

Legislative Analysis



FERTILITY FRAUD

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House Bills 5035, 5037, and 5039 as introduced
Sponsor: Rep. John R. Roth

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5036 as introduced
Sponsor: Rep. Samantha Steckloff

House Bill 5038 as introduced
Sponsor: Rep. Alicia St. Germaine

Committee: Families and Veterans
Complete to 11-3-25

SUMMARY:

The bills would amend different acts to address fraud in reproductive assistance procedures. House Bill 5036 would prohibit providing false or misleading information related to an assisted reproduction procedure and prohibit a health professional from using an embryo, sperm, or egg in such a procedure that is not the one the patient consented to. House Bills 5035, 5037, 5038, and 5039 would make related changes concerning, respectively, civil liability, statutes of limitations, sentencing guidelines, and health professional sanctions.

House Bill 5036 would amend the Michigan Penal Code to create two felonies related to ***assisted reproduction***, defined as a method of causing pregnancy other than sexual intercourse.

False representation in assisted reproduction

First, the bill would provide that a person who ***knowingly***, intentionally, or willfully engages in a practice or act the person ***knows*** or reasonably should know provides false or misleading information related to an assisted reproduction procedure is guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$50,000, or both. Such a practice or act would include making a false or misleading representation relating to any of the following:

- The ***human embryo*** or ***gamete*** used or provided for assisted reproduction.
- The ***identity*** (defined to mean “legal name”) of a ***donor*** of the human embryo or gamete used or provided for assisted reproduction, including the donor’s name, birthdate, or address at the time of donation.
- A donor’s medical history, including present illness at the time of donation, any past illnesses, any history of diagnosed mental illness, the ***social history of the donor***, any known genetic defects, the ***family medical history of the donor***, or the donor’s level of education.

Know or knowingly would mean that a health professional or other person undertook an action with knowledge and not because of mistake, accident, or other innocent reason.

Human embryo would mean a human organism at any stage of development from fertilized ovum to embryo.

Gamete would mean sperm, egg, or any part of a sperm or egg.

Donor would mean an individual who provides gametes or human embryos intended for use in assisted reproduction, regardless of whether the individual receives financial compensation for the donation.

Social history of the donor would mean the personal and sexual history of the donor pertaining to risk factors for relevant communicable disease transmissible via gamete donation.

Family medical history of the donor would mean the complete medical history of the first-, second-, and third-degree relatives of the donor.

Use of another embryo or gamete

Second, the bill would provide that a ***health professional*** who knowingly or recklessly uses or provides a human embryo or gamete, including their own human embryo or gamete, for assisted reproduction other than the specific one the ***patient*** expressly consented to in writing is guilty of a felony punishable by imprisonment for up to 15 years or a fine of up to \$100,000, or both.

Health professional would mean an individual licensed, registered, certified, or otherwise authorized to engage in a health profession under Article 15 (Occupations) of the Public Health Code.¹

Patient would mean an individual under the care of a health professional.

Anonymous donors

The use of an ***anonymous donor***, if requested by a patient, would not be a defense to a violation of either of the above prohibitions committed by a health professional.

Anonymous donor would mean a donor whose identity is not provided to the patient.

The bill would take effect 90 days after the date it is enacted.

Proposed MCL 750.219g

House Bill 5038 would amend the Code of Criminal Procedure to add the felonies that would be created under HB 5036 to the sentencing guidelines as follows:

- False representation with regard to specific circumstances regarding an assisted reproduction procedure would be a class E crime against a person with a statutory maximum term of imprisonment of five years.
- A health professional knowingly or recklessly using a human embryo or gamete other than the one agreed to by the patient in an assisted reproduction procedure would be a

¹ Health care professions licensed or registered under Article 15 of the Public Health Code include acupuncturists, athletic trainers, audiologists, behavior analysts, chiropractors, counselors, dental assistants, dental hygienists, dentists, genetic counselors, marriage and family therapists, massage therapists, midwives, nurses, nursing home administrators, occupational therapists and occupational therapy assistants, optometrists, pharmacists and pharmacy technicians, physical therapists and physical therapy assistants, physician's assistants, physicians, podiatrists, psychologists, respiratory therapists, sanitarians, social workers and social service technicians, speech-language pathologists, and veterinarians and veterinarian technicians

class C crime against a person with a statutory maximum term of imprisonment of 15 years.

The bill would take effect 90 days after the date it is enacted, but it would not take effect unless HB 5036 were also enacted.

MCL 777.16/

House Bill 5039 would amend sections 16221 and 16226 of the Public Health Code. Section 16221 requires the Department of Licensing and Regulatory Affairs (LARA) to investigate an allegation that one or more grounds for disciplinary subcommittee action exist concerning a licensee, registrant, or applicant for licensure or registration under the code. The investigation includes conducting hearings, administering oaths, and ordering relevant testimony to be given, and its findings are then reported to the appropriate disciplinary subcommittee. After finding the existence of one or more grounds for disciplinary subcommittee action, a disciplinary subcommittee must impose one or more of the sanctions listed in section 16226 that apply to the specific violation.

