

HOUSE BILL 305

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Greg Nibert

AN ACT

RELATING TO PARENTAGE; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NEW MEXICO UNIFORM PARENTAGE ACT TO CLARIFY
SURROGACY AGREEMENTS, ASSISTED REPRODUCTION AND PARENTAGE
DETERMINATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-11A-102 NMSA 1978 (being Laws 2009,
Chapter 215, Section 1-102) is amended to read:

"40-11A-102. DEFINITIONS.--As used in the New Mexico
Uniform Parentage Act:

A. "acknowledged father" means a man who has
established a father-child relationship pursuant to Article 3
of the New Mexico Uniform Parentage Act;

B. "adjudicated father" means a man who has been
adjudicated by a court of competent jurisdiction to be the

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1 father of a child;

2 C. "alleged father" means a man who alleges himself
3 to be, or is alleged to be, the genetic father or a possible
4 genetic father of a child, but whose paternity has not been
5 determined. "Alleged father" does not include:

6 (1) a presumed father;

7 (2) a man whose parental rights have been
8 terminated or declared not to exist; or

9 (3) a male donor;

10 D. "assisted reproduction" means a method of
11 causing pregnancy other than sexual intercourse. "Assisted
12 reproduction" includes:

13 (1) intrauterine or intracervical
14 insemination;

15 (2) donation of [~~eggs~~] gametes;

16 (3) donation of embryos;

17 (4) in-vitro fertilization and transfer of
18 embryos; and

19 (5) intracytoplasmic sperm injection;

20 E. "bureau" means the vital records and health
21 statistics bureau of the department of health;

22 F. "child" means a person of any age whose
23 parentage may be determined pursuant to the New Mexico Uniform
24 Parentage Act;

25 G. "commence" means to file the initial pleading

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1 seeking an adjudication of parentage in district court;

2 H. "determination of parentage" means the
3 establishment of the parent-child relationship by the signing
4 of a valid acknowledgment of paternity pursuant to Article 3 of
5 the New Mexico Uniform Parentage Act or adjudication by the
6 court;

7 I. "donor" means a person who [~~produces eggs or~~
8 ~~sperm used for~~] provides gametes intended for use in assisted
9 reproduction, whether or not for consideration. "Donor" does
10 not include:

11 [~~(1) a husband who provides sperm, or a wife~~
12 ~~who provides eggs, to be used for assisted reproduction by the~~
13 ~~wife;~~

14 ~~(2)]~~ (1) a woman who gives birth to a child
15 [~~by means of assisted reproduction~~] conceived by assisted
16 reproduction, except as otherwise provided in Article 8 of the
17 New Mexico Uniform Parentage Act; or

18 [~~(3)]~~ (2) a parent pursuant to Article 7 of
19 the New Mexico Uniform Parentage Act or an intended parent
20 under Article 8 of that act;

21 J. "ethnic or racial group" means, for purposes of
22 genetic testing, a recognized group that a person identifies as
23 all or part of the person's ancestry or that is so identified
24 by other information;

25 K. "gamete" means sperm, egg or any part of a sperm

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1 or egg;

2 [K-] L. "genetic testing" means an analysis of
3 genetic markers to exclude or identify a man as the father or a
4 woman as the mother of a child. "Genetic testing" includes an
5 analysis of one or a combination of the following:

6 (1) deoxyribonucleic acid; and

7 (2) blood-group antigens, red-cell antigens,
8 human-leukocyte antigens, serum enzymes, serum proteins or red-
9 cell enzymes;

10 M. "intended parent" means a person, married or
11 unmarried, who manifests an intent to be legally bound as a
12 parent of a child conceived by assisted reproduction;

13 [L-] N. "man" means a male person of any age;

14 [M-] O. "parent" means a person who has established
15 a parent-child relationship pursuant to Section [2-201 of the
16 ~~New Mexico Uniform Parentage Act~~] 40-11A-201 NMSA 1978;

17 [N-] ~~"parent-child relationship" means the legal~~
18 ~~relationship between a child and a parent of the child,~~
19 ~~including the mother-child relationship and the father-child~~
20 ~~relationship;]~~

21 P. "parentage" or "parent-child relationship" means
22 the legal relationship between a child and a parent of the
23 child;

24 [O-] Q. "paternity index" means the likelihood of
25 paternity calculated by computing the ratio between:

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1 (1) the likelihood that the tested man is the
2 father, based on the genetic markers of the tested man, mother
3 and child, conditioned on the hypothesis that the tested man is
4 the father of the child; and

5 (2) the likelihood that the tested man is not
6 the father, based on the genetic markers of the tested man,
7 mother and child, conditioned on the hypothesis that the tested
8 man is not the father of the child and that the father is of
9 the same ethnic or racial group as the tested man;

10 [P-] R. "presumed father" means a man who, by
11 operation of law pursuant to Section [~~2-204 of the New Mexico~~
12 ~~Uniform Parentage Act~~] 40-11A-204 NMSA 1978, is recognized as
13 the father of a child until that status is rebutted or
14 confirmed in a judicial proceeding;

15 [Q-] S. "probability of paternity" means the
16 measure, for the ethnic or racial group to which the alleged
17 father belongs, of the probability that the man in question is
18 the father of the child, compared with a random, unrelated man
19 of the same ethnic or racial group, expressed as a percentage
20 incorporating the paternity index and a prior probability;

21 [R-] T. "record" means information that is
22 inscribed on a tangible medium or that is stored in an
23 electronic or other medium and is retrievable in perceivable
24 form;

25 U. "sign" means, with present intent to

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1 authenticate or adopt a record:

2 (1) to execute or adopt a tangible symbol; or

3 (2) to attach to or logically associate with
4 the record an electronic symbol, sound or process;

5 [~~S.~~] V. "signatory" means a person who signs or
6 otherwise authenticates a record and is bound by its terms;

7 [~~F.~~] W. "state" means a state of the United States,
8 the District of Columbia, Puerto Rico, the United States Virgin
9 Islands or any territory or insular possession subject to the
10 jurisdiction of the United States; [~~and~~]

