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A BILL
21-16

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 4 of Title 16 of the District of Columbia Official Code to permit collaborative reproduction and surrogacy agreements, establish requirements for surrogates, intended parents, and the contents of surrogacy agreements, establish parentage of a child, provide for court orders of parentage, and establish the effect of a subsequent marriage or domestic partnership, dissolution of a marriage or domestic partnership, death of an intended parent, and withdrawal of consent.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Collaborative Reproduction Amendment Act of 2016”.

TITLE I – COLLABORATIVE REPRODUCTION.

Sec. 101. Chapter 4 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The chapter name is amended to read as follows:
“Chapter 4. Collaborative Reproduction.”.

(b) The table of contents is amended by adding new section designations to read as follows:

- “16-401. Definitions.
- “16-402. Prohibitions and penalties. [Repealed].
- “16-403. Collaborative reproduction authorized.
- “16-404. Surrogacy agreements authorized.

30 “16-405. Requirements of surrogates and intended parents.

31 “16-406. Contents of surrogacy agreements.

32 “16-407. Parentage in collaborative reproduction.

33 “16-408. Court order of parentage.

34 “16-409. Effect of subsequent marriage or domestic partnership or dissolution of
35 marriage or domestic partnership.

36 “16-410. Effect of death of intended parent.

37 “16-411. Effect of withdrawal of consent.”.

38 (c) Section § 16-401 is amended to read as follows:

39 “§ 16-401. Definitions.

40 “For the purposes of this chapter, the term:

41 “(1) “Ancillary expenses” means those expenses that a surrogate incurs due to the
42 surrogacy, including legal and counseling expenses; actual lost wages; compensation for risk,
43 inconvenience, forbearance, or restriction from usual activities; insurance premiums; expenses
44 associated with recovery; childcare expenses; housekeeping expenses; birthing classes;
45 nutritional expenses; maternity clothing; and travel expenses incurred during the pregnancy and
46 directly related to the surrogacy.

47 “(2) “Assisted reproduction” or “assisted reproductive technology” means the
48 treatments or procedures that include handling both eggs and sperm and embryos by a medical
49 professional for the purpose of establishing a pregnancy.

50 “(3) “Assisted reproduction center” means the medical facility that performs the
51 medical procedures related to collaborative reproduction.

52 “(4) “Child” means a child who is born as the result of collaborative reproduction.

53 “(5) “Collaborative reproduction” means assisted reproduction that involves a
54 surrogate or a donor and an intended parent or parents. The term “collaborative reproduction”
55 does not include the birth of a child conceived by means of sexual intercourse, or the birth of a
56 child conceived through assisted reproduction by an individual or couple who use their own
57 gametes and intend to gestate and parent the child themselves.

58 “(6) “Domestic partner” shall have the same meaning as provided in section 2(3)
59 of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114;
60 D.C. Official Code § 32-701(3)).

61 “(7) “Domestic partnership” shall have the same meaning as provided in section
62 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-
63 114; D.C. Official Code § 32-701(4)).

64 “(8) “Donor” means a person other than an intended parent who contributes
65 gametes or embryos for use in collaborative reproduction, including a traditional surrogate.

66 “(9) “Embryo” means one or more fertilized eggs prior to week 8 of a pregnancy.

67 “(10) “Embryo transfer” means the medical procedure of transferring an embryo
68 to a uterus.

69 “(11) “Fertilization” means a multi-step process that results in the formation of a
70 zygote by the union of a sperm and an egg.

71 “(12) “Fetus” means an embryo that has developed during the period of gestation
72 between 8 weeks and the birth of the child.

73 “(13) “Gamete” means a male (sperm) or female (egg) human reproductive cell.

74 “(14) “Gestational surrogate” means an individual who is not the intended parent,
75 who has not provided the egg used to form any embryo that is transferred to the gestational
76 surrogate’s uterus, and who agrees to become pregnant, gestate, and deliver, through
77 collaborative reproduction, the intended parent’s child on behalf of the intended parent.

78 “(15) “Insemination” means either intracervical insemination – the fertility
79 treatment that involves the placing of sperm inside a vagina to facilitate fertilization – or
80 intrauterine insemination – the fertility treatment that involves the placing of sperm inside a
81 uterus to facilitate fertilization. The term “insemination” does not include the placement of sperm
82 inside the vagina through sexual intercourse.

