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SENATE BILL DRS45443-NJfa-80

Short Title: Parentage Protection for Families. (Public)

Sponsors: Senators Batch, Murdock, and Mohammed (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AND ALLOW THE USE OF ASSISTED REPRODUCTION,
3 SURROGACY, AND ASSOCIATED AGREEMENTS AND RELATIONSHIPS, AND TO
4 APPROPRIATE FUNDS TO PROVIDE EDUCATION AND TRAINING RELATED TO
5 THIS ACT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** The title of Chapter 49A of the General Statutes is renamed to read
8 "Assisted Reproduction and Surrogacy Agreements."

9 **SECTION 2.** Chapter 49A of the General Statutes is amended by adding a new
10 Article to read:

11 "Article 2.

12 "Assisted Reproduction.

13 **"§ 49A-10. Short title.**

14 This act may be cited as the "Assisted Reproduction Act."

15 **"§ 49A-11. Scope.**

16 This Article does not apply to the birth of a child conceived by sexual intercourse or assisted
17 reproduction under a surrogacy agreement under Article 3 of this Chapter.

18 **"§ 49A-12. Definitions.**

19 The following definitions apply in this Article:

20 (1) Assisted reproduction. – A method of causing pregnancy other than sexual
21 intercourse, including all of the following:

22 a. Intrauterine or intracervical insemination.

23 b. Donation of gametes.

24 c. Donation of embryos.

25 d. In-vitro fertilization and transfer of embryos.

26 e. Intracytoplasmic sperm injection.

27 (2) Donor. – An individual who provides gametes intended for use in assisted
28 reproduction, whether or not for consideration. The term does not include a
29 woman who gives birth to a child conceived by assisted reproduction, except
30 as otherwise provided in this Article.

31 (3) Gamete. – A sperm, egg, or any part of a sperm or egg.

32 (4) Genetic testing. – An analysis of genetic markers to identify or exclude a
33 genetic relationship.

34 (5) Intended parent. – An individual, married or unmarried, who manifests an
35 intent to be legally bound as a parent of a child conceived by assisted
36 reproduction.



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1 (6) Parent. – An individual who has established a parent-child relationship.

2 (7) Parentage or parent-child relationship. – The legal relationship between a
3 child and a parent of the child.

4 (8) Record. – Information that is inscribed on a tangible medium or that is stored
5 in an electronic or other medium and is retrievable in perceivable form.

6 **"§ 49A-13. Parentage of child of assisted reproduction.**

7 (a) A donor is not a parent of a child conceived by assisted reproduction.

8 (b) An individual who consents under this Article to assisted reproduction by a woman
9 with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the
10 child.

11 **"§ 49A-14. Consent to assisted reproduction.**

12 (a) Except as otherwise provided in G.S. 49A-13, the consent described in this section
13 must be in a record signed by a woman giving birth to a child conceived by assisted reproduction
14 and an individual who intends to be a parent of the child.

15 (b) Failure to consent in a record as required by subsection (a) of this section, before, on,
16 or after the birth of the child, does not preclude the court from finding consent to parentage if
17 either of the following are satisfied:

18 (1) The woman or the individual proves by clear and convincing evidence the
19 existence of an express agreement entered into before conception that the
20 individual and the woman intended they both would be parents of the child.

21 (2) The woman and the individual for the first two years of the child's life,
22 including any period of temporary absence, resided together in the same
23 household with the child and both openly held out the child as the individual's
24 child, unless the individual dies or becomes incapacitated before the child
25 attains two years of age or the child dies before the child attains two years of
26 age, in which case the court may find consent under this subsection to
27 parentage if a party proves by clear and convincing evidence that the woman
28 and the individual intended to reside together in the same household with the
29 child and both intended the individual would openly hold out the child as the
30 individual's child, but the individual was prevented from carrying out that
31 intent by death or incapacity.

32 **"§ 49A-15. Limitation on spouse's dispute of parentage.**

33 (a) Except as otherwise provided in subsection (b) of this section, an individual who, at
34 the time of a child's birth, is the spouse of the woman who gave birth to the child by assisted
35 reproduction may not challenge the individual's parentage of the child unless both of the
36 following are satisfied:

37 (1) Not later than two years after the birth of the child, the individual commences
38 a proceeding to adjudicate the individual's parentage of the child.

39 (2) The court finds the individual did not consent to the assisted reproduction,
40 before, on, or after the birth of the child, or withdrew consent under this
41 Article.

