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House Bills 5207, 5210, 5212, and 5214 (Substitute H-1 as passed by the House)

House Bills 5208, 5209, 5211, 5213, and 5215 (as passed by the House)

Sponsor: Representative Samantha Steckloff (H.B. 5207)  
Representative Christine Morse (H.B. 5208)  
Representative Kelly Breen (H.B. 5209)  
Representative Jason Hoskins (H.B. 5210)  
Representative Jennifer Conlin (H.B. 5211)  
Representative Jason Morgan (H.B. 5212)  
Representative Penelope Tsernoglou (H.B. 5213)  
Representative Laurie Pohutsky (H.B. 5214)  
Representative Amos O'Neal (H.B. 5215)

House Committee: Judiciary

Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 3-7-24

## **INTRODUCTION**

The bills would enact the "Assisted Reproduction and Surrogacy Parentage Act" to prescribe standards and processes for assisted reproduction and surrogacy agreements in the State. They would establish parent-child relationships under such agreements, provide for determination of parentage in case of the death of an intended parent, and specify that children born under the Act would be eligible for succession concerning estates. Parties of a surrogacy agreement generally would have to be at least 21 years old and undergo a mental health consultation, among other requirements. Additionally, the bills would specify that the parentage of children conceived in compliance with the Act could not be determined under specified laws. Finally, House Bill 5207 (H-1) would repeal the Surrogate Parenting Act, which prohibits surrogate parentage contracts for compensation and specifies that a contract would be void and unenforceable as contrary to public policy (see **BACKGROUND**).

House Bill 5207 is tie-barred to House Bills 5208 through 5215. House Bills 5208 through 5215 are tie-barred to House Bill 5207. House Bill 5210 also is tie-barred to House Bill 5212. Each bill would take effect 90 days after its enactment.

## **BRIEF FISCAL IMPACT**

The bills would have a minimal fiscal impact on the Department of Health and Human Services (DHHS) and local units of government. Eliminating barriers for surrogacy and assisted reproduction would mean there would no longer be the need for families to use the adoption process as an alternative route. This would take some burden off the of the State's child welfare system, though the magnitude of these cases and cost is relatively small. The bill would eliminate the penalties for entering into surrogacy agreements, and the fiscal impact of this would depend on how often counties were actually enforcing this penalty and the loss of that revenue.

MCL 333.2822 et al. (H.B. 5208); 777.15g (H.B. 5209) Legislative Analyst: Eleni Lionas  
700.2114 et al. (H.B. 5211); 722.1431 et al. (H.B. 5212) Fiscal Analyst: Ellyn Ackerman  
722.1493 (H.B. 5213); 722.1002 et al. (H.B. 5214) Humphrey Akujobi  
722.1465 (H.B. 5215) Joe Carrasco, Jr.; Elizabeth Raczowski; Michael Siracuse

## **CONTENT**

**House Bill 5207 (H-1)** would enact the "Assisted Reproduction and Surrogacy Parentage Act" to do the following:

- Prescribe the process to establish a parent-child relationship for individuals who used assisted reproduction methods.
- Allow a party to request the court to seal records under the Act to the public and specify that sealed records could only be available for inspection through a court order or request by the child of the party.
- Allow an individual who was an intended parent or individual who gave birth to a child through assisted reproduction to adjudicate parentage in the family division of a circuit court.
- Prescribe the process to determine parentage if an intended parent of a child conceived by assisted reproduction or surrogacy died during the process.
- Prescribe the eligibility requirements for the parties of a surrogacy agreement, including that all parties be at least 21 years old and undergo a mental health consultation, among other requirements.
- Prescribe surrogacy agreement minimum standards, including that at least one party in a surrogacy agreement be a resident of the State or that the birth and assisted reproduction occur within the State.
- Allow for the termination of a surrogacy agreement before the transfer of a gamete (sperm or egg) or an embryo, or, if a transfer failed to result in pregnancy, before another transfer.

