

# BAR BRIEFS

Official Publication of the Macomb Bar Association

December 2023

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# Bar Briefs

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# 2023 In Review

*By Ryan Zemke, President of the Macomb Bar Association*

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As 2023 comes to a close, we have a chance to reflect on what has been an eventful year for the Macomb County Bar Association. So many of you have played an integral part in the continued success of our organization and on behalf of the entire board of directors I want to thank you for each of your contributions to furthering our mission. Together, we have continued to demonstrate why the Macomb County legal community is a special place to practice law in addition to providing important resources and support to the public.

It is important to recognize the work of our various committees and sections. The Diversity & Inclusion committee, chaired by Esse Tuke, has planted roots and grown tremendously over the past year. They continue to hold events that grow their sections and engage membership as a whole. The criminal committee has been led by Tanya Grillo and the committee continues to keep members up to speed on changes in the law and foster more intimate, case-specific discussions at their regular “think tank” sessions. Our civil and family law committees, chaired by Nathan Petrusak and Don Wheaton, have held events that are both educational and social in nature to continue engaging membership intellectually while also building camaraderie within their respective fields.

The YLS section has been chaired by both Aaron J. Hall and Mickey McCullough during 2023, and they continue to host successful events such as Meet the New Judges (thankfully back in person after COVID) and the annual holiday party. I would be remiss to not mention our masters section who despite not having a formal leadership structure is full of members who continue to provide guidance and advice to MCBA members who will join the ranks of the master section down the line. Thank you to all of you for your hard work this year and please continue to attend and support these committees and their events.

This year was full of events that brought us together for a variety of purposes ranging from educational opportunities to social networking. I want to recognize

Pamela Kroll and Hon. Suzanne Faunce who took the reins of our annual golf outing and brought the event to a new location and a new level of success that we will build on in 2024. We had social events such as our Red Wings night out and TopGolf outing – both of which we plan to bring back in 2024 and substantive events such as brown bags and our seemingly never-ending offering of CLE opportunities through our partnership with CDAM. The Bench Bar Conference made its return after its COVID hiatus, and we want to thank all the members of the bench who came out to make the event a resounding success. Our annual meeting and installation events were well-attended and provided a great opportunity to network, recognize members, and learn more about the association as well as each other and we are hard at work planning those events for 2024 with details to follow in the coming months.

Of course, 2023 also presented our organization with change as well. Lori Smith ended her extremely successful term as President. We are so grateful for the leadership and direction that she provided during her time as President (and she continues to provide as immediate Past President and leading WLAM). Our former Executive Director, Rick Troy, has moved on to other opportunities and the board continues to work diligently to fill the shoes of a director that served over 20 years. As we adapt to the ever-changing post-COVID landscape and how things will look for the MCBA moving forward, I am excited for what 2024 holds. The year ahead provides opportunities for us to maintain things that have been successful while integrating new things that will provide a springboard for the success of the organization. From new events to new personnel to the implementation of new ideas, I am excited to watch the MCBA move forward and evolve in 2024. Please feel free to contact me at your convenience with any ideas that you may have as your feedback and input is highly valued and appreciated. I wish you and your family a happy holiday season and hope that everyone has an amazing 2024.



# Michigan Takes Another Look at Assisted Reproduction

By Timothy P. Flynn and  
Frank L. Briguglio, Clarkston Legal



Currently, Michigan is the only state that does not recognize surrogacy agreements and criminalizes those entering into such agreements. The Surrogate Parenting Act from the 1980s renders any surrogacy parentage contract void and unenforceable as contrary to public policy.

In addition to such agreements being void, persons entering into such agreements are subject to felony charges that could bring fines up to \$50,000 and five years in prison. Children born under such contracts are placed within the jurisdiction of the county family courts for a judge to determine the “best interests” of the child.

Last month, however, the House Judiciary Committee of the Michigan House of Representatives passed a raft of bills aimed at eliminating these barriers to assisted reproduction. Among the bills passed was HB 5207 that would create a new act out of whole cloth: the Assisted Reproduction and Surrogacy Parentage Act; the old act would be repealed.

At the root of the legislation is the definition of “assisted reproduction”: a method of causing pregnancy that does not involve sexual intercourse. There are many such methods recognized in the bill:

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

Any child conceived by sexual intercourse would not fall within the scope of the bill. Here is the current legislative analysis of HB 5207.

The bill defines the parent-child relationship in some new ways. The donor of biological material used in the assisted reproductive process is excluded from being a “parent” under the new bill.

To be eligible for a surrogacy contract, a woman must be 21-years of age and have had at least one child. Medical and mental health consultations are also required, and the surrogate must have access to independent legal consultation, paid for by the intended parents.

