S T A T E O F N E W Y O R K

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I N A S S E M B L Y

May 29, 2012

Introduced by M. of A. PAULIN, TITONE, LAVINE, ROBINSON, GALEF, JAFFEE, P. RIVERA, ZEBROWSKI, WEPRIN -- Multi-Sponsored by -- M. of A. BOYLAND, GOTTFRIED, LINARES -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to establishing the child-parent security act; and to repeal section 73 and article 8 of the domestic relations law, relating to legitimacy of children born by artificial insemination and surrogate parenting contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The family court act is amended by adding a new article 5-C to read as follows:

ARTICLE 5-C
CHILD-PARENT SECURITY ACT

PART 1 GENERAL PROVISIONS (581-101 - 581-103)
2 JUDGMENT OF PARENTAGE (581-201 - 581-206)
3 CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION (581-301 - 581-307)
4 GESTATIONAL AGREEMENT (581-401 - 581-411)
5 PAYMENT TO DONORS AND GESTATIONAL CARRIERS (581-501 - 581-502)
6 FORMATION OF LEGAL PARENT-CHILD RELATIONSHIP AFTER BIRTH OF CHILD (581-601)
7 MISCELLANEOUS PROVISIONS (581-701 - 581-703)

PART 1
GENERAL PROVISIONS

SECTION 581-101. SHORT TITLE.
581-102. PURPOSE.
581-103. DEFINITIONS.

S 581-101. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "CHILD-PARENT SECURITY ACT".

S 581-102. PURPOSE. THE PURPOSE OF THIS ARTICLE IS TO LEGALLY ESTABLISH A CHILD'S RELATIONSHIP TO HIS OR HER PARENTS.

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

LBD15555-03-2

S 581-103. DEFINITIONS. (A) "ARTIFICIAL INSEMINATION" MEANS INSERTION OF SPERM INTO FEMALE REPRODUCTIVE ORGANS BY ANY MEANS OTHER THAN SEXUAL INTERCOURSE, INCLUDING INTRAUTERINE INSEMINATION, WITH THE INTENT TO CAUSE A PREGNANCY.

(B) "ASSISTED REPRODUCTION" INCLUDES ALL FERTILITY TREATMENTS IN WHICH BOTH EGGS AND SPERM ARE HANDLED. IN THE FOREGOING CONTEXT, THE TERM INCLUDES, BUT IS NOT LIMITED TO IN-VITRO FERTILIZATION AND TRANSFER OF EMBRYOS INCLUDING DONATED GAMETES OR DONATED EMBRYOS.

(C) "ART PROVIDER" MEANS ANY ENTITY WHICH ASSISTS WITH ASSISTED REPRODUCTIVE TECHNOLOGY.

(D) "ASSISTED REPRODUCTIVE TECHNOLOGY" OR "ART" IS ANY MEDICAL OR SCIENTIFIC INTERVENTION, INCLUDING, BUT NOT LIMITED TO, ASSISTED REPRODUCTION, PROVIDED FOR THE PURPOSE OF ACHIEVING LIVE BIRTH THAT RESULTS FROM ASSISTED CONCEPTION. ASSISTED CONCEPTION MEANS THE FORMATION OF A HUMAN EMBRYO OUTSIDE THE BODY WITH THE INTENT TO PRODUCE A LIVE BIRTH.

(E) "CHILD" MEANS A LIVE BORN INDIVIDUAL OF ANY AGE WHOSE PARENTAGE MAY BE DETERMINED UNDER THIS ACT OR OTHER LAW.

(F) "COLLABORATIVE REPRODUCTION" INVOLVES ARTIFICIAL INSEMINATION WITH DONOR SPERM AND ANY ASSISTED REPRODUCTION IN WHICH AN INDIVIDUAL OTHER THAN THE INTENDED PARENT PROVIDES GENETIC MATERIAL OR AGREES TO ACT AS A GESTATIONAL CARRIER. IT CAN INCLUDE, BUT IS NOT LIMITED TO, (1) ATTEMPTS BY THE INTENDED PARENT TO CREATE A CHILD THROUGH MEANS OF A GESTATIONAL ARRANGEMENT, WITH OR WITHOUT THE INVOLVEMENT OF A DONOR, AND (2) ASSISTED REPRODUCTION INVOLVING A DONOR WHERE A GESTATIONAL CARRIER IS NOT USED.

(G) "COMPENSATION" MEANS PAYMENT OF ANY VALUABLE CONSIDERATION FOR TIME, EFFORT, PAIN AND/OR RISK TO HEALTH IN EXCESS OF REASONABLE MEDICAL AND ANCILLARY COSTS.

(H) "CONSULTATION" MEANS AN INITIAL IN-PERSON MEETING WITH A LICENSED MENTAL HEALTH PROFESSIONAL FOR THE PURPOSE OF EDUCATING THE PARTICIPANT ABOUT THE EFFECTS AND POTENTIAL CONSEQUENCES OF THEIR PARTICIPATION IN ANY ART PROCEDURE.

(I) "COUNSELING" MEANS ADDITIONAL MEETINGS WITH A MENTAL HEALTH PROFESSIONAL AFTER THE CONSULTATION FOR THE PURPOSE OF ADVISING AND EMOTIONALLY SUPPORTING THE PARTICIPANT DURING THE IMPLEMENTATION OF ANY ART PROCEDURE.

(J) "DONOR" MEANS AN INDIVIDUAL WHO PRODUCES EGGS OR SPERM USED FOR ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION, WHETHER OR NOT FOR CONSIDERATION. DONOR ALSO INCLUDES AN INDIVIDUAL OR INDIVIDUALS WITH DISPOSITIONAL CONTROL OF AN EMBRYO WHO PROVIDE IT TO ANOTHER PERSON FOR THE PURPOSE OF GESTATION AND RELINQUISHES ALL PRESENT AND FUTURE PARENTAL AND INHERITANCE RIGHTS AND OBLIGATIONS TO A RESULTING CHILD. THE TERM DOES NOT INCLUDE AN INTENDED PARENT WHO PROVIDES GAMETES TO BE USED FOR ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION.

(K) "EMBRYO" MEANS A CELL OR GROUP OF CELLS CONTAINING A DIPLOID COMPLEMENT OF CHROMOSOMES OR GROUP OF SUCH CELLS, NOT A GAMETE OR GAMETES, THAT HAS THE POTENTIAL TO DEVELOP INTO A LIVE BORN HUMAN BEING IF TRANSFERRED INTO THE BODY OF A WOMAN UNDER CONDITIONS IN WHICH GESTATION MAY BE REASONABLY EXPECTED TO OCCUR.

(L) "EMBRYO TRANSFER" MEANS ALL MEDICAL AND LABORATORY PROCEDURES THAT ARE NECESSARY TO EFFECTUATE THE TRANSFER OF AN EMBRYO INTO THE UTERINE CAVITY.

(M) "GAMETE" MEANS A CELL CONTAINING A HAPLOID COMPLEMENT OF DNA THAT HAS THE POTENTIAL TO FORM AN EMBRYO WHEN COMBINED WITH ANOTHER GAMETE. SPERM AND EGGS ARE GAMETES. A GAMETE MAY CONSIST OF NUCLEAR DNA FROM ONE

HUMAN BEING COMBINED WITH THE CYTOPLASM, INCLUDING CYTOPLASMIC DNA, OF ANOTHER HUMAN BEING.