**House Bill 5208** would amend Part 28 (Vital Records) of the Public Health Code to do the following:

- Require the State Registrar to establish a new birth certificate upon a judgment or a parentage judgment under the "Assisted Reproduction and Surrogacy Parentage Act" as proposed by **House Bill 5207 (H-1)**.
- Prescribe a \$50 fee to establish the new birth certificate.
- Decrease, from 2.0 million to 1.5 million, the population size required for a county to be permitted to charge a fee greater than those of the Code.

**House Bill 5209** would delete sentencing guidelines in the Code of Criminal Procedure for felony violations of the Surrogacy Parenting Act, which would be repealed under **House Bill 5207 (H-1)**.

**House Bill 5210 (H-1)** would amend the Estates and Protected Individuals Code (EPIC) to do the following:

- Specify that a child conceived by assisted reproduction or a surrogacy agreement under the proposed "Assisted Reproduction and Surrogacy Parentage Act" would be considered the child of the parents or intended parents.
- Delete language establishing the assumption of parentage of a child born to married parents.

**House Bill 5211** would amend the Paternity Act to prohibit the parentage of a child conceived through assisted reproduction or a surrogacy act as prescribed by the "Assisted Reproduction and Surrogacy Parentage Act" from being determined under the Paternity Act.

**House Bill 5213 and House Bill 5215 would amend the Summary Support and Paternity Act and the Genetic Parentage Act, respectively, to prohibit the Acts from being used to determine the parentage of a child conceived through assisted reproduction or a surrogacy act that complied with the "Assisted Reproduction and Surrogacy Parentage Act".**

**House Bill 5212 (H-1) would amend the Revocation of Paternity Act do the following:**

- Rename the Act from the Revocation of *Paternity Act* to the Revocation of *Parentage Act*.
- Specify that an action concerning parentage could not be brought under the Act if the child were conceived under in compliance with the "Assisted Reproduction and Surrogacy Parenting Act".
- Prohibit genetic testing from being used to challenge the parentage of a parent or donor who complied with the "Assisted Reproduction and Surrogacy Parenting Act".
- Modify factors a court could consider when determining that a parentage determination order would not be in the best interests of a child.

**House Bill 5214 (H-1) would amend the Acknowledgement of Parentage Act to modify conditions under which an individual would be considered the parent of a child in cases of assisted reproduction and surrogacy.**

House Bills 5207 to 5210 and House Bills 5212 and 5214 are described in detail below.

#### **House Bill 5207 (H-1)**

##### Definitions

"Assisted Reproduction" would mean a method of causing pregnancy through means other than by sexual intercourse including the following:

- Intrauterine, intracervical, or vaginal insemination.
- Donation of gametes.
- Donation of embryos.
- In vitro fertilization and embryo transfer.
- Intracytoplasmic sperm injection.
- Assisted reproductive technology.

"Donor" would mean an individual who provides gametes intended for use in assisted reproduction, whether or not for compensation. Donor would not include an individual who gives birth to a child conceived by assisted reproduction, except in the case of surrogacy, or an individual who is a parent under the rules governing the parentage of children conceived by assisted reproduction or assisted reproduction under a surrogacy agreement.

"Surrogacy agreement" would mean an agreement between one or more intended parents and a surrogate in which the surrogate agrees to become pregnant by assisted reproduction and that provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term would refer to a gestational surrogacy agreement and a genetic surrogacy agreement.

"Surrogate" would mean an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction under a surrogacy agreement. Surrogate would include a genetic surrogate or gestational surrogate, as applicable. "Genetic

surrogate" would mean an individual, not an intended parent, who agrees to become pregnant through assisted reproduction using the individual's own gametes. "Gestational surrogate" would mean an individual, not an intended parent, who agrees to become pregnant through assisted reproduction using gametes that are not the individual's own.

"Child" would mean individual born as a result of assisted reproduction or under a surrogacy agreement, whose parentage may be determined under the Act.

"Intended parent" would mean an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction or by assisted reproduction under a surrogacy agreement.

