

# HOUSE BILL No. 4753

June 4, 1987, Introduced by Reps. Clack, Willis Bullard and Power and referred to the Committee on Judiciary.

A bill to establish the parental rights and responsibilities of a societal father and a societal mother for a child conceived or born through surrogate parentage procedures or surrogate gestation procedures; to establish the legal status of a child conceived or born through surrogate parentage procedures or surrogate gestation procedures; to prohibit agreements to conceive a child through artificial insemination of a surrogate mother or to gestate a child except as provided in this act; to provide for the termination of the parental rights of a surrogate mother and a surrogate carrier; to prohibit an attorney from engaging in certain conduct; to require that certain documents be filed with the probate court; to impose certain duties on the state registrar; to provide for a cause of action in certain circumstances; and to prescribe penalties.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act shall be known and may be cited as the  
2 "surrogate parenting act".

3       Sec. 2. As used in this act:

4       (a) "Genetic screening" means the taking of a comprehensive  
5 personal history and a comprehensive family history encompassing  
6 at least 2 generations, the testing for diseases which may be  
7 indicated by the personal and family history, the testing of mem-  
8 bers of ethnic groups for specific genetic diseases known to be  
9 common in those groups, and the testing for Rh factor  
10 compatibility.

11       (b) "Societal father" means a male who is the husband of the  
12 societal mother and who intends, as evidenced by a written  
13 acknowledgment as described in section 5, to have the parental  
14 rights and responsibilities for a child born to a surrogate  
15 mother or to a surrogate carrier, regardless of whether the child  
16 is biologically related to the male.

17       (c) "Societal mother" means a female who is the wife of the  
18 societal father and who intends, as evidenced by a written  
19 acknowledgment as described in section 5, to have the parental  
20 rights and responsibilities for a child born to a surrogate  
21 mother or a surrogate carrier, regardless of whether the child is  
22 biologically related to the female.

23       (d) "Surrogate carrier" means the woman in whom an embryo is  
24 implanted in a surrogate gestation procedure.

1 (e) "Surrogate gestation" means the implantation in a woman  
2 of an embryo not genetically related to that woman and subsequent  
3 gestation of a child by that woman.

4 (f) "Surrogate mother" means a woman who is artificially  
5 inseminated with the semen of a societal father in a surrogate  
6 parentage procedure.

7 (g) "Surrogate parentage" means the artificial insemination  
8 of a surrogate mother with the semen of a societal father and the  
9 subsequent gestation by the surrogate mother of a child conceived  
10 through the insemination.

11 Sec. 3. (1) A person shall not be a party to an agreement  
12 in which a female agrees to conceive a child through artificial  
13 insemination, or in which a female agrees to gestate a child not  
14 genetically related to the female, and to voluntarily relinquish  
15 her parental rights except as provided in this act.

16 (2) A person who violates subsection (1) is guilty of a mis-  
17 demeanor, punishable by imprisonment for not more than 90 days or  
18 a fine of not more than \$10,000.00, or both.

19 Sec. 4. (1) A societal father and a societal mother shall  
20 assume all parental rights and responsibilities upon the birth of  
21 the child, regardless of the condition of the child, born to the  
22 surrogate mother or the surrogate carrier. The child shall be  
23 considered to be the legitimate child of the societal father and  
24 the societal mother, if all of the following conditions are met:

25 (a) The societal father and the surrogate mother or the sur-  
26rogate carrier have entered into a written agreement as

1 prescribed in section 7 and after the conditions described in  
2 subdivisions (c) and (e) have been met.

3 (b) The societal father and the societal mother sign the  
4 written acknowledgments as provided in section 5.

5 (c) A person who has a certificate of registration as a mar-  
6 riage counselor, a licensed psychologist, a licensed physician  
7 who is a psychiatrist, or a qualified employee of a licensed  
8 child placement agency signs a written acknowledgment that the  
9 person or the agency has counseled the societal father and the  
10 societal mother on the consequences and responsibilities of sur-  
11rogate parenthood and believes that the societal father and the  
12 societal mother both fully understand these consequences and  
13 responsibilities and are prepared, in the professional judgment  
14 of the person or agency, to assume these responsibilities.

