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2 Chairman Phil Mendelson

Councilmember Charles Allen

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6 Councilmember Jack Evans

Councilmember David Grosso

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10 Councilmember Yvette Alexander

Councilmember Brianne Nadeau

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14 Councilmember Anita Bonds

Councilmember Elissa Silverman

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18 Councilmember Mary M. Cheh

Councilmember Kenyan McDuffie

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22 Councilmember Vincent B. Orange, Sr.

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25 A BILL

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28 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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32 To amend Title 16 of the District of Columbia Official Code to permit surrogacy arrangements;
33 to establish requirements for surrogacy agreements and other specified collaborative
34 reproduction arrangements; to establish a legal relationship between a child and his or her
35 intended parent and govern proceedings to establish that relationship; to permit the
36 establishment of consistent standards and procedural safeguards to promote the best
37 interests of the children who are born as a result of collaborative reproduction
38 agreements; to protect an intended parent, surrogate, and donor in the formation of a
39 family through collaborative reproduction.

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41 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
42 act may be cited as the “Collaborative Reproduction Amendment Act of 2015”.

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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 for the chapter is amended to read as follows:

“Section

“16-401. Definitions.

“16-402. Prohibitions and penalties (repealed).

“16-403. Validity of collaborative reproduction.

“16-404. Parentage of the child resulting from collaborative reproduction.

“16-405. Court order of parentage: requirements, process, and effect.

“16-406. Surrogacy agreement authorized.

“16-407. Eligibility requirements of the parties.

“16-408. Surrogacy agreement.

“16-409. Effect of subsequent marriage or relationship or dissolution of marriage or relationship on surrogacy agreement.

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

“16-411. Effect of withdrawal of consent.

“16-412. Character.”.

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

“§ 16-401. Definitions.

“For the purposes of this chapter, the term:

“(1) “Assisted reproduction” or “assisted reproductive technology” means the laboratory and medical procedures performed by a medical professional in which human gametes are used to create embryos outside the female body for reproductive purposes. This definition does not include intrauterine insemination.

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

“(3) “Collaborative reproduction” means assisted reproduction or intrauterine insemination that involves a surrogate, a gamete donor, or an embryo donor, or all. It does not

74 include the birth of a child conceived by means of sexual intercourse, or the birth of a child
75 conceived with assisted reproductive technology or intrauterine insemination by an individual or
76 couple who use their own gametes and who intend(s) to gestate and parent the resulting child.

77 “(4) “Domestic partner” shall have the same meaning as provided in section 2(4)
78 of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114;
79 D.C. Official Code § 32-701(3)).

80 “(5) “Domestic partnership” shall have the same meaning as provided in section
81 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-
82 114; D.C. Official Code § 32-701(3)).

83 “(6) “Donor” means a person other than an intended parent who contributes
84 gametes or embryos for use in collaborative reproduction; also referred to as a gamete or embryo
85 donor; donor does not include a parent who contributes gametes to be used in assisted
86 reproduction for themselves. A donor is not a parent and does not have a parent-child
87 relationship as defined under this chapter.

88 “(7) “Donor arrangements” mean all situations in which someone other than an
89 intended parent provides the gamete or the embryo.

90 “(8) “Embryo” means a fertilized egg until week eight of a pregnancy; the term is
91 used to include a single embryo or two or more embryos.

92 “(9) “Embryo transfer” means the medical procedure of transferring the embryo
93 to a uterus.

94 “(10) “Fertilization” means the initial union of the sperm and the egg.

95 “(11) “Fetus” means an embryo that has developed during the period of gestation
96 between eight weeks and the birth of the child.

97 “(12) “Gamete” means a human reproductive cell: the sperm or the egg.

98 “(13) “Intended parent” means an individual or individuals, married or unmarried,
99 who manifest the intent to be legally bound as the parent of a child resulting from collaborative
100 reproduction.

101 “(14) “Intrauterine insemination” means the fertility treatment that involves the
102 placing of sperm inside a woman’s uterus to facilitate fertilization.

103 “(15) “*In vitro* fertilization” or “IVF” means the assisted reproductive technology
104 procedure by which a female gamete is fertilized by a male gamete outside of the body, in a
105 laboratory, to create an embryo.

106 “(16) “IVF center” means the medical practice that performs the medical
107 procedures related to the collaborative reproduction.

108 “(17) “Medical evaluation” means an evaluation and consultation by a
109 reproductive endocrinologist.

