

STATE OF NEW YORK

5107--A

Cal. No. 645

2023-2024 Regular Sessions

IN SENATE

February 22, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the family court act, the domestic relations law and the general business law, in relation to surrogacy programs and agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 581-102 of the family court act, as added by
2 section 1 of part L of chapter 56 of the laws of 2020, is amended to
3 read as follows:

4 § 581-102. Definitions. (a) "Assisted reproduction" means a method of
5 causing pregnancy other than sexual intercourse and includes but is not
6 limited to:

- 7 1. intrauterine or vaginal insemination;
- 8 2. donation of gametes;
- 9 3. donation of embryos;
- 10 4. in vitro fertilization and transfer of embryos; and
- 11 5. intracytoplasmic sperm injection.

12 (b) "Child" means a born individual of any age whose parentage may be
13 determined under this act or other law.

14 (c) "Compensation" means payment of any valuable consideration in
15 excess of reasonable medical and ancillary costs.

16 (d) "Donor" means an individual who does not intend to be a parent who
17 produces gametes and provides them to another person, other than the
18 individual's spouse, for use in assisted reproduction. The term does not
19 include a person who is a parent under part three of this article. Donor
20 also includes an individual who had dispositional control of an embryo
21 or gametes who then transfers dispositional control and releases all

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 present and future parental and inheritance rights and obligations to a
2 resulting child.

3 (e) "Embryo" means a cell or group of cells containing a diploid
4 complement of chromosomes or group of such cells, not a gamete or
5 gametes, that has the potential to develop into a live born human being
6 if transferred into the body of a person under conditions in which
7 gestation may be reasonably expected to occur.

8 (f) "Embryo transfer" means all medical and laboratory procedures that
9 are necessary to effectuate the transfer of an embryo into the uterine
10 cavity.

11 (g) "Gamete" means a cell containing a haploid complement of DNA that
12 has the potential to form an embryo when combined with another gamete.
13 Sperm and eggs shall be considered gametes. A human gamete used or
14 intended for reproduction may not contain nuclear DNA that has been
15 deliberately altered, or nuclear DNA from one human combined with the
16 cytoplasm or cytoplasmic DNA of another human being.

17 (h) "Health care practitioner" means an individual licensed or certi-
18 fied under title eight of the education law, or a similar law of another
19 state or country, acting within his or her scope of practice.

20 (i) "Independent escrow agent" means someone other than the parties to
21 a surrogacy agreement and their attorneys. An independent escrow agent
22 can, but need not, be a surrogacy program, provided such surrogacy
23 program is owned [~~or managed~~] by an attorney licensed to practice law in
24 the state of New York. If such independent escrow agent is not an attor-
25 ney owned surrogacy program, it shall be [~~licensed,~~] bonded and insured.

26 [~~(i) "Surrogacy agreement" is an agreement between at least one~~
27 ~~intended parent and a person acting as surrogate intended to result in a~~
28 ~~live birth where the child will be the legal child of the intended~~
29 ~~parents.]~~

30 (j) "In vitro fertilization" means the formation of a human embryo
31 outside the human body.

32 (k) "Intended parent" is an individual who manifests the intent to be
33 legally bound as the parent of a child resulting from assisted reprod-
34 uction or a surrogacy agreement, provided he or she meets the require-
35 ments of this article.

36 (l) "Parent" as used in this article means an individual with a
37 parent-child relationship created or recognized under this act or other
38 law.

39 (m) "Participant" is an individual who either provides a gamete that
40 is used in assisted reproduction, is an intended parent, is a person
41 acting as surrogate, or is the spouse of an intended parent or person
42 acting as surrogate.

43 (n) "Person acting as surrogate" means an adult person, not an
44 intended parent, who enters into a surrogacy agreement to bear a child
45 who will be the legal child of the intended parent or parents so long as
46 the person acting as surrogate has not provided the egg used to conceive
47 the resulting child.

48 [~~(k) "Health care practitioner" means an individual licensed or certi-~~
49 ~~fied under title eight of the education law, or a similar law of another~~
50 ~~state or country, acting within his or her scope of practice.~~

51 [~~(l) "Intended parent" is an individual who manifests the intent to be~~
52 ~~legally bound as the parent of a child resulting from assisted reprod-~~
53 ~~uction or a surrogacy agreement provided he or she meets the require-~~
54 ~~ments of this article.~~

55 [~~(m) "In vitro fertilization" means the formation of a human embryo~~
56 ~~outside the human body.~~

~~(n) "Parent" as used in this article means an individual with a parent-child relationship created or recognized under this act or other law.~~

~~(o) "Participant" is an individual who either: provides a gamete that is used in assisted reproduction, is an intended parent, is a person acting as surrogate, or is the spouse of an intended parent or person acting as surrogate.~~

~~(p)~~ (o) "Record" means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

~~(q)~~ (p) "Retrieval" means the procurement of eggs or sperm from a gamete provider.

~~(r)~~ (q) "Spouse" means an individual married to another, or who has a legal relationship entered into under the laws of the United States or of any state, local or foreign jurisdiction, which is substantially equivalent to a marriage, including a civil union or domestic partnership.

~~(s)~~ (r) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(s) "Surrogacy agreement" means an agreement between at least one intended parent and a person acting as surrogate intended to result in a live birth where the child will be the legal child of the intended parents.

(t) "Transfer" means the placement of an embryo or gametes into the body of a person with the intent to achieve pregnancy and live birth.

§ 2. Section 581-202 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-202. Proceeding for judgment of parentage of a child conceived through assisted reproduction. (a) A proceeding for a judgment of parentage with respect to a child conceived through assisted reproduction may be commenced:

(1) if ~~the~~ an intended parent or child resides in New York state, in the county where the intended parent resides any time after pregnancy is achieved or in the county where the child was born or resides or in the county where the birth is intended to occur; or

(2) if ~~the~~ neither an intended parent ~~and~~ nor the child ~~do not~~ reside in New York state, up to ninety days after the birth of the child in the county where the child was born.

(b) The petition for a judgment of parentage must be verified.

(c) Where ~~a petition includes the following truthful~~ the court finds the following statements in the petition to be true, the court shall adjudicate the intended parent or parents to be the parent or parents of the child without the need for additional proceedings or documentation:

(1) a statement that an intended parent or child has been a resident of the state for at least six months, or if an intended parent or child is not a New York state resident, that the child ~~will be or~~ was born in ~~the~~ New York state within ninety days of filing; and

(2) a statement from the gestating intended parent that the gestating intended parent became pregnant as a result of assisted reproduction; and

(3) in cases where there is a non-gestating intended parent, a statement from the gestating intended parent and non-gestating intended parent that the non-gestating intended parent consented to assisted reproduction pursuant to section 581-304 of this article; and

1 (4) proof of any donor's donative intent.