15 (d) The surrogate mother or the surrogate carrier signs a  
16 consent to the termination of her parental rights and responsi-  
17 bilities as provided in section 6.

18 (e) A licensed physician signs a written statement that the  
19 physician has determined that the societal father or the societal  
20 mother, or both, have a condition that makes the conception or  
21 birth of a child unlikely or that creates a likelihood that a  
22 child of the societal father and the societal mother will have a  
23 mental impairment or disability or a significant physical impair-  
24 ment, disability, or disease.

25 (f) A licensed psychologist, a licensed physician who is a  
26 psychiatrist, or a qualified employee of a licensed child  
27 placement agency signs a written statement that the surrogate

1 mother or the surrogate carrier is capable of consenting to the  
2 termination of her parental rights and responsibilities as pro-  
3 vided in section 6 and that the psychologist, physician, or qual-  
4 ified employee of the agency has discussed with the surrogate  
5 mother or the surrogate carrier the potential psychological con-  
6 sequences of her consent.

7 (g) In the case of surrogate parentage, the societal father  
8 provides his semen to a licensed physician under the supervision  
9 of the physician.

10 (h) In the case of surrogate parentage, the artificial  
11 insemination of the surrogate is performed under the supervision  
12 of a licensed physician who acknowledges in writing having super-  
13 vised the artificial insemination and having informed the surro-  
14 gate of all instructions relative to the artificial insemination  
15 procedure.

16 (i) The artificial insemination of the surrogate mother or  
17 the implantation of the embryo in the surrogate carrier occurs  
18 not less than 30 days after the applicable conditions described  
19 in subdivisions (a) through (f) have been met.

20 (2) If all the requirements of subsection (1) have been met  
21 and if either the societal father or the societal mother dies  
22 before the birth of the child, the survivor shall assume, upon  
23 birth of the child, all parental rights and responsibilities for  
24 the child.

25 (3) If all the requirements of subsection (1) have been met  
26 and if both the societal father and the societal mother die  
27 before the birth of the child, the surrogate mother's or

1 surrogate carrier's consent to the termination of her parental  
2 rights as required by section 6 is void, and the surrogate shall  
3 have all parental rights and responsibilities for the child. If,  
4 after the birth of the child, the surrogate mother or the surro-  
5 gate carrier executes a consent or a release under chapter X of  
6 Act No. 288 of the Public Acts of 1939, being sections 710.21 to  
7 710.70 of the Michigan Compiled Laws, the costs associated with  
8 the execution of the consent or release and subsequent adoption  
9 of the child shall be paid from the bond required by  
10 section 7(4).

11       Sec. 5. (1) The societal father and the societal mother  
12 shall sign a written acknowledgment of the following:

13       (a) That, before entering into the written agreement with  
14 the surrogate mother or the surrogate carrier, the societal  
15 father and societal mother reviewed the results of medical and  
16 psychiatric or psychological examinations that have been per-  
17 formed on the surrogate mother or the surrogate carrier and have  
18 decided that the surrogate is suitable.

19       (b) That the societal father and the societal mother are  
20 aware that they will assume parental rights and responsibilities  
21 for the child born to the surrogate mother or the surrogate car-  
22 rier, regardless of the condition of the child, as provided in  
23 this act.

24       (2) In the case of a surrogate parentage arrangement, the  
25 societal mother shall sign in the presence of the licensed physi-  
26 cian who is to perform the artificial insemination upon the  
27 surrogate mother a written acknowledgment that the societal

1 mother is aware that the societal father's semen will be used for  
2 the artificial insemination of the surrogate mother.