11 [~~U.~~] X. "support-enforcement agency" means the
12 human services department designated pursuant to Section
13 27-2-27 NMSA 1978 as the single state agency for the
14 enforcement of child and spousal support obligations pursuant
15 to Title IV D of the federal Social Security Act and any other
16 public official or agency authorized to seek:

17 (1) enforcement of support orders or laws
18 relating to the duty of support;

19 (2) establishment or modification of child
20 support;

21 (3) determination of parentage; or

22 (4) location of child-support obligors and
23 their income and assets;

24 Y. "transfer" means a procedure for assisted
25 reproduction by which an embryo or sperm is placed in the body

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1 of the woman who will give birth to the child;

2 Z. "witnessed" means that at least one person who
3 is authorized to sign has signed a record to verify that the
4 person personally observed a signatory sign the record; and

5 AA. "woman" means a female person of any age."

6 SECTION 2. Section 40-11A-701 NMSA 1978 (being Laws 2009,
7 Chapter 215, Section 7-701) is amended to read:

8 "40-11A-701. SCOPE OF ARTICLE.--This article does not
9 apply to the birth of a child conceived by [~~means of~~] sexual
10 intercourse or assisted reproduction pursuant to a surrogacy
11 agreement pursuant to Article 8 of the New Mexico Uniform
12 Parentage Act."

13 SECTION 3. Section 40-11A-702 NMSA 1978 (being Laws 2009,
14 Chapter 215, Section 7-702) is amended to read:

15 "40-11A-702. PARENTAL STATUS OF DONOR.--~~[Donors of eggs,~~
16 ~~sperm or embryos are not the parents of a child conceived by~~
17 ~~means of assisted reproduction]~~ A donor is not a parent of a
18 child conceived by assisted reproduction."

19 SECTION 4. Section 40-11A-703 NMSA 1978 (being Laws 2009,
20 Chapter 215, Section 7-703) is amended to read:

21 "40-11A-703. PARENTAGE OF CHILD OF ASSISTED
22 REPRODUCTION.--A person who [~~provides eggs, sperm or embryos~~
23 ~~for or~~] consents to assisted reproduction as provided in
24 Section [~~7-704 of the New Mexico Uniform Parentage Act]~~
25 40-11A-704 NMSA 1978 by a woman with the intent to be the

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1 parent of a child conceived by the assisted reproduction is a
2 parent of the ~~[resulting]~~ child."

3 SECTION 5. Section 40-11A-704 NMSA 1978 (being Laws 2009,
4 Chapter 215, Section 7-704) is amended to read:

5 "40-11A-704. CONSENT TO ASSISTED REPRODUCTION.--

6 A. ~~[The intended parent or parents shall consent to~~
7 ~~the assisted reproduction in a record signed by them before the~~
8 ~~placement of the eggs, sperm or embryos. Donors shall also~~
9 ~~consent to an assisted reproduction before retrieval of the~~
10 ~~donors' eggs or sperm.] Except as otherwise provided in~~
11 Subsection B of this section, the consent described in Section
12 40-11A-703 NMSA 1978 shall be in a record signed by a woman
13 giving birth to a child conceived by assisted reproduction and
14 a person who intends to be a parent of the child.

15 B. Failure ~~[of a parent to sign a]~~ to consent in a
16 record as required by Subsection A of this section ~~[does]~~
17 before, on or after the birth of a child shall not preclude ~~[a]~~
18 the court from finding ~~[of]~~ consent to parentage if: ~~[the~~
19 ~~parent, during the first two years of the child's life, resided~~
20 ~~in the same household with the child and openly held out the~~
21 ~~child as the parent's own.~~

22 C. ~~All papers relating to the assisted~~
23 ~~reproduction, whether part of a court, medical or any other~~
24 ~~file, are subject to inspection only upon an order of the~~
25 ~~district court or with the consent, in a signed record, of:~~

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1 ~~(1) the donor or donors; and~~
2 ~~(2) the parent or parents who consented to the~~
3 ~~assisted reproduction pursuant to Subsection A of this section~~
4 ~~or a child who was born as a result of the assisted~~
5 ~~reproduction pursuant to Subsection A of this section if the~~
6 ~~child is eighteen years of age or older.]~~

7 (1) the woman or the person proves by clear
8 and convincing evidence the existence of an express agreement
9 entered into before conception that the person and the woman
10 intended they both would be parents of the child; or

11 (2) the woman and the person for the first two
12 years of the child's life, including any period of temporary
13 absence, resided together in the same household with the child
14 and both openly held out the child as the person's child,
15 unless the person dies or becomes incapacitated before the
16 child attains two years of age or the child dies before the
17 child attains two years of age, in which case the court may
18 find consent under this subsection to parentage if a party
19 proves by clear and convincing evidence that the woman and the
20 person intended to reside together in the same household with
21 the child and both intended that the person would openly hold
22 out the child as the person's child, but the person was
23 prevented from carrying out that intent by death or
24 incapacity."

25 SECTION 6. Section 40-11A-705 NMSA 1978 (being Laws 2009,
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1 Chapter 215, Section 7-705) is amended to read:

2 "40-11A-705. LIMITATION ON ~~[HUSBAND'S]~~ SPOUSE'S DISPUTE
3 OF ~~[PATERNITY]~~ PARENTAGE.--

4 A. Except as otherwise provided in Subsection B of
5 this section, a person who, at the time of a child's birth, is
6 the ~~[husband]~~ spouse of ~~[a wife]~~ the woman who ~~[gives]~~ gave
7 birth to a child by ~~[means of]~~ assisted reproduction ~~[shall]~~
8 may not challenge ~~[his paternity]~~ the person's parentage of the
9 child unless:

10 (1) ~~[within]~~ not later than two years after
11 ~~[learning of]~~ the birth of the child, ~~[he]~~ the person commences
12 a proceeding to adjudicate ~~[his paternity]~~ the person's
13 parentage of the child; and

14 (2) the district court finds that ~~[he]~~ the
15 person did not consent to the assisted reproduction, before, on
16 or after birth of the child or withdrew consent pursuant to
17 Section 40-11A-708 NMSA 1978.