Of course, the county family courts are called into play in the proposed legislation. Under the bill, court proceedings would be filed in the county where the child was born, will be born, or resides. Venue is also proper where a parent or “intended parent” resides, or where a proceeding has been commenced for the administration of the estate of an individual who is or who may be a parent under the bill. Complicated venue provisions in this bill.

The bill also contains extensive consent provisions calling for written assisted reproduction agreements or surrogacy contracts. Disputes between individuals who give birth to the child and individuals who claim to be parents under the reproduction agreement are anticipated in this proposed legislation. Therefore, if passed, this legislation will give rise to a whole new type of custody jurisprudence.

Representative Samantha Steckloff from Farmington is the primary sponsor of the bill. She has stated that for many families, traditional methods of childbirth are not available due to health or safety issues. Rep. Steckloff sees revision of the parentage laws in Michigan as the necessary first step.

Critics of the proposed legislation claim that it will commercialize surrogacy in our state and give rise to reproductive commerce. Some fear that women who serve as surrogates could be exploited in poorly structured transactions.

Our office will update you as this bill moves through the State legislature and its impact on this area of law.

*Clarkston Legal is a group of attorneys practicing in the areas of Family Law, Probate and Criminal Defense centrally located in Northern Oakland County. The firm is only minutes away from Oakland County Circuit Court and practicing in all adjacent counties.*



# Watching Some Sunsets Are Not Always Pretty

By Alan C. Rudzewicz & Charles E. Turnbull



Effective January 1, 2026 the sunset provisions of the Tax Cuts and Jobs Act (“TCJA”) will become effective unless Congress acts to modify them. The TCJA was the largest overhaul of the tax code in years.

Chief among the provisions is the rollback of the Federal Estate and Gift Tax Exemption or Unified Credit. Currently in 2023 the amount of this exemption is \$12,920,000 per person. It is slated to increase to \$13,610,000 in 2024 as a result of Consumer Price Index data. However, at the end of 2025 the exemption will be reduced to approximately \$6,000,000 to \$7,000,000 per person.

The intent of this article is to provide a warning that the rollback looms on the horizon. And, although it is two years away, that time will pass quickly. Also, you cannot count on the idea that Congress will take action. In today’s climate of overt partisan politics, the possibility exists that no action may be taken to adjust this sunset provision prior to January 1, 2026. It is imperative that estate planners and attorneys in general, at the very least, inform their clients of this impending possibility so that clients who wish to take advantage of taxable gifting and estate planning use their exemption prior to the sunset date.

The rollback would not affect a surviving spouse’s ability to apply for a deceased spouse’s unused exemption under Portability Rules. Nor would it reduce the DSUE (“Deceased Spouse’s Unused Exemption”) that may already have been taken by a surviving spouse.

In addition to the effect on estate and gift taxes, the sunset provisions of the Tax Cuts and Jobs Act will also include the current income tax brackets which would be replaced with the 2017 tax brackets that were in place prior to TCJA. Taxes would increase for most US households. Here is a sample of how federal income tax brackets would be affected:

## Married Couple Filing Jointly

\$0 to \$22,000	From 10% to 10% No Difference
\$22,001 to \$89,450	From 12% to 15% Increase by 3%
\$89,451 to \$180,000	From 22% to 25% Increase by 3%
\$180,001 to \$190,750	From 22% to 28% Increase by 6%
\$190,751 to \$274,400	From 24% to 28% Increase by 4%
\$274,401 to \$364,200	From 24% to 33% Increase by 9%
\$364,201 to \$462,500	From 32% to 33% Increase by 1%
\$462,501 to \$490,000	From 35% to 33% Reduce by 2%
\$490,001 to \$553,600	From 35% to 35% No Difference
\$553,601 to \$693,750	From 35% to 39.6% Increase by 4.6%
Over \$693,750	From 37% to 39.6% Increase by 2.6%

## Single Filers

\$0 to \$11,000	From 10% to 10% No Difference
\$11,001 to \$44,725	From 12% to 15% Increase by 3%
\$44,726 to \$95,375	From 22% to 25% Increase by 3%
\$95,376 to \$108,000	From 24% to 25% Increase by 1%
\$108,001 to \$182,100	From 24% to 28% Increase by 4%
\$182,101 to \$225,400	From 32% to 28% Reduce by 4%
\$225,401 to \$231,250	From 32% to 33% Increase by 1%
\$231,251 to \$490,000	From 35% to 33% Reduce by 2%
\$490,001 to \$492,000	From 35% to 35% No Difference
\$492,001 to \$578,125	From 35% to 39.6% Increase by 4.6%
Over \$578,125	From 37% to 39.6% Increase by 2.6%

The standard tax deduction will be cut roughly in half and the personal exemption amount would return. The Child Tax Credit would be cut and the 20% tax deduction for many “pass-through” businesses (S-Corps, LLC’s etc.) would be eliminated. The Alternative Minimum Tax (AMT) changes under TCJA will expire and the previous amounts will apply. Also, the cap on the state and local income tax (SALT) deduction would be eliminated.