110 “(18) “Order of parentage” means a judgment by a court of competent jurisdiction
111 in which the parent of the child is declared and determined pursuant to this act.

112 “(19) “Parent” means the individual or individuals who are legally recognized to
113 have corollary rights or obligations with respect to the child.

114 “(20) “Reasonable medical and ancillary expenses” means all expenses incurred
115 by a surrogate that she would not have incurred but for a surrogacy agreement, including, among
116 other reasonable expenses, various intangible expenses associated with risk, inconvenience,
117 forbearance or restriction from usual activities, and recovery.

118 “(A) Medical expenses are those expenses, which are not otherwise
119 covered by medical insurance, that the surrogate incurs because of the surrogacy, including
120 expenses related to the pregnancy and expenses related for complications or other medical issues
121 arising from the pregnancy.

122 “(B) Ancillary expenses are those expenses that the surrogate incurs
123 because of the surrogacy and may include such expenses as maternity clothes; legal and
124 counseling expenses; actual lost wages; childcare expenses; housekeeping expenses; insurance
125 premiums; various intangible expenses associated with risk, inconvenience, forbearance,
126 restriction from usual activities, and recovery; and travel expenses incurred during and directly
127 related to the surrogacy agreement or pregnancy.

128 “(21) “Surrogate” means a woman who is not an intended parent, who agrees to
129 become pregnant for an intended parent by collaborative reproduction with the intention of
130 gestating and delivering the intended parent’s child.

131 “(22) “Surrogacy agreement” means the written contract between the surrogate,
132 her spouse or partner, if any, and the intended parent, pursuant to which the intended parent shall
133 be the parent of the child who is born as a result of the collaborative reproduction.

134 (d) Section 16-402 is repealed.

135 (e) New sections 16-403 – 16-416 are added to read as follows:

136 “§ 16-403. Validity of collaborative reproduction.

137 “Provided that the surrogate and the intended parent satisfy all the requirements set forth
138 in § 16-407, and the surrogacy agreement satisfies all the requirements set forth in § 16-408, the
139 intended parent shall be recognized as the parent of the child consistent with this chapter.

140 “§ 16-404. Parentage of the child resulting from collaborative reproduction.

141 “(a) Surrogacy agreements.

142 “(1) An intended parent whose child is born via a surrogate shall be the parent of
143 the child and have all corollary rights and obligations, regardless of whether the intended parent
144 has a genetic relationship to the child.

145 “(2) The child shall have all the rights of a parent-child relationship with the
146 intended parent, including the rights of inheritance, from the moment of birth.

147 “(3) A surrogate and her spouse or partner, if any, shall not be the parent of a
148 child conceived through collaborative reproduction, and shall not have any corollary rights or
149 obligations with respect to the child.

150 “(b) Donor arrangements.

151 “(1) An intended parent who uses a donor gamete or donor embryo to conceive a
152 child through collaborative reproduction shall be the parent of the child and have all corollary
153 rights and obligations of parentage with respect to the child.

154 “(2) The child shall have all the rights of a parent-child relationship with the
155 intended parent, including the rights of inheritance, from the moment of birth.

156 “(3) A gamete donor or embryo donor, or his or her spouse or partner, if any, shall
157 not be the parent of a child conceived through collaborative reproduction, and shall not have any
158 rights or obligations with respect to the child.

159 “§ 16-405. Court order of parentage: requirements, process and effect.

160 “(a) A petition for parentage may be filed by any party to a surrogacy agreement at any
161 time after confirmation of pregnancy. Jurisdiction will properly lie in Superior Court, if such
162 court determines that:

163 “(1) The intended parent or the surrogate is domiciled in and has been a resident
164 in the District for at least 90 days; or

165 “(2) The child is reasonably expected to be born in the District, as demonstrated
166 by the surrogate’s established relationship with an obstetrician licensed in the District, who has
167 delivery privileges at a hospital in the District where the surrogate intends to deliver the child; or

168 “(3) The embryo transfer or intrauterine insemination procedure has been
169 performed in the District.

170 “(b) The petition for parentage shall include:

171 “(1) An affidavit by the petitioning party’s attorney that the requirements of the
172 chapter have been met, specifically the requirements of § 16-405 through § 16-408;

173 “(2) An affidavit by the reproductive endocrinologist who performed the embryo
174 transfer attesting to the facts pertaining to the creation of the embryo and the embryo transfer,
175 when applicable;

176 “(3) A copy of the executed surrogacy agreement; and

177 “(4) An affidavit of each attorney representing a party, attesting to the identities of
178 the parties, to the fact that the attorney did not represent, connect, or locate both the intended
179 parent and the surrogate carrier and her partner, and that the terms of the agreement comply with
180 the requirements as set forth in this chapter.