18 B. A proceeding to adjudicate ~~[paternity]~~ a
19 spouse's parentage of a child born by assisted reproduction may
20 be ~~[maintained]~~ commenced at any time if the ~~[district]~~ court
21 determines that:

22 (1) the ~~[husband did not provide sperm for or,~~
23 ~~before or after the birth of the child, consent]~~ spouse neither
24 provided a gamete for, nor consented to, the assisted
25 reproduction ~~[by his wife]~~;

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1 (2) the ~~[husband and the mother of]~~ spouse and
2 the woman who gave birth to the child have not cohabited since
3 the probable time of assisted reproduction; and

4 (3) the ~~[husband]~~ spouse never openly held out
5 the child as ~~[his own]~~ the spouse's child.

6 C. ~~[The limitation provided in]~~ This section
7 applies to a ~~[marriage dissolved or declared invalid after~~
8 ~~assisted reproduction]~~ spouse's dispute of parentage even if
9 the spouse's marriage is declared void after assisted
10 reproduction occurs."

11 SECTION 7. Section 40-11A-706 NMSA 1978 (being Laws 2009,
12 Chapter 215, Section 7-706) is amended to read:

13 "40-11A-706. EFFECT OF ~~[DISSOLUTION OF]~~ CERTAIN LEGAL
14 PROCEEDINGS REGARDING MARRIAGE [OR WITHDRAWAL OF CONSENT].--

15 ~~[A. If a marriage is dissolved before placement of~~
16 ~~eggs, sperm or embryos, the former spouse is not a parent of~~
17 ~~the resulting child unless the former spouse consented in a~~
18 ~~signed record that if assisted reproduction were to occur after~~
19 ~~a divorce the former spouse would be a parent of the child.~~

20 ~~B. Unless otherwise agreed in a signed record, the~~
21 ~~consent of a woman or a man to assisted reproduction may be~~
22 ~~withdrawn by that person in a signed record delivered to the~~
23 ~~other person at any time before placement of eggs, sperm or~~
24 ~~embryos if the placement has not occurred within one year after~~
25 ~~the consent. A person who withdraws consent pursuant to this~~

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1 ~~section is not a parent of the resulting child.]~~ If a marriage
2 of a woman who gives birth to a child conceived by assisted
3 reproduction is terminated through dissolution, or is declared
4 void or is subject to division of property and separation
5 before transfer of gametes or embryos to the woman, a former
6 spouse of the woman is not a parent of the child unless the
7 former spouse of the woman consented in a record that the
8 former spouse would be a parent of the child if assisted
9 reproduction were to occur after a dissolution or a voiding of
10 the marriage or a division of property and separation and the
11 former spouse did not withdraw consent under Section 40-11A-708
12 NMSA 1978."

13 SECTION 8. Section 40-11A-707 NMSA 1978 (being Laws 2009,
14 Chapter 215, Section 7-707) is amended to read:

15 "40-11A-707. PARENTAL STATUS OF DECEASED PERSON.--

16 A. If a person who intends to be a parent of a
17 child conceived by assisted reproduction dies during the period
18 between the transfer of a gamete or embryo and the birth of the
19 child, the person's death does not preclude the establishment
20 of the person's parentage of the child if the person otherwise
21 would be a parent of the child pursuant to the New Mexico
22 Uniform Parentage Act.

23 B. If a person who consented in a record to [~~be a~~
24 ~~parent by~~] assisted reproduction by a woman who agreed to give
25 birth to a child dies before [~~placement~~] a transfer of [~~eggs,~~

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1 sperm] gametes or embryos, the deceased person is [not] a
2 parent of [the resulting] a child [unless the deceased spouse
3 consented in a signed record that if assisted reproduction were
4 to occur after death, the deceased person would be a parent of
5 the child] conceived by the assisted reproduction only if:

6 (1) either the person's:

7 (a) consent was provided in a record
8 that states that if assisted reproduction were to occur after
9 the death of the person, the person would be a parent of the
10 child; or

11 (b) intent to be a parent of a child
12 conceived by assisted reproduction after the person's death is
13 established by clear and convincing evidence; and

14 (2) either the:

15 (a) embryo is in utero not later than
16 thirty-six months after the person's death; or

17 (b) child is born not later than forty-
18 five months after the person's death."

19 SECTION 9. A new section of the New Mexico Uniform
20 Parentage Act, Section 40-11A-708 NMSA 1978, is enacted to
21 read:

22 "40-11A-708. [NEW MATERIAL] WITHDRAWAL OF CONSENT.--

23 A. A person who consents pursuant to Section
24 40-11A-704 NMSA 1978 to assisted reproduction may withdraw
25 consent at any time before a transfer that results in a

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1 pregnancy by giving notice in a record of the withdrawal of
2 consent to the woman who agreed to give birth to a child
3 conceived by assisted reproduction and to any clinic or health
4 care provider facilitating the assisted reproduction. Failure
5 to give notice to the clinic or health care provider shall not
6 affect a determination of parentage pursuant to the New Mexico
7 Uniform Parentage Act.

8 B. A person who withdraws consent pursuant to
9 Subsection A of this section is not a parent of the child
10 pursuant to this article."