42 (b) A proceeding to adjudicate a spouse's parentage of a child born by assisted
43 reproduction may be commenced at any time if the court determines any of the following exist:

44 (1) The spouse neither provided a gamete for, nor consented to, the assisted
45 reproduction.

46 (2) The spouse and the woman who gave birth to the child have not cohabited
47 since the probable time of assisted reproduction.

48 (3) The spouse never openly held out the child as the spouse's child.

49 (c) This section applies to a spouse's dispute of parentage even if the spouse's marriage
50 is declared invalid after assisted reproduction occurs.

51 **"§ 49A-16. Effect of certain legal proceedings regarding marriage.**

1 If a marriage of a woman who gives birth to a child conceived by assisted reproduction is
2 terminated through divorce or annulment, subject to legal separation, or declared void before
3 transfer of gametes or embryos to the woman, a former spouse of the woman is not a parent of
4 the child unless the former spouse consented in a record that the former spouse would be a parent
5 of the child if assisted reproduction were to occur after a divorce or annulment, subject to legal
6 separation, or declared void, and the former spouse did not withdraw consent under this Article.

7 **"§ 49A-17. Withdrawal of consent.**

8 (a) An individual who consents under this section to assisted reproduction may withdraw
9 consent any time before a transfer that results in a pregnancy, by giving notice in a record of the
10 withdrawal of consent to the woman who agreed to give birth to a child conceived by assisted
11 reproduction and to any clinic or healthcare provider facilitating the assisted reproduction.
12 Failure to give notice to the clinic or healthcare provider does not affect a determination of
13 parentage under this act.

14 (b) An individual who withdraws consent under this section is not a parent of the child.

15 **"§ 49A-18. Parental status of deceased individual.**

16 (a) If an individual who intends to be a parent of a child conceived by assisted
17 reproduction dies during the period between the transfer of a gamete or embryo and the birth of
18 the child, the individual's death does not preclude the establishment of the individual's parentage
19 of the child if the individual otherwise would be a parent of the child under this act.

20 (b) If an individual who consented in a record to assisted reproduction by a woman who
21 agreed to give birth to a child dies before a transfer of gametes or embryos, the deceased
22 individual is a parent of a child conceived by the assisted reproduction only if both of the
23 following requirements are satisfied:

24 (1) The individual consented in a record that if assisted reproduction were to
25 occur after the death of the individual, the individual would be a parent of the
26 child or the individual's intent to be a parent of a child conceived by assisted
27 reproduction after the individual's death is established by clear and convincing
28 evidence.

29 (2) The embryo is in utero not later than 36 months after the individual's death or
30 the child is born not later than 45 months after the individual's death."

31 **SECTION 3.** Chapter 49A of the General Statutes is amended by adding a new
32 Article to read:

33 "Article 3.

34 "Surrogacy Agreement Act.

35 **"§ 49A-20. Short title.**

36 This Article may be cited as the "Surrogacy Agreement Act."

37 **"§ 49A-21. Definitions.**

38 The following definitions apply in this Article:

39 (1) Genetic surrogate. – A woman who is not an intended parent and who agrees
40 to become pregnant through assisted reproduction using her own gamete,
41 under a genetic surrogacy agreement as provided in this Article.

42 (2) Gestational surrogate. – A woman who is not an intended parent and who
43 agrees to become pregnant through assisted reproduction using gametes that
44 are not her own, under a gestational surrogacy agreement as provided in this
45 Article.

46 (3) Surrogacy agreement. – An agreement between one or more intended parents
47 and a woman who is not an intended parent in which the woman agrees to
48 become pregnant through assisted reproduction and which provides that each
49 intended parent is a parent of a child conceived under the agreement. Unless
50 otherwise specified, the term refers to both a gestational surrogacy agreement
51 and a genetic surrogacy agreement.

"§ 49A-22. Eligibility to enter gestational or genetic surrogacy agreement.

(a) To execute an agreement to act as a gestational or genetic surrogate, a woman must complete all of the following:

- (1) Have attained 21 years of age.
- (2) Previously have given birth to at least one child.
- (3) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor.
- (4) Complete a mental health consultation by a licensed mental health professional.
- (5) Have independent legal representation of the woman's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(b) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must complete all of the following:

- (1) Have attained 21 years of age.
- (2) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor.
- (3) Complete a mental health consultation by a licensed mental health professional.
- (4) Have independent legal representation of the intended parent's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

"§ 49A-23. Requirements of the gestational or genetic surrogacy agreement process.

