

# STATE OF NEW YORK

5107--B

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 -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 also includes an individual who had dispositional control of an embryo  
2 or gametes who then transfers dispositional control and releases all  
3 present and future parental and inheritance rights and obligations to a  
4 resulting child.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(m) "In vitro fertilization" means the formation of a human embryo~~  
2 ~~outside the human body.~~

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

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

10 (p) (o) "Record" means information inscribed in a tangible medium or  
11 stored in an electronic or other medium that is retrievable in perceiva-  
12 ble form.

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

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

20 (s) (r) "State" means a state of the United States, the District of  
21 Columbia, Puerto Rico, the United States Virgin Islands, or any territo-  
22 ry or insular possession subject to the jurisdiction of the United  
23 States.

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

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

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

32 § 581-202. Proceeding for judgment of parentage of a child conceived  
33 through assisted reproduction. (a) A proceeding for a judgment of  
34 parentage with respect to a child conceived through assisted reproduc-  
35 tion may be commenced:

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

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

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

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

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

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

55 (3) in cases where there is a non-gestating intended parent, a state-  
56 ment from the gestating intended parent and non-gestating intended

1 parent that the non-gestating intended parent consented to assisted  
2 reproduction pursuant to section 581-304 of this article; and

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

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

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

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

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

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

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

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

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

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

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

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

36 [~~b.~~] (ii) clear and convincing evidence that the gamete or embryo  
37 donor or donors agreed, prior to [~~conception~~] the gametes or embryos  
38 being used for assisted reproduction, [~~with the gestating parent~~] that  
39 the donor [~~has~~] or donors would have no parental or proprietary interest  
40 in the gametes or embryos.

41 (3) Except for those agreements executed in compliance with section  
42 581-306 of this article, this subdivision shall not apply where the  
43 person providing the gametes or embryos is the spouse of the intended  
44 parent.

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

1 proceeding or within such further time as the court may allow, that  
2 personal service cannot be effected at the [~~donor's~~] last known address  
3 or addresses of the donor or donors, and/or the non-petitioning intended  
4 parent, if any, with reasonable effort, notice may be given, without  
5 prior court order therefore, at least twenty days prior to the proceed-  
6 ing by registered or certified mail directed to [~~the donor's~~] such last  
7 known address or addresses. Notice by publication shall not be required  
8 to be given to [~~a donor~~] anyone entitled to notice pursuant to the  
9 provisions of this section.

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

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

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

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

25 (2) ordering the intended parent or parents to assume responsibility  
26 for the maintenance and support of the child immediately upon the birth  
27 of the child; and

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

30 (4) ordering that:

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

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

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

1 (5) if the judgment of parentage is issued prior to the birth of the  
2 child, ordering the petitioner or petitioners, within fourteen days of  
3 such birth, to provide the court with notification thereof, together  
4 with such other facts as may assist in identifying the birth record of  
5 the child whose parentage was in issue. Such notification shall be in  
6 writing on a form to be prescribed by the chief administrator of the  
7 courts. The court shall thereafter issue an amended judgment of parent-  
8 age that includes the child's name as it appears on the child's birth  
9 certificate and the child's date of birth.

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

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

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

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

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

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

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

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

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

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

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

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

1 (5) ordering the intended parent or parents to assume responsibility  
2 for the maintenance and support of the child immediately upon the birth  
3 of the child; and

4 (6) ordering that:

5 (i) [~~Pursuant~~] The hospital birth registrar shall report the parentage  
6 of the child on the record of live birth in conformity with the judgment  
7 of parentage, if the judgment of parentage is issued before the birth of  
8 the child; and

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

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

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

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

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

50 § 581-205. Inspection of records. Court records relating to  
51 proceedings under this article shall be sealed, provided, however, that  
52 the office of temporary and disability assistance, a child support unit  
53 of a social services district or a child support agency of another state  
54 providing child support services pursuant to title IV-d of the federal  
55 social security act, when a party to a related support proceeding and to  
56 the extent necessary to provide child support services or for the admin-

1 istration of the program pursuant to title IV-d of the federal social  
2 security act, may obtain a copy of a judgment of parentage. The parties  
3 to the proceeding and the child shall have the right to inspect and make  
4 copies of the entire court record, including, but not limited to, the  
5 name of the person acting as surrogate and any known ~~[donors]~~ donor.  
6 Notwithstanding any other provision of law, the county clerk or the  
7 clerk of the supreme, surrogate's or family court shall not display the  
8 surname of the child or parties in any document, index, minutes or other  
9 record available to the public.