11 ARTICLE 8

12 SURROGACY AGREEMENTS

13 PART 1 - GENERAL REQUIREMENTS

14 SECTION 10. Section 40-11A-801 NMSA 1978 (being Laws
15 2009, Chapter 215, Section 8-801) is repealed and a new Section
16 40-11A-801 NMSA 1978 is enacted to read:

17 "40-11A-801. [NEW MATERIAL] DEFINITIONS.--As used in this
18 article:

19 A. "dissolution of marriage" includes a declaration
20 that a marriage is void pursuant to Section 40-1-9 NMSA 1978, a
21 decree of dissolution of marriage pursuant to Section 40-4-1
22 NMSA 1978 and a division of property and separation pursuant to
23 Section 40-4-3 NMSA 1978;

24 B. "genetic surrogate" means a woman who is not an
25 intended parent and who agrees to become pregnant through

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1 assisted reproduction using her own gamete, pursuant to a
2 genetic surrogacy agreement;

3 C. "gestational surrogate" means a woman who is not
4 an intended parent and who agrees to become pregnant through
5 assisted reproduction using gametes that are not her own,
6 pursuant to a gestational surrogacy agreement;

7 D. "notarial officer" means a notarial officer as
8 defined in Section 14-14A-2 NMSA 1978; and

9 E. "surrogacy agreement" means an agreement between
10 one or more intended parents and a woman who is not an intended
11 parent in which the woman agrees to become pregnant through
12 assisted reproduction and which provides that each intended
13 parent is a parent of a child conceived pursuant to the
14 agreement. Unless otherwise specified, "surrogacy agreement"
15 refers to both a gestational surrogacy agreement and a genetic
16 surrogacy agreement."

17 SECTION 11. A new section of the New Mexico Uniform
18 Parentage Act, Section 40-11A-802 NMSA 1978, is enacted to
19 read:

20 "40-11A-802. [NEW MATERIAL] ELIGIBILITY TO ENTER
21 GESTATIONAL OR GENETIC SURROGACY AGREEMENT.--

22 A. To execute an agreement to act as a gestational
23 or genetic surrogate, a woman shall:

24 (1) have attained twenty-one years of age;

25 (2) have previously given birth to at least

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1 one child;

2 (3) complete a medical evaluation related to
3 the surrogacy agreement by a licensed medical doctor;

4 (4) complete a mental health consultation by a
5 licensed mental health professional; and

6 (5) have independent legal representation of
7 the woman's choice throughout the surrogacy arrangement
8 regarding the terms of the surrogacy agreement and the
9 potential legal consequences of the agreement.

10 B. To execute a gestational or genetic surrogacy
11 agreement, each intended parent, whether or not genetically
12 related to the child, shall:

13 (1) have attained twenty-one years of age;

14 (2) complete a medical evaluation related to
15 the surrogacy agreement by a licensed medical doctor;

16 (3) complete a mental health consultation by a
17 licensed mental health professional; and

18 (4) have independent legal representation of
19 the intended parent's choice throughout the surrogacy
20 arrangement regarding the terms of the surrogacy agreement and
21 the potential legal consequences of the agreement."

22 SECTION 12. A new section of the New Mexico Uniform
23 Parentage Act, Section 40-11A-803 NMSA 1978, is enacted to
24 read:

25 "40-11A-803. [NEW MATERIAL] REQUIREMENTS OF GESTATIONAL
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1 OR GENETIC SURROGACY AGREEMENT--PROCESS.--A gestational or
2 genetic surrogacy agreement shall be executed in compliance
3 with the following rules:

4 A. at least one party shall be a resident of this
5 state or, if no party is a resident of this state, at least one
6 medical evaluation or procedure or mental health consultation
7 pursuant to the agreement shall occur in this state;

8 B. a surrogate and each intended parent shall meet
9 the requirements of Section 40-11A-802 NMSA 1978;

10 C. each intended parent, the surrogate and the
11 surrogate's spouse, if any, shall be parties to the agreement;

12 D. the agreement shall be in a record signed by
13 each party listed in Subsection C of this section;

14 E. the surrogate and each intended parent shall
15 acknowledge in a record receipt of a copy of the agreement;

16 F. the signature of each party to the agreement
17 shall be attested by a notarial officer or witnessed;

18 G. the surrogate and the intended parent or parents
19 shall have independent legal representation throughout the
20 surrogacy arrangement regarding the terms of the surrogacy
21 agreement and the potential legal consequences of the
22 agreement, and each counsel shall be identified in the
23 surrogacy agreement;

24 H. the intended parent or parents shall pay for
25 independent legal representation for the surrogate; and

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1 I. the agreement shall be executed before a medical
2 procedure occurs related to the surrogacy agreement, other than
3 the medical evaluation and mental health consultation required
4 by Section 40-11A-802 NMSA 1978."

5 SECTION 13. A new section of the New Mexico Uniform
6 Parentage Act, Section 40-11A-804 NMSA 1978, is enacted to
7 read:

8 "40-11A-804. [NEW MATERIAL] REQUIREMENTS OF GESTATIONAL
9 OR GENETIC SURROGACY AGREEMENT--CONTENT.--

10 A. A gestational or genetic surrogacy agreement
11 shall comply with the following requirements:

12 (1) a surrogate agrees to attempt to become
13 pregnant by means of assisted reproduction;

14 (2) except as otherwise provided in Sections
15 40-11A-811, 40-11A-814 and 40-11A-815 NMSA 1978, the surrogate
16 and the surrogate's spouse or former spouse, if any, shall have
17 no claim to parentage of a child conceived by assisted
18 reproduction pursuant to the surrogacy agreement;

19 (3) the surrogate's spouse, if any, shall
20 acknowledge and agree to comply with the obligations imposed on
21 the surrogate by the surrogacy agreement;

22 (4) except as otherwise provided in Sections
23 40-11A-811, 40-11A-814 and 40-11A-815 NMSA 1978, the intended
24 parent or, if there are two intended parents, each one jointly
25 and severally, immediately on birth shall be the exclusive

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1 parent or parents of the child, regardless of number of
2 children born or gender or mental or physical condition of each
3 child;

4 (5) except as otherwise provided in Sections
5 40-11A-811, 40-11A-814 and 40-11A-815 NMSA 1978, the intended
6 parent or, if there are two intended parents, each parent
7 jointly and severally, immediately on birth shall assume
8 responsibility for the financial support of the child,
9 regardless of number of children born or gender or mental or
10 physical condition of each child;

11 (6) the surrogacy agreement shall include
12 information disclosing how each intended parent will cover the
13 surrogacy-related expenses of the surrogate and the medical
14 expenses of the child. If health care coverage is used to
15 cover the medical expenses, the disclosure shall include a
16 summary of the health care policy provisions related to
17 coverage for surrogate pregnancy, including any possible
18 liability of the surrogate, third-party-liability liens, other
19 insurance coverage and any notice requirement that could affect
20 coverage or liability of the surrogate. Unless the agreement
21 expressly provides otherwise, the review and disclosure do not
22 constitute legal advice. If the extent of coverage is
23 uncertain, a statement of that fact is sufficient to comply
24 with this paragraph;

25 (7) the surrogacy agreement shall permit the

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1 surrogate to make all health and welfare decisions regarding
2 herself and her pregnancy. The New Mexico Uniform Parentage
3 Act shall not enlarge or diminish the surrogate's right to
4 terminate her pregnancy; and

5 (8) the surrogacy agreement shall include
6 information about each party's right pursuant this article to
7 terminate the surrogacy agreement.

