

STATE OF NEW YORK

1071--C

2019-2020 Regular Sessions

IN ASSEMBLY

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Introduced by M. of A. PAULIN, ZEBROWSKI, WEPRIN, GALEF, JAFFEE, OTIS, COOK, STIRPE, BENEDETTO, BRONSON, MOSLEY, ORTIZ, DINOWITZ, L. ROSENTHAL, STECK, SIMON, WOERNER, SOLAGES, CARROLL, DE LA ROSA, ROZIC, SIMOTAS, LAVINE, EPSTEIN, DICKENS, REYES, WALKER, RODRIGUEZ, STERN, PICHARDO, CRUZ, BLAKE, QUART, NIOU, SAYEGH -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, GOTTFRIED, PEOPLES-STOKES, THIELE -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, in relation to judgments of parentage of children conceived through assisted reproduction or pursuant to surrogacy agreements; to amend the domestic relations law, in relation to restricting genetic surrogate parenting contracts; to amend the public health law, in relation to voluntary acknowledgments of parentage, gestational surrogacy and regulations concerning ova donation; to amend the general business law, in relation to the regulation of surrogacy programs; and to repeal section 73 of the domestic relations law, relating to legitimacy of children born by artificial insemination

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 JUDGMENTS OF PARENTAGE OF CHILDREN CONCEIVED THROUGH ASSISTED
5 REPRODUCTION OR PURSUANT TO SURROGACY AGREEMENTS

6 PART 1. General provisions (581-101 - 581-102)

7 2. Judgment of parentage (581-201 - 581-206)

8 3. Child of assisted reproduction (581-301 - 581-307)

9 4. Surrogacy agreement (581-401 - 581-409)

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

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- 1 5. Payment to donors and persons acting as surrogates (581-501 -
- 2 581-502)
- 3 6. Surrogates' bill of rights (581-601 - 581-607)
- 4 7. Miscellaneous provisions (581-701 - 581-704)

PART 1

GENERAL PROVISIONS

Section 581-101. Purpose.

581-102. Definitions.

5 § 581-101. Purpose. The purpose of this article is to legally estab-
 6 lish a child's relationship to his or her parents where the child is
 7 conceived through assisted reproduction except for children born to a
 8 person acting as surrogate who contributed the gametes used in
 9 conception. No fertilized egg, embryo or fetus shall have any independ-
 10 ent rights under the laws of this state, nor shall any fertilized egg,
 11 embryo or fetus be viewed as a child under the laws of this state.

12 § 581-102. Definitions. (a) "Assisted reproduction" means a method of
 13 causing pregnancy other than sexual intercourse and includes but is not
 14 limited to:

- 15 1. intrauterine or vaginal insemination;
- 16 2. donation of gametes;
- 17 3. donation of embryos;
- 18 4. in vitro fertilization and transfer of embryos; and
- 19 5. intracytoplasmic sperm injection.

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

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

24 (d) "Donor" means an individual who does not intend to be a parent who
 25 produces gametes and provides them to another person, other than the
 26 individual's spouse, for use in assisted reproduction. The term does
 27 not include a person who is a parent under part three of this article.
 28 Donor also includes an individual who had dispositional control of an
 29 embryo who then transfers dispositional control and relinquishes all
 30 present and future parental and inheritance rights and obligations to a
 31 resulting child.

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

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

40 (g) "Gamete" means a cell containing a haploid complement of DNA that
 41 has the potential to form an embryo when combined with another gamete.
 42 Sperm and eggs are gametes.

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

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

1 (j) "Health care practitioner" means an individual licensed or certi-
2 fied under title eight of the education law acting within his or her
3 scope of practice.

4 (k) "Intended parent" is an individual who manifests the intent to be
5 legally bound as the parent of a child resulting from assisted reproduc-
6 tion or a surrogacy agreement provided he or she meets the require-
7 ments of this article.

8 (l) "In vitro fertilization" means the formation of a human embryo
9 outside the human body.

10 (m) "Parent" means an individual who has established a parent-child
11 relationship under this act or other law.

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

16 (o) "Record" means information inscribed in a tangible medium or
17 stored in an electronic or other medium that is retrievable in perceiva-
18 ble form.