2 The court may, in its discretion, dispense with testimony to establish
3 the truthfulness of the statements.

4 (d) The following shall be deemed sufficient proof of a donor's dona-
5 tive intent for purposes of this section:

6 (1) [~~in the case of an anonymous donor or~~] where gametes or embryos
7 have [~~previously~~] been released to a gamete or embryo storage facility
8 or were donated in the presence of a health care practitioner, either:

9 (i) a statement or documentation from the gamete or embryo storage
10 facility or health care practitioner stating or demonstrating that such
11 gametes or embryos [~~were anonymously donated or~~] had previously been
12 released; [~~or~~]

13 (ii) a record from the gamete or embryo donor or donors evidencing
14 intent to release the gametes or embryos; or

15 (iii) clear and convincing evidence that the gamete or embryo donor
16 [~~intended to donate gametes or embryos anonymously or intended to~~
17 ~~release such gametes or embryos to a gamete or embryo storage facility~~
18 ~~or health care practitioner,~~] or donors confirmed, prior to donation,
19 that the donor or donors would have no parental or proprietary interest
20 in the gametes or embryos;

21 (2) [~~in the case of a donation from a known donor, either: a.~~] where
22 the gametes or embryos were not released to a gamete or embryo storage
23 facility or donated in the presence of a health care practitioner,
24 either:

25 (i) a record from the gamete or embryo donor acknowledging the
26 donation and confirming that the donor [~~has~~] or donors shall have no
27 parental or proprietary interest in the gametes or embryos. The record
28 shall be signed by the [~~gestating~~] intended parent or parents and the
29 gamete or embryo donor[~~-. The record may be, but is not required to be,~~
30 ~~signed~~] or donors:

31 [~~i.~~] (A) before a notary public, or

32 [~~ii.~~] (B) before two witnesses who are not the intended parents, or

33 [~~iii.~~] (C) before a health care practitioner; or

34 [~~b.~~] (ii) clear and convincing evidence that the gamete or embryo
35 donor or donors agreed, prior to conception, [~~with the gestating parent~~]
36 that the donor [~~has~~] or donors would have no parental or proprietary
37 interest in the gametes or embryos.

38 (3) Except for those agreements executed in compliance with section
39 581-306 of this article, this subdivision shall not apply where the
40 person providing the gametes or embryos is the spouse of the intended
41 parent.

42 (e) [~~1.~~] In the absence of evidence pursuant to subparagraphs (i) and
43 (ii) of paragraph one and subparagraph (i) of paragraph two of [~~this~~]
44 subdivision (d) of this section, notice shall be given to the donor at
45 least twenty days prior to the date set for the proceeding to determine
46 the existence of donative intent by delivery of a copy of the petition
47 and notice pursuant to section three hundred eight of the civil practice
48 law and rules. If an intended parent or an intended parent's spouse is
49 not a petitioner, such notice shall also be given to such person who
50 shall be a necessary party unless the intended parent proceeded without
51 the participation of their spouse in compliance with subdivision (b) of
52 section 581-305 or section 581-306 of this article. Upon a showing to
53 the court, by affidavit or otherwise, on or before the date of the
54 proceeding or within such further time as the court may allow, that
55 personal service cannot be effected at the [~~donor's~~] last known address
56 or addresses of the donor or donors, and/or the non-petitioning intended

1 parent, if any, with reasonable effort, notice may be given, without
2 prior court order therefore, at least twenty days prior to the proceed-
3 ing by registered or certified mail directed to [~~the donor's~~] such last
4 known address or addresses. Notice by publication shall not be required
5 to be given to [~~a donor~~] anyone entitled to notice pursuant to the
6 provisions of this section.

7 (2) Notwithstanding the above, where there is evidence that sperm is
8 provided under the supervision of a health care practitioner to someone
9 other than the sperm provider's intimate partner or spouse without a
10 record of the sperm provider's intent to parent notice is not required.

11 (f) In cases not covered by subdivision (c) of this section, the court
12 shall adjudicate the parentage of the child consistent with part three
13 of this article.

14 (g) Where the requirements of subdivision (c) of this section are met
15 or where the court finds the intended parent or parents to be a parent
16 under subdivision [~~(e)~~] (f) of this section, the court shall issue a
17 judgment of parentage:

18 (1) declaring [~~, that~~] the intended parent or parents to be the legal
19 parent or parents of the child immediately upon the birth of the child[~~,~~
20 ~~the intended parent or parents is or are the legal parent or parents of~~
21 ~~the child~~]; and

22 (2) ordering the intended parent or parents to assume responsibility
23 for the maintenance and support of the child immediately upon the birth
24 of the child; and

25 (3) if there is a donor or donors, ordering that [~~the~~] any donor is
26 not a parent of the child; and

27 (4) ordering that:

28 (i) [~~Pursuant~~] The hospital birth registrar shall report the parentage
29 of the child on the record of live birth in conformity with the judgment
30 of parentage, if the judgment of parentage is issued before the birth of
31 the child; and

32 (ii) If a change to the child's birth certificate is necessitated by
33 the judgment of parentage, then pursuant to section two hundred fifty-
34 four of the judiciary law, the clerk of the court shall transmit to the
35 state commissioner of health, or for a person born in New York city, to
36 the commissioner of health of the city of New York, on a form prescribed
37 by the commissioner, a written notification of such entry together with
38 such other facts as may assist in identifying the birth record of the
39 person whose parentage was in issue and, if such person whose parentage
40 has been determined is under eighteen years of age, the clerk shall also
41 transmit forthwith to the registry operated by the department of social
42 services pursuant to section three hundred seventy-two-c of the social
43 services law a notification of such determination; and

44 [~~(ii)~~] (iii) Pursuant to section forty-one hundred thirty-eight of the
45 public health law and NYC Public Health Code section 207.05 that upon
46 receipt of a judgment of parentage the local registrar where a child is
47 born will report the parentage of the child to the appropriate depart-
48 ment of health in conformity with the court order. If an original birth
49 certificate has already been issued, the appropriate department of
50 health will amend the birth certificate in an expedited manner and seal
51 the previously issued birth certificate except that it may be rendered
52 accessible to the child at eighteen years of age or the legal parent or
53 parents; and

54 (5) if the judgment of parentage is issued prior to the birth of the
55 child, ordering the petitioner or petitioners, within seven days of such
56 birth, to provide the court with notification thereof, together with

1 such other facts as may assist in identifying the birth record of the
2 child whose parentage was in issue. Such notification shall be in writ-
3 ing on a form to be prescribed by the chief administrator of the courts.
4 The court shall thereafter issue an amended judgment of parentage that
5 includes the child's name as it appears on the child's birth certificate
6 and the child's date of birth.

7 § 3. Section 581-203 of the family court act, as added by section 1 of
8 part L of chapter 56 of the laws of 2020, is amended to read as follows:

9 § 581-203. Proceeding for judgment of parentage of a child conceived
10 pursuant to a surrogacy agreement. (a) The proceeding may be commenced
11 (1) in any county where an intended parent resided any time after the
12 surrogacy agreement was executed; or (2) in the county where the child
13 was born or resides or in the county where the birth is intended to
14 occur; or (3) in the county where the surrogate resided any time after
15 the surrogacy agreement was executed.