8 B. A gestational or genetic surrogacy agreement may
9 provide for:

10 (1) payment of consideration and reasonable
11 expenses; and

12 (2) reimbursement of specific expenses if the
13 agreement is terminated pursuant to this article.

14 C. A right created pursuant to a gestational or
15 genetic surrogacy agreement is not assignable, and there is no
16 third-party beneficiary of the agreement other than the child."

17 SECTION 14. A new section of the New Mexico Uniform
18 Parentage Act, Section 40-11A-805 NMSA 1978, is enacted to
19 read:

20 "40-11A-805. [NEW MATERIAL] GESTATIONAL OR GENETIC
21 SURROGACY AGREEMENT--EFFECT OF SUBSEQUENT CHANGE OF MARITAL
22 STATUS.--

23 A. Unless a gestational or genetic surrogacy
24 agreement expressly provides otherwise:

25 (1) the marriage of a surrogate after the

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1 agreement is signed by all parties does not affect the validity
2 of the agreement, her spouse's consent to the agreement is not
3 required and her spouse is not a presumed parent of a child
4 conceived by assisted reproduction pursuant to the agreement;
5 and

6 (2) the dissolution of marriage of the
7 surrogate after the agreement is signed by all parties shall
8 not affect the validity of the agreement.

9 B. Unless a gestational or genetic surrogacy
10 agreement expressly provides otherwise:

11 (1) the marriage of an intended parent after
12 the agreement is signed by all parties shall not affect the
13 validity of a surrogacy agreement, the consent of the spouse of
14 the intended parent is not required and the spouse of the
15 intended parent is not, based on the agreement, a parent of a
16 child conceived by assisted reproduction pursuant to the
17 agreement; and

18 (2) the dissolution of marriage of an intended
19 parent after the agreement is signed by all parties shall not
20 affect the validity of the agreement and, except as otherwise
21 provided in Section 40-11A-814 NMSA 1978, the intended parents
22 are the parents of the child."

23 SECTION 15. A new section of the New Mexico Uniform
24 Parentage Act, Section 40-11A-806 NMSA 1978, is enacted to
25 read:

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1 "40-11A-806. [NEW MATERIAL] GESTATIONAL OR GENETIC
2 SURROGACY AGREEMENT--INSPECTION OF DOCUMENTS.--Unless the court
3 orders otherwise, a petition and any other document related to
4 a gestational or genetic surrogacy agreement filed with the
5 court pursuant to Sections 40-11A-801 through 40-11A-807 NMSA
6 1978 are not open to inspection by any person other than the
7 parties to the proceeding, a child conceived by assisted
8 reproduction pursuant to the agreement, their attorneys and the
9 relevant state agency. A court may not authorize a person to
10 inspect a document related to the agreement, unless required by
11 exigent circumstances. The person seeking to inspect the
12 document may be required to pay the expense of preparing a copy
13 of the document to be inspected."

14 SECTION 16. A new section of the New Mexico Uniform
15 Parentage Act, Section 40-11A-807 NMSA 1978, is enacted to
16 read:

17 "40-11A-807. [NEW MATERIAL] GESTATIONAL OR GENETIC
18 SURROGRACY AGREEMENT--EXCLUSIVE, CONTINUING JURISDICTION.--
19 During the period after the execution of a gestational or
20 genetic surrogacy agreement until ninety days after the birth
21 of a child conceived by assisted reproduction pursuant to the
22 agreement, a court of this state conducting a proceeding
23 pursuant to the New Mexico Uniform Parentage Act has exclusive,
24 continuing jurisdiction over all matters arising out of the
25 agreement. This section shall not give the court jurisdiction

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1 over a child-custody or child-support proceeding if
2 jurisdiction is not otherwise authorized by law of this state
3 other than the New Mexico Uniform Parentage Act."

4 PART 2 -- SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT

5 SECTION 17. A new section of the New Mexico Uniform
6 Parentage Act, Section 40-11A-808 NMSA 1978, is enacted to
7 read:

8 "40-11A-808. [NEW MATERIAL] TERMINATION OF GESTATIONAL
9 SURROGACY AGREEMENT.--

10 A. A party to a gestational surrogacy agreement may
11 terminate the agreement at any time before an embryo transfer
12 by giving notice of termination in a record to all other
13 parties. If an embryo transfer does not result in a pregnancy,
14 a party may terminate the agreement at any time before a
15 subsequent embryo transfer by giving notice of termination in a
16 record to all other parties.

17 B. Unless a gestational surrogacy agreement
18 provides otherwise, on termination of the agreement pursuant to
19 Subsection A of this section, the parties are released from the
20 agreement, except that each intended parent remains responsible
21 for expenses that are reimbursable pursuant to the agreement
22 and incurred by the gestational surrogate through the date of
23 termination.

24 C. Except in a case involving fraud, neither a
25 gestational surrogate nor the surrogate's spouse or former

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1 spouse, if any, is liable to the intended parent or parents for
2 expenses, other damages, a penalty or liquidated damages for
3 terminating a gestational surrogacy agreement pursuant to this
4 section."