"Medical evaluation" would mean a complete consultation with and evaluation by a physician. "Mental health consultation" would mean a consultation with and, when required by the Act, an assessment by a mental health professional.

#### Establishment of Parent-Child Relationship

A parent-child relationship would be established between an individual and a child if one of the following occurred:

- The individual gave birth to the child except as by assisted reproduction under an act of surrogacy.
- The individual's parentage of a child was established by assisted reproduction not involving surrogacy.
- The individual's parentage of a child was established by assisted reproduction under an act of surrogacy.

Other than for parental rights that were terminated, a parent-child relationship established under the Act would apply for all purposes. An individual who established a parent-child relationship under the Act would be considered a natural parent for all purposes, including under the Child Custody Act. A donor would not be a parent of a child conceived by assisted reproduction.

(Generally, the Child Custody Act governs the rights of minor children to provide for the rights and duties pertaining to their custody support and support until the child becomes a legal adult.)

The venue for a proceeding to adjudicate parentage under the Act would have to be in the county in which one of the following occurred:

- The child resided, was born, or would be born.
- A parent or intended parent resided.
- A proceeding had been commenced for administration of the estate of an individual who was or could be a parent under the Act.

Under the Act, genetic testing could not be used for either of the following purposes:

- To challenge the parentage of an individual who was a parent through assisted reproduction.
- To establish the parentage of an individual who was a donor under the Act.

On request of a party, the court could order the court records in an action under the Act to be sealed to the public. If the records were ordered sealed, all pleadings, papers, or

documents in the court records, including the case history or registry of actions, could not be available for inspection, unless the court, for good cause shown, ordered the inspection or unless requested by the child or a party.

The Act would not apply to the birth of a child conceived by sexual intercourse.

#### Consent to Assisted Reproduction

Under the Act, the following provisions would apply to the birth of a child by assisted reproduction not involving surrogacy. An individual who gave consent for assisted reproduction with the intent to be the parent of a child conceived by assisted reproduction would be a parent of the child.

The consent would have to be either of the following:

- In a record signed before, on, or after the birth of the child by the individual who gave birth and by an individual who intended to be a parent of the child, including an acknowledgment of parentage.
- In an agreement entered before conception that the individual who gave birth and the individual who intended to be a parent of the child intended they both would be parents of the child.

("An acknowledgment of parentage" under the Acknowledgement of Parentage Act as defined by House Bill 5214 would be a record within the meaning of this subdivision.)

The Act would specify that failure to consent would not preclude a court from finding consent to parent if the individual for the first two years of the child's life, including any period of temporary absence, resided in the same household with the child and openly held out the child as the individual's child.

#### Adjudication of Parentage for Assisted Reproduction

An individual who was an intended parent or the individual who gave birth to the child could bring a proceeding to adjudicate parentage for a judgment of parentage in the family division of the circuit court. If the court determined the individual was a parent under the Act, either because the individual gave birth to the child or the individual was a consenting the intended parent, the court would have to adjudicate the individual to be a parent of the child.

The individual who would give or who had given birth or an individual who was or claimed to be a parent for the purpose of adjudication could commence an action before or after the birth of a child to obtain a judgment to declare that the intended parent or parents were the parent or parents of the resulting child immediately on birth of the child and order that parental rights and responsibilities vested exclusively in the intended parent or parents immediately on birth of the child. A certificate of live birth of a child would have to comply with the Act and would have to be established as provided under Part 28 (Vital Records) of the Public Health Code.

On request of a party and consistent with State laws other than the Act, the court in an action could order the name of the child changed. If the final judgment were at variance with the child's birth certificate, the court would have to order the State Registrar to issue an amended birth certificate.

A judgment issued before the birth of the resulting child would not take effect until the birth of that child. The Act would specify that these provisions could not be construed to limit the court's authority to issue other orders under other laws of the State. The State, the department (unspecified), and the hospital where the child was or was expected to be born would not be necessary parties to an action described above.

