

4617

2013-2014 Regular Sessions

I N S E N A T E

April 16, 2013

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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:

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

3 ARTICLE 5-C

4 CHILD-PARENT SECURITY ACT

5 PART 1 GENERAL PROVISIONS (581-101 - 581-103)

6 2 JUDGMENT OF PARENTAGE (581-201 - 581-206)

7 3 CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION
8 (581-301 - 581-307)

9 4 GESTATIONAL AGREEMENT (581-401 - 581-411)

10 5 PAYMENT TO DONORS AND GESTATIONAL CARRIERS (581-501 - 581-502)

11 6 FORMATION OF LEGAL PARENT-CHILD RELATIONSHIP AFTER BIRTH OF CHILD
12 (581-601)

13 7 MISCELLANEOUS PROVISIONS (581-701 - 581-703)

14 PART 1

15 GENERAL PROVISIONS

16 SECTION 581-101. SHORT TITLE.

17 581-102. PURPOSE.

18 581-103. DEFINITIONS.

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

21 S 581-102. PURPOSE. THE PURPOSE OF THIS ARTICLE IS TO LEGALLY ESTAB-
22 LISH 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.

LBD05071-04-3

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

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

9 (C) "ART PROVIDER" MEANS ANY ENTITY WHICH ASSISTS WITH ASSISTED REPRO-
10 DUCTIVE TECHNOLOGY.

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

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

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

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

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

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

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

45 (K) "GAMETE" MEANS A CELL CONTAINING A HAPLOID COMPLEMENT OF DNA THAT
46 HAS THE POTENTIAL TO FORM AN EMBRYO WHEN COMBINED WITH ANOTHER GAMETE.
47 SPERM AND EGGS ARE GAMETES. A GAMETE MAY CONSIST OF NUCLEAR DNA FROM ONE
48 HUMAN BEING COMBINED WITH THE CYTOPLASM, INCLUDING CYTOPLASMIC DNA, OF
49 ANOTHER HUMAN BEING.

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

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

55 (N) "GESTATIONAL CARRIER" MEANS AN ADULT WOMAN, NOT AN INTENDED
56 PARENT, WHO ENTERS INTO A GESTATIONAL AGREEMENT TO BEAR A CHILD WHO WILL

1 BE THE LEGAL CHILD OF THE INTENDED PARENTS SO LONG AS SHE HAS NOT
2 PROVIDED THE EGG USED TO CONCEIVE THE RESULTING CHILD.

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

7 (P) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL LICENSED OR CERTI-
8 FIED UNDER TITLE EIGHT OF THE EDUCATION LAW ACTING WITHIN HIS OR HER
9 SCOPE OF PRACTICE.

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

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

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

17 (T) "PARENT" MEANS AN INDIVIDUAL WHO HAS ESTABLISHED A PARENT-CHILD
18 RELATIONSHIP UNDER THIS ACT OR OTHER LAW AND INCLUDES, BUT IS NOT LIMIT-
19 ED TO: (1) A CHILD'S BIRTH PARENT WHO IS NOT A GESTATIONAL CARRIER OR
20 THE SPOUSE OF THE GESTATIONAL CARRIER; (2) A CHILD'S GENETIC PARENT WHO
21 IS NOT THE DONOR; (3) AN INDIVIDUAL WHO HAS LEGALLY ADOPTED THE CHILD;
22 (4) AN INDIVIDUAL WHO IS A PARENT OF THE CHILD PURSUANT TO A LEGAL
23 PRESUMPTION; (5) AN INDIVIDUAL WHO IS A PARENT OF THE CHILD PURSUANT TO
24 AN ACKNOWLEDGMENT OR JUDGMENT OF PARENTAGE PURSUANT TO ARTICLE TWO OF
25 THIS ACT OR OTHER LAW; (6) AN INDIVIDUAL WHO IS A PARENT OF THE CHILD
26 PURSUANT TO ARTICLE THREE, FOUR, OR SIX OF THIS ACT.

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

32 (V) "RECORD" MEANS INFORMATION INSCRIBED IN A TANGIBLE MEDIUM OR
33 STORED IN AN ELECTRONIC OR OTHER MEDIUM THAT IS RETRIEVABLE IN PERCEIVA-
34 BLE FORM.

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

37 (X) "SPOUSE" MEANS AN INDIVIDUAL MARRIED TO ANOTHER, OR WHO HAS A
38 LEGAL RELATIONSHIP ENTERED INTO UNDER THE LAWS OF THE UNITED STATES OR
39 OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, WHICH IS SUBSTANTIALLY
40 EQUIVALENT TO A MARRIAGE, INCLUDING A CIVIL UNION OR DOMESTIC PARTNER-
41 SHIP.