10 § 5. Section 581-206 of the family court act, as added by section 1 of  
11 part L of chapter 56 of the laws of 2020, is amended to read as follows:

12 § 581-206. Jurisdiction, and exclusive continuing jurisdiction. (a)  
13 Proceedings pursuant to this article may be instituted in [~~the~~] New York  
14 state supreme [~~or~~] court, family court or surrogates court.

15 (b) The court conducting a proceeding under this article shall have  
16 exclusive, continuing jurisdiction of all matters relating to the deter-  
17 mination of parentage until the child attains the age of one hundred  
18 eighty days, whereafter continuing jurisdiction shall be determined by  
19 the jurisdictional standards of section seventy-six of the domestic  
20 relations law.

21 (c) Subject to the jurisdictional standards of section seventy-six of  
22 the domestic relations law, the court conducting a proceeding under this  
23 article has exclusive, continuing jurisdiction of all matters relating  
24 to the determination of parentage until the child attains the age of one  
25 hundred eighty days.

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

28 § 581-207. Certified copy of judgment of parentage. Upon issuing a  
29 judgment of parentage pursuant to section 581-202 or 581-203 of this  
30 part, the issuing court shall provide a certified copy of such judgment  
31 to the intended parent or parents.

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

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

39 § 8. Paragraph 3 of subdivision (a) and subdivision (d) of section  
40 581-306 of the family court act, as added by section 1 of part L of  
41 chapter 56 of the laws of 2020, are amended to read as follows:

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

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

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

3 § 581-402. Eligibility to enter surrogacy agreement. (a) A person  
4 acting as surrogate shall be eligible to enter into an enforceable  
5 surrogacy agreement under this article if the person acting as surrogate  
6 has met the following requirements at the time the surrogacy agreement  
7 is executed:

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

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

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

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

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

28 (6) the person acting as surrogate, and the spouse of the person  
29 acting as surrogate, if applicable, have been represented [~~throughout]~~  
30 from the initiation of the contractual process and throughout the dura-  
31 tion of the [~~contract and its execution]~~ surrogacy agreement by inde-  
32 pendent legal counsel of their own choosing who is licensed to practice  
33 law in the state of New York which shall be paid for by the intended  
34 parent or parents, except that a person acting as surrogate who is  
35 receiving no compensation may waive the right to have the intended  
36 parent or parents pay the fee for such legal counsel. Where the  
37 [~~intended parent or parents are paying for the]~~ independent legal coun-  
38 sel of the person acting as surrogate, and the spouse of the person  
39 acting as surrogate, if applicable, is paid by the intended parent or  
40 parents, a separate retainer agreement shall be prepared clearly stating  
41 that such legal counsel will only represent the person acting as surro-  
42 gate and the spouse of the person acting as surrogate, if applicable, in  
43 all matters pertaining to the surrogacy agreement, that such legal coun-  
44 sel will not offer legal advice to any other parties to the surrogacy  
45 agreement, and that the attorney-client relationship lies with the  
46 person acting as surrogate and the spouse of the person acting as surro-  
47 gate, if applicable;

48 (7) the person acting as surrogate has or the surrogacy agreement  
49 stipulates that the person acting as surrogate will obtain [~~a]~~ compre-  
50 hensive health insurance [~~policy]~~ coverage that takes effect after the  
51 person acting as surrogate has been deemed medically eligible but prior  
52 to taking any medication or commencing treatment to further embryo  
53 transfer that covers [~~preconception care, prenatal care, major medical~~  
54 ~~treatments, hospitalization, and behavioral health care, and the compre-~~  
55 ~~hensive policy has a term that extends throughout the duration of the~~  
56 ~~expected pregnancy and for twelve months after the birth of the child, a~~