#### Death of Parent Before Birth of Child; Assisted Reproduction

If an individual who intended to be a parent of a child conceived by assisted reproduction died during the period between the transfer of a gamete or embryo and the birth of the child, the individual's death would not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under the Act.

If an individual who consented in a record to assisted reproduction by an individual who agreed to give birth to a child died before a transfer of gametes or embryos, the deceased individual would be a parent of a child conceived by the assisted reproduction only if the following occurred:

- Either the individual consented in a record that if assisted reproduction were to occur after the death of the individual, the individual would be a parent of the child or the individual's intent to be a parent of a child conceived by assisted reproduction after the individual's death was established by clear and convincing evidence.
- Either the transfer occurred within 36 months after the individual's death or the child's birth occurred within 45 months after the individual's death.

#### Surrogacy Agreement Eligibility

The following provisions would apply to the birth of a child by assisted reproduction under a surrogacy act.

To execute an agreement to act as a *surrogate*, an individual would have to meet all the following requirements:

- Be 21 years of age or older.
- Have previously given birth to at least one child.
- Have completed a medical evaluation concerning the surrogacy arrangement.
- Have completed a mental health consultation concerning the surrogacy arrangement.
- Have independent legal representation of the individual's choice by an attorney licensed in the State throughout the agreement negotiation process, the execution of the agreement, and the duration of the agreement about the terms of the surrogacy agreement and the potential legal consequences of the surrogacy agreement.

To execute a surrogacy agreement, an *intended parent*, whether or not genetically related to the child, would have to meet all the following requirements:

- Be 21 years of age or older.
- Have completed a mental health consultation.
- Have independent legal representation of the intended parent's or parents' choice by an attorney licensed in the State throughout the agreement negotiation process, the execution of the agreement, and the duration of the agreement about the terms of the surrogacy agreement and the potential legal consequences of the surrogacy agreement.

## Surrogacy Agreement Standards

A surrogacy agreement would have to meet all the following requirements:

- The surrogate and each intended parent would have to meet the eligibility requirements described above.
- Each intended parent, the surrogate, and the surrogate's spouse, if any, would have to be parties to the agreement.
- Each intended parent, the surrogate, and the surrogate's spouse, if any, would have to sign the agreement.
- The signature of each party to the agreement would have to be attested by a notarial officer.
- The intended parent or parents would have to pay for independent legal representation for the surrogate.
- The agreement would have to be executed before a medical procedure occurred related to the surrogacy agreement, other than the medical evaluation and mental health consultations required by the agreement's eligibility conditions.

Additionally, at least one of the following would have to apply:

- At least one party would have to be a resident of the State.
- The birth would have to occur or was anticipated to occur in the State.
- The assisted reproduction performed under the surrogacy agreement would have to occur in the State.

A surrogacy agreement would have to comply with all the following requirements:

- The surrogate would have to agree to attempt to become pregnant by means of assisted reproduction.
- Except as otherwise specified, the surrogate and the surrogate's spouse or former spouse, if any, would have no claim to parentage of a child conceived by assisted reproduction under the agreement.
- The surrogate's spouse, if any, would have to acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.
- Except as otherwise specified, the agreement would have to provide that the intended parent, or, if there were two intended parents, each intended parent jointly and severally, immediately on birth, would be the exclusive parent or parents of the child, regardless of the number of children born or gender or mental or physical condition of each child.
- Except as otherwise provided, the intended parent, or, if there were two intended parents, each parent jointly and severally, immediately on birth, would have to assume responsibility for the financial support of the child, regardless of the number of children born or gender or mental or physical condition of each child.
- The agreement would have to include information disclosing that the intended parent or parents would have to cover the agreed-on expenses of the surrogate, the assisted reproduction expenses, and the medical expenses for the surrogate and the child.
- The surrogacy agreement would have to permit the surrogate to use the services of a health care practitioner of the surrogate's choosing.
- The surrogacy agreement must include information about each party's right to terminate the surrogacy agreement as described below.