The bill would provide that a final order or judgment under the provisions of House Bill 5035 constitutes grounds requiring subcommittee action, with sanctions for a violation including probation; limitation, denial, suspension, revocation, or permanent revocation of the health professional's license or registration; restitution; or a fine.

The bill also would provide that a conviction for a violation of either of the prohibitions proposed by House Bill 5036 (knowingly, intentionally, or willfully providing false or misleading information related to an assisted reproduction procedure or a health professional using a human embryo or gamete for assisted reproduction without consent) constitutes grounds requiring disciplinary subcommittee action. Sanctions for a violation would include probation; limitation, denial, suspension, revocation, or permanent revocation of the health professional's license or registration; restitution; or a fine.

The bill would not take effect unless HBs 5035 and 5036 were also enacted.

MCL 333.16221 and 333.16226

House Bill 5035 would amend the Revised Judicature Act to provide that a *person* that engages in *false representation in assisted reproduction* is liable to an individual injured by that false representation (as described below) for one or more of the following:

- Economic and noneconomic damages.
- Punitive damages.
- Reasonable attorney fees and costs.

False representation in assisted reproduction would mean conduct or a practice of conduct described in section 219g(1) of the Michigan Penal Code. (This provision would be added by HB 5036 and is described above under "False representation in assisted reproduction.")

Person would mean an individual or a partnership, corporation, limited liability company, association, or other legal entity.

Any individual who is injured by a false representation in assisted reproduction could bring an action under the bill, including any of the following individuals:

- The patient who gives birth to a child conceived through assisted reproduction as a result of the false representation.
- The patient's spouse at the time the patient used the assisted reproduction services.
- An individual conceived through assisted reproduction as a result of the false representation.
- A donor whose gamete or human embryo resulted in the birth of a child as a result of the false representation.

An individual bringing an action under the bill would have a separate cause of action for each child born as a result of the false representation in assisted reproduction. An action under the bill would have to be brought no later than three years after the individual bringing the action discovers the false representation in assisted reproduction. An action under the bill would be in addition to any other criminal or civil penalties or remedies provided by law.

The bill would not take effect unless HB 5036 were also enacted.

Proposed MCL 600.2980

House Bill 5037 would amend statute of limitations provisions in the Code of Criminal Procedure to provide that an indictment for a violation of either of the prohibitions proposed by House Bill 5036 (knowingly, intentionally, or willfully providing false or misleading information related to an assisted reproduction procedure or a health professional using a human embryo or gamete for assisted reproduction without consent) could be found and filed within 15 years after the offense. However, if evidence of the offense were obtained and that evidence contained DNA determined to be from an unidentified individual, an indictment could be found and filed at any time after the offense was committed, except that it would have to be filed within 15 years after the identification of the individual.

The bill would take effect 90 days after the date it is enacted, but it would not take effect unless HB 5036 were also enacted.

MCL 767.24

BACKGROUND:

The bills are reintroductions of House Bills 4178 to 4182 of the 2023-24 legislative session and are similar to House Bills 5713 to 5717 of the 2021-22 legislative session.

FISCAL IMPACT:

House Bill 5035 would have an indeterminate fiscal impact on local courts. The fiscal impact on local court systems would depend on the number of individuals that bring actions under provisions of the bill. The fiscal impact would depend on how those actions affected court caseloads and related administrative costs.

House Bill 5036 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, a person who knowingly, intentionally, or willfully provides false

or misleading information related to an assisted reproduction procedure would be guilty of a felony punishable by imprisonment for up to five years, a fine of up to \$50,000, or both. Also under the bill, a health professional who knowingly or recklessly uses or provides a human embryo or gamete other than the specific human embryo or gamete to which the patient expressly consented would be guilty of a felony punishable by imprisonment for up to 15 years, or a fine of up to \$100,000, or both. New felony convictions would result in increased costs related to state prisons and parole and felony probation supervision. In fiscal year 2024, the average cost of prison incarceration in a state facility was roughly \$46,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,500 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that would occur, an estimate of the amount of costs related to county jails and/or state prisons, penal fine revenue collections, or costs to local courts cannot be made.

House Bill 5037 would have an indeterminate fiscal impact on local courts. The fiscal impact on local court systems would depend on the number of indictments found and filed within the specified time frames. The fiscal impact would depend on how those actions affected court caseloads and related administrative costs.

House Bill 5038 is a companion bill to HB 5036 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include the proposed new felonies of providing false or misleading information related to an assisted reproduction procedure and using or providing a human embryo or gamete other than the specific human embryo or gamete to which the patient expressly consented as Class E and Class C felonies, respectively, against a person punishable by a statutory maximum of five years and 15 years, respectively. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bill 5039 would have minimal to no fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). The bill is tie-barred to HBs 5035 and 5036, which would provide for liabilities and penalties relating to false representation in assisted reproduction. House Bill 5039 would expand the list of violations that LARA may investigate and issue disciplinary actions for to include the violations in HBs 5035 and 5036. To the extent that violations of the new provisions occur, additional fine revenue may be realized and enforcement costs incurred.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.