5 SECTION 18. A new section of the New Mexico Uniform
6 Parentage Act, Section 40-11A-809 NMSA 1978, is enacted to
7 read:

8 "40-11A-809. [NEW MATERIAL] PARENTAGE UNDER GESTATIONAL
9 SURROGACY AGREEMENT.--

10 A. Except as otherwise provided in Subsection C of
11 this section, Subsection B of Section 40-11A-810 NMSA 1978 or
12 Section 40-11A-812 NMSA 1978, on the birth of a child conceived
13 by assisted reproduction pursuant to a gestational surrogacy
14 agreement, each intended parent is, by operation of law, a
15 parent of the child.

16 B. Except as otherwise provided in Subsection C of
17 this section or Section 40-11A-812 NMSA 1978, neither a
18 gestational surrogate nor the surrogate's spouse or former
19 spouse, if any, is a parent of the child.

20 C. If a child is alleged to be a genetic child of
21 the woman who agreed to be a gestational surrogate, the court
22 shall order genetic testing of the child. If the child is a
23 genetic child of the woman who agreed to be a gestational
24 surrogate, parentage shall be determined based on Articles 1
25 through 6 of the New Mexico Uniform Parentage Act.

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1 D. Except as otherwise provided in Subsection C of
2 this section, Subsection B of Section 40-11A-810 NMSA 1978 or
3 Section 40-11A-812 NMSA 1978, if, due to a clinical or
4 laboratory error, a child conceived by assisted reproduction
5 pursuant to a gestational surrogacy agreement is not
6 genetically related to an intended parent or a donor who
7 donated to the intended parent or parents, each intended
8 parent, and not the gestational surrogate and the surrogate's
9 spouse or former spouse, if any, is a parent of the child,
10 subject to any other claim of parentage."

11 **SECTION 19.** A new section of the New Mexico Uniform
12 Parentage Act, Section 40-11A-810 NMSA 1978, is enacted to
13 read:

14 "40-11A-810. [NEW MATERIAL] GESTATIONAL SURROGACY
15 AGREEMENT--PARENTAGE OF DECEASED INTENDED PARENT.--

16 A. Section 40-11A-809 NMSA 1978 applies to an
17 intended parent even if the intended parent died during the
18 period between the transfer of a gamete or embryo and the birth
19 of the child.

20 B. Except as otherwise provided in Section
21 40-11A-812 NMSA 1978, an intended parent is not a parent of a
22 child conceived by assisted reproduction pursuant to a
23 gestational surrogacy agreement if the intended parent dies
24 before the transfer of a gamete or embryo unless:

25 (1) the agreement provides otherwise; and

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1 (2) the transfer of a gamete or embryo occurs
2 not later than thirty-six months after the death of the
3 intended parent or the birth of the child occurs not later than
4 forty-five months after the death of the intended parent."

5 SECTION 20. A new section of the New Mexico Uniform
6 Parentage Act, Section 40-11A-811 NMSA 1978, is enacted to
7 read:

8 "40-11A-811. [NEW MATERIAL] GESTATIONAL SURROGACY
9 AGREEMENT--ORDER OF PARENTAGE.--

10 A. Except as otherwise provided in Subsection C of
11 Section 40-11A-809 NMSA 1978 or Section 40-11A-812 NMSA 1978,
12 before, on or after the birth of a child conceived by assisted
13 reproduction pursuant to a gestational surrogacy agreement, a
14 party to the agreement may commence a proceeding in the
15 district court for an order or judgment:

16 (1) declaring that each intended parent is a
17 parent of the child and ordering that parental rights and
18 duties vest immediately on the birth of the child exclusively
19 in each intended parent;

20 (2) declaring that the gestational surrogate
21 and the surrogate's spouse or former spouse, if any, are not
22 the parents of the child;

23 (3) designating the content of the birth
24 record in accordance with Section 24-14-13 NMSA 1978 and
25 directing the department of health to designate each intended

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1 parent as a parent of the child;

2 (4) to protect the privacy of the child and
3 the parties, declaring that the court record is not open to
4 inspection except as authorized pursuant to Section 40-11A-806
5 NMSA 1978;

6 (5) requiring that the child be surrendered to
7 the intended parent or parents if necessary; and

8 (6) for other relief the court determines
9 necessary and proper.

10 B. The court may issue an order or judgment
11 pursuant to Subsection A of this section before the birth of
12 the child. The court shall stay enforcement of the order or
13 judgment until the birth of the child.

14 C. Neither this state nor the department of health
15 is a necessary party to a proceeding pursuant to Subsection A
16 this section."

17 SECTION 21. A new section of the New Mexico Uniform
18 Parentage Act, Section 40-11A-812 NMSA 1978, is enacted to
19 read:

20 "40-11A-812. [NEW MATERIAL] EFFECT OF GESTATIONAL
21 SURROGACY AGREEMENT.--

22 A. A gestational surrogacy agreement that complies
23 with Sections 40-11A-802 through 40-11A-804 NMSA 1978 is
24 enforceable.

25 B. If a child was conceived by assisted

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1 reproduction pursuant to a gestational surrogacy agreement that
2 does not comply with Sections 40-11A-802 through 40-11A-804
3 NMSA 1978, the court shall determine the rights and duties of
4 the parties to the agreement consistent with the intent of the
5 parties at the time of execution of the agreement. Each party
6 to the agreement and any person who at the time of the
7 execution of the agreement was a spouse of a party to the
8 agreement has standing to maintain a proceeding to adjudicate
9 an issue related to the enforcement of the agreement.

10 C. Except as expressly provided in a gestational
11 surrogacy agreement or Subsection D or E of this section, if
12 the agreement is breached by the gestational surrogate or one
13 or more intended parents, the non-breaching party is entitled
14 to the remedies available at law or in equity.

15 D. Specific performance is not a remedy available
16 for breach by a gestational surrogate of a provision in the
17 agreement that the gestational surrogate be impregnated,
18 terminate or not terminate a pregnancy or submit to medical
19 procedures.