Additionally, the agreement would have to permit the surrogate to make all health and welfare decisions regarding the surrogate and the pregnancy, including whether to consent to a cesarean section or multiple embryo transfer. Notwithstanding the Act's provisions, any

provision in the agreement to the contrary would be void and unenforceable. The Act could not diminish the right of the surrogate under Section 28 of Article I of the State Constitution of 1963. (Section 28 of Article I of the State Constitution ensures an individual's right to reproductive freedom).

A surrogacy agreement would have to provide for payment of compensation, support, and reasonable expenses or reimbursement of specific agreed-on expenses if the agreement was terminated, or both.

A right created under a surrogacy agreement would not be assignable, and there could not be a third-party beneficiary of the surrogacy agreement other than the child.

If any of the requirements regarding the birth of a child under a surrogacy act were not met, a court of competent jurisdiction would have to determine parentage based on the enforceability of the agreement and consistent with the intent of the parties considering the best interest of the child.

Unless a surrogacy agreement expressly provided otherwise, the following would apply:

- The marriage of a *surrogate* after the surrogacy agreement was signed by all parties would not affect the validity of the agreement, the spouse's consent to the agreement would not be required, and the spouse would not be a presumed parent of a child conceived by assisted reproduction under the agreement.
- The dissolution, annulment, or declaration of invalidity of the *surrogate's marriage*, the legal separation of the surrogate, or a judgment of separate maintenance concerning the surrogate after the surrogacy agreement was signed by all parties would not affect the validity of the agreement.

Unless a surrogacy agreement expressly provided otherwise, the following would apply:

- The marriage of an *intended parent* after the surrogacy agreement was signed by all parties would not affect the validity of a surrogacy agreement, the consent of the spouse would not be required, and the spouse would not be, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement.
- The dissolution, annulment, or declaration of invalidity of an *intended parent's marriage*, the legal separation of an intended parent, or a judgment of separate maintenance concerning an intended parent after the agreement was signed by all parties would not affect the validity of the agreement and, except as otherwise provided by the Act, the intended parent would be a parent of the child.

#### Termination of Surrogacy Agreement

A party to a surrogacy agreement could terminate the agreement at any time before a gamete or an embryo transfer by giving notice of termination in a record to all other parties. If a gamete or an embryo transfer did not result in a pregnancy, a party could terminate the agreement at any time before a subsequent gamete or embryo transfer.

Unless a surrogacy agreement provided otherwise, on termination of the agreement, the parties would be released from the agreement, except that each intended parent would remain responsible for expenses that were reimbursable under the agreement and incurred by the surrogate through the date of termination of the surrogacy agreement.

Unless there were fraud, a party would not be liable to any other party for a penalty or liquidated damages for terminating a surrogacy agreement.



## Parental Rights and Exemptions

Except as otherwise provided, on birth of a child conceived by assisted reproduction under a surrogacy agreement under the Act, *each intended parent would be*, by operation of law, a parent of the child. Except as otherwise provided, on birth of a child conceived by assisted reproduction under a surrogacy agreement under the Act, *neither a surrogate nor the surrogate's spouse or former spouse*, if any, would be a parent of the child.

If a child were alleged to be a genetic child of the individual who agreed to be a gestational surrogate, the court would have to order genetic testing of the child. If the child were a genetic child of the surrogate, parentage would have to be determined based on law of the State other than the Act.

Except as otherwise provided, if, because of a clinical or laboratory error, a child conceived by assisted reproduction under a surrogacy agreement were not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the surrogate and the surrogate's spouse or former spouse, if any, would be a parent of the child, subject to any other claim of parentage.

A donor would not be a parent of a child conceived by assisted reproduction under a surrogacy agreement.

## Death of Intended Parent Before Birth of Child; Surrogacy

The following provisions would apply to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

Except as otherwise provided, an intended parent would not be a parent of a child conceived by assisted reproduction under a surrogacy agreement if the intended parent died before the transfer of a gamete or embryo unless the following applied:

- The surrogacy agreement provided otherwise.
- The transfer of a gamete or embryo occurred within 36 months after the death of the intended parent, or the birth of the child occurred within 45 months after the death of the intended parent.