~~1 stillbirth, a miscarriage resulting in termination of pregnancy, or  
2 termination of the pregnancy, the policy shall be paid for, whether  
3 directly or through reimbursement or other means, by the intended parent  
4 or parents on behalf of the person acting as surrogate pursuant to the  
5 surrogacy agreement, except that a person acting as surrogate who is  
6 receiving no compensation may waive the right to have the intended  
7 parent or parents pay for the health insurance policy. The intended  
8 parent or parents shall also pay for or reimburse the person acting as  
9 surrogate for all co-payments, deductibles and any other out-of-pocket  
10 medical costs associated with preconception, pregnancy, childbirth, or  
11 postnatal care, that accrue through twelve months after the birth of the  
12 child, a stillbirth, a miscarriage, or termination of the pregnancy. A  
13 person acting as surrogate who is receiving no compensation may waive  
14 the right to have the intended parent or parents make such payments or  
15 reimbursements]:~~

16 (i) preconception care. The surrogacy agreement shall state that the  
17 intended parent or parents will be responsible for all medical costs of  
18 the person acting as surrogate associated with their preconception care  
19 including but not limited to medical and psychological screenings, medi-  
20 cations, embryo transfer procedure, monitoring prior and subsequent to  
21 the embryo transfer procedure and any complications associated with the  
22 foregoing. The intended parent or parents shall be responsible for the  
23 costs of any such complications either through insurance or by placing  
24 and maintaining sufficient funds in escrow to cover such expenses. If  
25 the surrogacy agreement is terminated after the person acting as surro-  
26 gate has taken any medication or commenced treatment to further embryo  
27 transfer but before pregnancy is achieved, such funds shall remain in  
28 escrow for a minimum period of six months from the date the surrogacy  
29 agreement is terminated;

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

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

53 (8) the surrogacy agreement must provide that the intended parent or  
54 parents shall [~~procure and~~] pay for a life insurance, contractual  
55 liability or accidental death insurance policy for the person acting as  
56 surrogate that takes effect prior to taking any medication or the

1 commencement of medical procedures to further embryo transfer, provides  
2 a minimum benefit of seven hundred fifty thousand dollars or the maximum  
3 amount the person acting as surrogate qualifies for if it is less than  
4 seven hundred fifty thousand dollars, and [~~has a term that extends~~] such  
5 coverage shall extend throughout the duration of the expected pregnancy  
6 and for twelve months after the birth of the child, a stillbirth, a  
7 miscarriage resulting in termination of pregnancy, or termination of the  
8 pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person  
9 acting as surrogate's choosing. The policy shall be paid for, whether  
10 directly or through reimbursement or other means, by the intended parent  
11 or parents on behalf of the person acting as surrogate pursuant to the  
12 surrogacy agreement, except that a person acting as surrogate who is  
13 receiving no compensation may waive the right to have the intended  
14 parent or parents pay for the life insurance, contractual liability or  
15 accidental death insurance policy but not the requirement to have such a  
16 policy; and

17 (9) the person acting as surrogate meets all other requirements deemed  
18 appropriate by the commissioner of health regarding the health of the  
19 prospective surrogate.

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

24 (1) at least one intended parent is:

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

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

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

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

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

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

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

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

51 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement  
52 shall be deemed to have satisfied the requirements of this article and  
53 be enforceable if it meets the following requirements:

