

6701

2013-2014 Regular Sessions

I N A S S E M B L Y

April 16, 2013

Introduced by M. of A. PAULIN, TITONE, LAVINE, ZEBROWSKI, WEPRIN, ROBINSON, GALEF, JAFFEE, OTIS, MAISEL, SCARBOROUGH, GABRYSZAK, COOK, BOYLAND -- Multi-Sponsored by -- M. of A. GOTTFRIED, MARKEY, MILLMAN, ROSA, WRIGHT -- 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:

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".

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

LBD05071-04-3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 PART 2

53 JUDGMENT OF PARENTAGE

54 SECTION 581-201. JUDGMENT OF PARENTAGE.

1 581-202. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN
2 THROUGH ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINA-
3 TION.

4 581-203. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD BORN
5 PURSUANT TO A GESTATIONAL CARRIER ARRANGEMENT.

6 581-204. PROCEEDING FOR JUDGMENT OF PARENTAGE OF A CHILD WHOSE
7 PARENTAGE IS ESTABLISHED PURSUANT TO SECTION 581-601
8 OF THIS ARTICLE.

9 581-205. JUDGMENT OF PARENTAGE FOR INTENDED PARENTS WHO ARE
10 SPOUSES.

11 581-206. JURISDICTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 PART 3

42 CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION

43 SECTION 581-301. SCOPE OF ARTICLE.

44 581-302. STATUS OF DONOR.

45 581-303. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION OR ARTIFI-
 46 CIAL INSEMINATION.

47 581-304. CONSENT TO ASSISTED REPRODUCTION OR ARTIFICIAL INSEMI-
 48 NATION.

49 581-305. LIMITATION ON SPOUSES' DISPUTE OF PARENTAGE OF CHILD OF
 50 ASSISTED REPRODUCTION AND ARTIFICIAL INSEMINATION.

51 581-306. EFFECT OF DISSOLUTION OF RELATIONSHIP OF SPOUSES OR
 52 WITHDRAWAL OF CONSENT.

53 581-307. EFFECT OF DEATH OF INTENDED PARENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 S 581-307. EFFECT OF DEATH OF INTENDED PARENT. EXCEPT AS OTHERWISE
56 PROVIDED IN THE ESTATES, POWERS AND TRUSTS LAW, IF AN INDIVIDUAL WHO

1 CONSENTED IN A RECORD TO BE A PARENT BY ASSISTED REPRODUCTION OR ARTIFI-
2 CIAL INSEMINATION DIES BEFORE THE TRANSFER OF EGGS, SPERM, OR EMBRYOS,
3 THE DECEASED INDIVIDUAL IS NOT A PARENT OF THE RESULTING CHILD UNLESS
4 THE DECEASED INDIVIDUAL CONSENTED IN A SIGNED RECORD THAT IF ASSISTED
5 REPRODUCTION OR ARTIFICIAL INSEMINATION WERE TO OCCUR AFTER DEATH, THE
6 DECEASED INDIVIDUAL WOULD BE A PARENT OF THE CHILD.

PART 4

GESTATIONAL AGREEMENT

9 SECTION 581-401. GESTATIONAL AGREEMENT AUTHORIZED.

10 581-404. ELIGIBILITY.

11 581-405. REQUIREMENTS OF GESTATIONAL AGREEMENT.

12 581-406. TERMINATION OF GESTATIONAL AGREEMENT.

13 581-407. GESTATIONAL AGREEMENT: EFFECT OF SUBSEQUENT SPOUSAL
14 RELATIONSHIP.

15 581-408. FAILURE TO OBTAIN A JUDGMENT OF PARENTAGE.

16 581-409. DISPUTE AS TO GESTATIONAL AGREEMENT.

17 581-410. INSPECTION OF RECORDS.

18 581-411. EXCLUSIVE, CONTINUING JURISDICTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 S 581-406. TERMINATION OF GESTATIONAL AGREEMENT. (A) AFTER ISSUANCE
54 OF A JUDGMENT OF PARENTAGE PURSUANT TO SECTION 581-203 OF THIS ARTICLE,
55 BUT BEFORE THE GESTATIONAL CARRIER BECOMES PREGNANT BY MEANS OF ASSISTED
56 REPRODUCTION, THE GESTATIONAL CARRIER, HER SPOUSE, IF ANY, OR EITHER OF

1 THE INTENDED PARENTS MAY TERMINATE THE GESTATIONAL AGREEMENT BY GIVING
2 NOTICE OF TERMINATION IN A RECORD TO ALL OTHER PARTIES AND ANY LIABILITY
3 RESULTING THEREFROM WILL BE DETERMINED PURSUANT TO SECTION 581-408 OF
4 THIS PART.

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

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

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

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

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

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

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

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

45 PART 5

46 PAYMENT TO DONORS AND GESTATIONAL CARRIERS

47 SECTION 581-501. REIMBURSEMENT.

48 581-502. COMPENSATION.

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

(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 QUALIFYING AS A PARENT 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.

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

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

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

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

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

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