(N) "GAMETE PROVIDER" MEANS AN INDIVIDUAL WHO PROVIDES SPERM OR EGGS FOR USE IN ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION.

(O) "GESTATIONAL AGREEMENT" IS A CONTRACT BETWEEN INTENDED PARENTS AND A GESTATIONAL CARRIER INTENDED TO RESULT IN A LIVE BIRTH WHERE THE CHILD WILL BE THE LEGAL CHILD OF THE INTENDED PARENTS.

(P) "GESTATIONAL CARRIER" MEANS AN ADULT WOMAN, NOT AN INTENDED PARENT, WHO ENTERS INTO A GESTATIONAL AGREEMENT TO BEAR A CHILD WHO WILL BE THE LEGAL CHILD OF THE INTENDED PARENTS SO LONG AS SHE HAS NOT PROVIDED THE EGG USED TO CONCEIVE THE RESULTING CHILD.

(Q) "GESTATIONAL CARRIER ARRANGEMENT" MEANS THE PROCESS BY WHICH A GESTATIONAL CARRIER ATTEMPTS TO CARRY AND GIVE BIRTH TO A CHILD CREATED THROUGH ASSISTED REPRODUCTION SO LONG AS THE GESTATIONAL CARRIER HAS NOT PROVIDED THE EGG USED TO CONCEIVE THE RESULTING CHILD.

(R) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL LICENSED OR CERTIFIED UNDER TITLE EIGHT OF THE EDUCATION LAW ACTING WITHIN HIS OR HER SCOPE OF PRACTICE.

(S) "INTENDED PARENT" IS AN INDIVIDUAL WHO MANIFESTS THE INTENT AS PROVIDED IN THIS ACT TO BE LEGALLY BOUND AS THE PARENT OF A CHILD RESULTING FROM ASSISTED REPRODUCTION OR COLLABORATIVE REPRODUCTION.

(T) "IN-VITRO FERTILIZATION" MEANS THE FORMATION OF A HUMAN EMBRYO OUTSIDE THE HUMAN BODY.

(U) "MEDICAL EVALUATION" MEANS AN EVALUATION AND CONSULTATION WITH A HEALTH CARE PROVIDER REGARDING THE ANTICIPATED PREGNANCY.

(V) "MENTAL HEALTH EVALUATION" MEANS AN EVALUATION BY A MENTAL HEALTH PROFESSIONAL AS TO PARTICIPANTS' SUITABILITY TO PARTICIPATE IN COLLABORATIVE REPRODUCTION.

(W) "MENTAL HEALTH PROFESSIONAL" IS AN INDIVIDUAL WHO (1) HOLDS A MASTERS OR DOCTORAL DEGREE IN ONE OF THE FOLLOWING FIELDS: PSYCHIATRY, PSYCHOLOGY, COUNSELING, SOCIAL WORK, PSYCHIATRIC NURSING, MARRIAGE AND FAMILY THERAPY, OR STATE EQUIVALENT; AND (2) IS LICENSED, CERTIFIED, OR REGISTERED TO PRACTICE IN THE MENTAL HEALTH FIELD; AND (3) HAS RECEIVED TRAINING IN, OR HAS KNOWLEDGE OF, REPRODUCTIVE PHYSIOLOGY; THE TESTING, DIAGNOSIS, AND TREATMENT OF INFERTILITY; AND/OR THE PSYCHOLOGICAL ISSUES IN INFERTILITY AND COLLABORATIVE REPRODUCTION. IF THERE ARE QUESTIONS ABOUT INHERITED OR GENETIC DISORDERS, THE COUNSELOR MUST REFER THE PARTICIPANT TO A QUALIFIED GENETIC COUNSELOR.

(X) "PARENT" MEANS AN INDIVIDUAL WHO HAS ESTABLISHED A PARENT-CHILD RELATIONSHIP UNDER THIS ACT OR OTHER LAW AND INCLUDES, BUT IS NOT LIMITED TO: (1) A CHILD'S BIRTH PARENT WHO IS NOT A GESTATIONAL CARRIER OR THE SPOUSE OF THE GESTATIONAL CARRIER; (2) A CHILD'S GENETIC PARENT WHO IS NOT THE DONOR; (3) AN INDIVIDUAL WHO HAS LEGALLY ADOPTED THE CHILD; (4) AN INDIVIDUAL WHO IS A PARENT OF THE CHILD PURSUANT TO A LEGAL PRESUMPTION; (5) AN INDIVIDUAL WHO IS A PARENT OF THE CHILD PURSUANT TO AN ACKNOWLEDGMENT OR JUDGMENT OF PARENTAGE PURSUANT TO ARTICLE TWO OF THIS ACT OR OTHER LAW; (6) AN INDIVIDUAL WHO IS A PARENT OF THE CHILD PURSUANT TO ARTICLE THREE, FOUR, OR SIX OF THIS ACT.

(Y) "PARTICIPANT" MEANS AN INDIVIDUAL WHO PROVIDES A BIOLOGICAL OR GENETIC COMPONENT OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION, AN INTENDED PARENT, AND THE SPOUSE OF AN INTENDED PARENT OR GESTATIONAL CARRIER. GESTATION IS A BIOLOGICAL COMPONENT WITHIN THE MEANING OF THIS DEFINITION.

(Z) "RECORD" MEANS INFORMATION INSCRIBED IN A TANGIBLE MEDIUM OR STORED IN AN ELECTRONIC OR OTHER MEDIUM THAT IS RETRIEVABLE IN PERCEIVABLE FORM.

(AA) "RETRIEVAL" MEANS THE PROCUREMENT OF EGGS OR SPERM FROM A GAMETE PROVIDER.

(BB) "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.

(CC) "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.

(DD) "TIME OF TRANSFER" MEANS THE TIME AT WHICH A GAMETE OR EMBRYO IS TRANSFERRED INTO THE BODY OF A WOMAN WITH THE INTENT TO PRODUCE LIVE BIRTH.

(EE) "TRANSFER" MEANS THE PLACEMENT OF AN EMBRYO OR GAMETES INTO THE BODY OF A WOMAN WITH THE INTENT TO ACHIEVE PREGNANCY AND LIVE BIRTH.

PART 2
JUDGMENT OF PARENTAGE

SECTION 581-201. JUDGMENT OF PARENTAGE.
581-202. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN THROUGH ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION.
581-203. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN PURSUANT TO A GESTATIONAL CARRIER ARRANGEMENT.
581-204. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD WHOSE PARENTAGE IS ESTABLISHED PURSUANT TO SECTION 581-601 OF THIS ARTICLE.
581-205. JUDGMENT OF PARENTAGE FOR INTENDED PARENTS WHO ARE SPOUSES.
581-206. JURISDICTION.

S 581-201. JUDGMENT OF PARENTAGE. (A) A CIVIL PROCEEDING MAY BE MAINTAINED TO ADJUDICATE THE PARENTAGE OF A CHILD UNDER THE CIRCUMSTANCES SET FORTH IN THIS ARTICLE. THIS PROCEEDING IS GOVERNED BY THE NEW YORK CIVIL PRACTICE LAW AND RULES.

(B) A JUDGMENT OF PARENTAGE MAY BE ISSUED PRIOR TO BIRTH BUT SHALL NOT BECOME EFFECTIVE UNTIL THE BIRTH OF THE CHILD.