42 (Y) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUM-
43 BIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR
44 INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

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

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

50 PART 2

51 JUDGMENT OF PARENTAGE

52 SECTION 581-201. JUDGMENT OF PARENTAGE.

53 581-202. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN
54 THROUGH ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINA-
55 TION.

1 581-203. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN
2 PURSUANT TO A GESTATIONAL CARRIER ARRANGEMENT.

3 581-204. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD WHOSE
4 PARENTAGE IS ESTABLISHED PURSUANT TO SECTION 581-601
5 OF THIS ARTICLE.

6 581-205. JUDGMENT OF PARENTAGE FOR INTENDED PARENTS WHO ARE
7 SPOUSES.

8 581-206. JURISDICTION.

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

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

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

22 (I) A CHILD BORN THROUGH ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINA-
23 TION UNDER PART THREE OF THIS ARTICLE; OR

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

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

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

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

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

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

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

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

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

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

52 (C) THE FOLLOWING SHALL BE DEEMED SUFFICIENT PROOF OF A DONOR'S DONA-
53 TIVE INTENT:

54 (1) IN THE CASE OF AN ANONYMOUS DONOR, A STATEMENT FROM THE GAMETE OR
55 EMBRYO STORAGE FACILITY WITH CUSTODY OF THE GAMETES OR EMBRYOS THAT THE

1 DONOR RELINQUISHED ANY PARENTAL OR PROPRIETARY INTEREST IN THE GAMETES
2 OR EMBRYOS AT THE TIME OF DONATION; AND

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

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

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

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

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

28 S 581-203. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN PURSU-
29 ANT TO A GESTATIONAL CARRIER ARRANGEMENT. (A) THE PROCEEDING MAY BE
30 COMMENCED AT ANY TIME AFTER THE GESTATIONAL AGREEMENT HAS BEEN EXECUTED
31 BY ALL OF THE PARTIES. ANY PARTY TO THE GESTATIONAL AGREEMENT NOT JOIN-
32 ING IN THE PETITION MUST BE SERVED WITH NOTICE OF THE PROCEEDING. FAIL-
33 URE TO RESPOND TO THE NOTICE SHALL BE CONSIDERED A DEFAULT AND NO
34 FURTHER NOTICE SHALL BE REQUIRED.

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

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

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

45 (3) A STATEMENT THAT THE PARTIES ENTERED INTO THE GESTATIONAL AGREE-
46 MENT KNOWINGLY AND VOLUNTARILY.

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

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

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

1 (3) ORDERING THE GESTATIONAL CARRIER AND HER SPOUSE, IF ANY, TO TRANS-
 2 FER THE CHILD TO THE INTENDED PARENTS IF THIS HAS NOT ALREADY OCCURRED;
 3 AND

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

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

16 (D) THE AGREEMENT OF THE INTENDED PARENTS TO PAY REASONABLE COMPEN-
 17 SATION TO THE GESTATIONAL CARRIER IN EXCESS OF REASONABLE MEDICAL AND
 18 ANCILLARY COSTS SHALL NOT BE A BAR TO THE ISSUANCE OF A JUDGMENT OF
 19 PARENTAGE.

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

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

34 S 581-206. JURISDICTION. PROCEEDINGS PURSUANT TO THIS ARTICLE MAY BE
 35 INSTITUTED IN THE SUPREME, FAMILY OR SURROGATE'S COURT EXCEPT FOR
 36 PROCEEDINGS PURSUANT TO SECTION 581-204 OF THIS PART MAY BE INSTITUTED
 37 IN THE SUPREME OR FAMILY COURT.

38 PART 3

39 CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION

40 SECTION 581-301. SCOPE OF ARTICLE.

41 581-302. STATUS OF DONOR.

42 581-303. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION OR ARTIFI-
 43 CIAL INSEMINATION.

44 581-304. CONSENT TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMI-
 45 NATION.

46 581-305. LIMITATION ON SPOUSES' DISPUTE OF PARENTAGE OF CHILD OF
 47 ASSISTED REPRODUCTION AND ARTIFICIAL INSEMINATION.

48 581-306. EFFECT OF DISSOLUTION OF RELATIONSHIP OF SPOUSES OR
 49 WITHDRAWAL OF CONSENT.

50 581-307. EFFECT OF DEATH OF INTENDED PARENT.

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

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

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

7 (B) UPON APPLICATION BY ANY PARTICIPANT, THE COURT SHALL ISSUE A JUDG-
8 MENT OF PARENTAGE TO ANY PARTICIPANT WHO IS A PARENT PURSUANT TO THIS
9 ACT.