Corporate deductions for costs of research and equipment along with certain interest expenses were impacted by TCJA and will resurface as a result of the sunset.

Once again, this brief article is intended to alert the reader to the fact that the sunset provisions exist and will have a profound effect on estate, gift and income taxes if no action is taken by Congress prior to December 31, 2025.

*Are you interested in this and similar Estate Planning and Tax issues? Become a member of the Financial and Estate Planning Council of Macomb (FEPCOM). One of the longest running Council’s in Macomb County.*

*We hold quarterly dinner meetings with interesting speakers that highlight current issues that affect our practice. Contact Alan Rudzewicz or Charles (Chuck) E. Turnbull for more information.*

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# Michigan Supreme Court Effectively Eliminates the Open and Obvious Defense in Premise Liability Cases

By Arvin F. Zora, Associate, O'Reilly Rancilio P.C.

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Landowners and business operators should make efforts to insulate themselves from liability following a major decision from our Michigan Supreme Court concerning premise liability cases. The Court issued a consolidated opinion regarding two different cases in *Kandil-Elsayed v. F & E Oil, Inc.* and *Pinsky v. Kroger Co. of Michigan* that effectively slammed the door shut on the open and obvious doctrine in premise liability lawsuits.

Since 2001, the Court's opinion in *Lugo v. Ameritech Corp, Inc.*, 464 Mich 512 (2001), established the open and obvious exception in premise liability suits. The open and obvious doctrine allowed defendants in premise liability cases to shield themselves when an invitee suffered an injury due to a hazardous condition on the defendant's property.

The open and obvious defense allowed landowners to avoid potential liability by asserting that an average person with ordinary intelligence acting under similar conditions would have been able to discover the danger and the risk presented by the condition upon a casual inspection, absent a special aspect to the potential danger. Put simply, the landowner could avoid liability by arguing that the injury resulted from a condition that was open and obvious to the claimant.

Following the decision in *Kandil-Elsayed* and *Pinsky* in the Summer of 2023, the open and obvious doctrine was dealt a fatal blow. As a result of the Court's opinion, landowners can no longer completely avoid liability by claiming that they did not owe a duty of care to the injured party due to the openness and obviousness of the dangerous condition.

With the change in the law, landowners must now exercise reasonable care to protect visitors/invitees, and

anticipate potentially dangerous conditions to an invitee on the landowner's property. Put simply, even if the danger is open and obvious, landowners now have a duty to eliminate the risk of harm to invitees. As result of the change in the law, a Michigan court will look deeper into the facts that give rise to the claim rather than determining whether the danger was open and obvious to the injured party.

## Before and After Example on the Affect of the Shift from the Open and Obvious Doctrine

*Example:* Following a snow storm during a Michigan winter, a woman decides to drive to her local grocery store. She parks her car in the grocery store's parking lot, and as she makes her way to the store's entrance, she slips and falls injuring her hip.

**Before:** Snow and ice accumulation are common during Michigan winters and such potentially dangerous conditions are considered open and obvious. The court rules that the woman was able to discover the danger and accepted the risk of walking across the snow covered parking lot, and that the grocery store did not have a duty of care under the circumstances.

*Note:* it is very likely that the lawsuit would not have been filed given the prior effect of the open and obvious doctrine on premise liability cases.

**After:** The court will evaluate the facts and consider the grocery store's preventative measures such as plowing the snow, de-icing the parking lot, applying salt to the pavement, and/or making its customers aware of the potential risk of injury, and based on this analysis the court may find there to be comparative negligence between the parties.

*Note:* The barrier now has been significantly lowered for plaintiffs in premises liability cases to survive summary disposition due to the removal of the open and obvious defense.

### What does this mean for landowners and business operators?

This monumental shift in premise liability cases means that landowners and business operators no longer have a defense to completely bar recovery, which opens the door for plaintiffs to be compensated for injuries sustained from a hazardous property condition. The change in the law will result in a Michigan court reviewing premises

liability cases from the context of comparative fault to determine to what extent defendant and plaintiff are separately culpable for the plaintiff's injury.