(C) A JUDGMENT OF PARENTAGE SHALL BE ISSUED BY THE COURT UPON THE PETITION OF (1) A CHILD, OR (2) A PARENT, OR (3) A PARTICIPANT, OR (4) THE SUPPORT/ENFORCEMENT AGENCY OR OTHER GOVERNMENTAL AGENCY AUTHORIZED BY OTHER LAW, OR (5) A REPRESENTATIVE AUTHORIZED BY LAW TO ACT FOR AN INDIVIDUAL WHO WOULD OTHERWISE BE ENTITLED TO MAINTAIN A PROCEEDING BUT WHO IS DECEASED, INCAPACITATED, OR A MINOR, IN ORDER TO LEGALLY ESTABLISH THE CHILD-PARENT RELATIONSHIP UNDER THE FOLLOWING CIRCUMSTANCES:

(I) A CHILD BORN THROUGH ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION UNDER PART THREE OF THIS ARTICLE; OR

(II) A CHILD BORN PURSUANT TO A GESTATIONAL CARRIER ARRANGEMENT UNDER PART FOUR OF THIS ARTICLE; OR

(III) A CHILD WHOSE PARENTAGE CAN BE ESTABLISHED PURSUANT TO PART SIX OF THIS ARTICLE.

S 581-202. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN THROUGH ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION. (A) A PROCEEDING FOR A JUDGMENT OF PARENTAGE MAY BE COMMENCED:

(1) IF THE INTENDED PARENTS RESIDE IN NEW YORK STATE, IN THE COUNTY WHERE THE INTENDED PARENTS RESIDE ANY TIME AFTER PREGNANCY IS ACHIEVED OR IN THE COUNTY WHERE THE CHILD WAS BORN OR RESIDES; OR

(2) IF THE INTENDED PARENTS AND CHILD DO NOT RESIDE IN NEW YORK STATE, UP TO NINETY DAYS AFTER THE BIRTH OF THE CHILD IN THE COUNTY WHERE THE CHILD IS BORN.

(B) THE PETITION FOR A JUDGMENT OF PARENTAGE MUST BE VERIFIED AND INCLUDE THE FOLLOWING:

(1) A STATEMENT THAT THE INTENDED PARENTS HAVE BEEN RESIDENTS OF THE STATE FOR AT LEAST NINETY DAYS OR IF THEY ARE NOT NEW YORK STATE RESIDENTS, THE CHILD WAS BORN IN THE STATE; AND

(2) A STATEMENT FROM THE GESTATING MOTHER THAT SHE BECAME PREGNANT AS A RESULT OF THE DONATION OF THE GAMETES OR EMBRYOS AND A REPRESENTATION OF NON-ACCESS DURING THE TIME OF CONCEPTION; AND

(3) A STATEMENT THAT THE INTENDED PARENTS CONSENTED TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION PURSUANT TO SECTION 581-304 OF THIS ARTICLE; AND

(4) WHERE THE GAMETES OR EMBRYOS WERE RECEIVED FROM A GAMETE OR EMBRYO STORAGE FACILITY, AN ATTACHED STATEMENT FROM THE FACILITY HAVING CUSTODY OF THE GAMETES OR EMBRYOS DEMONSTRATING THE DONATIVE INTENT OF THE GAMETE OR EMBRYO DONOR.

(C) THE FOLLOWING SHALL BE DEEMED SUFFICIENT PROOF OF A DONOR'S DONATIVE INTENT:

(1) IN THE CASE OF AN ANONYMOUS DONOR, A STATEMENT FROM THE GAMETE OR EMBRYO STORAGE FACILITY WITH CUSTODY OF THE GAMETES OR EMBRYOS THAT THE DONOR RELINQUISHED ANY PARENTAL OR PROPRIETARY INTEREST IN THE GAMETES OR EMBRYOS AT THE TIME OF DONATION; AND

(2) IN THE CASE OF A DONATION FROM A KNOWN DONOR, A NOTARIZED STATEMENT FROM THE GAMETE OR EMBRYO DONOR ACKNOWLEDGING THE DONATION AND CONFIRMING THAT THE DONORS HAVE NO PARENTAL OR PROPRIETARY INTEREST IN THE GAMETES OR EMBRYOS. IN THE ABSENCE OF A NOTARIZED STATEMENT FROM THE DONOR, THE DONOR SHALL BE SERVED BY MAIL AT THE DONOR'S LAST KNOWN ADDRESS WITH NOTICE OF THE PROCEEDING. FAILURE TO RESPOND TO SAID NOTICE SHALL BE CONSIDERED A DEFAULT AND NO FURTHER NOTICE SHALL BE REQUIRED.

(D) WHERE A PETITION DEMONSTRATES THE CONSENT OF THE INTENDED PARENTS PURSUANT TO SECTION 581-304 OF THIS ARTICLE, THE DONATIVE INTENT OF THE GAMETE OR EMBRYO DONORS AND THAT THE PREGNANCY RESULTED FROM THE DONATION, THE COURT SHALL ISSUE A JUDGMENT OF PARENTAGE:

(1) DECLARING, THAT UPON THE BIRTH OF THE CHILD, THE INTENDED PARENTS ARE THE ONLY LEGAL PARENTS OF THE CHILD; AND

(2) ORDERING THE INTENDED PARENTS TO ASSUME SOLE RESPONSIBILITY FOR THE MAINTENANCE AND SUPPORT OF THE CHILD IMMEDIATELY UPON THE BIRTH OF THE CHILD; AND

(3) ORDERING THAT UPON THE BIRTH OF THE CHILD, A COPY OF THE JUDGMENT OF PARENTAGE BE SERVED ON THE (I) DEPARTMENT OF HEALTH OR NEW YORK CITY DEPARTMENT OF MENTAL HEALTH AND HYGIENE, OR (II) REGISTRAR OF BIRTHS IN THE HOSPITAL WHERE THE CHILD IS BORN AND DIRECTING THAT THE HOSPITAL REPORT THE PARENTAGE OF THE CHILD TO THE APPROPRIATE DEPARTMENT OF HEALTH IN CONFORMITY WITH THE COURT ORDER. IF AN ORIGINAL BIRTH CERTIFICATE HAS ALREADY ISSUED, THE COURT SHALL ISSUE AN ORDER DIRECTING THE APPROPRIATE DEPARTMENT OF HEALTH TO AMEND THE BIRTH CERTIFICATE IN AN EXPEDITED MANNER AND SEAL THE PREVIOUSLY ISSUED BIRTH CERTIFICATE.

S 581-203. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN PURSUANT TO A GESTATIONAL CARRIER ARRANGEMENT. (A) THE PROCEEDING MAY BE COMMENCED AT ANY TIME AFTER THE GESTATIONAL AGREEMENT HAS BEEN EXECUTED BY ALL OF THE PARTIES. ANY PARTY TO THE GESTATIONAL AGREEMENT NOT JOINING IN THE PETITION MUST BE SERVED WITH NOTICE OF THE PROCEEDING. FAILURE TO RESPOND TO THE NOTICE SHALL BE CONSIDERED A DEFAULT AND NO FURTHER NOTICE SHALL BE REQUIRED.