181 “(5) An affidavit of each attorney attesting that no other parties should be joined
182 and attesting to the fact that no other proceedings exist which could affect the current
183 proceedings.

184 “(c) Provided that the requirements are met in subparagraphs (a) and (b) above, the court
185 shall issue an order of parentage within thirty days of submission of a petition satisfying the
186 requirements of § 16-405(b). The order shall:

187 “(1) Validate the parentage of the intended parent as the sole legal parent of the
188 child, as set forth in § 16-405;

189 “(2) Order the Registrar to issue the original birth certificate naming the intended
190 parent as sole legal parent with the proper headings; and if entered after child’s discharge from
191 hospital, order registrar to issue a new birth certificate naming the intended parent as sole legal
192 parent and seal the prior birth certificate.

193 “(3) Find that the surrogate and the surrogate’s spouse or partner, if any, are not
194 parents.

195 “(d) If such petition is filed in advance of the delivery, the order shall be entered within a
196 reasonable time from filing the petition. The order may be entered prior to the birth of the child,
197 but enforcement of the order shall be stayed until the birth of the child.

198 “(e) The order shall be sealed to protect the child’s and the parties’ privacy.

199 “(f) If there is no order of parentage issued pursuant to this chapter, the parentage of a
200 child shall be determined under D.C. law.

201 “§ 16-406. Surrogacy agreement authorized.

202 “A surrogacy agreement shall be enforceable provided that the parties and the agreement
203 meet the requirements of § 16-407 and § 16-408.

204 “§ 16-407. Eligibility requirements of the parties.

205 “(a) Surrogate.

206 “The surrogate shall be deemed to have satisfied the requirements of this section if the
207 surrogate has entered into a written surrogacy agreement and, at the time that the surrogacy
208 agreement is executed, the surrogate:

209 “(1) Is at least 21 years of age;

210 “(2) Has given birth to at least one live child;

211 “(3) Has completed a medical evaluation by which the individual was approved to
212 serve as a surrogate;

213 “(4) Has completed a mental health evaluation by a mental health professional by
214 which the individual was approved to serve as a surrogate; provided that the mental health
215 professional’s practice specializes, at least in significant part, in assisted reproduction, infertility,
216 or collaborative reproduction issues;

217 “(5) Has completed, with the intended parent, a joint consultation with a mental
218 health professional regarding the issues that could arise during the surrogacy agreement.

219 “(b) Intended parent.

220 “An intended parent who satisfies the requirements of this section shall be recognized as
221 a parent. If married or in a domestic partnership, both individuals must satisfy the requirements
222 of this section. An intended parent shall be deemed to have satisfied the requirements of this
223 section if the intended parent has entered into a written surrogacy agreement and, at the time the
224 surrogacy agreement is executed, the intended parent:

225 “(1) Is at least 21 years of age; and

226 “(2) Has guaranteed payment of all reasonable medical and ancillary expenses that
227 are agreed to in the surrogacy agreement.

228 “§ 16-408. The surrogacy agreement: terms.

229 “(a) The surrogacy agreement shall be deemed to have satisfied the requirements of this
230 section and be enforceable if it meets the following requirements:

231 “(1) The agreement shall be in writing and executed by the surrogate and her
232 spouse or partner, if any, and each intended parent;

233 “(2) The agreement shall be executed prior to the embryo transfer and the
234 signatures on the agreement shall be notarized, or executed before a minimum of two witnesses
235 who shall document their names, addresses and phone numbers;

236 “(3) The surrogate and her spouse or partner, if any, and the intended parent shall
237 be represented by separate attorneys in the preparation, counseling, and negotiation of the
238 surrogacy agreement. Nothing in this provision shall prevent the intended parent from paying the
239 surrogate’s attorney’s fees; and

240 “(4) All parties to the agreement must affirm, by their signatures to the agreement,
241 that she or he has read the agreement and this chapter, and understands the requirements of both.