Landowners and business operators are strongly advised to take a proactive approach and take action to inspect the condition of their property, existing agreements or contracts, and review insurance policies.

It would also be advisable for landowners to ensure that their existing leases and contracts have strong indemnification provisions to protect the landowner from liability stemming from the actions or omissions of a tenant or third-party.

The elimination of the open and obvious doctrine will undoubtedly result in premise liability cases becoming more costly due to the lower chance of success in obtaining summary disposition. Additionally, it is anticipated that more lawsuits will be filed due to the rejection of the open and obvious doctrine as an absolute defense.

*The attorneys at O'Reilly Rancilio P.C. are here to address your concerns and answer questions following this major change in Michigan law. We are also here to provide advice to landowners and business operators to help minimize the risk of litigation.*

*Please feel free to contact Arvin Zora by phone at (586) 726-1000 or by email at azora@orlaw.com.*



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# Google Chrome vs. Microsoft Edge: An Analysis of Security Features

By Cheyenne Harden, Cyber Protect, LLC and  
IT Director - O'Reilly Rancilio, P.C.



In today's digital age, web browsers have become an integral part of our daily lives, serving as gateways to the vast expanse of the internet. As users increasingly rely on the internet for various tasks, including online shopping, banking, and communication, the importance of web browser security cannot be overstated. Two of the most popular web browsers, Google Chrome and Microsoft Edge, have emerged as top contenders in the browser market.

But when it comes to security, which one is the better choice? This article aims to answer this question by providing a comparison using third-party data from 2021-2023 of the security features offered by these two browsers.

## Understanding the Security Mechanisms

Both Microsoft Edge and Google Chrome are equipped with robust security mechanisms designed to protect users from various online threats, including malware and phishing attacks. Let's delve into the specifics of each browser's security infrastructure.

### Microsoft Edge: Utilizing Microsoft Defender SmartScreen

Microsoft Edge comes equipped with a formidable security arsenal, with Microsoft Defender SmartScreen at its forefront. This feature is designed to block malicious downloads and phishing attempts, offering users a shield against potentially harmful websites and files.

### Google Chrome: Harnessing Google Safe Browsing API

On the other hand, Google Chrome relies on the Google Safe Browsing API to combat threats. This technology works in a similar fashion, identifying and blocking malicious downloads and phishing sites to keep users safe during their online activities.

## Comparing Security Performance

To gauge the effectiveness of these security mechanisms, a study conducted by Cyber Ratings in 2021 provides valuable insights. The study subjected both Microsoft Edge and Google Chrome to rigorous testing in malware and phishing scenarios.

### Malware Protection

In the realm of malware protection, Microsoft Edge demonstrated its superiority by blocking an impressive 97.4% of malicious content. In contrast, Google Chrome managed to thwart 86.3% of malware attempts. This significant disparity in favor of Microsoft Edge underscores its robustness in shielding users from malware threats.

### Phishing Protection

Phishing attacks remain a pervasive threat on the internet, luring users into divulging sensitive information. Microsoft Edge once again proved its mettle by blocking 92.3% of phishing URLs, providing a substantial layer of protection. Google Chrome, while commendable, blocked a slightly lower percentage of phishing URLs at 84.6%.

### Zero-Hour Protection

One crucial aspect of security is the ability to fend off new and previously unknown threats. Microsoft Edge shone in this regard as well, boasting the highest zero-hour protection rate. This means that it excels in identifying and neutralizing emerging threats that other browsers might miss, ensuring that users are safe even in the face of the latest cyberattacks.

### Privacy

When it comes to privacy, Microsoft Edge is a little ahead of Chrome, offering a slightly superior experience. Microsoft has made strides in enhancing user privacy by implementing features like tracker prevention and a more

transparent approach to data collection, giving users more control over their online footprint. While both browsers are continually working to improve privacy, Microsoft Edge's commitment to providing a more privacy-conscious browsing experience makes it a favorable choice for users seeking to protect their personal information in today's data-driven online world.

**\*Note: by no means are Chrome or Edge considered to be privacy browsers.**

### Speed (Not security related)

While both browsers are touted as being fast, we noticed no real difference in loading times while loading the same content. We performed several browser speed tests—in this case we used WebSPRT 4—and the results were neck and neck with Edge coming in at 135 while Chrome scored a 121.

### The Verdict: Which Browser is Safer?

Based on this analysis of security features and performance, Microsoft Edge emerges as the stronger choice in terms of security. It provides a higher level of protection against malware and phishing attempts compared to Google Chrome. Additionally, its superior zero-hour

protection rate ensures users are shielded from emerging threats, cementing its position as a secure browsing option.