Before, on, or after the birth of a child conceived under a surrogacy agreement, a party to the agreement could commence an action in the family division of the circuit court for entry of a parentage judgment. The requested parentage judgment could be issued before or after the child's birth as requested by the parties. The surrogate and all intended parents would be necessary parties to the action. The complaint would have to be accompanied by a certification from the attorney representing the intended parent or parents and from the attorney representing the surrogate that the surrogacy agreement complied with the requirements of the Act and a statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that all parties were requesting the judgment of parentage. On receipt of the complaint and accompanying certifications, the court would have to, without holding a hearing unless the surrogate challenged the accuracy of the attorney certificates, enter a judgment of parentage that did all the following, without additional proceedings or documentation:

- Declared that each intended parent was a parent of the child and ordered those parental rights and duties vested immediately on the birth of the child exclusively in each intended parent.

- Declared that the surrogate and the surrogate's spouse or former spouse, if any, were not the parents of the child.
- To protect the privacy of the child and the parties, ordered the court records sealed.
- If necessary, ordered that the child be surrendered to the intended parent or parents.
- Awarded other relief the court determined necessary and proper.

The court could issue the order or judgment before or after the birth of the child. The court would have to stay enforcement of the order or judgment until the birth of the child.

Neither the State nor the department (unspecified) nor the hospital where the child was or was expected to be born would be necessary parties to an action described above.

A certificate of live birth of a child would have to comply with the Act and would have to be established as provided under Part 28 of the Public Health Code.

#### Enforcement and Breach of Surrogacy Agreement

A surrogacy agreement that substantially complied with the Act's provisions would be enforceable. If a child were conceived under a surrogacy agreement that did not substantially meet the material requirements of the Act, a court would have to determine parentage consistent with the intent of the parties, considering the best interests of the child. Each party to the surrogacy agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement would have standing to maintain an action to adjudicate an issue related to the enforcement of the agreement.

Except as expressly provided in a surrogacy agreement or as provided below, if the agreement were breached by the surrogate or one or more intended parents, the nonbreaching party would be entitled to the remedies available at law or in equity.

The breach of the surrogacy agreement by one or more intended parents would not relieve the intended parent of the support obligations imposed by the parent and child relationship under the Act.

Specific performance would not be a remedy available for breach by a surrogate of a provision in the agreement that the surrogate was impregnated, terminated a pregnancy, or submitted to medical procedures. Except as otherwise provided in above, if an intended parent were determined to be a parent of the child, specific performance would be a remedy available for either of the following:

- Breach of the surrogacy agreement by a surrogate that prevented an intended parent from exercising immediately on birth of the child the full rights of parentage.
- Breach of the surrogacy agreement by an intended parent that prevented the intended parent's acceptance, immediately on the birth of the child, of the duties of parentage.

### **House Bill 5208**

The bill would modify references of father and mother to instead refer to parent.

#### Determination of Parentage

Under the Public Health Code, if a child's mother was not married at the time of conception or birth, the name of the father must not be entered on the birth certificate without written consent by the mother and upon completion of filing an acknowledgement of parentage with the State Registrar. If the child's father is not named on the birth registration, no other

information about the father can be entered on the registration. The bill specifies that these provisions would apply unless otherwise provided by law.

The Code specifies that a child conceived by a married woman with consent of her husband following the utilization of assisted reproductive technology is the legitimate child of the husband and wife. The bill would delete this provision.

#### New Certificate of Birth

The State Registrar must establish a new birth certificate for an individual born in the State upon receiving certain reports or requests. Under the bill, the Registrar would have to establish a new birth certificate upon a judgment or a parentage judgment under the Assisted Reproduction and Surrogacy Parentage Act as proposed by House Bill 5207 (H-1), together with the information necessary to identify the original certificate of birth and to establish a new certificate of live birth.