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

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

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

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

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

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

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

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

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

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

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

49 S 581-306. EFFECT OF DISSOLUTION OF RELATIONSHIP OF SPOUSES OR WITH-
50 DRAWAL OF CONSENT. AN INDIVIDUAL WHO WITHDRAWS CONSENT PRIOR TO TRANS-
51 FER IS NOT A PARENT.

52 S 581-307. EFFECT OF DEATH OF INTENDED PARENT. EXCEPT AS OTHERWISE
53 PROVIDED IN THE ESTATES, POWERS AND TRUSTS LAW, IF AN INDIVIDUAL WHO
54 CONSENTED IN A RECORD TO BE A PARENT BY ASSISTED REPRODUCTION OR ARTIFI-
55 CIAL INSEMINATION DIES BEFORE THE TRANSFER OF EGGS, SPERM, OR EMBRYOS,
56 THE DECEASED INDIVIDUAL IS NOT A PARENT OF THE RESULTING CHILD UNLESS

1 THE DECEASED INDIVIDUAL CONSENTED IN A SIGNED RECORD THAT IF ASSISTED
2 REPRODUCTION OR ARTIFICIAL INSEMINATION WERE TO OCCUR AFTER DEATH, THE
3 DECEASED INDIVIDUAL WOULD BE A PARENT OF THE CHILD.

4 PART 4

5 GESTATIONAL AGREEMENT

6 SECTION 581-401. GESTATIONAL AGREEMENT AUTHORIZED.

7 581-404. ELIGIBILITY.

8 581-405. REQUIREMENTS OF GESTATIONAL AGREEMENT.

9 581-406. TERMINATION OF GESTATIONAL AGREEMENT.

10 581-407. GESTATIONAL AGREEMENT: EFFECT OF SUBSEQUENT SPOUSAL
11 RELATIONSHIP.

12 581-408. FAILURE TO OBTAIN A JUDGMENT OF PARENTAGE.

13 581-409. DISPUTE AS TO GESTATIONAL AGREEMENT.

14 581-410. INSPECTION OF RECORDS.

15 581-411. EXCLUSIVE, CONTINUING JURISDICTION.

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

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

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

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

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

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

32 (2) SHE HAS COMPLETED A MEDICAL EVALUATION WITH A HEALTH CARE PRACTI-
33 TIONER RELATING TO THE ANTICIPATED PREGNANCY; AND

34 (3) SHE HAS UNDERGONE LEGAL CONSULTATION WITH INDEPENDENT LEGAL COUN-
35 SEL REGARDING THE TERMS OF THE GESTATIONAL AGREEMENT AND THE POTENTIAL
36 LEGAL CONSEQUENCES OF THE GESTATIONAL CARRIER ARRANGEMENT; AND

37 (4) SHE HAS, OR THE GESTATIONAL AGREEMENT STIPULATES THAT PRIOR TO THE
38 EMBRYO TRANSFER, SHE WILL OBTAIN, A HEALTH INSURANCE POLICY THAT COVERS
39 MAJOR MEDICAL TREATMENTS AND HOSPITALIZATION, AND THE HEALTH INSURANCE
40 POLICY HAS A TERM THAT EXTENDS THROUGHOUT THE DURATION OF THE EXPECTED
41 PREGNANCY AND FOR EIGHT WEEKS AFTER THE BIRTH OF THE CHILD; THE POLICY
42 MAY BE PROCURED AND PAID FOR BY THE INTENDED PARENTS ON BEHALF OF THE
43 GESTATIONAL CARRIER PURSUANT TO THE GESTATIONAL AGREEMENT.

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

48 (1) HE, SHE, OR THEY HAVE UNDERGONE LEGAL CONSULTATION WITH INDEPEND-
49 ENT LEGAL COUNSEL REGARDING THE TERMS OF THE GESTATIONAL AGREEMENT AND
50 THE POTENTIAL LEGAL CONSEQUENCES OF THE GESTATIONAL CARRIER ARRANGEMENT;
51 AND

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

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

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

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

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

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

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

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

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

26 (6) IF THE GESTATIONAL AGREEMENT PROVIDES FOR THE PAYMENT OF COMPEN-
27 SATION TO THE GESTATIONAL CARRIER, THE COMPENSATION SHALL HAVE BEEN
28 PLACED IN ESCROW WITH AN INDEPENDENT ESCROW AGENT PRIOR TO THE GESTA-
29 TIONAL CARRIER'S COMMENCEMENT OF ANY MEDICAL PROCEDURE OTHER THAN
30 MEDICAL EVALUATIONS NECESSARY TO DETERMINE THE GESTATIONAL CARRIER'S
31 ELIGIBILITY; AND