83 “(16) “Intended parent” means an individual, married or unmarried, who
84 manifests the intent in a written agreement to be legally bound as the parent of a child.

85 “(17) “Medical evaluation” means an evaluation and consultation by a medical
86 professional.

87 “(18) “Medical expenses” means those expenses, not otherwise covered by
88 medical insurance, that a surrogate incurs due to the medical effects of surrogacy, including
89 expenses directly related to the pregnancy and expenses related to complications or other
90 medical issues arising from the pregnancy.

91 “(19) “Order of parentage” means a judgment by a court of competent jurisdiction

92 in which the parent of a child is declared.

93 “(20) “Parent” means an individual who is legally recognized to have all rights
94 provided under District law with respect to a child.

95 “(21) “Surrogate” means an individual who is not the intended parent and does
96 not intend to parent the child, but who agrees to become pregnant on behalf of an intended parent
97 through collaborative reproduction with the intention of gestating and delivering the intended
98 parent’s child. The term “surrogate” includes a gestational and traditional surrogate.

99 “(22) “Surrogacy agreement” means a written contract between a surrogate, the
100 surrogate’s spouse or domestic partner, if any, and the intended parent or parents, pursuant to
101 which the intended parent or parents shall be recognized as the parent or parents of the child.

102 “(23) “Traditional surrogate” means an individual who is not the intended parent
103 and does not intend to parent the child, but who agrees to donate their own egg and to become
104 pregnant, gestate, and deliver, through collaborative reproduction, the intended parent’s child on
105 behalf of the intended parent.

106 “(24) “Zygote” means a single cell resulting from fertilization of an egg by
107 sperm.”.

108 (d) Section 16-402 is repealed.

109 (e) New sections 16-403 through 16-411 are added to read as follows:

110 “§ 16-403. Collaborative reproduction authorized.

111 “An intended parent or parents shall be recognized as the parent or parents of a child;
112 provided, that the surrogate and the intended parent or parents comply with the requirements of
113 this chapter.

114 “§ 16-404. Surrogacy agreements authorized.

115 “A surrogacy agreement shall be enforceable provided that all parties to the agreement
116 and the agreement itself meet the requirements of § 16-405 and § 16-406.

117 “§ 16-405. Requirements of surrogates and intended parents.

118 “(a) An individual seeking to serve as a surrogate shall enter into a written surrogacy
119 agreement and, at the time that the surrogacy agreement is executed, shall:

120 “(1) Be at least 21 years of age;

121 “(2) Have given birth to at least one live child;

122 “(3) Have undergone a medical evaluation in which the individual was approved to
123 serve as a surrogate;

124 “(4) Have completed a mental health evaluation by a mental health professional in
125 which the individual was approved to serve as a surrogate; provided, that the mental health
126 professional has received specialized training in, or has a practice that includes a specialty in,
127 collaborative reproduction; and

128 “(5) Have completed, with the intended parent or parents, a joint consultation with
129 a mental health professional regarding issues that could arise during the surrogacy.

130 “(b)(1) An individual or individuals seeking to become an intended parent or parents
131 shall enter into a written surrogacy agreement and, at the time the surrogacy agreement is

132 executed, shall:

133 “(A) Be at least 21 years of age; and

134 “(B) Have completed, with the surrogate, a joint consultation with a
135 mental health professional regarding issues that could arise during the surrogacy.

136 “(2) In an individual or individuals is married or in a domestic partnership, both
137 parties to the marriage or domestic partnership must satisfy the requirements of this subsection.

138 “§ 16-406. Contents of surrogacy agreements.

139 “(a) An enforceable surrogacy agreement shall:

140 “(1) Be in writing and executed by the surrogate and the surrogate’s spouse or
141 domestic partner, if any, and the intended parent or parents;

142 “(2) Be executed prior to the embryo transfer or insemination;

143 “(3) Include an affirmation by all parties that they have independent legal counsel,
144 and have read the surrogacy agreement and this chapter and understand the requirements of both;

145 “(4) Include an affirmation by the surrogate and the surrogate’s spouse or
146 domestic partner that the surrogate and the surrogate’s spouse or domestic partner:

147 “(A) Acknowledge and agree that the surrogate and the surrogate’s spouse
148 or domestic partner are not and shall not be the parents of the child;

149 “(B) Agree to surrender physical custody of the child to the intended
150 parent or parents immediately after the child’s birth;