16 (b) The proceeding may be commenced at any time after [~~the surrogacy~~
17 ~~agreement has been executed~~] pregnancy is achieved and the person acting
18 as surrogate, the spouse of the person acting as surrogate, if any,
19 donors for whom there is not proof of donative intent as set forth in
20 subdivision (d) of section 581-202 of this part, and all intended
21 parents are necessary parties. The service provisions of subdivision
22 (e) of section 581-202 of this part shall be applicable to donors enti-
23 tled to notice pursuant to this provision.

24 (c) The petition for a judgment of parentage must be verified and
25 include the following:

26 (1) a statement that the person acting as surrogate or at least one
27 [~~of the~~] intended [~~parents~~] parent has been a resident of the state for
28 at least six months at the time the surrogacy agreement was executed;
29 and

30 (2) a certification from the attorney representing the intended parent
31 or parents and the attorney representing the person acting as surrogate
32 and the spouse of the person acting as surrogate, if applicable, that
33 each of the requirements of part four of this article have been met; and

34 (3) a statement from all parties to the surrogacy agreement that they
35 knowingly and voluntarily entered into the surrogacy agreement and that
36 the parties are jointly requesting the judgment of parentage; and
37 (4) a copy of the executed surrogacy agreement.

38 (d) Where the court finds the statements required by subdivision (c)
39 of this section to be true, the court shall issue a judgment of parent-
40 age, without additional proceedings or documentation:

41 (1) declaring, that upon the birth of the child born during the term
42 of the surrogacy agreement, the intended parent or parents are the only
43 legal parent or parents of the child;

44 (2) declaring, that upon the birth of the child born during the term
45 of the surrogacy agreement, the person acting as surrogate, and the
46 spouse of the person acting as surrogate, if [~~any~~] applicable, is not
47 [~~the~~] a legal parent of the child;

48 (3) declaring that upon the birth of the child born during the term of
49 the surrogacy agreement, [~~the donors~~] any donor, if [~~any~~] applicable,
50 [~~are~~] is not [~~the parents~~] a parent of the child;

51 (4) ordering the person acting as surrogate and the spouse of the
52 person acting as surrogate, if any, to transfer the child to the
53 intended parent or parents if this has not already occurred;

54 (5) ordering the intended parent or parents to assume responsibility
55 for the maintenance and support of the child immediately upon the birth
56 of the child; and

1 (6) ordering that:

2 (i) ~~Pursuant~~ The hospital birth registrar shall report the parentage
3 of the child on the record of live birth in conformity with the judgment
4 of parentage, if the judgment of parentage is issued before the birth of
5 the child; and

6 (ii) If a change to the child's birth certificate is necessitated by
7 the judgment of parentage, then pursuant to section two hundred fifty-
8 four of the judiciary law, the clerk of the court shall transmit to the
9 state commissioner of health, or for a person born in New York city, to
10 the commissioner of health of the city of New York, on a form prescribed
11 by the commissioner, a written notification of such entry together with
12 such other facts as may assist in identifying the birth record of the
13 person whose parentage was in issue and, if the person whose parentage
14 has been determined is under eighteen years of age, the clerk shall also
15 transmit to the registry operated by the department of social services
16 pursuant to section three hundred seventy-two-c of the social services
17 law a notification of the determination; and

18 ~~(ii)~~ (iii) Pursuant to section forty-one hundred thirty-eight of the
19 public health law and NYC Public Health Code section 207.05 that upon
20 receipt of a judgement of parentage the local registrar where a child is
21 born will report the parentage of the child to the appropriate depart-
22 ment of health in conformity with the court order. If an original birth
23 certificate has already been issued, the appropriate department of
24 health will amend the birth certificate in an expedited manner and seal
25 the previously issued birth certificate except that it may be rendered
26 accessible to the child at eighteen years of age or the legal parent or
27 parents; and

28 (7) if the judgment of parentage is issued prior to the birth of the
29 child, ordering the petitioner or petitioners, within seven days of such
30 birth, to provide the court with notification thereof, together with
31 such other facts as may assist in identifying the birth record of the
32 child whose parentage was in issue. Such notification shall be in writ-
33 ing on a form to be prescribed by the chief administrator of the courts.
34 The court shall thereafter issue an amended judgment of parentage that
35 includes the child's name as it appears on the child's birth certificate
36 and the child's date of birth.

37 (e) In the event the certification required by paragraph two of subdi-
38 vision (c) of this section cannot be made because of a technical or
39 non-material deviation from the requirements of this article; the court
40 may nevertheless enforce the agreement and issue a judgment of parentage
41 if the court determines the agreement is in substantial compliance with
42 the requirements of this article. In the event that any other require-
43 ments of subdivision (c) of this section are not met, the court shall
44 determine parentage according to part four of this article.

45 § 4. Section 581-205 of the family court act, as added by section 1 of
46 part L of chapter 56 of the laws of 2020, is amended to read as follows:

47 § 581-205. Inspection of records. Court records relating to
48 proceedings under this article shall be sealed, provided, however, that
49 the office of temporary and disability assistance, a child support unit
50 of a social services district or a child support agency of another state
51 providing child support services pursuant to title IV-d of the federal
52 social security act, when a party to a related support proceeding and to
53 the extent necessary to provide child support services or for the admin-
54 istration of the program pursuant to title IV-d of the federal social
55 security act, may obtain a copy of a judgment of parentage. The parties
56 to the proceeding and the child shall have the right to inspect and make

1 copies of the entire court record, including, but not limited to, the
2 name of the person acting as surrogate and any known ~~[donors]~~ donor.
3 Notwithstanding any other provision of law, the county clerk or the
4 clerk of the supreme, surrogate's or family court shall not display the
5 surname of the child or parties in any document, index, minutes or other
6 record available to the public.

7 § 5. Subdivision (a) of section 581-206 of the family court act, as
8 added by section 1 of part L of chapter 56 of the laws of 2020, is
9 amended to read as follows:

10 (a) Proceedings pursuant to this article may be instituted in [~~the~~]
11 New York state supreme [~~or~~] court, family court or surrogates court.

12 § 6. The family court act is amended by adding a new section 581-207
13 to read as follows:

14 § 581-207. Certified copy of judgment of parentage. Upon issuing a
15 judgment of parentage pursuant to section 581-202 or 581-203 of this
16 part, the issuing court shall provide a certified copy of such judgment
17 to the intended parent or parents.

18 § 7. Subdivision (b) of section 581-303 of the family court act, as
19 added by section 1 of part L of chapter 56 of the laws of 2020, is
20 amended to read as follows:

21 (b) The court shall issue a judgment of parentage pursuant to this
22 article upon application by any [~~participant~~] person authorized to file
23 a petition pursuant to subdivision (c) of section 581-201 of this arti-
24 cle.