A surrogacy agreement must comply with all of the following requirements:

- (1) At least one party must be a resident of this State or, if no party is a resident of this State, at least one medical evaluation or procedure or mental health consultation under the agreement must occur in this State.
- (2) A surrogate and each intended parent must meet the requirements of this Article.
- (3) Each intended parent, the surrogate, and the surrogate's spouse, if any, must be parties to the agreement.
- (4) The agreement must be in a record signed by each party listed in subdivision (3) of this section.
- (5) Each party to the agreement must acknowledge in a record receipt of a copy of the agreement.
- (6) The agreement must be notarized.
- (7) The surrogate and the intended parent or parents must have independent legal representation throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement, and each counsel must be identified in the surrogacy agreement.
- (8) The intended parent or parents must pay for independent legal representation for the surrogate.
- (9) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultation required by this Article.

"§ 49A-24. Requirements of the gestational or genetic surrogacy agreement content.

(a) A surrogacy agreement must comply with all following requirements:

- (1) A surrogate agrees to attempt to become pregnant by means of assisted reproduction.
- (2) Except as otherwise provided in G.S. 49A-30, 49A-33, and 49A-34, the surrogate and the surrogate's spouse or former spouse, if any, have no claim

1 to parentage of a child conceived by assisted reproduction under the
2 agreement.

3 (3) The surrogate's spouse, if any, must acknowledge and agree to comply with
4 the obligations imposed on the surrogate by the agreement.

5 (4) Except as otherwise provided in G.S. 49A-30, 49A-33, and 49A-34, the
6 intended parent or, if there are two intended parents, each one jointly and
7 severally, immediately on birth will be the exclusive parent or parents of the
8 child, regardless of number of children born or gender or mental or physical
9 condition of each child.

10 (5) Except as otherwise provided in G.S. 49A-30, 49A-33, and 49A-34, the
11 intended parent or, if there are two intended parents, each parent jointly and
12 severally, immediately on birth will assume responsibility for the financial
13 support of the child, regardless of number of children born or gender or mental
14 or physical condition of each child.

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

25 (7) The agreement must permit the surrogate to make all health and welfare
26 decisions regarding herself and her pregnancy. This act does not enlarge or
27 diminish the surrogate's right to terminate her pregnancy.

28 (8) The agreement must include information about each party's right under this
29 Article to terminate the surrogacy agreement.

30 (b) A surrogacy agreement may provide for (i) payment of consideration and reasonable
31 expenses and (ii) reimbursement of specific expenses if the agreement is terminated under this
32 Article.

33 (c) A right created under a surrogacy agreement is not assignable and there is no
34 third-party beneficiary of the agreement other than the child.

35 **"§ 49A-25. Surrogacy agreement: change in marital status.**

36 (a) Unless a surrogacy agreement expressly provides otherwise (i) the marriage of a
37 surrogate after the agreement is signed by all parties does not affect the validity of the agreement,
38 her spouse's consent to the agreement is not required, and her spouse is not a presumed parent of
39 a child conceived by assisted reproduction under the agreement and (ii) the divorce or annulment,
40 legal separation, or declaration that the marriage of the surrogate is void after the agreement is
41 signed by all parties does not affect the validity of the agreement.

42 (b) Unless a surrogacy agreement expressly provides otherwise (i) the marriage of an
43 intended parent after the agreement is signed by all parties does not affect the validity of a
44 surrogacy agreement, the consent of the spouse of the intended parent is not required, and the
45 spouse of the intended parent is not, based on the agreement, a parent of a child conceived by
46 assisted reproduction under the agreement and (ii) the divorce or annulment, legal separation, or
47 declaration that the marriage of the intended parent is void after the agreement is signed by all
48 parties does not affect the validity of the agreement and, except as otherwise provided in
49 G.S. 49A-33, the intended parents are the parents of the child.

50 **"§ 49A-26. Inspection of documents and continuing jurisdiction.**

1 (a) Unless the court orders otherwise, a petition and any other document related to a
2 surrogacy agreement filed with the court under this Article is not open to inspection by any
3 individual other than the parties to the proceeding, a child conceived by assisted reproduction
4 under the agreement, and their attorneys. A court may not authorize an individual to inspect a
5 document related to the agreement, unless required by exigent circumstances. The individual
6 seeking to inspect the document may be required to pay the expense of preparing a copy of the
7 document to be inspected.