#### Registrar Fees

Under the bill, the State Registrar would have to charge a \$50 fee for a judgment or parentage judgment under the Assisted Reproduction and Surrogacy Act.

Currently, the State Registrar or local registrar cannot charge a fee other than prescribed in the Code. A charter county with a population greater than 2.0 million may adopt a system of fees for a local registrar under the jurisdiction of that charter county that provides for fees more than those set forth under the Code. The bill would decrease, from 2.0 million to 1.5 million, the population requirement for a county to provide for fees as described above.

#### **House Bill 5209**

Under the Code of Criminal Procedure, arranging a surrogate parenting contract for compensation or for a minor or individual with an intellectual disability are each Class E felonies against a person with a maximum five years' imprisonment. The bill would delete these sentencing guidelines.

#### **House Bill 5210 (H-1)**

The bill would modify references to "the man", "father", or "alleged father" to instead refer to the individual with a claim to parentage or an individual who did not give birth.

Under EPIC, for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of the parent's marital status. The Code specifies the way the parent child relationship may be established.

Among other methods to establish intestate succession, if a child is born or conceived during marriage both spouses are presumed to be the natural parents.

The Code specifies that a child conceived by a married woman with the consent of her husband following the utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. The bill would delete these provisions.

Instead, the bill would add the following methods to establish intestate succession:

- A child conceived by assisted reproduction with the consent of an individual consistent with the "Assisted Reproduction and Surrogacy Parentage Act" would be considered the child of the intended parent or parents.
- A child conceived by assisted reproduction and surrogacy agreement that complied with the "Assisted Reproduction and Surrogacy Parentage Act" would be considered the child of the intended parent or parents.

The Code specifies that only an individual presumed to be the natural parent of a child if the child was conceived during marriage and both spouses are presumed to be the natural parents may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent. The bill would delete this provision.

### **House Bill 5212 (H-1)**

Under the Revocation of Paternity Act, a court may refuse to enter an order setting aside paternity determination if the court finds evidence that the order would not be in the best interests of the child. The court must state its reasons for refusing to enter an order on the record. The court may consider the following factors:

- Whether the presumed father is estopped from denying parentage due to personal conduct.
- The nature of the relationship between the child and the presumed or alleged father.
- The age of the child.
- The harm that may result to the child.
- Other factors that may affect the equities arising from the disruption of the relationship.
- Any other factor the court deems appropriate.

Additionally, the court may consider the length of time the presumed father was on notice that he might not be the father and the facts surrounding the presumed father's discovery that he might not be the father. The bill would delete these factors of consideration and instead specify that the court would have to consider these factors if the challenge to parentage were based on genetic testing. The court also would have to consider the other factors listed above in such a case.

The bill would specify that genetic testing could not be used for the following purposes:

- To challenge the parentage of an individual who was a parent through assisted reproduction or through surrogacy under the "Assisted Reproduction and Surrogacy Parentage Act".
- To establish the parent of an individual who was a donor.

Currently, the Act does not establish a basis for vacating a judgment establishing paternity of a child conceived under the Surrogate Parenting Act, meaning a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child. The bill would delete this provision.

Instead, under the bill, an action could not be brought under the Revocation of Paternity Act concerning the parentage of either of the following:

- A child conceived through the use of assisted reproduction that did not involve surrogacy if the parents of the child could be determined under the "Assisted Reproduction and Surrogacy Parentage Act".
- A child conceived under surrogacy agreement that complied with the "Assisted Reproduction and Surrogacy Parentage Act".

### **House Bill 5214 (H-1)**

#### **Definitions**

"Acknowledged parent" would mean an individual who has established a parent-child relationship under the Acknowledgement of Parentage Act.

"Child" means a child conceived and born to a woman who was not married at the time of conception or the date of birth of the child or a child that the circuit court determines was born or conceived during a marriage but is not the issue of that marriage. Under the bill, the term also would mean a child that is born to an individual who gave birth to a child conceived through assisted reproduction.