25 § 8. Paragraph 3 of subdivision (a) and subdivision (d) of section
26 581-306 of the family court act, as added by section 1 of part L of
27 chapter 56 of the laws of 2020, are amended to read as follows:

28 (3) where the intended parents are married, transfer of legal rights
29 and dispositional control [~~occurs only~~] becomes effective upon: (i)
30 living separate and apart pursuant to a decree or judgment of separation
31 or pursuant to a written agreement of separation subscribed by the
32 parties thereto and acknowledged or proved in the form required to enti-
33 tle a deed to be recorded; or (ii) living separate and apart at least
34 three years; or (iii) divorce; or (iv) death.

35 (d) An embryo disposition agreement [~~or advance directive~~] that is not
36 in compliance with subdivision (a) of this section may still be found to
37 be enforceable by the court after balancing the respective interests of
38 the parties except that the intended parent who divested him or herself
39 of legal rights and dispositional control may not be declared to be a
40 parent for any purpose without his or her consent. The intended parent
41 awarded legal rights and dispositional control of the embryos shall, in
42 this instance, be declared to be the only parent of the child.

43 § 9. Section 581-402 of the family court act, as added by section 1 of
44 part L of chapter 56 of the laws of 2020, is amended to read as follows:

45 § 581-402. Eligibility to enter surrogacy agreement. (a) A person
46 acting as surrogate shall be eligible to enter into an enforceable
47 surrogacy agreement under this article if the person acting as surrogate
48 has met the following requirements at the time the surrogacy agreement
49 is executed:

50 (1) the person acting as surrogate is at least twenty-one years of
51 age;

52 (2) the person acting as surrogate: (i) is a United States citizen or
53 a lawful permanent resident, and [~~where at least one intended parent is~~
54 ~~not~~] (ii) has been a resident of New York state for at least six
55 months [~~was~~] if neither intended parent has been a resident of New York
56 state for at least six months;

1 (3) the person acting as surrogate has not provided the egg used to
2 conceive the resulting child;

3 (4) the person acting as surrogate has completed a medical evaluation
4 with a health care practitioner relating to the anticipated pregnancy.
5 Such medical evaluation shall include a screening of the medical history
6 of the potential surrogate including known health conditions that may
7 pose risks to the potential surrogate or embryo during pregnancy;

8 (5) the person acting as surrogate has given informed consent [~~for the~~
9 ~~surrogacy~~] to undergo the medical procedures after the licensed health
10 care practitioner [~~inform~~] has informed them of the medical risks of
11 surrogacy including the possibility of multiple births, risk of medica-
12 tions taken for the surrogacy, risk of pregnancy complications, psycho-
13 logical and psychosocial risks, and impacts on their personal lives;

14 (6) the person acting as surrogate, and the spouse of the person
15 acting as surrogate, if applicable, have been represented [~~throughout~~
16 from the initiation of the contractual process and throughout the dura-
17 tion of the [~~contract and its execution~~] surrogacy agreement by inde-
18 pendent legal counsel of their own choosing who is licensed to practice
19 law in the state of New York which shall be paid for by the intended
20 parent or parents, except that a person acting as surrogate who is
21 receiving no compensation may waive the right to have the intended
22 parent or parents pay the fee for such legal counsel. Where the
23 [~~intended parent or parents are paying for the~~] independent legal coun-
24 sel of the person acting as surrogate, and the spouse of the person
25 acting as surrogate, if applicable, is paid by the intended parent or
26 parents, a separate retainer agreement shall be prepared clearly stating
27 that such legal counsel will only represent the person acting as surro-
28 gate and the spouse of the person acting as surrogate, if applicable, in
29 all matters pertaining to the surrogacy agreement, that such legal coun-
30 sel will not offer legal advice to any other parties to the surrogacy
31 agreement, and that the attorney-client relationship lies with the
32 person acting as surrogate and the spouse of the person acting as surro-
33 gate, if applicable;

34 (7) the person acting as surrogate has or the surrogacy agreement
35 stipulates that the person acting as surrogate will obtain [~~a~~] compre-
36 hensive health insurance [~~policy~~] coverage that takes effect after the
37 person acting as surrogate has been deemed medically eligible but prior
38 to taking any medication or commencing treatment to further embryo
39 transfer that covers [~~preconception care, prenatal care, major medical~~
40 ~~treatments, hospitalization, and behavioral health care, and the compre-~~
41 ~~hensive policy has a term that extends throughout the duration of the~~
42 ~~expected pregnancy and for twelve months after the birth of the child, a~~
43 ~~stillbirth, a miscarriage resulting in termination of pregnancy, or~~
44 ~~termination of the pregnancy; the policy shall be paid for, whether~~
45 ~~directly or through reimbursement or other means, by the intended parent~~
46 ~~or parents on behalf of the person acting as surrogate pursuant to the~~
47 ~~surrogacy agreement, except that a person acting as surrogate who is~~
48 ~~receiving no compensation may waive the right to have the intended~~
49 ~~parent or parents pay for the health insurance policy. The intended~~
50 ~~parent or parents shall also pay for or reimburse the person acting as~~
51 ~~surrogate for all co-payments, deductibles and any other out-of-pocket~~
52 ~~medical costs associated with preconception, pregnancy, childbirth, or~~
53 ~~postnatal care, that accrue through twelve months after the birth of the~~
54 ~~child, a stillbirth, a miscarriage, or termination of the pregnancy. A~~
55 ~~person acting as surrogate who is receiving no compensation may waive~~

1 ~~the right to have the intended parent or parents make such payments or~~
2 ~~reimbursements~~]:

3 (i) preconception care. The surrogacy agreement shall state that the
4 intended parent or parents will be responsible for all medical costs of
5 the person acting as surrogate associated with their preconception care
6 including but not limited to medical and psychological screenings, medi-
7 cations, embryo transfer procedure, monitoring prior and subsequent to
8 the embryo transfer procedure and any complications associated with the
9 foregoing. The intended parent or parents shall be responsible for the
10 costs of any such complications either through insurance or by placing
11 and maintaining sufficient funds in escrow to cover such expenses. If
12 the surrogacy agreement is terminated after the person acting as surro-
13 gate has taken any medication or commenced treatment to further embryo
14 transfer but before pregnancy is achieved, such funds shall remain in
15 escrow for a minimum period of six months from the date the surrogacy
16 agreement is terminated;

17 (ii) medical expenses associated with pregnancy. The person acting as
18 surrogate has, or the surrogacy agreement shall stipulate that the
19 person acting as surrogate will obtain, comprehensive health insurance
20 coverage, via one or more insurance policies, prior to or immediately
21 upon confirmation of pregnancy that covers prenatal care, major medical
22 treatments, hospitalization, behavioral health care, childbirth and
23 postnatal care, and that such comprehensive coverage must be in place
24 throughout the duration of the pregnancy and for twelve months after the
25 birth of the child, a stillbirth, a miscarriage resulting in termination
26 of the pregnancy, or termination of the pregnancy. The policy shall be
27 paid for, whether directly or through reimbursement or other means, by
28 the intended parent or parents on behalf of the person acting as surro-
29 gate to the extent that there is an additional cost to the person acting
30 as surrogate for such health insurance coverage. The intended parent or
31 parents shall also pay for or reimburse the person acting as surrogate
32 for all co-payments, deductibles and any other out-of-pocket medical
33 costs associated with pregnancy, childbirth, or postnatal care, that
34 accrue through twelve months after the birth of the child, a stillbirth,
35 a miscarriage resulting in termination of the pregnancy, or termination
36 of the pregnancy; and