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

1 (1) each intended parent, and  
2 (2) the person acting as surrogate, and the spouse of the person  
3 acting as surrogate, if [~~any~~] applicable, unless:  
4 (i) [~~the person acting as surrogate and the spouse of the person~~  
5 ~~acting as surrogate~~] they are living separate and apart pursuant to a  
6 decree or judgment of separation or pursuant to a written agreement of  
7 separation subscribed by the parties thereto and acknowledged or proved  
8 in the form required to entitle a deed to be recorded; or  
9 (ii) they have been living separate and apart for at least three years  
10 prior to execution of the surrogacy agreement;  
11 (b) it shall be executed prior to the person acting as surrogate  
12 taking any medication or the commencement of medical procedures in the  
13 furtherance of embryo transfer, provided the person acting as surrogate  
14 shall have provided informed consent to undergo such medical treatment  
15 or medical procedures prior to executing the agreement;  
16 (c) it shall be executed by a person acting as surrogate meeting the  
17 eligibility requirements of subdivision (a) of section 581-402 of this  
18 part and by the spouse of the person acting as surrogate, if applicable,  
19 unless the signature of the spouse of the person acting as surrogate is  
20 not required as set forth in this section;  
21 (d) it shall be executed by intended parent or parents who met the  
22 eligibility requirements of subdivision (b) of section 581-402 of this  
23 part;  
24 (e) the person acting as surrogate and the spouse of the person acting  
25 as surrogate, if applicable, and the intended parent or parents shall  
26 have been represented [~~throughout~~] from the initiation of the contractu-  
27 al process and the surrogacy agreement states that they shall be repres-  
28 ented throughout the duration of the [~~contract and its execution~~] surro-  
29 gacy agreement by separate, independent legal counsel of their own  
30 choosing, who is licensed to practice law in the state of New York;  
31 (f) if the surrogacy agreement provides for the payment of compen-  
32 sation to the person acting as surrogate, the funds for base compen-  
33 sation and reasonable anticipated additional expenses shall have been  
34 placed in escrow with an independent escrow agent, who consents to the  
35 jurisdiction of New York courts for all proceedings related to the  
36 enforcement of the escrow agreement, prior to the person acting as  
37 surrogate commencing [~~with~~] any medical procedure other than medical  
38 evaluations necessary to determine the person acting as surrogate's  
39 eligibility;  
40 (g) the surrogacy agreement must include information disclosing how  
41 the intended parent or parents will cover the medical expenses of the  
42 person acting as surrogate and the child. The surrogacy agreement shall  
43 specify the amount that the intended parent or parents shall place in  
44 escrow to cover such reasonable anticipated costs including precon-  
45 ception medical care and extending throughout the duration of the  
46 expected surrogacy agreement. If it is anticipated that comprehensive  
47 health care coverage [~~is~~] will be used to cover the medical expenses for  
48 the person acting as surrogate, the [~~disclosure shall include a review~~  
49 ~~and summary of the~~] health care policy provisions related to coverage  
50 and exclusions for the person acting as [~~surrogate's~~] surrogate shall be  
51 reviewed and summarized in relation to the anticipated pregnancy prior  
52 to such policy being used to cover any of the person acting as surro-  
53 gate's medical expenses incurred pursuant to the surrogacy agreement;  
54 and  
55 (h) [~~it~~] the surrogacy agreement shall include the following informa-  
56 tion:

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

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

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

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

11 (5) the name of and contact information for the attorney representing  
12 the person acting as surrogate, and the spouse of the person acting as  
13 surrogate, if applicable, and the attorney representing the intended  
14 parent or parents; and

15 (i) the surrogacy agreement must comply with all of the following  
16 terms:

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

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

21 (ii) the person acting as surrogate and the spouse of the person  
22 acting as surrogate, if applicable, agree to surrender custody of all  
23 resulting children to the intended parent or parents immediately upon  
24 birth;

25 (iii) the surrogacy agreement shall include the name of the attorney  
26 representing the person acting as surrogate and, if applicable, the  
27 spouse of the person acting as surrogate;

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

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

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

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

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

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

1 (x) the surrogacy agreement shall provide that, upon the person acting  
 2 as surrogate's request, the intended parent or parents [~~have or will~~  
 3 ~~procure and~~] shall pay for a disability insurance policy [~~for~~] or other  
 4 insurance policy to cover any lost wages incurred by the person acting  
 5 as surrogate [~~, the person acting as surrogate may designate the benefi-~~  
 6 ~~ciary of the person's choosing~~] in connection with their participation  
 7 in the surrogacy agreement after taking any medication or commencing  
 8 treatment to further embryo transfer excluding medical procedures  
 9 required to determine the medical eligibility to become a person acting  
 10 as surrogate. In the event that such insurance coverage is not avail-  
 11 able, the intended parent or parents shall reimburse the person acting  
 12 as surrogate for any lost wages the person acting as surrogate incurs in  
 13 connection with their participation in the surrogacy agreement.