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

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

26 (r) "State" means a state of the United States, the District of Colum-
27 bia, Puerto Rico, the United States Virgin Islands, or any territory or
28 insular possession subject to the jurisdiction of the United States.

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

31 PART 2

32 JUDGMENT OF PARENTAGE

33 Section 581-201. Judgment of parentage.

34 581-202. Proceeding for judgment of parentage of a child
35 conceived through assisted reproduction.

36 581-203. Proceeding for judgment of parentage of a child
37 conceived pursuant to a surrogacy agreement.

38 581-204. Judgment of parentage for intended parents who are
39 spouses.

40 581-205. Inspection of records.

41 581-206. Jurisdiction, and exclusive continuing jurisdiction.

42 § 581-201. Judgment of parentage. (a) A civil proceeding may be main-
43 tained to adjudicate the parentage of a child under the circumstances
44 set forth in this article. This proceeding is governed by the civil
45 practice law and rules.

46 (b) A judgment of parentage may be issued prior to birth but shall not
47 become effective until the birth of the child.

48 (c) A petition for a judgment of parentage or nonparentage of a child
49 conceived through assisted reproduction may be initiated by (1) a child,
50 or (2) a parent, or (3) a participant, or (4) a person with a claim to
51 parentage, or (5) the support/enforcement agency or other governmental
52 agency authorized by other law, or (6) a representative authorized by
53 law to act for an individual who would otherwise be entitled to maintain
54 a proceeding but who is deceased, incapacitated, or a minor, in order to
55 legally establish the child-parent relationship of either a child born

1 through assisted reproduction under part three of this article or a
2 child born pursuant to a surrogacy agreement under part four of this
3 article.

4 § 581-202. Proceeding for judgment of parentage of a child conceived
5 through assisted reproduction. (a) A proceeding for a judgment of
6 parentage with respect to a child conceived through assisted reproduc-
7 tion may be commenced:

8 (1) if the intended parent resides in New York state, in the county
9 where the intended parent resides any time after pregnancy is achieved
10 or in the county where the child was born or resides; or

11 (2) if the intended parent and child do not reside in New York state,
12 up to ninety days after the birth of the child in the county where the
13 child was born.

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

15 (c) Where a petition includes the following statements, the court must
16 adjudicate any intended parent to be the parent of the child:

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

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

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

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

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

31 (1) in the case of an anonymous donor or where gametes or embryos have
32 previously been relinquished to a gamete or embryo storage facility or
33 in the presence of a health care practitioner, a statement from the
34 gamete or embryo storage facility or health care practitioner that the
35 donor does not retain any parental or proprietary interest in the
36 gametes or embryos; or

37 (2) in the case of a donation from a known donor, either: a. a record
38 from the gamete or embryo donor acknowledging the donation and confirm-
39 ing that the donor has no parental or proprietary interest in the
40 gametes or embryos. The record shall be signed by the gestating
41 intended parent and the gamete or embryo donor. The record may be, but
42 is not required to be, signed:

43 (i) before a notary public, or

44 (ii) before two witnesses who are not the intended parents, or

45 (iii) before a health care practitioner; or

46 b. clear and convincing evidence that the gamete or embryo donor
47 agreed, prior to conception, with the gestating parent that the donor
48 has no parental or proprietary interest in the gametes or embryos.

49 (3) In the absence of evidence pursuant to paragraph two of this
50 subdivision, notice shall be given to the donor at least twenty days
51 prior to the proceeding by delivery of a copy of the petition and
52 notice. Upon a showing to the court, by affidavit or otherwise, on or
53 before the date of the proceeding or within such further time as the
54 court may allow, that personal service cannot be effected at the donor's
55 last known address with reasonable effort, notice may be given, without
56 prior court order therefore, at least twenty days prior to the proceed-

1 ing by registered or certified mail directed to the donor's last known
2 address. Notice by publication shall not be required to be given to a
3 donor entitled to notice pursuant to the provisions of this section.

4 (4) Notwithstanding the above, where sperm is provided under the
5 supervision of a health care practitioner to someone other than the
6 sperm provider's intimate partner or spouse without a record of the
7 sperm provider's intent to parent, the sperm provider is presumed to be
8 a donor and notice is not required.