37 (iii) uncompensated surrogacy agreements. A person acting as surrogate
38 who is receiving no compensation may waive the right to have the
39 intended parent or parents make the payments set forth in this section;

40 (8) the surrogacy agreement must provide that the intended parent or
41 parents shall [~~procure and~~] pay for a life insurance, contractual
42 liability or accidental death insurance policy for the person acting as
43 surrogate that takes effect prior to taking any medication or the
44 commencement of medical procedures to further embryo transfer, provides
45 a minimum benefit of seven hundred fifty thousand dollars or the maximum
46 amount the person acting as surrogate qualifies for if it is less than
47 seven hundred fifty thousand dollars, and [~~has a term that extends~~] such
48 coverage shall extend throughout the duration of the expected pregnancy
49 and for twelve months after the birth of the child, a stillbirth, a
50 miscarriage resulting in termination of pregnancy, or termination of the
51 pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person
52 acting as surrogate's choosing. The policy shall be paid for, whether
53 directly or through reimbursement or other means, by the intended parent
54 or parents on behalf of the person acting as surrogate pursuant to the
55 surrogacy agreement, except that a person acting as surrogate who is
56 receiving no compensation may waive the right to have the intended

1 parent or parents pay for the life insurance, contractual liability or
2 accidental death insurance policy; and

3 (9) the person acting as surrogate meets all other requirements deemed
4 appropriate by the commissioner of health regarding the health of the
5 prospective surrogate.

6 (b) The intended parent or parents shall be eligible to enter into an
7 enforceable surrogacy agreement under this article if he, she or they
8 have met the following requirements at the time the surrogacy agreement
9 was executed:

10 (1) at least one intended parent is:

11 (i) a United States citizen or a lawful permanent resident; and

12 [~~was~~] (ii) has been a resident of New York state for at least six
13 months if the person acting as surrogate has not been a resident of the
14 state of New York for at least six months;

15 (2) [~~the intended parent or parents has~~] they have been represented
16 [~~throughout~~] from the initiation of the contractual process and through-
17 out the duration of the [~~contract and its execution~~] surrogacy agreement
18 by independent legal counsel of his, her or their own choosing who is
19 licensed to practice law in the state of New York; and

20 (3) [~~he or she is~~] they are an adult person who is not in a spousal
21 relationship, or [~~adult~~] any adults who are spouses together, or any
22 [~~two~~] adults who are intimate partners together, except an adult in a
23 spousal relationship is eligible to enter into an enforceable surrogacy
24 agreement without [~~his or her~~] their spouse if:

25 (i) they are living separate and apart pursuant to a decree or judg-
26 ment of separation or pursuant to a written agreement of separation
27 subscribed by the parties thereto and acknowledged or proved in the form
28 required to entitle a deed to be recorded; or

29 (ii) they have been living separate and apart for at least three years
30 prior to execution of the surrogacy agreement.

31 (c) where the spouse of an intended parent is not a required party to
32 the agreement, the spouse is not an intended parent and shall not have
33 rights or obligations to the child.

34 § 10. Section 581-403 of the family court act, as added by section 1
35 of part L of chapter 56 of the laws of 2020, is amended to read as
36 follows:

37 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement
38 shall be deemed to have satisfied the requirements of this article and
39 be enforceable if it meets the following requirements:

40 (a) it shall be in a [~~signed~~] record [~~verified or executed before~~]
41 with each signature either notarized or witnessed by two [~~non-party~~
42 ~~witnesses~~] non-parties and signed by:

43 (1) each intended parent, and

44 (2) the person acting as surrogate, and the spouse of the person
45 acting as surrogate, if [~~any~~] applicable, unless:

46 (i) [~~the person acting as surrogate and the spouse of the person~~
47 ~~acting as surrogate~~] they are living separate and apart pursuant to a
48 decree or judgment of separation or pursuant to a written agreement of
49 separation subscribed by the parties thereto and acknowledged or proved
50 in the form required to entitle a deed to be recorded; or

51 (ii) they have been living separate and apart for at least three years
52 prior to execution of the surrogacy agreement;

53 (b) it shall be executed prior to the person acting as surrogate
54 taking any medication or the commencement of medical procedures in the
55 furtherance of embryo transfer, provided the person acting as surrogate

1 shall have provided informed consent to undergo such medical treatment
2 or medical procedures prior to executing the agreement;

3 (c) it shall be executed by a person acting as surrogate meeting the
4 eligibility requirements of subdivision (a) of section 581-402 of this
5 part and by the spouse of the person acting as surrogate, if applicable,
6 unless the signature of the spouse of the person acting as surrogate is
7 not required as set forth in this section;

8 (d) it shall be executed by intended parent or parents who met the
9 eligibility requirements of subdivision (b) of section 581-402 of this
10 part;

11 (e) the person acting as surrogate and the spouse of the person acting
12 as surrogate, if applicable, and the intended parent or parents shall
13 have been represented [~~throughout~~] from the initiation of the contractu-
14 al process and the surrogacy agreement states that they shall be repres-
15 ented throughout the duration of the [~~contract and its execution~~] surro-
16 gacy agreement by separate, independent legal counsel of their own
17 choosing, who is licensed to practice law in the state of New York;

18 (f) if the surrogacy agreement provides for the payment of compen-
19 sation to the person acting as surrogate, the funds for base compen-
20 sation and reasonable anticipated additional expenses shall have been
21 placed in escrow with an independent escrow agent, who consents to the
22 jurisdiction of New York courts for all proceedings related to the
23 enforcement of the escrow agreement, prior to the person acting as
24 surrogate commencing [~~with~~] any medical procedure other than medical
25 evaluations necessary to determine the person acting as surrogate's
26 eligibility;

27 (g) the surrogacy agreement must include information disclosing how
28 the intended parent or parents will cover the medical expenses of the
29 person acting as surrogate and the child. The surrogacy agreement shall
30 specify the amount that the intended parent or parents shall place in
31 escrow to cover such reasonable anticipated costs including precon-
32 ception medical care and extending throughout the duration of the
33 expected surrogacy agreement. If it is anticipated that comprehensive
34 health care coverage [~~is~~] will be used to cover the medical expenses for
35 the person acting as surrogate, the [~~disclosure shall include a review~~
36 ~~and summary of the~~] health care policy provisions related to coverage
37 and exclusions for the person acting as [~~surrogate's~~] surrogate shall be
38 reviewed and summarized in relation to the anticipated pregnancy prior
39 to such policy being used to cover any of the person acting as surro-
40 gate's medical expenses incurred pursuant to the surrogacy agreement;
41 and

42 (h) [~~it~~] the surrogacy agreement shall include the following informa-
43 tion:

44 (1) the date, city and state where the surrogacy agreement was
45 executed;