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

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

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

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

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

29 (v) the intended parent or parents [~~agree to~~] shall execute a will,  
 30 prior to the embryo transfer, designating a guardian for all resulting  
 31 children and authorizing their executor to perform the [~~intended~~  
 32 ~~parent's or parents'~~] obligations of the intended parent or parents  
 33 pursuant to the surrogacy agreement, including filing a proceeding for a  
 34 judgment of parentage for a child conceived pursuant to a surrogacy  
 35 agreement pursuant to section 581-203 of this article if there is no  
 36 intended parent living.

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

40 (b) The subsequent separation or divorce of the intended parents does  
 41 not affect the rights, duties and responsibilities of the intended  
 42 parents as outlined in the surrogacy agreement. After the execution of a  
 43 surrogacy agreement under this article, the subsequent spousal relation-  
 44 ship of the intended parent does not affect the validity of a surrogacy  
 45 agreement, and the consent of the new spouse of [~~the~~] an intended parent  
 46 to the agreement shall not be required.

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

50 § 581-405. Termination of surrogacy agreement. After the execution of  
 51 a surrogacy agreement but before the [~~person acting as surrogate becomes~~  
 52 ~~pregnant by means of assisted reproduction,~~] embryo transfer occurs or  
 53 after an unsuccessful embryo transfer, the person acting as surrogate,  
 54 the spouse of the person acting as surrogate, if applicable, or any  
 55 intended parent may terminate the surrogacy agreement by giving notice  
 56 of termination in a record to all other parties. Upon proper termination

1 of the surrogacy agreement the parties are released from all obligations  
2 recited in the surrogacy agreement except that the intended parent or  
3 parents [~~remains~~] shall remain responsible for all [~~expenses that are~~  
4 ~~reimbursable~~] lost wages and other financial obligations which have  
5 accrued under the agreement [~~which have been incurred by the person~~  
6 ~~acting as surrogate~~] through the date of termination. If the intended  
7 parent or parents terminate the surrogacy agreement pursuant to this  
8 section after the person acting as surrogate has taken any medication or  
9 commenced treatment to further embryo transfer, such intended parent or  
10 parents shall be responsible for paying [~~for or reimbursing the person~~  
11 ~~acting as surrogate for all co-payments, deductibles,~~] any other out-of-  
12 pocket medical costs[, ~~and any other economic losses~~] incurred within  
13 twelve months [~~of~~] after the termination of the agreement [~~and~~] which,  
14 as documented by a health care practitioner, are associated with taking  
15 such medication or undertaking such treatment. Unless the agreement  
16 provides otherwise, the person acting as surrogate is entitled to keep  
17 all payments received and obtain all payments to which the person is  
18 entitled up until the date of termination of the agreement. Neither a  
19 person acting as surrogate nor the spouse of the person acting as surro-  
20 gate, if [~~any~~] applicable, is liable to the intended parent or parents  
21 for terminating a surrogacy agreement as provided in this section.

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

25 § 581-406. Parentage under compliant surrogacy agreement. Upon the  
26 birth of a child conceived by assisted reproduction under a surrogacy  
27 agreement that complies with this part, each intended parent is, by  
28 operation of law, a parent of the child and neither the person acting as  
29 [~~a~~] surrogate nor the person's spouse, if [~~any~~] applicable, is a parent  
30 of the child.

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

34 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is  
35 related to a surrogacy agreement other than disputes as to parentage,  
36 which are not resolved through alternative dispute resolution methods,  
37 shall be resolved by the supreme court, which shall determine the  
38 respective rights and obligations of the parties[, ~~in~~]. In any proceed-  
39 ing initiated pursuant to this section, the court may, at its  
40 discretion, authorize the use of conferencing or mediation at any point  
41 in the proceedings.