3       Sec. 6. (1) Contemporaneously with entering into the writ-  
4 ten agreement prescribed in section 7, the surrogate mother or  
5 the surrogate carrier shall sign a written consent, effective on  
6 the birth of the child, permanently relinquishing her parental  
7 rights and responsibilities for the child.

8       (2) The consent required by subsection (1) shall contain an  
9 acknowledgment by the surrogate mother or the surrogate carrier  
10 that she is aware that she will assume parental rights and  
11 responsibilities for a child born to her if both the societal  
12 father and the societal mother die before the birth of the child  
13 or if a court determines pursuant to section 11(1) that the soci-  
14 etal father is not the father of the child.

15       (3) In the case of a surrogate parentage arrangement only,  
16 the consent required by subsection (1) is effective unless the  
17 surrogate mother revokes her consent in writing and initiates an  
18 action under the child custody act of 1970, Act No. 91 of the  
19 Public Acts of 1970, being sections 722.21 to 722.29 of the  
20 Michigan Compiled Laws, to determine the custody of the child  
21 within 20 days after the birth of the child. All records of pro-  
22 ceedings in any action initiated pursuant to this subsection  
23 shall be suppressed. The custody of the child during the pen-  
24 dency of an action initiated pursuant to this subsection shall be  
25 determined by the court.

26       (4) The execution of the consent required by subsection (1)  
27 shall be witnessed by 2 persons, and a duplicate copy of the

1 consent shall be retained by the surrogate mother or the  
2 surrogate carrier.

3 (5) The consent required by subsection (1) shall contain the  
4 name of the surrogate mother or the surrogate carrier at the time  
5 of the child's birth and the surrogate mother's or the surrogate  
6 carrier's most recent address.

7 Sec. 7. (1) A written agreement between a societal father  
8 and societal mother and a surrogate mother or a surrogate carrier  
9 shall contain both of the following terms:

10 (a) That the surrogate mother or the surrogate carrier  
11 agrees to submit to any reasonable request by the societal father  
12 for a medical, psychiatric, or psychological examination or a  
13 genetic screening and to authorize the release of the results of  
14 the examination to the societal father.

15 (b) That the surrogate mother and the surrogate carrier and  
16 the societal father agree to submit themselves and the child to  
17 any procedure necessary for the performance of the blood or  
18 tissue typing tests required by section 8.

19 (2) Except as otherwise provided in subsection (3), a writ-  
20 ten surrogate agreement may contain terms agreed to by the par-  
21 ties in addition to those terms required by subsection (1).

22 (3) A written surrogate agreement shall not contain any  
23 agreement to reduce any amount paid to the surrogate mother or  
24 the surrogate carrier if the child is stillborn or is born alive  
25 but impaired.

26 (4) At the same time that the written surrogate agreement is  
27 filed as provided in section 9, the societal father shall file a



1 surety bond by a surety company registered in this state to  
2 indemnify this state for any cost up to \$100,000.00 incurred by  
3 the state for the care of a child born to a surrogate or to pay  
4 for the costs described in section 4(3).

5       Sec. 8. (1) Not later than 24 hours after the birth of a  
6 child born to a surrogate mother or a surrogate carrier, the  
7 societal father; the societal mother, in the case of a surrogate  
8 carrier only; the surrogate mother or the surrogate carrier; the  
9 surrogate's husband, if the surrogate is married; and the child  
10 shall submit to procedures necessary for the performance of blood  
11 or tissue typing tests which tend to establish the paternity of  
12 the child. The tests shall be selected by the societal father  
13 and societal mother and may include, but are not limited to,  
14 tests of red cell antigens, red cell isoenzymes, human leukocyte  
15 antigens, and serum proteins. The results of the tests performed  
16 shall be made available immediately to the surrogate mother or  
17 the surrogate carrier and the societal father and the societal  
18 mother.