(B) THE PETITION FOR A JUDGMENT OF PARENTAGE MUST BE VERIFIED AND INCLUDE THE FOLLOWING:

(1) A STATEMENT THAT THE GESTATIONAL CARRIER OR THE INTENDED PARENTS HAVE BEEN RESIDENTS OF THE STATE FOR AT LEAST NINETY DAYS AT THE TIME THE GESTATIONAL AGREEMENT WAS EXECUTED; AND

(2) A CERTIFICATION FROM THE ATTORNEYS REPRESENTING THE PETITIONERS THAT THE PARTIES ARE ELIGIBLE TO PARTICIPATE IN THE GESTATIONAL CARRIER ARRANGEMENT AS REQUIRED BY SECTION 581-404 OF THIS ARTICLE AND THAT THE GESTATIONAL AGREEMENT CONTAINS THE REQUIRED TERMS UNDER SECTION 581-405 OF THIS ARTICLE; AND

(3) A STATEMENT THAT THE PARTIES ENTERED INTO THE GESTATIONAL AGREEMENT KNOWINGLY AND VOLUNTARILY.

(C) WHERE A PETITION SATISFIES SUBDIVISION (B) OF THIS SECTION, THE COURT SHALL ISSUE A JUDGMENT OF PARENTAGE, WITHOUT ADDITIONAL PROCEEDINGS OR DOCUMENTATION:

(1) DECLARING, THAT UPON THE BIRTH OF A CHILD BORN DURING THE TERM OF THE GESTATIONAL AGREEMENT, THE INTENDED PARENTS ARE THE LEGAL PARENTS OF THE CHILD; AND

(2) DECLARING, THAT UPON THE BIRTH OF A CHILD BORN DURING THE TERM OF THE GESTATIONAL AGREEMENT, THE GESTATIONAL CARRIER, AND HER SPOUSE, IF ANY, ARE NOT THE LEGAL PARENTS OF THE CHILD; AND

(3) ORDERING THE GESTATIONAL CARRIER AND HER SPOUSE, IF ANY, TO TRANSFER THE CHILD TO THE INTENDED PARENTS IF THIS HAS NOT ALREADY OCCURRED; AND

(4) ORDERING THE INTENDED PARENTS TO ASSUME SOLE RESPONSIBILITY FOR THE MAINTENANCE AND SUPPORT OF THE CHILD IMMEDIATELY UPON THE BIRTH OF THE CHILD; AND

(5) ORDERING THAT UPON THE BIRTH OF THE CHILD, A COPY OF THE JUDGMENT OF PARENTAGE BE SERVED ON THE (I) DEPARTMENT OF HEALTH OR NEW YORK CITY DEPARTMENT OF MENTAL HEALTH AND HYGIENE, OR (II) REGISTRAR OF BIRTHS IN THE HOSPITAL WHERE THE CHILD IS BORN AND DIRECTING THAT THE HOSPITAL REPORT THE PARENTAGE OF THE CHILD TO THE APPROPRIATE DEPARTMENT OF HEALTH IN CONFORMITY WITH THE COURT ORDER. IF AN ORIGINAL BIRTH CERTIFICATE HAS ALREADY ISSUED, THE COURT SHALL ISSUE AN ORDER DIRECTING THE APPROPRIATE DEPARTMENT OF HEALTH TO AMEND THE BIRTH CERTIFICATE IN AN EXPEDITED MANNER AND SEAL THE PREVIOUSLY ISSUED BIRTH CERTIFICATE.

(D) THE AGREEMENT OF THE INTENDED PARENTS TO PAY REASONABLE COMPENSATION TO THE GESTATIONAL CARRIER IN EXCESS OF REASONABLE MEDICAL AND ANCILLARY COSTS SHALL NOT BE A BAR TO THE ISSUANCE OF A JUDGMENT OF PARENTAGE.

S 581-204. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD WHOSE PARENTAGE IS ESTABLISHED PURSUANT TO SECTION 581-601 OF THIS ARTICLE. A PROCEEDING FOR A JUDGMENT OF PARENTAGE MAY BE COMMENCED BY VERIFIED PETITION TO ESTABLISH PARENTAGE UNDER SECTION 581-601 OF THIS ARTICLE AT ANY TIME IN THE COUNTY OF RESIDENCE OF THE CHILD OR OF A PARENT, INCLUDING A PERSON ASSERTING TO HAVE FORMED A PARENT-CHILD RELATIONSHIP WITH A CHILD UNDER SECTION 581-601 OF THIS ARTICLE. UPON A DETERMINATION OF PARENTAGE UNDER SECTION 581-601 OF THIS ARTICLE, THE COURT SHALL ISSUE A JUDGMENT OF PARENTAGE DECLARING THE PARENTS OF THE CHILD FOR ALL LEGAL PURPOSES.

S 581-205. JUDGMENT OF PARENTAGE FOR INTENDED PARENTS WHO ARE SPOUSES. NOTWITHSTANDING OR WITHOUT LIMITATION ON PRESUMPTIONS OF PARENTAGE THAT APPLY, A JUDGMENT OF PARENTAGE MAY BE OBTAINED UNDER THIS PART BY INTENDED PARENTS WHO ARE EACH OTHER'S SPOUSE.

S 581-206. JURISDICTION. PROCEEDINGS PURSUANT TO THIS ARTICLE MAY BE INSTITUTED IN THE SUPREME, FAMILY OR SURROGATE'S COURT EXCEPT FOR

PROCEEDINGS PURSUANT TO SECTION 581-204 OF THIS PART MAY BE INSTITUTED IN THE SUPREME OR FAMILY COURT.

PART 3

CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION

SECTION 581-301. SCOPE OF ARTICLE.
581-302. STATUS OF DONOR.
581-303. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION.
581-304. CONSENT TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION.
581-305. LIMITATION ON SPOUSES' DISPUTE OF PARENTAGE OF CHILD OF ASSISTED REPRODUCTION AND ARTIFICIAL INSEMINATION.
581-306. EFFECT OF DISSOLUTION OF RELATIONSHIP OF SPOUSES OR WITHDRAWAL OF CONSENT.
581-307. EFFECT OF DEATH OF INTENDED PARENT.

S 581-301. SCOPE OF ARTICLE. THIS ARTICLE DOES NOT APPLY TO THE BIRTH OF A CHILD CONCEIVED BY MEANS OF SEXUAL INTERCOURSE.

S 581-302. STATUS OF DONOR. A DONOR IS NOT A PARENT OF A CHILD CONCEIVED BY MEANS OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION EXCEPT AS PROVIDED IN SECTION 581-303 OF THIS PART.

S 581-303. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION. (A) AN INDIVIDUAL WHO PROVIDES GAMETES FOR ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION WITH THE INTENT TO BE A PARENT OF THE CHILD, OR CONSENTS TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION AS PROVIDED IN SECTION 581-304 OF THIS PART, IS A PARENT OF THE RESULTING CHILD FOR ALL LEGAL PURPOSES.

(B) THE COURT SHALL ISSUE A JUDGMENT OF PARENTAGE TO ANY PARTICIPANT WHO IS A PARENT PURSUANT TO THIS ACT.

S 581-304. CONSENT TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION. (A) WHERE THE INTENDED PARENT WHO GIVES BIRTH TO A CHILD BY MEANS OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION IS A SPOUSE, THE CONSENT OF BOTH SPOUSES TO THE ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION IS PRESUMED AND NEITHER SPOUSE MAY CHALLENGE THE PARENTAGE OF THE CHILD, EXCEPT AS PROVIDED IN SECTION 581-305 OF THIS PART.