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

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

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

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

8 (e) In any proceeding initiated pursuant to this section, where the  
9 supreme court determines that the dispute involves both contractual and  
10 parentage issues, the court may order that the portion of the  
11 proceedings raising parentage issues may be transferred to the family or  
12 surrogate's court.

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

16 § 581-502. Compensation. (a) Compensation may be paid to a donor or  
17 person acting as surrogate based on medical risks, physical discomfort,  
18 inconvenience and the responsibilities they are undertaking in  
19 connection with their participation in the assisted reproduction. Under  
20 no circumstances may compensation be paid to purchase gametes or embryos  
21 or for the release of a parental interest in a child.

22 (b) The compensation, if any, paid to a donor or person acting as  
23 surrogate must be reasonable and negotiated in good faith between the  
24 parties~~[, and said payments]~~. Base compensation paid to a person acting  
25 as surrogate shall not exceed the duration of the pregnancy and recuper-  
26 ative period of ~~[up to]~~ eight weeks after the birth of any resulting  
27 ~~[children]~~ child. Supplemental compensation for any medical procedure  
28 associated with complications from the pregnancy or delivery as  
29 confirmed by a health care practitioner, and any associated lost wages,  
30 may be, but are not required to be, paid after the recuperative period  
31 and until twelve months after the birth of the child, a stillbirth, a  
32 miscarriage resulting in termination of the pregnancy, or termination of  
33 the pregnancy.

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

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

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

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

44 § 581-601. Applicability. The rights enumerated in this part shall  
45 apply to any person acting as surrogate ~~[in this state]~~ under the laws  
46 of the state of New York, notwithstanding any surrogacy agreement, judg-  
47 ment of parentage, memorandum of understanding, verbal agreement or  
48 contract to the contrary. Except as otherwise provided by law, any writ-  
49 ten or verbal agreement purporting to waive or limit any of the rights  
50 in this part is void as against public policy. The rights enumerated in  
51 this part are not exclusive, and are in addition to any other rights  
52 provided by law, regulation, or a surrogacy agreement that meets the  
53 requirements of this article.

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

1 § 581-603. Independent legal counsel. A person acting as surrogate,  
2 and the spouse of the person acting as surrogate, if applicable, has the  
3 right to be represented [~~throughout~~] from the initiation of the contrac-  
4 tual process and throughout the duration of the surrogacy agreement [~~and~~  
5 ~~its execution~~] by independent legal counsel of their own choosing who is  
6 licensed to practice law in the state of New York, to be paid for by the  
7 intended parent or parents.

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

11 § 581-604. Health insurance and medical costs. A person acting as  
12 surrogate has the right to have [~~a~~] comprehensive health insurance  
13 [~~policy~~] coverage that covers preconception [~~care, prenatal care, major~~  
14 ~~medical treatments, hospitalization and behavioral health care~~] medical  
15 expenses and medical expenses associated with the pregnancy for a [~~term~~]  
16 period that extends throughout the duration of the expected pregnancy  
17 and for twelve months after the birth of the child, a stillbirth, a  
18 miscarriage resulting in termination of pregnancy, or termination of the  
19 pregnancy, to be paid for by the intended parent or parents. [~~The~~  
20 ~~intended parent or parents shall also pay for or reimburse the person~~  
21 ~~acting as surrogate for all co-payments, deductibles and any other out-~~  
22 ~~of-pocket medical costs associated with pregnancy, childbirth, or post-~~  
23 ~~natal care that accrue through~~] In addition, a person acting as a  
24 surrogate shall have the right to have the intended parent or parents  
25 pay for all of their medical expenses incurred in connection with the  
26 surrogacy agreement, continuing through the duration of the expected  
27 pregnancy and for twelve months after the birth of the child, a still-  
28 birth, a miscarriage resulting in the termination of pregnancy, or the  
29 termination of the pregnancy. A person acting as a surrogate who is  
30 receiving no compensation may waive the right to have the intended  
31 parent or parents make such payments or reimbursements.