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

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

34 (A) THE AGREEMENT OF THE GESTATIONAL CARRIER TO UNDERGO EMBRYO TRANS-
35 FER AND ATTEMPT TO CARRY AND GIVE BIRTH TO THE CHILD; AND

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

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

42 (II) AS TO THE INTENDED PARENT OR PARENTS:

43 (A) THE AGREEMENT TO ACCEPT CUSTODY OF ALL RESULTING CHILDREN IMME-
44 DIATELY UPON BIRTH REGARDLESS OF NUMBER, GENDER, OR MENTAL OR PHYSICAL
45 CONDITION; AND

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

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

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

1 RESULTING THEREFROM WILL BE DETERMINED PURSUANT TO SECTION 581-408 OF
2 THIS PART.

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

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

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

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

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

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

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

37 S 581-411. EXCLUSIVE, CONTINUING JURISDICTION. SUBJECT TO THE JURIS-
38 DICTIONAL STANDARDS OF SECTION SEVENTY-SIX OF THE DOMESTIC RELATIONS
39 LAW, THE COURT CONDUCTING A PROCEEDING UNDER THIS ARTICLE HAS EXCLUSIVE,
40 CONTINUING JURISDICTION OF ALL MATTERS ARISING OUT OF THE GESTATIONAL
41 AGREEMENT UNTIL A CHILD BORN TO THE GESTATIONAL CARRIER DURING THE PERI-
42 OD GOVERNED BY THE AGREEMENT ATTAINS THE AGE OF ONE HUNDRED EIGHTY DAYS.

43 PART 5

44 PAYMENT TO DONORS AND GESTATIONAL CARRIERS

45 SECTION 581-501. REIMBURSEMENT.

46 581-502. COMPENSATION.

47 S 581-501. REIMBURSEMENT. (A) A DONOR WHO HAS ENTERED INTO A VALID
48 AGREEMENT TO BE A DONOR, MAY RECEIVE REIMBURSEMENT FROM AN INTENDED
49 PARENT OR PARENTS FOR ECONOMIC LOSSES INCURRED IN CONNECTION WITH THE
50 DONATION WHICH RESULT FROM THE RETRIEVAL OR STORAGE OF GAMETES OR EMBR-
51 YOS.

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

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

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

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

13 (D) COMPENSATION MAY NOT BE CONDITIONED ON ACTUAL GENOTYPIC OR PHENO-
 14 TYPIC CHARACTERISTICS OF THE DONOR OR OF THE CHILD.

15 PART 6

16 FORMATION OF LEGAL PARENT-CHILD RELATIONSHIP AFTER BIRTH OF CHILD
 17 SECTION 581-601. DETERMINATION OF PARENTHOOD.

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

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

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

29 (2) PETITIONER RESIDED IN THE SAME HOUSEHOLD WITH THE CHILD FOR A
 30 LENGTH OF TIME SUFFICIENT, GIVEN THE AGE OF THE CHILD, TO HAVE ESTAB-
 31 LISHED WITH THE CHILD A BONDED, DEPENDENT RELATIONSHIP PARENTAL IN
 32 NATURE; AND

33 (3) PETITIONER PERFORMED PARENTAL FUNCTIONS FOR THE CHILD TO A SIGNIF-
 34 ICANT DEGREE; AND

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

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

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

42 (E) A JUDGMENT OF PARENTAGE SHALL BE ISSUED PURSUANT TO SECTION
 43 581-204 OF THIS ARTICLE CONFIRMING ESTABLISHMENT OF A PARENT-CHILD
 44 RELATIONSHIP AS PROVIDED IN THIS PART.

45 PART 7

46 MISCELLANEOUS PROVISIONS

47 SECTION 581-701. REMEDIAL.

48 581-702. SEVERABILITY.

49 581-703. PARENT UNDER SECTION SEVENTY OF THE DOMESTIC RELATIONS
 50 LAW.

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

1 S 581-702. SEVERABILITY. THE INVALIDATION OF ANY PART OF THIS LEGIS-
2 LATION BY A COURT OF COMPETENT JURISDICTION SHALL NOT RESULT IN THE
3 INVALIDATION OF ANY OTHER PART.

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

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

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

10 S 4. This act shall take effect on the one hundred twentieth day after
11 it shall have become a law. Effective immediately, the addition, amend-
12 ment and/or repeal of any rule or regulation necessary for the implemen-
13 tation of this act on its effective date is authorized to be made on or
14 before such date.