A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Collaborative Reproduction Amendment Act of 2015”.
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
“16-402. Prohibitions and penalties (repealed).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.
“16-411. 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
include the birth of a child conceived by means of sexual intercourse, or the birth of a child conceived with assisted reproductive technology or intrauterine insemination by an individual or couple who use their own gametes and who intend(s) to gestate and parent the resulting child.

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

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

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

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

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

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

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

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

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

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

“(14) “Intrauterine insemination” means the fertility treatment that involves the placing of sperm inside a woman’s uterus to facilitate fertilization.
“(15) “In vitro fertilization” or “IVF” means the assisted reproductive technology procedure by which a female gamete is fertilized by a male gamete outside of the body, in a laboratory, to create an embryo.

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

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

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

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

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

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

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

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

“(22) “Surrogacy agreement” means the written contract between the surrogate, her spouse or partner, if any, and the intended parent, pursuant to which the intended parent shall be the parent of the child who is born as a result of the collaborative reproduction.
(d) Section 16-402 is repealed.
(e) New sections 16-403 – 16-416 are added to read as follows:

“§ 16-403. Validity of collaborative reproduction.

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

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

“(a) Surrogacy agreements.

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

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

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

“(b) Donor arrangements.

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

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

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

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

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

“(1) The intended parent or the surrogate is domiciled in and has been a resident in the District for at least 90 days; or
“(2) The child is reasonably expected to be born in the District, as demonstrated by the surrogate’s established relationship with an obstetrician licensed in the District, who has delivery privileges at a hospital in the District where the surrogate intends to deliver the child; or

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

“(b) The petition for parentage shall include:

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

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

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

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

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

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

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

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

“(3) Find that the surrogate and the surrogate’s spouse or partner, if any, are not parents.
“(d) If such petition is filed in advance of the delivery, the order shall be entered within a reasonable time from filing the petition. The order may be entered prior to the birth of the child, but enforcement of the order shall be stayed until the birth of the child.

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

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

§ 16-406. Surrogacy agreement authorized.

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

§ 16-407. Eligibility requirements of the parties.

“(a) Surrogate.

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

“(1) Is at least 21 years of age;

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

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

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

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

“(b) Intended parent.

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

“(1) Is at least 21 years of age; and
“(2) Has guaranteed payment of all reasonable medical and ancillary expenses that are agreed to in the surrogacy agreement.

§ 16-408. The surrogacy agreement: terms.

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

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

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

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

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

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

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

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

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

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

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

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

“(1) Accept physical custody of the child immediately upon the child’s birth,
regardless of whether the child has or is perceived to have congenital defects; and

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

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

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

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

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

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

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

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


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

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

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

“(1) Prior to embryo transfer;
“(2) In writing; and  
“(3) Delivered to:  

“(A) All parties to the surrogacy agreement and to the IVF center by certified mail or by hand delivery and either with receipt acknowledged by the recipient or with a witness to each hand delivery; and  

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

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

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

“§ 16-412. Character.  

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

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

TITLE II – RULES, FISCAL IMPACT STATEMENT, AND EFFECTIVE DATE.  
Sec. 201. Rules.  
The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this act.  
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 203. Effective date.

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