242 “(b) The surrogacy agreement shall include terms that the surrogate:

243 “(1) Acknowledges and agrees that she is not and shall not be the parent of the
244 child;

245 “(2) Agrees to surrender physical custody of the child to the intended parent
246 immediately upon the child’s birth;

247 “(3) At all times during the pregnancy and until delivery, regardless of whether
248 the court has issued a parentage order, the surrogate shall maintain clinical management over her
249 own body;

250 “(4) Agrees to cooperate in any necessary legal proceedings to recognize the
251 intended parent as the legal parent or any other proceeding related to the surrogacy agreement;
252 and

253 “(5) Agrees to all other terms, consistent with this chapter and as mutually
254 negotiated and agreed upon by the parties.

255 “(c) The surrogacy agreement shall include terms that the intended parent shall:

256 “(1) Accept physical custody of the child immediately upon the child’s birth,

257 regardless of whether the child has or is perceived to have congenital defects; and

258 “(2) Assume sole responsibility for the support of the child immediately upon the
259 child’s birth, including paying for any funeral expenses if there is a stillbirth, preterm birth, or
260 any other birth issue that results in the child’s death.

261 “(d) The surrogacy agreement shall provide that the intended parent will cover all
262 reasonable medical expenses and those reasonable ancillary expenses that are agreed to in the
263 agreement.

264 “(1) Ancillary expenses are presumed to be reasonable if they are specified in a
265 surrogacy agreement that was negotiated by independent attorneys.

266 “(2) Payment of expenses shall be made either in the form of insurance, cash,
267 escrow, bonds, or other arrangements satisfactory to the parties, pursuant to the terms of the
268 surrogacy agreement.

269 “(3) The surrogacy agreement shall include an allocation of responsibility for
270 such costs in the event of termination of the pregnancy, termination of the contract, or breach of
271 the contract by any party.

272 “(e) Any dispute related to a surrogacy agreement shall be resolved by the procedures set
273 forth in the surrogacy agreement. The surrogacy agreement shall include an alternative dispute
274 resolution provision.

275 “§ 16-409. Effect of subsequent marriage or relationship or dissolution of marriage or
276 domestic partnership on surrogacy agreement.

277 “Subsequent marriage or domestic partnership or dissolution thereof for either the
278 surrogate or the intended parent shall have no bearing on the validity of the surrogacy agreement
279 nor affect the intended parentage.

280 “§ 16-410. Effect of death of an intended parent.

281 ““If an intended parent dies after an embryo transfer, the surviving spouse or domestic
282 partner will assume all obligations with respect to the surrogacy agreement, and both will be
283 considered the parents of the resulting child.

284 “§ 16-411. Effect of withdrawal of consent.

285 “(a) Either party may withdraw his or her consent to collaborative reproduction. Such
286 withdrawal must be:

287 “(1) Prior to embryo transfer;

288 “(2) In writing; and
289 “(3) Delivered to:
290 “(A) All parties to the surrogacy agreement and to the IVF center by
291 certified mail or by hand delivery and either with receipt acknowledged by the recipient or with
292 a witness to each hand delivery; and

293 “(B) The court that approved the original agreement.

294 “(b) When a party withdraws consent in a timely manner as provided under this section,
295 no embryo transfer shall take place.

296 “(c) Upon such withdrawal, costs will be paid according to the terms of the surrogacy
297 agreement.

298 “§ 16-412. Character.

299 “(a) No person who has been convicted of a felony or a misdemeanor involving impunity
300 of character or honesty, including any action pertaining to fraud, shall be involved in or profit
301 from, directly or indirectly, the business of surrogacy agreements in the District. This section
302 applies to individuals and entities doing business as or profiting from recruiting and matching,
303 escrow services, and providing other professional services to individuals interested in
304 collaborative reproduction. This section does not apply to the participants in collaborative
305 reproduction, the surrogate, her spouse or partner, gamete or embryo donors, and the intended
306 parent.

307 “(b) A person convicted of a violation of this section shall be fined not more than the
308 amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012,
309 effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), or imprisoned for
310 not more than 2 years.”

311
312 TITLE II – RULES, FISCAL IMPACT STATEMENT, AND EFFECTIVE DATE.

313 Sec. 201. Rules.

314 The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act,
315 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules
316 to implement the provisions of this act.

317 Sec. 202. Fiscal impact statement.

318 The Council adopts the fiscal impact statement in the committee report as the fiscal
319 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
320 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

321 Sec. 203. Effective date.

322 This act shall take effect following approval by the Mayor (or in the event of veto by the
323 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
324 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
325 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
326 Columbia Register.

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