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

12 (f) Where the requirements of subdivision (c) of this section are met
13 or where the court finds the intended parent to be a parent under subdivi-
14 vision (e) of this section, the court shall issue a judgment of parent-
15 age:

16 (1) declaring, that upon the birth of the child, the intended parent
17 is the legal parent of the child; and

18 (2) ordering the intended parent to assume responsibility for the
19 maintenance and support of the child immediately upon the birth of the
20 child; and

21 (3) if there is a donor, ordering that the donor is not a parent of
22 the child; and

23 (4) ordering that upon the birth of the child, a copy of the judgment
24 of parentage be served on the (i) department of health or New York city
25 department of mental health and hygiene, or (ii) registrar of births in
26 the hospital where the child is born and directing that the hospital
27 report the parentage of the child to the appropriate department of
28 health in conformity with the court order. If an original birth certif-
29 icate has already issued, the court shall issue an order directing the
30 appropriate department of health to amend the birth certificate in an
31 expedited manner and seal the previously issued birth certificate.

32 § 581-203. Proceeding for judgment of parentage of a child conceived
33 pursuant to a surrogacy agreement. (a) The proceeding may be commenced
34 at any time after the surrogacy agreement has been executed by all of
35 the parties. Any party to the surrogacy agreement not joining in the
36 petition must be served with notice of the proceeding.

37 (b) The petition for a judgment of parentage must be verified and
38 include the following:

39 (1) a statement that the person acting as surrogate or at least one of
40 the intended parents has been a resident of the state for at least nine-
41 ty days at the time the surrogacy agreement was executed; and

42 (2) a certification from the attorney representing the intended parent
43 or parents and the attorney representing the person acting as surrogate
44 that the requirements of part four of this article have been met; and

45 (3) a statement from all parties to the surrogacy agreement that they
46 entered into the surrogacy agreement 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 the child born during the term
51 of the surrogacy agreement, the intended parent or parents is the legal
52 parent or parents of the child; and

53 (2) declaring, that upon the birth of the child born during the term
54 of the surrogacy agreement, the person acting as surrogate, and the
55 spouse of the person acting as surrogate, if any, is not the legal
56 parent of the child; and

1 (3) ordering the person acting as surrogate and the spouse of the
2 person acting as surrogate, if any, to transfer the child to the
3 intended parent or parents if this has not already occurred; and

4 (4) ordering the intended parent or parents to assume responsibility
5 for the maintenance and support of the child immediately upon the birth
6 of 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) In the event the certification required by paragraph two of subdivi-
17 vision (b) of this section cannot be made because of a technical or
18 non-material deviation from the requirements of this article; the court
19 may nevertheless enforce the agreement and issue a judgment of parentage
20 if the court determines the agreement is in substantial compliance with
21 the requirements of this article.

22 § 581-204. Judgment of parentage for intended parents who are spouses.
23 Notwithstanding or without limitation on presumptions of parentage that
24 apply, a judgment of parentage may be obtained under this part by
25 intended parents who are each other's spouse.

26 § 581-205. Inspection of records. Court records relating to
27 proceedings under this article shall be sealed. The parties to the
28 proceeding and the child shall have the right to inspect the entire
29 court record, including, but not limited to, the name of the person
30 acting as surrogate and any known donors.

31 § 581-206. Jurisdiction, and exclusive continuing jurisdiction. (a)
32 Proceedings pursuant to this article may be instituted in the supreme or
33 family court.

34 (b) Subject to the jurisdictional standards of section seventy-six of
35 the domestic relations law, the court conducting a proceeding under this
36 article has exclusive, continuing jurisdiction of all matters relating
37 to the determination of parentage until the child attains the age of one
38 hundred eighty days.

39 PART 3

40 CHILD OF ASSISTED REPRODUCTION

41 Section 581-301. Scope of article.

42 581-302. Status of donor.

43 581-303. Parentage of child of assisted reproduction.

44 581-304. Consent to assisted reproduction.

45 581-305. Limitation on spouses' dispute of parentage of child of
46 assisted reproduction.

47 581-306. Effect of embryo disposition agreement between intended
48 parents which transfers legal rights and disposi-
49 tioned control to one intended parent.

50 581-307. Effect of death of intended parent.

51 § 581-301. Scope of article. This article does not apply to the birth
52 of a child conceived by means of sexual intercourse.