(B) CONSENT TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION BY AN INDIVIDUAL WHO INTENDS TO BE A PARENT AND IS NOT THE SPOUSE OF THE INTENDED PARENT WHO GIVES BIRTH TO A CHILD BY MEANS OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION MUST BE IN A SIGNED RECORD WHICH ACKNOWLEDGES THE INTENDED PARENTS' JOINT PARTICIPATION AND INTENTION TO PARENT TOGETHER.

(C) THE FAILURE OF A PERSON TO SIGN A RECORD EVIDENCING HIS/HER CONSENT AS PROVIDED IN SUBDIVISION (B) OF THIS SECTION SHALL NOT PRECLUDE A FINDING THAT SUCH CONSENT EXISTED IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT AT THE TIME OF THE CHILD'S CONCEPTION OR BIRTH, BOTH THE INTENDED PARENT WHO GIVES BIRTH TO THE CHILD AND SUCH PERSON RESIDED IN THE SAME HOUSEHOLD AS INTIMATE PARTNERS, AND HELD THEMSELVES AND EACH OTHER OUT AS THE PARENTS OF THE INTENDED CHILD.

S 581-305. LIMITATION ON SPOUSES' DISPUTE OF PARENTAGE OF CHILD OF ASSISTED REPRODUCTION AND ARTIFICIAL INSEMINATION. (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B) OF THIS SECTION, NEITHER SPOUSE MAY CHALLENGE THE PRESUMPTION OF PARENTAGE OF THE CHILD UNLESS:

(1) WITHIN TWO YEARS AFTER LEARNING OF THE BIRTH OF THE CHILD A PROCEEDING IS COMMENCED TO ADJUDICATE PARENTAGE; AND

(2) THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT EITHER SPOUSE DID NOT CONSENT FOR THE NON-GESTATING SPOUSE TO BE A PARENT OF THE CHILD.

(B) A PROCEEDING FOR A JUDGMENT OF PARENTAGE MAY BE MAINTAINED AT ANY TIME IF THE COURT DETERMINES THAT:

(1) THE SPOUSE DID NOT PROVIDE GAMETES FOR, OR CONSENT TO, ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION BY THE INDIVIDUAL WHO GAVE BIRTH; AND

(2) THE SPOUSE AND THE INDIVIDUAL WHO GAVE BIRTH HAVE NOT COHABITED SINCE THE SPOUSE KNEW OR HAD REASON TO KNOW OF THE PREGNANCY; AND

(3) THE SPOUSE NEVER OPENLY HELD OUT THE CHILD AS HIS OR HER OWN.

(C) THE LIMITATION PROVIDED IN THIS SECTION APPLIES TO A SPOUSAL RELATIONSHIP THAT HAS BEEN DECLARED INVALID AFTER ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION.

S 581-306. EFFECT OF DISSOLUTION OF RELATIONSHIP OF SPOUSES OR WITHDRAWAL OF CONSENT. (A) IF THE RELATIONSHIP OF SPOUSES IS DISSOLVED BEFORE TRANSFER OF EGGS, SPERM, OR EMBRYOS, THE FORMER SPOUSE IS NOT A PARENT OF THE RESULTING CHILD UNLESS THE FORMER SPOUSE CONSENTED IN A RECORD THAT IF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION WERE TO OCCUR AFTER A DIVORCE, THE FORMER SPOUSE WOULD BE A PARENT OF THE CHILD.

(B) THE CONSENT OF AN INDIVIDUAL TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION MAY BE WITHDRAWN BY THAT INDIVIDUAL IN A RECORD GIVEN TO THE OTHER PARTICIPANTS AND HEALTH CARE PRACTITIONER, IF APPLICABLE, AT ANY TIME BEFORE THE TRANSFER OF EGGS, SPERM, OR EMBRYOS. AN INDIVIDUAL WHO WITHDRAWS CONSENT UNDER THIS SECTION IS NOT A PARENT OF THE RESULTING CHILD.

S 581-307. EFFECT OF DEATH OF INTENDED PARENT. EXCEPT AS OTHERWISE PROVIDED IN THE ESTATES, POWERS AND TRUSTS LAW, IF AN INDIVIDUAL WHO CONSENTED IN A RECORD TO BE A PARENT BY ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION DIES BEFORE THE TRANSFER OF EGGS, SPERM, OR EMBRYOS, THE DECEASED INDIVIDUAL IS NOT A PARENT OF THE RESULTING CHILD UNLESS THE DECEASED INDIVIDUAL CONSENTED IN A SIGNED RECORD THAT IF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION WERE TO OCCUR AFTER DEATH, THE DECEASED INDIVIDUAL WOULD BE A PARENT OF THE CHILD.

PART 4
GESTATIONAL AGREEMENT

SECTION 581-401. GESTATIONAL AGREEMENT AUTHORIZED.
581-402. MENTAL HEALTH CONSULTATION.
581-403. ADDITIONAL COUNSELING REQUIREMENTS.
581-404. ELIGIBILITY.
581-405. REQUIREMENTS OF GESTATIONAL AGREEMENT.
581-406. TERMINATION OF GESTATIONAL AGREEMENT.
581-407. GESTATIONAL AGREEMENT: EFFECT OF SUBSEQUENT SPOUSAL RELATIONSHIP.
581-408. FAILURE TO OBTAIN A JUDGMENT OF PARENTAGE.
581-409. DISPUTE AS TO GESTATIONAL AGREEMENT.
581-410. INSPECTION OF RECORDS.
581-411. EXCLUSIVE, CONTINUING JURISDICTION.

S 581-401. GESTATIONAL AGREEMENT AUTHORIZED. (A) IF ELIGIBLE UNDER THIS ARTICLE TO ENTER INTO A GESTATIONAL AGREEMENT, A GESTATIONAL CARRIER, HER SPOUSE IF APPLICABLE, AND THE INTENDED PARENTS MAY ENTER INTO A GESTATIONAL AGREEMENT WHICH WILL BE ENFORCEABLE PROVIDED THE GESTATIONAL AGREEMENT MEETS THE REQUIREMENTS OF THIS ARTICLE.

(B) A GESTATIONAL AGREEMENT SHALL NOT APPLY TO THE BIRTH OF A CHILD CONCEIVED BY MEANS OF SEXUAL INTERCOURSE.

(C) A GESTATIONAL AGREEMENT MAY PROVIDE FOR PAYMENT OF COMPENSATION UNDER PART FIVE OF THIS ARTICLE.

(D) A GESTATIONAL AGREEMENT MAY NOT LIMIT THE RIGHT OF THE GESTATIONAL CARRIER TO MAKE DECISIONS TO SAFEGUARD HER HEALTH.

S 581-402. MENTAL HEALTH CONSULTATION. (A) ALL PARTICIPANTS KNOWN TO THE ART PROVIDER ENGAGED IN A GESTATIONAL CARRIER ARRANGEMENT MUST OBTAIN A CONSULTATION AND A FAVORABLE MENTAL HEALTH EVALUATION WITH A MENTAL HEALTH PROFESSIONAL. THE ART PROVIDER SHALL NOT USE THE RESULTS OF THE EVALUATION TO ARBITRARILY DENY, INCLUDING ON THE BASIS OF RACE, COLOR, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, AGE, RELIGION, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL BELIEF, OR PHYSICAL HANDICAP, ANY PARTICIPANT THE RIGHT TO PARTICIPATE IN A GESTATIONAL CARRIER ARRANGEMENT.