8 (b) During the period after the execution of a surrogacy agreement until 90 days after the
9 birth of a child conceived by assisted reproduction under the agreement, a court of this State
10 conducting a proceeding under this act has exclusive, continuing jurisdiction over all matters
11 arising out of the agreement. This section does not give the court jurisdiction over a child custody
12 or child support proceeding if jurisdiction is not otherwise authorized by law of this State other
13 than this act.

14 **"§ 49A-27. Termination of gestational surrogacy agreement.**

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

19 (b) Unless a gestational surrogacy agreement provides otherwise, on termination of the
20 agreement under subsection (a) of this section, the parties are released from the agreement, except
21 that each intended parent remains responsible for expenses that are reimbursable under the
22 agreement and incurred by the gestational surrogate through the date of termination.

23 (c) Except in a case involving fraud, neither a gestational surrogate nor the surrogate's
24 spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or
25 liquidated damages for terminating a gestational surrogacy agreement under this section.

26 **"§ 49A-28. Parentage under gestational surrogacy agreement.**

27 (a) Except as otherwise provided in subsection (c) of this section, G.S. 49A-29, or
28 G.S. 49A-31, on the birth of a child conceived by assisted reproduction under a gestational
29 surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

30 (b) Except as otherwise provided in subsection (c) of this section, G.S. 49A-29, or
31 G.S. 49A-31, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any,
32 is a parent of the child.

33 (c) If a child is alleged to be a genetic child of the woman who agreed to be a gestational
34 surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the
35 woman who agreed to be a gestational surrogate, parentage must be determined.

36 (d) Except as otherwise provided in subsection (c) of this section, G.S. 49A-29, or
37 G.S. 49A-31, if, due to a clinical or laboratory error, a child conceived by assisted reproduction
38 under a gestational surrogacy agreement is not genetically related to an intended parent or a donor
39 who donated to the intended parent or parents, each intended parent, and not the gestational
40 surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to
41 any other claim of parentage.

42 **"§ 49A-29. Gestational surrogacy agreement parentage of a deceased intended parent.**

43 (a) G.S. 49A-28 applies to an intended parent even if the intended parent died during the
44 period between the transfer of a gamete or embryo and the birth of the child.

45 (b) Except as otherwise provided in G.S. 49A-31, an intended parent is not a parent of a
46 child conceived by assisted reproduction under a gestational surrogacy agreement if the intended
47 parent dies before the transfer of a gamete or embryo unless (i) the agreement provides otherwise
48 and (ii) the transfer of a gamete or embryo occurs not later than 36 months after the death of the
49 intended parent or the birth of the child occurs not later than 45 months after the death of the
50 intended parent.

51 **"§ 49A-30. Gestational surrogacy agreement order of parentage.**

1 (a) Except as otherwise provided in G.S. 49A-28 or G.S. 49A-31, before, on, or after the
2 birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, a
3 party to the agreement may commence a legal proceeding for an order or judgment of any of the
4 following:

5 (1) Declaring that each intended parent is a parent of the child and ordering that
6 parental rights and duties vest immediately on the birth of the child
7 exclusively in each intended parent.

8 (2) Declaring that the gestational surrogate and the surrogate's spouse or former
9 spouse, if any, are not the parents of the child.

10 (3) Designating the content of the birth record and directing the appropriate State
11 agency to designate each intended parent as a parent of the child.

12 (4) To protect the privacy of the child and the parties, declaring that the court
13 record is not open to inspection except as authorized under G.S. 49A-26.

14 (5) If necessary, that the child be surrendered to the intended parent or parents.

15 (6) For other relief the court determines is necessary.

16 (b) The court may issue an order or judgment under subsection (a) of this section before
17 the birth of the child. The court shall stay enforcement of the order or judgment until the birth of
18 the child.

19 (c) Neither this State nor the applicable State agency is a necessary party to a proceeding
20 under subsection (a) of this section.

21 **"§ 49A-31. Effect of gestational surrogacy agreement.**

22 (a) A gestational surrogacy agreement that complies with this Article is enforceable.

23 (b) If a child was conceived by assisted reproduction under a gestational surrogacy
24 agreement that does not comply with this Article, the court shall determine the rights and duties
25 of the parties to the agreement consistent with the intent of the parties at the time of execution of
26 the agreement. Each party to the agreement and any individual who at the time of the execution
27 of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding
28 to adjudicate an issue related to the enforcement of the agreement.