53 § 581-302. Status of donor. A donor is not a parent of a child
54 conceived by means of assisted reproduction.

1 § 581-303. Parentage of child of assisted reproduction. (a) An indi-
2 vidual who provides gametes for, or who consents to, assisted repro-
3 duction with the intent to be a parent of the child with the consent of
4 the gestating parent as provided in section 581-304 of this part, is a
5 parent of the resulting child for all legal purposes.

6 (b) The court shall issue a judgment of parentage pursuant to this
7 article upon application by any participant.

8 § 581-304. Consent to assisted reproduction. (a) Where the intended
9 parent who gives birth to a child by means of assisted reproduction is a
10 spouse, the consent of both spouses to the assisted reproduction is
11 presumed and neither spouse may challenge the parentage of the child,
12 except as provided in section 581-305 of this part.

13 (b) Where the intended parent who gives birth to a child by means of
14 assisted reproduction is not a spouse, the consent to the assisted
15 reproduction must be in a record in such a manner as to indicate the
16 mutual agreement of the intended parents to conceive and parent a child
17 together.

18 (c) The absence of a record described in subdivision (b) of this
19 section shall not preclude a finding that such consent existed if the
20 court finds by clear and convincing evidence that at the time of the
21 assisted reproduction the intended parents agreed to conceive and parent
22 the child together.

23 § 581-305. Limitation on spouses' dispute of parentage of child of
24 assisted reproduction. (a) Except as otherwise provided in subdivision
25 (b) of this section, neither spouse may challenge the presumption of
26 parentage of the child unless:

27 (1) within two years after learning of the birth of the child a
28 proceeding is commenced to adjudicate parentage; and

29 (2) the court finds by clear and convincing evidence that either
30 spouse did not consent for the non-gestating spouse to be a parent of
31 the child.

32 (b) A proceeding for a judgment of parentage may be maintained at any
33 time if the court finds by clear and convincing evidence that:

34 (1) the spouse did not consent to assisted reproduction by the indi-
35 vidual who gave birth; and

36 (2) the spouse and the individual who gave birth have not cohabited
37 since the spouse knew or had reason to know of the pregnancy; and

38 (3) the spouse never openly held out the child as his or her own.

39 (c) The limitation provided in this section applies to a spousal
40 relationship that has been declared invalid after assisted reproduction
41 or artificial insemination.

42 § 581-306. Effect of embryo disposition agreement between intended
43 parents which transfers legal rights and dispositional control to one
44 intended parent. (a) An embryo disposition agreement between intended
45 parents with joint dispositional control of an embryo shall be binding
46 under the following circumstances:

47 (1) it is in writing;

48 (2) each intended parent had the advice of independent legal counsel
49 prior to its execution; and

50 (3) where the intended parents are married, transfer of legal rights
51 and dispositional control occurs only upon divorce.

52 (b) The intended parent who transfers legal rights and dispositional
53 control of the embryo is not a parent of any child conceived from the
54 embryo unless the agreement states that he or she consents to be a
55 parent.

1 (c) If the intended parent transferring legal rights and dispositional
2 control consents to be a parent, he or she may withdraw his or her
3 consent to be a parent upon written notice to the embryo storage facili-
4 ty and to the other intended parent prior to transfer of the embryo. If
5 he or she timely withdraws consent to be a parent he or she is not a
6 parent for any purpose including support obligations but the embryo
7 transfer may still proceed.

8 (d) An embryo disposition agreement or advance directive that is not
9 in compliance with subdivision (a) of this section may still be found to
10 be enforceable by the court after balancing the respective interests of
11 the parties except that the intended parent who divested him or herself
12 of legal rights and dispositional control may not be declared to be a
13 parent for any purpose without his or her consent. The parent awarded
14 legal rights and dispositional control of the embryos shall, in this
15 instance, be declared to be the only parent of the child.

16 § 581-307. Effect of death of intended parent. If an individual who
17 consented in a record to be a parent by assisted reproduction dies
18 before the transfer of eggs, sperm, or embryos, the deceased individual
19 is not a parent of the resulting child unless the deceased individual
20 consented in a signed record that if assisted reproduction were to occur
21 after death, the deceased individual would be a parent of the child,
22 provided that the record complies with the estates, powers and trusts
23 law.