(B) DURING THE MENTAL HEALTH EVALUATION, THE MENTAL HEALTH PROFESSIONAL MUST OFFER ADDITIONAL COUNSELING TO EACH PARTICIPANT. THE OFFER OF COUNSELING IS MANDATORY, BUT THE PARTICIPANT'S ACCEPTANCE OF ADDITIONAL COUNSELING IS VOLUNTARY EXCEPT AS REQUIRED IN SUBDIVISION (C) OF THIS SECTION.

(C) IF THE MENTAL HEALTH EVALUATION IS NOT FAVORABLE TO ANY OF THE PARTICIPANTS, THE MENTAL HEALTH PROFESSIONAL MAY PROVIDE THE PARTICIPANTS WITH FURTHER COUNSELING TO ASSIST THEM IN BECOMING QUALIFIED TO PARTICIPATE.

S 581-403. ADDITIONAL COUNSELING REQUIREMENTS. (A) NO ART PROCEDURE THAT INVOLVES THE TRANSFER OF EMBRYOS TO A GESTATIONAL CARRIER SHALL BE INITIATED OR PERFORMED UNTIL:

(1) ALL PARTICIPANTS MADE KNOWN TO THE ART PROVIDER HAVE BEEN OFFERED ADDITIONAL COUNSELING FOLLOWING THE CONSULTATION AS PROVIDED FOR IN SECTION 581-402 OF THIS PART; AND

(2) THE MENTAL HEALTH PROFESSIONALS HAVE PREPARED AND DELIVERED TO THE ART PROVIDERS A STATEMENT IN A RECORD THAT HE OR SHE HAS MET WITH THE PARTICIPANTS AND HAS RENDERED A FAVORABLE MENTAL HEALTH EVALUATION;

(B) PRIOR TO ANY TRANSFER OF EMBRYOS AND PRIOR TO EXECUTION OF ANY GESTATIONAL AGREEMENT, A PARTICIPANT SHALL BE INFORMED BY THE ART PROVIDER THAT HE OR SHE MAY REQUEST AND RECEIVE THE MENTAL HEALTH PROFESSIONAL'S FINAL RECOMMENDATION OF ANY OTHER PARTICIPANT, BUT MAY ONLY RECEIVE THE FULL EVALUATION FOR HIM OR HERSELF.

S 581-404. ELIGIBILITY. (A) A GESTATIONAL CARRIER SHALL BE ELIGIBLE TO ENTER INTO AN ENFORCEABLE GESTATIONAL AGREEMENT UNDER THIS ARTICLE IF SHE HAS MET THE FOLLOWING REQUIREMENTS AT THE TIME THE GESTATIONAL AGREEMENT IS EXECUTED:

(1) SHE IS AT LEAST TWENTY-ONE YEARS OF AGE; AND

(2) SHE HAS GIVEN BIRTH TO AT LEAST ONE CHILD; AND

(3) SHE HAS COMPLETED A MEDICAL EVALUATION WITH A HEALTH CARE PRACTITIONER RELATING TO THE ANTICIPATED PREGNANCY; AND

(4) SHE HAS RECEIVED A FAVORABLE MENTAL HEALTH EVALUATION RELATING TO THE ANTICIPATED GESTATIONAL CARRIER ARRANGEMENT PURSUANT TO SECTION 581-402 OF THIS PART; AND

(5) SHE HAS UNDERGONE LEGAL CONSULTATION WITH INDEPENDENT LEGAL COUNSEL REGARDING THE TERMS OF THE GESTATIONAL AGREEMENT AND THE POTENTIAL LEGAL CONSEQUENCES OF THE GESTATIONAL CARRIER ARRANGEMENT; AND

(6) SHE HAS, OR THE GESTATIONAL AGREEMENT STIPULATES THAT PRIOR TO THE EMBRYO TRANSFER, SHE WILL OBTAIN, A HEALTH INSURANCE POLICY THAT COVERS MAJOR MEDICAL TREATMENTS AND HOSPITALIZATION, AND THE HEALTH INSURANCE POLICY HAS A TERM THAT EXTENDS THROUGHOUT THE DURATION OF THE EXPECTED PREGNANCY AND FOR EIGHT WEEKS AFTER THE BIRTH OF THE CHILD; THE POLICY

MAY BE PROCURED AND PAID FOR BY THE INTENDED PARENTS ON BEHALF OF THE GESTATIONAL CARRIER PURSUANT TO THE GESTATIONAL AGREEMENT.

(B) THE INTENDED PARENTS SHALL BE ELIGIBLE TO ENTER INTO AN ENFORCEABLE GESTATIONAL AGREEMENT UNDER THIS ARTICLE IF HE, SHE, OR THEY HAVE MET THE FOLLOWING REQUIREMENTS AT THE TIME THE GESTATIONAL AGREEMENT WAS EXECUTED:

(1) HE, SHE, OR THEY HAVE RECEIVED A FAVORABLE MENTAL HEALTH EVALUATION RELATING TO THE ANTICIPATED GESTATIONAL CARRIER ARRANGEMENT PURSUANT TO SECTION 581-402 OF THIS PART; AND

(2) HE, SHE, OR THEY HAVE UNDERGONE LEGAL CONSULTATION WITH INDEPENDENT LEGAL COUNSEL REGARDING THE TERMS OF THE GESTATIONAL AGREEMENT AND THE POTENTIAL LEGAL CONSEQUENCES OF THE GESTATIONAL CARRIER ARRANGEMENT; AND

(3) HE OR SHE IS AN ADULT PERSON WHO IS NOT IN A SPOUSAL RELATIONSHIP, OR ADULT SPOUSES TOGETHER, OR ANY TWO ADULTS WHO ARE INTIMATE PARTNERS TOGETHER, EXCEPT WHERE THE INTENDED PARENT AND HIS OR HER SPOUSE:

(I) ARE LIVING SEPARATE AND APART PURSUANT TO A DECREE OR JUDGMENT OF SEPARATION OR PURSUANT TO A WRITTEN AGREEMENT OF SEPARATION SUBSCRIBED BY THE PARTIES THERETO AND ACKNOWLEDGED OR PROVED IN THE FORM REQUIRED TO ENTITLE A DEED TO BE RECORDED; OR

(II) HAVE BEEN LIVING SEPARATE AND APART FOR AT LEAST THREE YEARS PRIOR TO EXECUTION OF THE GESTATIONAL AGREEMENT, THEN THE SPOUSE OF THE INTENDED PARENT IS NOT REQUIRED TO BE A PARTY TO THE GESTATIONAL AGREEMENT AND SHALL NOT HAVE PARENTAL RIGHTS OR OBLIGATIONS TO THE CHILD.