46 (2) the first and last names of and contact information for the
47 intended parent or parents and of the person acting as surrogate;

48 (3) the first and last names of and contact information for the
49 persons from which the gametes originated, if known. The agreement shall
50 specify whether the gametes provided were eggs, sperm, or embryos;

51 (4) the name of and contact information for the licensed and regis-
52 tered surrogacy program [~~handling the~~] arranging or facilitating the
53 transactions contemplated by the surrogacy agreement, if any; and

54 (5) the name of and contact information for the attorney representing
55 the person acting as surrogate, and the spouse of the person acting as

1 surrogate, if applicable, and the attorney representing the intended
2 parent or parents; and

3 (i) the surrogacy agreement must comply with all of the following
4 terms:

5 (1) As to the person acting as surrogate and the spouse of the person
6 acting as surrogate, if applicable:

7 (i) the person acting as surrogate agrees to undergo embryo transfer
8 and attempt to carry and give birth to the child;

9 (ii) the person acting as surrogate and the spouse of the person
10 acting as surrogate, if applicable, agree to surrender custody of all
11 resulting children to the intended parent or parents immediately upon
12 birth;

13 (iii) the surrogacy agreement shall include the name of the attorney
14 representing the person acting as surrogate and, if applicable, the
15 spouse of the person acting as surrogate;

16 (iv) the surrogacy agreement must include an acknowledgement by the
17 person acting as surrogate and the spouse of the person acting as surro-
18 gate, if applicable, that they have received a copy of the Surrogate's
19 Bill of Rights from their legal counsel;

20 (v) the surrogacy agreement must permit the person acting as surrogate
21 to make all health and welfare decisions regarding themselves and their
22 pregnancy including but not limited to, whether to consent to a cesarean
23 section or multiple embryo transfer, and notwithstanding any other
24 provisions in this chapter, provisions in the agreement to the contrary
25 are void and unenforceable. This article does not diminish the right of
26 the person acting as surrogate to terminate or continue a pregnancy;

27 (vi) the surrogacy agreement shall permit the person acting as a
28 surrogate to utilize the services of a health care practitioner of the
29 person's choosing;

30 (vii) the surrogacy agreement shall not limit the right of the person
31 acting as surrogate to terminate or continue the pregnancy or reduce or
32 retain the number of fetuses or embryos the person is carrying;

33 (viii) the surrogacy agreement shall provide for the right of the
34 person acting as surrogate, upon request, to obtain counseling to
35 address issues resulting from the person's participation in the surroga-
36 cy agreement, including, but not limited to, counseling following deliv-
37 ery. The cost of that counseling shall be paid by the intended parent
38 or parents;

39 (ix) the surrogacy agreement must include a notice that any compen-
40 sation received pursuant to the agreement may affect the eligibility of
41 the person acting as [~~surrogate's ability~~] surrogate and the person
42 acting as surrogate's spouse, if applicable, for public benefits or the
43 amount of such benefits; and

44 (x) the surrogacy agreement shall provide that, upon the person acting
45 as surrogate's request, the intended parent or parents [~~have or will~~
46 ~~procure and~~] shall pay for a disability insurance policy [~~for~~] or other
47 insurance policy to cover any lost wages incurred by the person acting
48 as surrogate [~~; the person acting as surrogate may designate the benefi-~~
49 ~~ciary of the person's choosing~~] in connection with their participation
50 in the surrogacy agreement after taking any medication or commencing
51 treatment to further embryo transfer excluding medical procedures
52 required to determine the medical eligibility to become a person acting
53 as surrogate. In the event that such insurance coverage is not avail-
54 able, the intended parent or parents shall reimburse the person acting
55 as surrogate for any lost wages the person acting as surrogate incurs in
56 connection with their participation in the surrogacy agreement.

1 (2) As to the intended parent or parents:

2 (i) the intended parent or parents [~~agree to~~] shall accept custody of
3 all resulting children immediately upon birth regardless of number,
4 gender, or mental or physical condition and regardless of whether the
5 [~~intended~~] embryo or embryos was or were transferred due to a laboratory
6 error without diminishing the rights, if any, of anyone claiming to have
7 a superior parental interest in the child; and

8 (ii) the intended parent or parents [~~agree to~~] shall assume responsi-
9 bility for the support of all resulting children immediately upon birth;
10 and

11 (iii) the surrogacy agreement shall include the name of the attorney
12 representing the intended parent or parents; and

13 (iv) the surrogacy agreement shall provide that the rights and obli-
14 gations of the intended parent or parents under the surrogacy agreement
15 are not assignable; and

16 (v) the intended parent or parents [~~agree to~~] shall execute a will,
17 prior to the embryo transfer, designating a guardian for all resulting
18 children and authorizing their executor to perform the [~~intended~~
19 ~~parent's or parents'~~] obligations of the intended parent or parents
20 pursuant to the surrogacy agreement, including filing a proceeding for a
21 judgment of parentage for a child conceived pursuant to a surrogacy
22 agreement pursuant to section 581-203 of this article if there is no
23 intended parent living.

24 § 11. Subdivision (b) of section 581-404 of the family court act, as
25 added by section 1 of part L of chapter 56 of the laws of 2020, is
26 amended to read as follows:

27 (b) The subsequent separation or divorce of the intended parents does
28 not affect the rights, duties and responsibilities of the intended
29 parents as outlined in the surrogacy agreement. After the execution of a
30 surrogacy agreement under this article, the subsequent spousal relation-
31 ship of the intended parent does not affect the validity of a surrogacy
32 agreement, and the consent of the new spouse of [~~the~~] an intended parent
33 to the agreement shall not be required.

34 § 12. Section 581-405 of the family court act, as added by section 1
35 of part L of chapter 56 of the laws of 2020, is amended to read as
36 follows:

37 § 581-405. Termination of surrogacy agreement. After the execution of
38 a surrogacy agreement but before the [~~person acting as surrogate becomes~~
39 ~~pregnant by means of assisted reproduction,~~] embryo transfer occurs or
40 after an unsuccessful embryo transfer, the person acting as surrogate,
41 the spouse of the person acting as surrogate, if applicable, or any
42 intended parent may terminate the surrogacy agreement by giving notice
43 of termination in a record to all other parties. Upon proper termination
44 of the surrogacy agreement the parties are released from all obligations
45 recited in the surrogacy agreement except that the intended parent or
46 parents [~~remains~~] shall remain responsible for all [~~expenses that are~~
47 ~~reimbursable~~] lost wages and other financial obligations which have
48 accrued under the agreement [~~which have been incurred by the person~~
49 ~~acting as surrogate~~] through the date of termination. If the intended
50 parent or parents terminate the surrogacy agreement pursuant to this
51 section after the person acting as surrogate has taken any medication or
52 commenced treatment to further embryo transfer, such intended parent or
53 parents shall be responsible for paying [~~for or reimbursing the person~~
54 ~~acting as surrogate for all co-payments, deductibles,~~] any other out-of-
55 pocket medical costs[, ~~and any other economic losses~~] incurred within
56 twelve months [~~of~~] after the termination of the agreement [~~and~~] which,

1 as documented by a health care practitioner, are associated with taking
2 such medication or undertaking such treatment. Unless the agreement
3 provides otherwise, the person acting as surrogate is entitled to keep
4 all payments received and obtain all payments to which the person is
5 entitled up until the date of termination of the agreement. Neither a
6 person acting as surrogate nor the spouse of the person acting as surro-
7 gate, if [~~any~~] applicable, is liable to the intended parent or parents
8 for terminating a surrogacy agreement as provided in this section.