29 (c) Except as expressly provided in a gestational surrogacy agreement or subsection (d)
30 or (e) of this section, if the agreement is breached by the gestational surrogate or one or more
31 intended parents, the non-breaching party is entitled to the remedies available at law or in equity.

32 (d) Specific performance is not a remedy available for breach by a gestational surrogate
33 of a provision in the agreement that the gestational surrogate be impregnated, terminate or not
34 terminate a pregnancy, or submit to medical procedures.

35 (e) Except as otherwise provided in subsection (d) of this section, if an intended parent
36 is determined to be a parent of the child, specific performance is a remedy available for (i) breach
37 of the agreement by a gestational surrogate which prevents the intended parent from exercising
38 immediately on the birth of the child the full rights of parentage or (ii) breach by the intended
39 parent which prevents the intended parent's acceptance, immediately on the birth of the child
40 conceived by assisted reproduction under the agreement, of the duties of parentage.

41 **"§ 49A-32. Requirements to validate a genetic surrogacy agreement.**

42 (a) Except as otherwise provided in G.S. 49A-35, to be enforceable, a genetic surrogacy
43 agreement must be validated by a legal proceeding. A proceeding to validate the agreement must
44 be commenced before assisted reproduction related to the surrogacy agreement.

45 (b) The court shall issue an order validating a genetic surrogacy agreement if the court
46 finds that (i) the requirements under G.S. 49A-22, 49A-23, and 49A-24 are satisfied and (ii) all
47 parties entered into the agreement voluntarily and understand its terms.

48 (c) An individual who terminates a genetic surrogacy agreement under G.S. 49A-33 shall
49 file notice of the termination with the court. On receipt of the notice, the court shall vacate any
50 order issued under subsection (b) of this section. An individual who does not notify the court of
51 the termination of the agreement is subject to sanctions.

"§ 49A-33. Termination of genetic surrogacy agreement.

(a) A party to a genetic surrogacy agreement may terminate the agreement as follows:

(1) An intended parent who is a party to the agreement may terminate the agreement at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties. If a gamete or embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer. The notice of termination must be attested by a notarial officer or witnessed.

(2) A genetic surrogate who is a party to the agreement may withdraw consent to the agreement any time before 72 hours after the birth of a child conceived by assisted reproduction under the agreement. To withdraw consent, the genetic surrogate must execute a notice of termination in a record stating the surrogate's intent to terminate the agreement. The notice of termination must be attested by a notarial officer or witnessed and be delivered to each intended parent any time before 72 hours after the birth of the child.

(b) On termination of the genetic surrogacy agreement under subsection (a) of this section, the parties are released from all obligations under the agreement except that each intended parent remains responsible for all expenses incurred by the surrogate through the date of termination which are reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not entitled to any non-expense related compensation paid for serving as a surrogate.

(c) Except in a case involving fraud, neither a genetic surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages for terminating a genetic surrogacy agreement under this section.

"§ 49A-34. Parentage under validated genetic surrogacy agreement.

(a) Unless a genetic surrogate exercises the right under G.S. 49A-33 to terminate a genetic surrogacy agreement, each intended parent is a parent of a child conceived by assisted reproduction under an agreement validated under G.S. 49A-32.

(b) Unless a genetic surrogate exercises the right under G.S. 49A-33 to terminate the genetic surrogacy agreement, on proof of a court order issued under G.S. 49A-32 validating the agreement, the court shall make an order:

(1) Declaring that each intended parent is a parent of a child conceived by assisted reproduction under the agreement and ordering that parental rights and duties vest exclusively in each intended parent.

(2) Declaring that the genetic surrogate and the surrogate's spouse or former spouse, if any, are not parents of the child.

(3) Designating the contents of the birth certificate in accordance and directing the applicable State agency to designate each intended parent as a parent of the child.

(4) Declaring that the court record is not open to inspection except as authorized by this Chapter.

(5) If necessary, that the child be surrendered to the intended parent or parents.

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

(c) If a genetic surrogate terminates under G.S. 49A-33 a genetic surrogacy agreement, parentage of the child conceived by assisted reproduction under the agreement must be determined.

(d) If a child born to a genetic surrogate is alleged not to have been conceived by assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction, parentage must be determined. Unless the genetic surrogacy agreement provides otherwise, if the child was not conceived by assisted

1 reproduction, the surrogate is not entitled to any non-expense related compensation paid for
2 servicing as a surrogate.