S 581-405. REQUIREMENTS OF GESTATIONAL AGREEMENT. (A) A GESTATIONAL AGREEMENT SHALL BE DEEMED TO HAVE SATISFIED THE REQUIREMENTS OF THIS ARTICLE AND BE ENFORCEABLE IF IT MEETS THE FOLLOWING REQUIREMENTS:

(1) IT SHALL BE IN A SIGNED RECORD VERIFIED BY THE INTENDED PARENTS, THE GESTATIONAL CARRIER, AND HER SPOUSE, IF ANY; AND

(2) IT SHALL BE EXECUTED PRIOR TO THE COMMENCEMENT OF ANY MEDICAL PROCEDURES IN FURTHERANCE OF THE GESTATIONAL CARRIER ARRANGEMENT OTHER THAN MEDICAL OR MENTAL HEALTH EVALUATIONS NECESSARY TO DETERMINE ELIGIBILITY OF THE PARTIES PURSUANT TO SECTION 581-404 OF THIS PART; AND

(3) IT SHALL BE EXECUTED BY A GESTATIONAL CARRIER MEETING THE ELIGIBILITY REQUIREMENTS OF SUBDIVISION (A) OF SECTION 581-404 OF THIS PART AND BY THE GESTATIONAL CARRIER'S SPOUSE, IF ANY; AND

(4) IT SHALL BE EXECUTED BY INTENDED PARENTS MEETING THE ELIGIBILITY REQUIREMENTS OF SUBDIVISION (B) OF SECTION 581-404 OF THIS PART; AND

(5) THE GESTATIONAL CARRIER AND THE INTENDED PARENTS SHALL HAVE BEEN REPRESENTED BY SEPARATE, INDEPENDENT COUNSEL IN ALL MATTERS CONCERNING THE GESTATIONAL CARRIER ARRANGEMENT AND THE GESTATIONAL AGREEMENT; AND

(6) IF THE GESTATIONAL AGREEMENT PROVIDES FOR THE PAYMENT OF COMPENSATION TO THE GESTATIONAL CARRIER, THE COMPENSATION SHALL HAVE BEEN PLACED IN ESCROW WITH AN INDEPENDENT ESCROW AGENT PRIOR TO THE GESTATIONAL CARRIER'S COMMENCEMENT OF ANY MEDICAL PROCEDURE OTHER THAN MEDICAL OR MENTAL HEALTH EVALUATIONS NECESSARY TO DETERMINE THE GESTATIONAL CARRIER'S ELIGIBILITY PURSUANT TO SECTION 581-402 OF THIS PART; AND

(7) THE GESTATIONAL AGREEMENT MUST INCLUDE THE FOLLOWING TERMS:

(I) AS TO THE GESTATIONAL CARRIER AND HER SPOUSE, IF ANY:

(A) THE AGREEMENT OF THE GESTATIONAL CARRIER TO UNDERGO EMBRYO TRANSFER AND ATTEMPT TO CARRY AND GIVE BIRTH TO THE CHILD; AND

(B) THE AGREEMENT OF THE GESTATIONAL CARRIER AND HER SPOUSE, IF ANY, TO SURRENDER CUSTODY OF ALL RESULTING CHILDREN TO THE INTENDED PARENTS IMMEDIATELY UPON THE BIRTH; AND

(C) THE RIGHT OF THE GESTATIONAL CARRIER TO UTILIZE THE SERVICES OF A HEALTH CARE PRACTITIONER OF HER CHOOSING, AFTER CONSULTATION WITH THE INTENDED PARENTS, TO PROVIDE HER CARE DURING THE PREGNANCY; AND

(II) AS TO THE INTENDED PARENT OR PARENTS:

(A) THE AGREEMENT TO ACCEPT CUSTODY OF ALL RESULTING CHILDREN IMMEDIATELY UPON BIRTH REGARDLESS OF NUMBER, GENDER, OR MENTAL OR PHYSICAL CONDITION; AND

(B) THE AGREEMENT TO ASSUME SOLE RESPONSIBILITY FOR THE SUPPORT OF THE CHILDREN IMMEDIATELY UPON THE CHILDREN'S BIRTH; AND

(C) THE AGREEMENT THAT THE RIGHTS AND OBLIGATIONS OF THE INTENDED PARENT OR PARENTS UNDER THE GESTATIONAL AGREEMENT ARE NOT ASSIGNABLE.

S 581-406. TERMINATION OF GESTATIONAL AGREEMENT. (A) AFTER ISSUANCE OF A JUDGMENT OF PARENTAGE PURSUANT TO SECTION 581-203 OF THIS ARTICLE, BUT BEFORE THE GESTATIONAL CARRIER BECOMES PREGNANT BY MEANS OF ASSISTED REPRODUCTION, THE GESTATIONAL CARRIER, HER SPOUSE, IF ANY, OR EITHER OF THE INTENDED PARENTS MAY TERMINATE THE GESTATIONAL AGREEMENT BY GIVING NOTICE OF TERMINATION IN A RECORD TO ALL OTHER PARTIES AND ANY LIABILITY RESULTING THEREFROM WILL BE DETERMINED PURSUANT TO SECTION 581-408 OF THIS PART.

(B) AN INDIVIDUAL WHO TERMINATES A GESTATIONAL AGREEMENT UNDER THIS SECTION SHALL FILE NOTICE OF THE TERMINATION WITH THE COURT. ON RECEIPT OF THE NOTICE, THE COURT SHALL VACATE THE JUDGMENT OF PARENTAGE ISSUED UNDER THIS ARTICLE.

S 581-407. GESTATIONAL AGREEMENT: EFFECT OF SUBSEQUENT SPOUSAL RELATIONSHIP. AFTER THE EXECUTION OF A GESTATIONAL AGREEMENT UNDER THIS ARTICLE, THE SUBSEQUENT SPOUSAL RELATIONSHIP OF THE GESTATIONAL CARRIER DOES NOT AFFECT THE VALIDITY OF A GESTATIONAL AGREEMENT, HER SPOUSE'S CONSENT TO THE AGREEMENT SHALL NOT BE REQUIRED, AND HER SPOUSE SHALL NOT BE THE PRESUMED PARENT OF THE RESULTING CHILD.

S 581-408. FAILURE TO OBTAIN A JUDGMENT OF PARENTAGE. WHERE THE INTENDED PARENTS OR THE GESTATIONAL CARRIER FAIL TO OBTAIN A JUDGMENT OF PARENTAGE PURSUANT TO SECTION 581-203 OF THIS ARTICLE, THE PARENTAGE OF A CHILD BORN AS THE RESULT OF A GESTATIONAL CARRIER ARRANGEMENT WILL BE DETERMINED BASED ON THE BEST INTERESTS OF THE CHILDREN TAKING INTO ACCOUNT GENETICS AND THE INTENT OF THE PARTIES.

S 581-409. DISPUTE AS TO GESTATIONAL AGREEMENT. (A) ANY DISPUTE WHICH IS RELATED TO A GESTATIONAL AGREEMENT OTHER THAN DISPUTES AS TO PARENTAGE SHALL BE RESOLVED BY THE SUPREME COURT, WHICH SHALL DETERMINE THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF A GESTATIONAL AGREEMENT DOES NOT MEET THE REQUIREMENTS OF THIS ARTICLE, THE AGREEMENT IS NOT ENFORCEABLE.

(B) EXCEPT AS EXPRESSLY PROVIDED IN THE GESTATIONAL AGREEMENT, THE INTENDED PARENT OR PARENTS AND GESTATIONAL CARRIER SHALL BE ENTITLED TO ALL REMEDIES AVAILABLE AT LAW OR EQUITY IN ANY DISPUTE RELATED TO THE GESTATIONAL AGREEMENT.

(C) THERE SHALL BE NO SPECIFIC PERFORMANCE REMEDY AVAILABLE FOR A BREACH BY THE GESTATIONAL CARRIER OF A GESTATIONAL AGREEMENT TERM THAT REQUIRES HER TO BE IMPREGNATED.