9 § 13. Section 581-406 of the family court act, as added by section 1
10 of part L of chapter 56 of the laws of 2020, is amended to read as
11 follows:

12 § 581-406. Parentage under compliant surrogacy agreement. Upon the
13 birth of a child conceived by assisted reproduction under a surrogacy
14 agreement that complies with this part, each intended parent is, by
15 operation of law, a parent of the child and neither the person acting as
16 [~~a~~] surrogate nor the person's spouse, if [~~any~~] applicable, is a parent
17 of the child.

18 § 14. Section 581-409 of the family court act, as added by section 1
19 of part L of chapter 56 of the laws of 2020, is amended to read as
20 follows:

21 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is
22 related to a surrogacy agreement other than disputes as to parentage,
23 which are not resolved through alternative dispute resolution methods,
24 shall be resolved by the supreme court, which shall determine the
25 respective rights and obligations of the parties[~~, in~~]. In any proceed-
26 ing initiated pursuant to this section, the court may, at its
27 discretion, authorize the use of conferencing or mediation at any point
28 in the proceedings.

29 (b) Except as expressly provided in the surrogacy agreement[~~, the~~
30 ~~intended parent or parents and the person acting as surrogate shall be~~
31 ~~entitled to all remedies available at law or equity in any dispute~~
32 ~~related to the surrogacy agreement.~~

33 ~~(c) There shall be no specific performance remedy available for a~~
34 ~~breach] or subdivision (c) or (d) of this section, if the agreement is~~
35 breached by the person acting as surrogate, the spouse of the person
36 acting as surrogate, if applicable, or one or more intended parent, the
37 non-breaching party shall be entitled to all remedies available at law
38 or in equity in any dispute related to the surrogacy agreement.

39 (c) Specific performance shall not be a remedy available for a breach
40 by a person acting as surrogate of a provision in the surrogacy agree-
41 ment that the person acting as surrogate be impregnated, agree to a
42 multiple embryo transfer, terminate or not terminate a pregnancy, or
43 submit to medical procedures including a cesarean section.

44 (d) If any intended parent is adjudicated to be the parent of the
45 child, specific performance is a remedy available for: (1) breach of the
46 surrogacy agreement by a person acting as surrogate which prevents the
47 intended parent or parents from exercising the full rights of parentage
48 immediately upon the birth of the child; or (2) breach by the intended
49 parent or parents by failure to accept the duties of parentage imme-
50 diately upon the birth of the child.

51 (e) In any proceeding initiated pursuant to this section, where the
52 supreme court determines that the dispute involves both contractual and
53 parentage issues, the court may order that the portion of the
54 proceedings raising parentage issues may be transferred to the family or
55 surrogate's court.

1 § 15. Section 581-502 of the family court act, as added by section 1
2 of part L of chapter 56 of the laws of 2020, is amended to read as
3 follows:

4 § 581-502. Compensation. (a) Compensation may be paid to a donor or
5 person acting as surrogate based on medical risks, physical discomfort,
6 inconvenience and the responsibilities they are undertaking in
7 connection with their participation in the assisted reproduction. Under
8 no circumstances may compensation be paid to purchase gametes or embryos
9 or for the release of a parental interest in a child.

10 (b) The compensation, if any, paid to a donor or person acting as
11 surrogate must be reasonable and negotiated in good faith between the
12 parties~~[, and said payments]~~. Base compensation paid to a person acting
13 as surrogate shall not exceed the duration of the pregnancy and recuper-
14 ative period of ~~[up to]~~ eight weeks after the birth of any resulting
15 ~~[children]~~ child. Supplemental compensation for any medical procedure
16 associated with complications from the pregnancy or delivery as
17 confirmed by a health care practitioner, and any associated lost wages,
18 may be, but are not required to be, paid after the recuperative period
19 and until twelve months after the birth of the child, a stillbirth, a
20 miscarriage resulting in termination of the pregnancy, or termination of
21 the pregnancy.

22 (c) Compensation may not be conditioned upon the purported quality or
23 genome-related traits of the gametes or embryos.

24 (d) Compensation may not be conditioned on actual genotypic or pheno-
25 typic characteristics of the donor or donors or of any resulting chil-
26 dren.

27 (e) Compensation to ~~[an]~~ any embryo donor shall be limited to storage
28 fees, transportation costs and attorneys' fees.

29 § 16. Section 581-601 of the family court act, as added by section 1
30 of part L of chapter 56 of the laws of 2020, is amended to read as
31 follows:

32 § 581-601. Applicability. The rights enumerated in this part shall
33 apply to any person acting as surrogate ~~[in this state]~~ under the laws
34 of the state of New York, notwithstanding any surrogacy agreement, judg-
35 ment of parentage, memorandum of understanding, verbal agreement or
36 contract to the contrary. Except as otherwise provided by law, any writ-
37 ten or verbal agreement purporting to waive or limit any of the rights
38 in this part is void as against public policy. The rights enumerated in
39 this part are not exclusive, and are in addition to any other rights
40 provided by law, regulation, or a surrogacy agreement that meets the
41 requirements of this article.

42 § 17. Section 581-603 of the family court act, as added by section 1
43 of part L of chapter 56 of the laws of 2020, is amended to read as
44 follows:

45 § 581-603. Independent legal counsel. A person acting as surrogate,
46 and the spouse of the person acting as surrogate, if applicable, has the
47 right to be represented ~~[throughout]~~ from the initiation of the contrac-
48 tual process and throughout the duration of the surrogacy agreement ~~[and~~
49 ~~its execution]~~ by independent legal counsel of their own choosing who is
50 licensed to practice law in the state of New York, to be paid for by the
51 intended parent or parents.

52 § 18. Section 581-604 of the family court act, as added by section 1
53 of part L of chapter 56 of the laws of 2020, is amended to read as
54 follows:

55 § 581-604. Health insurance and medical costs. A person acting as
56 surrogate has the right to have ~~[a]~~ comprehensive health insurance

1 [~~policy~~] coverage that covers preconception [~~care, prenatal care, major~~
2 ~~medical treatments, hospitalization and behavioral health care~~] medical
3 expenses and medical expenses associated with the pregnancy for a [~~term~~]
4 period that extends throughout the duration of the expected pregnancy
5 and for twelve months after the birth of the child, a stillbirth, a
6 miscarriage resulting in termination of pregnancy, or termination of the
7 pregnancy, to be paid for by the intended parent or parents. [~~The~~
8 ~~intended parent or parents shall also pay for or reimburse the person~~
9 ~~acting as surrogate for all co-payments, deductibles and any other out-~~
10 ~~of-pocket medical costs associated with pregnancy, childbirth, or post-~~
11 ~~natal care that accrue through~~] In addition, a person acting as a
12 surrogate shall have the right to have the intended parent or parents
13 pay for all of their medical expenses incurred in connection with the
14 surrogacy agreement, continuing through the duration of the expected
15 pregnancy and for twelve months after the birth of the child, a still-
16 birth, a miscarriage resulting in the termination of pregnancy, or the
17 termination of the pregnancy. A person acting as a surrogate who is
18 receiving no compensation may waive the right to have the intended
19 parent or parents make such payments or reimbursements.