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

35 § 581-605. Counseling. A person acting as surrogate has the right to  
36 [~~obtain a comprehensive health insurance policy that covers behavioral~~  
37 ~~health care and will cover the cost of psychological~~] mental health  
38 counseling to address issues resulting from their participation in [~~a~~]  
39 the surrogacy [~~and such policy~~] agreement, which shall be paid for by an  
40 insurance policy or by the intended parent or parents.

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

44 § 581-606. Life insurance, contractual liability, or accidental death  
45 insurance policy. A person acting as surrogate has the right to be  
46 provided a life insurance, contractual liability or accidental death  
47 insurance policy that takes effect prior to taking any medication or  
48 commencement of treatment to further embryo transfer, provides a minimum  
49 benefit of seven hundred fifty thousand dollars, or the maximum amount  
50 the person acting as surrogate [~~qualifying~~] qualifies for [~~it~~] if less  
51 than seven hundred fifty thousand dollars, and [~~has a term that extends~~]  
52 such coverage shall extend throughout the duration of the expected preg-  
53 nancy and for twelve months after the birth of the child, a stillbirth,  
54 a miscarriage resulting in termination of pregnancy, or termination of  
55 the pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person

1 acting as surrogate's choosing, to be paid for by the intended parent or  
2 parents.

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

5 § 581-705. Adjudication. (a) A court adjudicating the parentage of a  
6 child conceived through assisted reproduction or adjudicating the  
7 enforceability of an embryo disposition agreement may apply section  
8 581-202 and part three of this article retroactively.

9 (b) The participants in a surrogacy agreement that involved the  
10 payment of compensation prior to February fifteenth, two thousand twen-  
11 ty-two shall not be eligible to receive a judgment of parentage pursuant  
12 to section 581-203 or section 581-406 of this article, but shall be  
13 entitled to seek a judgment of parentage pursuant to section 581-407 of  
14 this article.

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

18 (d) Surrogacy agreements that were executed on or after February  
19 fifteenth, two thousand twenty-three, but before the effective date of  
20 the chapter of the laws of two thousand twenty-four that added this  
21 subdivision that were in compliance with this article before it was  
22 amended by the chapter of the laws of two thousand twenty-four that  
23 added this subdivision shall be deemed a compliant surrogacy agreement  
24 pursuant to section 581-406 of this article regardless of any deviations  
25 from the current provisions of this article.

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

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

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

36 (c) "Surrogacy program" does not include any party to a surrogacy  
37 agreement or any person licensed to practice law and representing a  
38 party to the surrogacy agreement, but does include and is not limited to  
39 any agency, agent, business, or individual engaged in, arranging, or  
40 facilitating transactions contemplated by a surrogacy agreement, regard-  
41 less of whether such agreement ultimately comports with the requirements  
42 of part four of article five-C of the family court act. Any person  
43 licensed to practice law shall be deemed a surrogacy program only in  
44 those cases where such person is providing matching services to the  
45 intended parent or parents and the person acting as a surrogate.

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

49 § 1401. Surrogacy programs regulated under this article. The  
50 provisions of this article apply to surrogacy programs arranging or  
51 facilitating transactions contemplated by a surrogacy agreement, regard-  
52 less of whether such agreement ultimately comports with the requirements  
53 under part four of article five-C of the family court act if:

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

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

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

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

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

12 (f) Shall be licensed to operate in New York state pursuant to regu-  
13 lations promulgated by the department of health in consultation with the  
14 department of financial services[~~, once such regulations are promulgated~~  
15 ~~and become effective~~]; and

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

19 1. The department of health, in consultation with the department of  
20 financial services, shall promulgate rules and regulations to implement  
21 the requirements of this article regarding surrogacy programs and  
22 assisted reproduction service providers in a manner that ensures the  
23 safety and health of gamete providers and persons serving as surrogates.  
24 Such regulations shall:

25 (a) Require surrogacy programs to monitor compliance with [~~surrogacy~~  
26 ~~agreements~~] eligibility [~~and requirements in state law~~] criteria for the  
27 intended parents and persons acting as surrogates pursuant to section  
28 581-402 of the family court act; and

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

33 § 27. This act shall take effect immediately.