S 581-410. INSPECTION OF RECORDS. THE PROCEEDINGS, RECORDS, AND IDENTITIES OF THE INDIVIDUAL PARTIES TO A GESTATIONAL AGREEMENT UNDER THIS ARTICLE SHALL BE SEALED EXCEPT UPON THE PETITION OF THE PARTIES TO THE GESTATIONAL AGREEMENT OR THE CHILD BORN AS A RESULT OF THE GESTATIONAL CARRIER ARRANGEMENT.

S 581-411. EXCLUSIVE, CONTINUING JURISDICTION. SUBJECT TO THE JURISDICTIONAL STANDARDS OF SECTION SEVENTY-SIX OF THE DOMESTIC RELATIONS LAW, THE COURT CONDUCTING A PROCEEDING UNDER THIS ARTICLE HAS EXCLUSIVE,

CONTINUING JURISDICTION OF ALL MATTERS ARISING OUT OF THE GESTATIONAL AGREEMENT UNTIL A CHILD BORN TO THE GESTATIONAL CARRIER DURING THE PERIOD GOVERNED BY THE AGREEMENT ATTAINS THE AGE OF ONE HUNDRED EIGHTY DAYS.

PART 5

PAYMENT TO DONORS AND GESTATIONAL CARRIERS

SECTION 581-501. REIMBURSEMENT.

581-502. COMPENSATION.

S 581-501. REIMBURSEMENT. (A) A DONOR WHO HAS ENTERED INTO A VALID AGREEMENT TO BE A DONOR, MAY RECEIVE REIMBURSEMENT FOR ECONOMIC LOSSES INCURRED IN CONNECTION WITH THE DONATION WHICH RESULT FROM THE RETRIEVAL OR STORAGE OF GAMETES OR EMBRYOS.

(B) PREMIUMS PAID FOR INSURANCE AGAINST ECONOMIC LOSSES DIRECTLY RESULTING FROM THE RETRIEVAL OR STORAGE OF GAMETES OR EMBRYOS FOR DONATION MAY BE REIMBURSED.

S 581-502. COMPENSATION. (A) COMPENSATION MAY BE PAID TO A DONOR OR GESTATIONAL CARRIER BASED ON SERVICES RENDERED, EXPENSES THAT HAVE BEEN OR WILL BE INCURRED, TIME, AND INCONVENIENCE. UNDER NO CIRCUMSTANCES MAY COMPENSATION BE PAID TO PURCHASE GAMETES OR EMBRYOS OR TO PAY FOR THE RELINQUISHMENT OF A PARENTAL INTEREST IN A CHILD.

(B) THE COMPENSATION, IF ANY, PAID TO A DONOR OR GESTATIONAL CARRIER MUST BE REASONABLE AND NEGOTIATED IN GOOD FAITH BETWEEN THE PARTIES, AND SAID PAYMENTS TO A GESTATIONAL CARRIER SHALL NOT EXCEED THE DURATION OF THE PREGNANCY AND RECUPERATIVE PERIOD OF UP TO EIGHT WEEKS AFTER THE BIRTH OF THE CHILD.

(C) COMPENSATION MAY NOT BE CONDITIONED UPON THE PURPORTED QUALITY OR GENOME-RELATED TRAITS OF THE GAMETES OR EMBRYOS.

(D) COMPENSATION MAY NOT BE CONDITIONED ON ACTUAL GENOTYPIC OR PHENOTYPIC CHARACTERISTICS OF THE DONOR OR OF THE CHILD.

PART 6

FORMATION OF LEGAL PARENT-CHILD RELATIONSHIP AFTER BIRTH OF CHILD

SECTION 581-601. DETERMINATION OF PARENTHOOD.

S 581-601. DETERMINATION OF PARENTHOOD. (A) A PERSON SEEKING TO QUALIFY FOR A JUDGMENT OF PARENTAGE UNDER THIS PART IS REFERRED TO HEREIN AS "PETITIONER."

(B) THE COURT SHALL ISSUE A JUDGMENT OF PARENTAGE TO A PETITIONER WHO DEMONSTRATES THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

(1) THE PARENT OR PARENTS OF A CHILD CONSENTED TO THE PETITIONER'S FORMATION OF A PARENT-CHILD RELATIONSHIP WITH THE CHILD, SUCH CONSENT TO BE EXPRESSED IN WRITTEN FORM, INCLUDING BUT NOT LIMITED TO, ANY OF THE FOLLOWING EXAMPLES: A SIGNED LETTER AGREEMENT, AN EXECUTED CONTRACT, A BIRTH ANNOUNCEMENT, A RELIGIOUS CEREMONY DOCUMENT, OR A SCHOOL OR MEDICAL RECORD; AND

(2) PETITIONER RESIDED IN THE SAME HOUSEHOLD WITH THE CHILD FOR A LENGTH OF TIME SUFFICIENT, GIVEN THE AGE OF THE CHILD, TO HAVE ESTABLISHED WITH THE CHILD A BONDED, DEPENDENT RELATIONSHIP PARENTAL IN NATURE; AND

(3) PETITIONER PERFORMED PARENTAL FUNCTIONS FOR THE CHILD TO A SIGNIFICANT DEGREE; AND

(4) PETITIONER FORMED A PARENT-CHILD BOND WITH THE CHILD.

(C) PETITIONER UNDER THIS PART SHALL NOT INCLUDE A GRANDPARENT OF SUCH MINOR CHILD, A PERSON WHOSE RELATIONSHIP WITH THE CHILD IS BASED ON PAYMENT BY THE PARENT, OR A PERSON WHO HAS NOT AT ANY TIME BEEN AN INTIMATE PARTNER WITH A PARENT OF THE CHILD.

(D) PETITIONER UNDER THIS SECTION SHALL BE DEEMED TO BE THE LEGAL PARENT OF SUCH CHILD FOR ALL PURPOSES.

(E) A JUDGMENT OF PARENTAGE SHALL BE ISSUED PURSUANT TO SECTION 581-204 OF THIS ARTICLE CONFIRMING ESTABLISHMENT OF A PARENT-CHILD RELATIONSHIP AS PROVIDED IN THIS PART.

PART 7

MISCELLANEOUS PROVISIONS

SECTION 581-701. REMEDIAL.
581-702. SEVERABILITY.
581-703. PARENT UNDER SECTION SEVENTY OF THE DOMESTIC RELATIONS LAW.

S 581-701. REMEDIAL. THIS LEGISLATION IS HEREBY DECLARED TO BE A REMEDIAL STATUTE AND IS TO BE CONSTRUED LIBERALLY TO SECURE THE BENEFICIAL INTERESTS AND PURPOSES THEREOF FOR THE BEST INTERESTS OF THE CHILD.

S 581-702. SEVERABILITY. THE INVALIDATION OF ANY PART OF THIS LEGISLATION BY A COURT OF COMPETENT JURISDICTION SHALL NOT RESULT IN THE INVALIDATION OF ANY OTHER PART.

S 581-703. PARENT UNDER SECTION SEVENTY OF THE DOMESTIC RELATIONS LAW. THE TERM "PARENT" IN SECTION SEVENTY OF THE DOMESTIC RELATIONS LAW SHALL INCLUDE A PERSON ESTABLISHED TO BE A PARENT UNDER THIS ARTICLE OR ANY OTHER RELEVANT LAW.

S 2. Section 73 of the domestic relations law is REPEALED.

S 3. Article 8 of the domestic relations law is REPEALED.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.