20 E. Except as otherwise provided in Subsection D of
21 this section, if an intended parent is determined to be a
22 parent of the child, specific performance is a remedy available
23 for:

24 (1) breach of the agreement by a gestational
25 surrogate that prevents the intended parent from exercising

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1 immediately on birth of the child the full rights of parentage;
2 or

3 (2) breach by the intended parent that
4 prevents the intended parent's acceptance, immediately on birth
5 of the child conceived by assisted reproduction pursuant to the
6 agreement, of the duties of parentage or that results in the
7 intended parent's failure to accept those duties immediately."

8 PART 3 -- SPECIAL RULES FOR GENETIC SURROGACY AGREEMENT

9 SECTION 22. A new section of the New Mexico Uniform
10 Parentage Act, Section 40-11A-813 NMSA 1978, is enacted to
11 read:

12 "40-11A-813. [NEW MATERIAL] REQUIREMENTS TO VALIDATE
13 GENETIC SURROGACY AGREEMENT.--

14 A. Except as otherwise provided in Section
15 40-11A-816 NMSA 1978, to be enforceable, a genetic surrogacy
16 agreement shall be validated by the district court. A
17 proceeding to validate the agreement shall be commenced before
18 assisted reproduction related to the surrogacy agreement.

19 B. The court shall issue an order validating a
20 genetic surrogacy agreement if the court finds that:

21 (1) Sections 40-11A-802 through 40-11A-804
22 NMSA 1978 are satisfied; and

23 (2) all parties entered into the agreement
24 voluntarily and understand its terms.

25 C. A person who terminates a genetic surrogacy

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1 agreement pursuant to Section 40-11A-814 NMSA 1978 shall file
2 notice of the termination with the court. The person shall
3 serve a copy of that notice on each party who was sent a notice
4 pursuant to Section 40-11A-814 NMSA 1978. On receipt of the
5 notice, the court shall vacate any order issued pursuant to
6 Subsection B of this section. A person who does not notify the
7 court of the termination of the agreement is subject to
8 sanctions."

9 SECTION 23. A new section of the New Mexico Uniform
10 Parentage Act, Section 40-11A-814 NMSA 1978, is enacted to
11 read:

12 "40-11A-814. [NEW MATERIAL] TERMINATION OF GENETIC
13 SURROGACY AGREEMENT.--

14 A. A party to a genetic surrogacy agreement may
15 terminate the agreement as follows:

16 (1) an intended parent who is a party to the
17 agreement may terminate the agreement at any time before a
18 gamete or embryo transfer by giving notice of termination in a
19 record to all other parties. If a gamete or embryo transfer
20 does not result in a pregnancy, a party may terminate the
21 agreement at any time before a subsequent gamete or embryo
22 transfer. The notice of termination shall be attested by a
23 notarial officer or witnessed; or

24 (2) a genetic surrogate who is a party to the
25 agreement may withdraw consent to the agreement any time before

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1 forty-eight hours after the birth of a child conceived by
2 assisted reproduction pursuant to the agreement. To withdraw
3 consent, the genetic surrogate shall execute a notice of
4 termination in a record stating the surrogate's intent to
5 terminate the agreement. The notice of termination shall be
6 attested by a notarial officer or witnessed and be delivered to
7 each intended parent any time before forty-eight hours after
8 the birth of the child.

9 B. On termination of the genetic surrogacy
10 agreement pursuant to Subsection A of this section, the parties
11 are released from all obligations pursuant to the agreement
12 except that each intended parent remains responsible for all
13 expenses incurred by the surrogate through the date of
14 termination that are reimbursable pursuant to the agreement.
15 Unless the agreement provides otherwise, the surrogate is not
16 entitled to any non-expense-related compensation for serving as
17 a surrogate.

18 C. Except in a case involving fraud, neither a
19 genetic surrogate nor the surrogate's spouse or former spouse,
20 if any, is liable to the intended parent or parents for
21 expenses, compensation, other damages, a penalty or liquidated
22 damages for terminating a genetic surrogacy agreement pursuant
23 to this section."

24 **SECTION 24.** A new section of the New Mexico Uniform
25 Parentage Act, Section 40-11A-815 NMSA 1978, is enacted to

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1 read:

2 "40-11A-815. [NEW MATERIAL] PARENTAGE UNDER VALIDATED
3 GENETIC SURROGACY AGREEMENT.--

4 A. Unless a genetic surrogate exercises the right
5 pursuant to Section 40-11A-814 NMSA 1978 to terminate a genetic
6 surrogacy agreement, each intended parent is a parent of a
7 child conceived by assisted reproduction pursuant an agreement
8 validated pursuant to Section 40-11A-813 NMSA 1978.

9 B. Unless a genetic surrogate exercises the right
10 pursuant to Section 40-11A-814 NMSA 1978 to terminate the
11 genetic surrogacy agreement, on proof of a court order issued
12 pursuant to Section 40-11A-813 NMSA 1978 validating the
13 agreement, the court shall make an order:

14 (1) declaring that each intended parent is a
15 parent of a child conceived by assisted reproduction pursuant
16 to the agreement and ordering that parental rights and duties
17 vest exclusively in each intended parent;

18 (2) declaring that the genetic surrogate and
19 the surrogate's spouse or former spouse, if any, are not
20 parents of the child;

21 (3) designating the contents of the birth
22 certificate in accordance with Section 24-14-13 NMSA 1978 and
23 directing the department of health to designate each intended
24 parent as a parent of the child;

25 (4) to protect the privacy of the child and

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1 the parties, declaring that the court record is not open to
2 inspection, except as authorized pursuant to Section 40-11A-806
3 NMSA 1978;

4 (5) requiring that the child be surrendered to
5 the intended parent or parents if necessary; and

6 (6) for other relief the court determines
7 necessary and proper.

8 C. If a genetic surrogate terminates a genetic
9 surrogacy agreement pursuant to Paragraph (2) of Subsection A
10 of Section 40-11A-814 NMSA 1978, parentage of the child
11 conceived by assisted reproduction pursuant to the agreement
12 shall be determined pursuant to Articles 1 through 6 of the New
13 Mexico Uniform Parentage Act.