151 “(C) Agree that at all times during the pregnancy and until delivery,
152 regardless of whether the court has issued an order of parentage, the surrogate shall maintain

153 control and decision making authority over the surrogate’s body;

154 “(D) Agree to cooperate in any necessary legal proceedings to recognize
155 the intended parent or parents as the legal parent or parents or any other proceeding related to the
156 surrogacy agreement; and

157 “(E) Agree to all other terms, consistent with this chapter and as mutually
158 negotiated and agreed upon by the surrogate, the surrogate’s spouse or domestic partner, and the
159 intended parent or parents;

160 “(5) Include an affirmation by the intended parent or parents that the parent or
161 parents shall:

162 “(A) Accept physical custody of the child immediately after the child’s
163 birth, regardless of the child’s gender, or mental or physical condition, or the number of children;
164 and

165 “(B) Assume sole responsibility for the support of the child immediately
166 after the child’s birth, including paying for any funeral expenses if a stillbirth, preterm birth, or
167 any other birth issue occurs that results in the child’s death;

168 “(6) Provide that the intended parent or parents shall assume the costs of all
169 agreed upon reasonable medical and ancillary expenses;

170 “(7) Allocate responsibility for the assumption of costs in the event of termination
171 of the pregnancy, termination of the contract, or breach of the contract by any party;

172 “(8) Provide procedures for dispute resolution; and

173 “(9) Be notarized or signed before a minimum of 2 witnesses who shall document

174 their names, addresses, and phone numbers.

175 “(b) The surrogate and the surrogate’s spouse or domestic partner, if any, and the
176 intended parent or parents shall be represented by independent counsel in the preparation,
177 counseling, and negotiation of the surrogacy agreement. Nothing in this provision shall prevent
178 the intended parent or parents from assuming the costs of the surrogate’s legal fees.

179 “(c) A surrogacy agreement may not limit the right of the surrogate to make decisions to
180 safeguard the surrogate’s health or that of the embryo or fetus.

181 “(d) Payment of reasonable medical and ancillary expenses shall be made by one or more
182 of the following means:

183 “(1) Insurance:

184 “(2) Cash;

185 “(3) Escrow;

186 “(4) Or other arrangements satisfactory to the parties, pursuant to the terms of the
187 surrogacy agreement.

188 “(e) Any dispute related to a surrogacy agreement shall be resolved by the terms set forth
189 in the surrogacy agreement.

190 “§ 16-407. Parentage in collaborative reproduction.

191 “(a)(1) In the case of a child born by a gestational surrogate, an intended parent or parents
192 shall be the parent or parents of the child and have all rights under District law, regardless of
193 whether the intended parent or parents has a genetic relationship to the child.

194 “(2) The child shall have all rights, powers, privileges, immunities, duties, and
195 obligations existing under law between a parent and child with the intended parent or parents,
196 including the rights of inheritance.

197 “(3) A gestational surrogate and the gestational surrogate’s spouse or domestic
198 partner, if any, shall not be the parent or parents of the child, and shall not have any rights,
199 powers, privileges, immunities, duties, or obligations with respect to the child.

200 “(4) A gamete or embryo donor who is not an intended parent and that donor’s
201 spouse or domestic partner, if any, shall not be the parent or parents of the child, and shall not
202 have any rights, powers, privileges, immunities, duties, or obligations with respect to the child.
203 For purposes of this paragraph, a traditional surrogate is not a donor.

204 “(b)(1) In the case of a child born by a traditional surrogate, an intended parent or parents
205 shall be the parent or parents of the child and have all rights under District law, regardless of
206 whether the intended parent or parents has a genetic relationship to the child.

207 “(2) The child shall have all rights, powers, privileges, immunities, duties, and
208 obligations existing under law between a parent and child with the intended parent or parents,
209 including the rights of inheritance.

210 “(3) A traditional surrogate and the traditional surrogate’s spouse or domestic
211 partner, if any, shall not be the parent or parents of the child, and shall not have any rights,
212 powers, privileges, immunities, duties, or obligations with respect to the child.

213 “(4) A gamete donor who is not an intended parent and that donor’s spouse or
214 domestic partner, if any, shall not be the parent or parents of the child, and shall not have any

215 rights, powers, privileges, immunities, duties, or obligations with respect to the child.

216 “§ 16-408. Court order of parentage.

217 “(a) A petition for parentage for the intended parent or parents of a child may be filed by
218 the intended parent or parents or the surrogate in the Superior Court of the District of Columbia
219 at any time after confirmation of the pregnancy.