The Act defines "father" as the man who signs the acknowledgement of parentage of a child. The bill would delete this term.

#### **Acknowledgement of Parentage Form**

Under the Act, if a child is born out of wedlock, the man is considered the natural father of that child if the man joins with the mother of the child and acknowledges the child as his by completing an acknowledgement of parentage form. The bill would add that if a child born out of wedlock were conceived by assisted reproduction, an individual would be considered the natural parent if the individual joined with the individual who gave birth to the child and acknowledged the child as their own by completing an acknowledgement of parentage form.

Additionally, if a child were born to a married individual who gave birth to a child conceived by assisted reproduction under the "Assisted Reproduction and Surrogacy Parentage Act", the individual's spouse would be considered the acknowledged parent by completing an acknowledgement of parentage form.

The Acknowledgement of Parentage Act specifies that an acknowledgment of parentage form is valid if signed by the mother and father and notarized before a witness. The bill would specify that the form would be valid and would establish the parentage if signed by the individuals' eligible to acknowledge parentage as described above.

#### **Custody**

Generally, after a mother and father sign an acknowledgement of parentage form, the mother has initial custody of the child. Under the bill, this provision only would apply to a child born out of wedlock to a man and woman where the man joined with the mother and completed the acknowledgement of parentage form.

### **BACKGROUND**

The Surrogate Parenting Act prohibits surrogacy contracts and prescribes associated penalties. Generally, individuals are prohibited from entering, arranging, or assisting in the formation of a surrogacy contract and would be guilty of a misdemeanor punishable by a maximum civil fine of \$10,000 or a maximum of one year imprisonment, or both. A person

other than a participating party would be guilty of a felony punishable by a maximum civil fine of \$50,000 or a maximum of five years' imprisonment, or both.

Additionally, the Act specifies that a person must not enter, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract under which an unemancipated minor female or a female diagnosed as being intellectually disabled or as having a mental illness or developmental disability is the surrogate mother or surrogate carrier. Under the Act, an individual who entered, induced, arranged, procured, or otherwise assisted in the formation of a surrogacy contract (other than the unemancipated minor female or a female diagnosed as being intellectually disabled) is guilty of a felony punishable by a maximum fine of \$50,000 or a maximum of five years' imprisonment, or both.

## **FISCAL IMPACT**

House Bills 5207 (H-1), 5211, 5212 (H-1), and 5215 would have minimal fiscal impact on the DHHS and local units of government. Eliminating barriers for surrogacy and assisted reproduction would mean there would no longer be the need for families to use the adoption process as an alternative route. This would take some burden off the of the State's child welfare system, though the magnitude of these cases and cost is relatively small. The bill would eliminate the penalties for entering into surrogacy agreements, and the fiscal impact of this would depend on how often counties were enforcing this penalty and the loss of that revenue.

House Bill 5208 would have an indeterminate, but likely minor, fiscal impact on the DHHS and local units of government. Currently, the application for the creation of a new certificate of birth is \$50, and is allowable in cases of adoption, legal change of name for minors, acknowledgement of parentage, sex change, legitimation, order of filiation, a request to replace a court filed certificate of adoption, or to correct obvious minor errors and omissions. The bill would add a judgement or parentage judgment under the Assisted Reproduction and Surrogacy Parentage Act. Any increase in revenue would depend on the number of requests for a new certificate of birth using a judgement or parentage judgement under the Assisted Reproduction and Surrogacy Parentage Act as necessary documentation. To the extent that some children born to surrogates may previously have gone through the adoption process, there could be a reduction in requests for a new birth certificate using documentation of adoption as the reason for a request. This would potentially offset any revenue from an increase in applications for a new certificate of birth using a judgement or parentage judgement under the "Assisted Reproduction and Surrogacy Parentage Act" as necessary documentation.

House Bill 5209 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions

House Bill 5210 would have no fiscal impact on State or local government.

House Bill 5207 (H-1) and House Bills 5212 (H-1) through 5214 (H-1) would have no measurable fiscal impact on State or local courts.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.