19       (2) Not later than 24 hours after the birth of a child born  
20 to a surrogate mother or a surrogate carrier, the societal father  
21 shall file with the probate court in the county where the surro-  
22 gate mother or the surrogate carrier resides a written notice of  
23 the birth.

24       Sec. 9. (1) Each acknowledgment, consent, revocation,  
25 agreement, contract, or notice described in sections 3 to 8 shall  
26 be notarized and shall be filed with the probate court in the  
27 county where the societal father and the societal mother reside.

1 (2) Not fewer than 20 days after the birth of a child born  
2 to a surrogate mother, but as soon as possible after this 19-day  
3 period elapses, and if the surrogate mother has not revoked her  
4 consent as provided in section 6(3), the probate court shall send  
5 to the state registrar appointed pursuant to section 2813 of the  
6 public health code, Act No. 368 of the Public Acts of 1978, being  
7 section 333.2813 of the Michigan Compiled Laws, a surrogate par-  
8 entage report to the effect that the documents required under  
9 sections 3 to 8 have been filed with the court.

10 (3) As soon as possible after the birth of a child to a sur-  
11rogate carrier and after receipt by the probate court of the doc-  
12uments described in subsection (1), the probate court shall send  
13to the state registrar a report to the effect that the documents  
14required by sections 3 to 8 have been filed with the court.

15 (4) Upon reaching 18 years of age, a child conceived and  
16born through a surrogate parentage or a surrogate gestation pro-  
17cedure may obtain from the probate court in the county with which  
18the documents described in subsection (1) have been filed copies  
19of those documents.

20 (5) The probate court in a county with which the documents  
21described in subsection (1) have been filed shall permit a surro-  
22gate mother or a surrogate carrier to update that portion of the  
23surrogate's consent required by section 6 which contains the  
24surrogate's name and most recent address or to add any other per-  
25tinent information to the file. The probate court shall charge  
26and collect from the surrogate mother or the surrogate carrier

1 \$5.00 for each update or addition filed pursuant to this  
2 subsection.

3 (6) Upon request, the state registrar shall advise any  
4 person who is at least 18 years of age whether a report as  
5 described in subsection (2) or (3) exists with respect to that  
6 person's certificate of birth, and if such a report exists, of  
7 the name of the county in which the documents upon which the  
8 report was based originally were filed.

9 (7) The probate court shall charge and collect from the  
10 societal father a fee of \$100.00 for the filing of the documents  
11 described in subsection (i).

12 Sec. 10. An attorney who represents a societal father and a  
13 societal mother, or any other attorney with whom that attorney is  
14 associated, shall not represent simultaneously a female who is or  
15 proposes to be a surrogate mother or a surrogate carrier in any  
16 matter relating to a surrogate agreement with that societal  
17 father and societal mother.

18 Sec. 11. (1) A societal father and a societal mother may  
19 initiate an action against a surrogate mother or a surrogate car-  
20 rier with whom the societal father and societal mother have  
21 entered into a surrogate agreement to establish, in the case of  
22 surrogate parentage, that the societal father is not the biologi-  
23 cal father of a child born to the surrogate mother, or in the  
24 case of surrogate gestation, that the societal father and the  
25 societal mother are not the biological parents of the child born  
26 to the surrogate carrier. If the court determines that, in the  
27 case of surrogate parentage, the societal father is not the

1 father of the child born to the surrogate mother, or in the case  
2 of surrogate gestation, the societal father and the societal  
3 mother are not the biological parents of the child born to the  
4 surrogate carrier, the surrogate mother's or the surrogate  
5 carrier's consent to the termination of her parental rights  
6 required by section 6 is void, and the surrogate mother or the  
7 surrogate carrier shall assume parental rights and responsibili-  
8 ties for the child.

9       (2) Blood or tissue typing tests which may include, but are  
10 not limited to, tests of red cell antigens, red cell isoenzymes,  
11 human leukocyte antigens, and serum proteins are admissible in  
12 evidence in the trial of a case initiated pursuant to subsection  
13 (1).