3 (e) Unless a genetic surrogate exercises the right under G.S. 49A-33 to terminate the
4 genetic surrogacy agreement, if an intended parent fails to file notice required under G.S. 49A-33,
5 the genetic surrogate or the appropriate State agency may file with the court, not later than 60
6 days after the birth of a child conceived by assisted reproduction under the agreement, notice that
7 the child has been born to the genetic surrogate. Unless the genetic surrogate has properly
8 exercised the right under G.S. 49A-33 to withdraw consent to the agreement, on proof of a court
9 order issued under G.S. 49A-33 validating the agreement, the court shall order that each intended
10 parent is a parent of the child.

11 **"§ 49A-35. Effect of nonvalidated genetic surrogacy agreement.**

12 (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under
13 G.S. 49A-32 is enforceable only to the extent provided in this section and G.S. 49A-37.

14 (b) If all parties agree, a court may validate a genetic surrogacy agreement after assisted
15 reproduction has occurred but before the birth of a child conceived by assisted reproduction under
16 the agreement.

17 (c) If a child conceived by assisted reproduction under a genetic surrogacy agreement
18 that is not validated under G.S. 49A-32 is born and the genetic surrogate, consistent with
19 G.S. 49A-33, withdraws her consent to the agreement before 72 hours after the birth of the child,
20 the court shall adjudicate the parentage of the child.

21 (d) If a child conceived by assisted reproduction under a genetic surrogacy agreement
22 that is not validated under G.S. 49A-32 is born and a genetic surrogate does not withdraw her
23 consent to the agreement, consistent with G.S. 49A-33 before 72 hours after the birth of the child,
24 the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the
25 child based on the best interest of the child and the intent of the parties at the time of the execution
26 of the agreement.

27 (e) The parties to a genetic surrogacy agreement have standing to maintain a proceeding
28 to adjudicate parentage under this section.

29 **"§ 49A-36. Genetic surrogacy agreement parentage of a deceased intended parent.**

30 (a) Except as otherwise provided in G.S. 49A-34 or G.S. 49A-35, on the birth of a child
31 conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent
32 is, by operation of law, a parent of the child, notwithstanding the death of an intended parent
33 during the period between the transfer of a gamete or embryo and the birth of the child.

34 (b) Except as otherwise provided in G.S. 49A-34 or G.S. 49A-35, an intended parent is
35 not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement
36 if the intended parent dies before the transfer of a gamete or embryo unless both of the following
37 are satisfied:

38 (1) The agreement provides otherwise.

39 (2) The transfer of the gamete or embryo occurs not later than 36 months after the
40 death of the intended parent, or birth of the child occurs not later than 45
41 months after the death of the intended parent.

42 **"§ 49A-37. Breach of genetic surrogacy agreement.**

43 (a) Subject to G.S. 49A-33, if a genetic surrogacy agreement is breached by a genetic
44 surrogate or one or more intended parents, the non-breaching party is entitled to the remedies
45 available at law or in equity.

46 (b) Specific performance is not a remedy available for breach by a genetic surrogate of a
47 requirement of a validated or non-validated genetic surrogacy agreement that the surrogate be
48 impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

49 (c) Except as otherwise provided in subsection (b) of this section, specific performance
50 is a remedy available for all of the following:

- 1 (1) Breach of a validated genetic surrogacy agreement by a genetic surrogate of a
2 requirement which prevents an intended parent from exercising the full rights
3 of parentage 72 hours after the birth of the child.
- 4 (2) Breach by an intended parent which prevents the intended parent's acceptance
5 of duties of parentage 72 hours after the birth of the child."

6 **SECTION 4.** Effective July 1, 2024, there is appropriated from the General Fund to
7 the Department of Health and Human Services the sum of ten thousand dollars (\$10,000) for the
8 2024-2025 fiscal year to fund education about and provide training related to the provisions of
9 this act.

10 **SECTION 5.** If any provision of this act or its application is held invalid, the
11 invalidity does not affect other provisions or applications of this act that can be given effect
12 without the invalid provisions or application and, to this end, the provisions of this act are
13 severable.

14 **SECTION 6.** Except as otherwise provided, this act is effective October 1, 2024, and
15 applies to assisted reproduction and surrogacy agreements arising on or after that date.