20 § 19. Section 581-605 of the family court act, as added by section 1
21 of part L of chapter 56 of the laws of 2020, is amended to read as
22 follows:

23 § 581-605. Counseling. A person acting as surrogate has the right to
24 [~~obtain a comprehensive health insurance policy that covers behavioral~~
25 ~~health care and will cover the cost of psychological~~] mental health
26 counseling to address issues resulting from their participation in [~~a~~]
27 the surrogacy [~~and such policy~~] agreement, which shall be paid for by an
28 insurance policy or by the intended parent or parents.

29 § 20. Section 581-606 of the family court act, as added by section 1
30 of part L of chapter 56 of the laws of 2020, is amended to read as
31 follows:

32 § 581-606. Life insurance, contractual liability, or accidental death
33 insurance policy. A person acting as surrogate has the right to be
34 provided a life insurance, contractual liability or accidental death
35 insurance policy that takes effect prior to taking any medication or
36 commencement of treatment to further embryo transfer, provides a minimum
37 benefit of seven hundred fifty thousand dollars, or the maximum amount
38 the person acting as surrogate [~~qualifying~~] qualifies for [~~it~~] if less
39 than seven hundred fifty thousand dollars, and [~~has a term that extends~~]
40 such coverage shall extend throughout the duration of the expected preg-
41 nancy and for twelve months after the birth of the child, a stillbirth,
42 a miscarriage resulting in termination of pregnancy, or termination of
43 the pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person
44 acting as surrogate's choosing, to be paid for by the intended parent or
45 parents.

46 § 21. The family court act is amended by adding a new section 581-705
47 to read as follows:

48 § 581-705. Adjudication. (a) A court adjudicating the parentage of a
49 child conceived through assisted reproduction or adjudicating the
50 enforceability of an embryo disposition agreement may apply section
51 581-202 and part three of this article retroactively.

52 (b) The participants in a surrogacy agreement that involved the
53 payment of compensation prior to February fifteenth, two thousand twen-
54 ty-two shall not be eligible to receive a judgment of parentage pursuant
55 to section 581-203 or section 581-406 of this article, but shall be

1 entitled to seek a judgment of parentage pursuant to section 581-407 of
2 this article.

3 (c) This article shall apply retroactively to uncompensated surrogacy
4 agreements entered into prior to February fifteenth, two thousand twen-
5 ty-two.

6 (d) Surrogacy agreements that were executed on or after February
7 fifteenth, two thousand twenty-two, but before the effective date of the
8 chapter of the laws of two thousand twenty-three that added this subdi-
9 vision that were in compliance with this article before it was amended
10 by the chapter of the laws of two thousand twenty-three that added this
11 subdivision shall be deemed a compliant surrogacy agreement pursuant to
12 section 581-406 of this article regardless of any deviations from the
13 current provisions of this article.

14 § 22. Paragraph (a) of subdivision 2 of section 123 of the domestic
15 relations law, as amended by section 5 of part L of chapter 56 of the
16 laws of 2020, is amended to read as follows:

17 (a) Any party to a genetic surrogate parenting agreement or the spouse
18 of any ~~[part]~~ party to a genetic surrogate parenting agreement who
19 ~~[violate]~~ violates this section shall be subject to a civil penalty not
20 to exceed five hundred dollars.

21 § 23. Subdivision (c) of section 1400 of the general business law, as
22 added by section 11 of part L of chapter 56 of the laws of 2020, is
23 amended to read as follows:

24 (c) "Surrogacy program" does not include any party to a surrogacy
25 agreement or any person licensed to practice law and representing a
26 party to the surrogacy agreement, but does include and is not limited to
27 any agency, agent, business, or individual engaged in, arranging, or
28 facilitating transactions contemplated by a surrogacy agreement, regard-
29 less of whether such agreement ultimately comports with the requirements
30 of part four of article five-C of the family court act. Any person
31 licensed to practice law shall be deemed a surrogacy program only in
32 those cases where such person is providing matching services to the
33 intended parent or parents and the person acting as a surrogate.

34 § 24. Section 1401 of the general business law, as added by section 11
35 of part L of chapter 56 of the laws of 2020, is amended to read as
36 follows:

37 § 1401. Surrogacy programs regulated under this article. The
38 provisions of this article apply to surrogacy programs arranging or
39 facilitating transactions contemplated by a surrogacy agreement, regard-
40 less of whether such agreement ultimately comports with the requirements
41 under part four of article five-C of the family court act if:

42 (a) The surrogacy program does business in New York state; or

43 (b) A person acting as surrogate who is party to a surrogacy agreement
44 resides in New York state ~~[during the term of]~~ at the time the surrogacy
45 agreement ~~[, or~~

46 ~~(c) Any medical procedures under the surrogacy agreement are performed~~
47 ~~in New York state] is executed.~~

48 § 25. Subdivisions (a) and (f) of section 1403 of the general business
49 law, as added by section 11 of part L of chapter 56 of the laws of 2020,
50 are amended to read as follows:

51 (a) Shall keep all funds paid by or on behalf of the intended parent
52 or parents other than funds paid to the surrogacy program for its fees,
53 in an escrow account separate from its operating accounts; and

54 (f) Shall be licensed to operate in New York state pursuant to regu-
55 lations promulgated by the department of health in consultation with the

1 department of financial services [~~7, once such regulations are promulgated~~
2 ~~and become effective~~]; and

3 § 26. Subdivision 1 of section 1404 of the general business law, as
4 added by section 11 of part L of chapter 56 of the laws of 2020, is
5 amended to read as follows:

6 1. The department of health, in consultation with the department of
7 financial services, shall promulgate rules and regulations to implement
8 the requirements of this article regarding surrogacy programs and
9 assisted reproduction service providers in a manner that ensures the
10 safety and health of gamete providers and persons serving as surrogates.
11 Such regulations shall:

12 (a) Require surrogacy programs to monitor compliance with [~~surrogacy~~
13 ~~agreements~~] eligibility [~~and requirements in state law~~] criteria for the
14 intended parents and persons acting as surrogates pursuant to section
15 581-402 of the family court act; and

16 (b) Require the [~~surrogacy programs and~~] assisted reproduction service
17 providers to administer informed consent procedures that comply with
18 regulations promulgated by the department of health under section twen-
19 ty-five hundred ninety-nine-cc of the public health law.

20 § 27. This act shall take effect immediately.