However, it's essential to note that while Microsoft Edge may have an edge in security, user preferences and specific needs also play a significant role in choosing a browser. Chrome has its own strengths, such as a wide array of extensions and seamless integration with Google services, making it a compelling choice for many users.

### Conclusion

In the landscape of internet security, the choice between Google Chrome and Microsoft Edge ultimately boils down to individual priorities. If your primary concern is a high level of security, especially protection against malware and phishing attacks, Microsoft Edge appears to be the safer bet. Nevertheless, users should also consider their overall browsing experience, compatibility with other applications, and personal preferences when making their decision. Regardless of the choice, practicing good online hygiene, such as regularly updating the browser and using additional security tools, remains essential to ensure a safe and secure internet experience.

*If you have a specific issue you would like me to address, please contact me directly via [info@cyberprotectllc.com](mailto:info@cyberprotectllc.com).*



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# Days Away from Graduation, Here Are My Three Pieces of Advice to Prospective and Current Law Students

*By Sami Nouri, Third Year Student,  
Wayne State University Law School*

My first day of law school was August 23, 2021, and, in the blink of an eye, I am one month away from graduating. I have learned so much these last two and a half years, and I want to share two pieces of advice to current and future law students. Regarding future law students, I will narrow my advice to those students that have completed the Law School Admissions Test (LSAT) and applications.

## **1. Shake hands and introduce yourself.**

As a young law student, I realized that basically every person in the world could be a potential professional connection – as a colleague, source of business, client, letter of recommendation, etc. I always heard about the importance of networking, but it was never clear to me until law school that networking is the most important thing.

For many, like me, networking can bring you out of your comfort zone. But as we all have (hopefully) learned by the time we enter law school; any growth requires charting unfamiliar territory and being uncomfortable. It is a skill that is sharpened with repetition, and it is truly a great way to develop strong relationships while achieving professional growth.

A mentor once told me that I needed to shake hands and introduce myself to every person I met. Following her advice religiously has gotten me opportunities to have interesting and genuine conversations with many judges, attorneys, and other professionals. I have extended this practice to classmates, professors, neighbors, and strangers. Many times, these conversations turn into personal and professional relationships that may bring with them fruitful opportunities.

## **2. Gain practical experience.**

Whether you are a student that knows exactly what type of law he wants to practice or a student that has no clue, I advise you to get practical experience. If you are the former, get a position at a law firm that specializes in that area. If you do not want to practice law, get a position at the agency or organization that does what you are interested in. Following this advice will help you figure out whether you are really sure about your career plans. It will also make you significantly more prepared to work and excel in that area once you graduate law school.

If you are the student that enters without a clear plan, get as much experience as you can throughout law school. You may find your passion in a line of work that you never thought you would like. Even if you try something and do not like it, you likely will have still made valuable connections and learned important lessons, such as how to file a court document or interact with clients.

I was sort of the student that did not have a clear plan and was more flexible throughout law school. I had an interest in criminal law, but I was willing to get different experiences. I found myself at a family law firm – an area I never thought I would do and had no experience in.

After six months, with the help of my boss' 'baptism by fire' mentality, I learned a tremendous amount about not only family law but also the practice of law. It was also the connections I made in that firm that led to my next position. I provide this example to encourage you to try new things because it may provide value beyond imagination.

**A mentor once told me that I needed to shake hands and introduce myself to every person I met.**

### 3. Take practice exams.

Since this article is for law students, I figured I would say something about the curriculum. For those that do not know, most law school classes are comprised on months of reading assignments and lectures followed by a cumulative final exam. Most of these exams include long hypotheticals that prompt you to analyze all the legal issues the hypothetical implicates.

For new students, there is a learning curve to taking these exams. A great answer not only requires a strong grasp on the material but also exceptional organizational writing skills. The best way to develop these skills is to take practice exams. Practice exams can likely be found in your law school's libraries and definitely can be found on the internet.

There are many valuable aspects of taking practice exams. First, it gives you examples of how specific material will be tested. You may be in your Torts class and wonder, "how is this negligence stuff going to be tested?" Luckily, most Torts practice exams provide questions covering Negligence. Attempting to answer the question, reviewing the sample answer, and repeating this process will make you an expert on answering questions about Negligence.

Another valuable aspect of taking practice exams is seeing what strong answers look like. Most practice exams come with sample answers. These sample answers are not perfect, but they provide a good example of what professors want to see. Above all, professors want to see an organized answer with clear analysis, and the sample answers do a great job illustrating how to do that.

I hope these three pieces of advice can provide some value as you travel deeper into your journey. One thing I can say for sure is that law school will fly by. Enjoy it while you can. Godspeed.

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