220 “(b) The Superior Court of the District of Columbia will have jurisdiction over a petition
221 filed under subsection (a) of this section if the court determines that:

222 “(1) The intended parent or parents or the surrogate is a legal resident of the
223 District;

224 “(2) The intended parent or parents or the surrogate has actually resided in the
225 District for at least one year preceding the filing of the petition; or

226 “(3) The child was born in the District.

227 “(c) A petition for parentage shall include:

228 “(1) An affidavit by the medical professional who oversaw the embryo transfer or
229 insemination attesting to the facts pertaining to the creation of the embryo and the embryo
230 transfer or insemination, if applicable;

231 “(2) A copy of the executed surrogacy agreement;

232 “(3) An affidavit by each party attesting to each party’s identity and that no other
233 proceedings exist which could affect the current proceedings; and

234 “(4) An affidavit by an attorney representing each party, attesting:

235 “(A) That the attorney did not represent both the intended parent or

236 parents and the surrogate and the surrogate’s spouse or domestic partner, if any; and

237 “(B) That the terms of the surrogacy agreement comply with the
238 requirements of this chapter.

239 “(d) The order of parentage issued under this section shall:

240 “(1) Declare the intended parent or parents to be the parent or parents of the child;

241 “(2)(A) Direct the Registrar of Vital Records to issue the certificate of birth
242 naming the intended parent or parents as the parent or parents.

243 “(B) If the intended parent or parents are named on the certificate of birth
244 after the child’s discharge from the hospital, direct:

245 “(i) The Registrar to substitute the new certificate of birth for the
246 original certificate of birth, naming the intended parent or parents as the parent or parents.

247 “(ii) That when a new certificate of birth is issued, the original
248 certificate of birth shall be sealed from inspection; and

249 “(3) Declare that the surrogate and the surrogate’s spouse or domestic partner, if
250 any, are not the legal parents of the child.

251 “(e)(1)(A) In the case of a child born by a gestational surrogate, the court may issue an
252 order of parentage for the child at any time after a petition for parentage has been filed. The
253 order of parentage shall be effective upon the birth of the child.

254 “(B) If the order of parentage is not issued before the birth of the child, the
255 court shall issue the order as soon as possible after the birth, but no later than 45 days after the
256 birth.

257 “(2) In the case of a child born by a traditional surrogate, the court shall issue an
258 order of parentage for the child no less than 48 hours and no more than 45 days after the birth of
259 the child.

260 “(f) An order of parentage issued under this section shall be sealed to protect the privacy
261 of the parties and the child.

262 “§ 16-409. Effect of subsequent marriage or domestic partnership or dissolution of
263 marriage or domestic partnership.

264 “A subsequent marriage or domestic partnership or dissolution thereof for either the
265 surrogate or the intended parent or parents shall have no bearing on the validity of the surrogacy
266 agreement or the child’s parentage.

267 “§ 16-410. Effect of death of intended parent.

268 “If an intended parent dies after a successful insemination or embryo transfer, the
269 surviving spouse or domestic partner shall assume all obligations with respect to the
270 surrogacy agreement, and both will be considered the parents of the child.

271 “§ 16-411. Effect of withdrawal of consent.

272 “Either the surrogate or the intended parent or parents may withdraw consent to
273 collaborative reproduction. Such withdrawal must be:

274 “(1) In accordance with the terms of the surrogacy agreement;

275 “(2) In writing;

276 “(3) Delivered to:

277 “(A) All parties to the surrogacy agreement and, if applicable, to the

278 assisted reproduction center by certified mail with receipt acknowledged by the parties or by
279 hand delivery with a witness to each hand delivery; and

280 “(B) The Superior Court of the District of Columbia, if an order or
281 parentage has been issued; and

282 “(4) In the case of a child born by a traditional surrogate, within 48 hours after
283 the birth of the child.”.

284 TITLE II – RULES; FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

285 Sec. 201. Rules.

286 The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act,
287 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules
288 to carry out the purposes of this act.

289 Sec. 202. Fiscal impact statement.

290 The Council adopts the fiscal impact statement in the committee report as the fiscal
291 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
292 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

293 Sec. 203. Effective date.

294 This act shall take effect following approval by the Mayor (or in the event of veto by the
295 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
296 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
297 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
298 Columbia Register.