14 D. If a child born to a genetic surrogate is
15 alleged not to have been conceived by assisted reproduction,
16 the court shall order genetic testing to determine the genetic
17 parentage of the child. If the child was not conceived by
18 assisted reproduction, parentage shall be determined pursuant
19 to Articles 1 through 6 of the New Mexico Uniform Parentage
20 Act. Unless the genetic surrogacy agreement provides
21 otherwise, if the child was not conceived by assisted
22 reproduction, the surrogate is not entitled to any non-expense-
23 related compensation for serving as a surrogate.

24 E. Unless a genetic surrogate exercises the right
25 pursuant to Section 40-11A-814 NMSA 1978 to terminate the

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1 genetic surrogacy agreement, if an intended parent fails to
2 file notice required pursuant to Subsection A of Section
3 40-11A-814 NMSA 1978, the genetic surrogate or the support-
4 enforcement agency may file with the court, not later than
5 sixty days after the birth of a child conceived by assisted
6 reproduction pursuant to the agreement, notice that the child
7 has been born to the genetic surrogate. Unless the genetic
8 surrogate has properly exercised the right pursuant to Section
9 40-11A-814 NMSA 1978 to withdraw consent to the agreement, on
10 proof of a court order issued pursuant to Section 40-11A-813
11 NMSA 1978 validating the agreement, the court shall order that
12 each intended parent is a parent of the child."

13 SECTION 25. A new section of the New Mexico Uniform
14 Parentage Act, Section 40-11A-816 NMSA 1978, is enacted to
15 read:

16 "40-11A-816. [NEW MATERIAL] EFFECT OF NONVALIDATED
17 GENETIC SURROGACY AGREEMENT.--

18 A. A genetic surrogacy agreement, whether or not in
19 a record, that is not validated pursuant to Section 40-11A-813
20 NMSA 1978 is enforceable only to the extent provided in this
21 section and Section 40-11A-818 NMSA 1978.

22 B. If all parties agree, a court may validate a
23 genetic surrogacy agreement after assisted reproduction has
24 occurred but before the birth of a child conceived by assisted
25 reproduction pursuant to the agreement.

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1 C. If a child conceived by assisted reproduction
2 pursuant to a genetic surrogacy agreement that is not validated
3 pursuant to Section 40-11A-813 NMSA 1978 is born and the
4 genetic surrogate, consistent with Paragraph (2) of Subsection
5 A of Section 40-11A-814 NMSA 1978, withdraws her consent to the
6 agreement before forty-eight hours after the birth of the
7 child, the court shall adjudicate the parentage of the child
8 pursuant to Articles 1 through 6 of the New Mexico Uniform
9 Parentage Act.

10 D. If a child conceived by assisted reproduction
11 pursuant to a genetic surrogacy agreement that is not validated
12 pursuant to Section 40-11A-813 NMSA 1978 is born and a genetic
13 surrogate does not withdraw her consent to the agreement,
14 consistent with Paragraph (2) of Subsection A of Section
15 40-11A-814 NMSA 1978, before forty-eight hours after the birth
16 of the child, the genetic surrogate is not automatically a
17 parent and the court shall adjudicate parentage of the child
18 based on the best interest of the child, taking into account
19 the factors in Subsection A of Section 40-11A-813 NMSA 1978 and
20 the intent of the parties at the time of the execution of the
21 agreement.

22 E. Each party to a genetic surrogacy agreement has
23 standing to maintain a proceeding to adjudicate parentage
24 pursuant to this section."

25 SECTION 26. A new section of the New Mexico Uniform

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1 Parentage Act, Section 40-11A-817 NMSA 1978, is enacted to
2 read:

3 "40-11A-817. [NEW MATERIAL] GENETIC SURROGACY AGREEMENT--
4 PARENTAGE OF DECEASED INTENDED PARENT.--

5 A. Except as otherwise provided in Section
6 40-11A-815 or 40-11A-816 NMSA 1978, on the birth of a child
7 conceived by assisted reproduction pursuant to a genetic
8 surrogacy agreement, each intended parent is, by operation of
9 law, a parent of the child, notwithstanding the death of an
10 intended parent during the period between the transfer of a
11 gamete or embryo and the birth of the child.

12 B. Except as otherwise provided in Sections
13 40-11A-815 and 40-11A-816 NMSA 1978, an intended parent is not
14 a parent of a child conceived by assisted reproduction pursuant
15 to a genetic surrogacy agreement if the intended parent dies
16 before the transfer of a gamete or embryo unless:

17 (1) the agreement provides otherwise; and
18 (2) the transfer of the gamete or embryo
19 occurs not later than thirty-six months after the death of the
20 intended parent, or the birth of the child occurs not later
21 than forty-five months after the death of the intended parent."

22 SECTION 27. A new section of the New Mexico Uniform
23 Parentage Act, Section 40-11A-818 NMSA 1978, is enacted to
24 read:

25 "40-11A-818. [NEW MATERIAL] BREACH OF GENETIC SURROGACY

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1 AGREEMENT.--

2 A. Subject to Subsection B of Section 40-11A-814
3 NMSA 1978, if a genetic surrogacy agreement is breached by a
4 genetic surrogate or one or more intended parents, the non-
5 breaching party is entitled to the remedies available at law or
6 in equity.

7 B. Specific performance is not a remedy available
8 for breach by a genetic surrogate of a requirement of a
9 validated or non-validated genetic surrogacy agreement that the
10 surrogate be impregnated, terminate or not terminate a
11 pregnancy or submit to medical procedures.

12 C. Except as otherwise provided in Subsection B of
13 this section, specific performance is a remedy available for:

14 (1) breach of a validated genetic surrogacy
15 agreement by a genetic surrogate of a requirement that prevents
16 an intended parent from exercising the full rights of parentage
17 forty-eight hours after the birth of the child; or

18 (2) breach by an intended parent that prevents
19 the intended parent's acceptance of duties of parentage
20 forty-eight hours after the birth of the child or that results
21 in the intended parent's failure to accept those duties
22 forty-eight hours after the birth of the child."

23 SECTION 28. APPLICABILITY.--The provisions of this act
24 apply to actions commenced on or after the effective date of
25 this act.

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SECTION 29. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2024.