PART 4

SURROGACY AGREEMENT

26 Section 581-401. Surrogacy agreement authorized.

27 581-402. Eligibility to enter surrogacy agreement.

28 581-403. Requirements of surrogacy agreement.

29 581-404. Surrogacy agreement: effect of subsequent spousal
30 relationship.

31 581-405. Termination of surrogacy agreement.

32 581-406. Parentage under compliant surrogacy agreement.

33 581-407. Insufficient surrogacy agreement.

34 581-408. Absence of surrogacy agreement.

35 581-409. Dispute as to surrogacy agreement.

36 § 581-401. Surrogacy agreement authorized. (a) If eligible under this
37 article to enter into a surrogacy agreement, a person acting as surro-
38 gate, the spouse of the person acting as surrogate, if applicable, and
39 the intended parent or parents may enter into a surrogacy agreement
40 which will be enforceable provided the surrogacy agreement meets the
41 requirements of this article.

42 (b) A surrogacy agreement shall not apply to the birth of a child
43 conceived by means of sexual intercourse.

44 (c) A surrogacy agreement may provide for payment of compensation
45 under part five of this article.

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

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

53 (2) the person acting as surrogate is a United States citizen or a
54 permanent lawful resident;

55 (3) the person acting as surrogate has not provided the egg used to
56 conceive the resulting child; and

1 (4) the person acting as surrogate has completed a medical evaluation
2 with a health care practitioner relating to the anticipated pregnancy;
3 and

4 (5) the person acting as surrogate, and the spouse of the person
5 acting as surrogate, if applicable, have been represented throughout the
6 contractual process and the duration of the contract and its execution
7 by independent legal counsel of their own choosing which shall be paid
8 for by the intended parent or parents except that a person acting as
9 surrogate who is receiving no compensation may waive the right to have
10 the intended parent or parents pay the fee for such legal counsel. Where
11 the intended parent or parents are paying for the independent legal
12 counsel of the person acting as surrogate, and the spouse of the person
13 acting as surrogate, if applicable, a separate retainer agreement shall
14 be prepared clearly stating that such legal counsel will only represent
15 the person acting as surrogate and the spouse of the person acting as
16 surrogate, if applicable, in all matters pertaining to the surrogacy
17 agreement, that such legal counsel will not offer legal advice to any
18 other parties to the surrogacy agreement, and that the attorney-client
19 relationship lies with the person acting as surrogate and the spouse of
20 the person acting as surrogate, if applicable; and

21 (6) the person acting as surrogate has, or the surrogacy agreement
22 stipulates that prior to the embryo transfer, the person acting as
23 surrogate will obtain a health insurance policy that covers major
24 medical treatments and hospitalization, and the health insurance policy
25 has a term that extends throughout the duration of the expected pregnan-
26 cy and for twenty-six weeks after the birth of the child; the policy
27 shall be paid for, whether directly or through reimbursement or other
28 means, by the intended parent or parents on behalf of the person acting
29 as surrogate pursuant to the surrogacy agreement, except that a person
30 acting as surrogate who is receiving no compensation may waive the right
31 to have the intended parent or parents pay for the health insurance
32 policy. The intended parent or parents shall also pay for or reimburse
33 the person acting as surrogate for all co-payments, deductibles and any
34 other out-of-pocket medical costs associated with pregnancy, that accrue
35 through twelve weeks after the birth of the child or termination of the
36 pregnancy, except that such responsibility shall be extended for up to
37 six months after the birth of the child or termination of the pregnancy
38 in the event a medical complication related to the pregnancy is diag-
39 nosd within twelve weeks after the birth of the child or termination or
40 the pregnancy. A person acting as surrogate who is receiving no compen-
41 sation may waive the right to have the intended parent or parents make
42 such payments or reimbursements.

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

47 (1) at least one intended parent is a United States citizen or a
48 permanent lawful resident;

49 (2) the intended parent or parents has been represented throughout the
50 contractual process and the duration of the contract and its execution
51 by independent legal counsel of his, her or their own choosing; and

52 (3) 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 an adult in a spousal relationship is eligible to enter
55 into an enforceable surrogacy agreement without his or her spouse if:

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

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

7 (4) where the spouse of an intended parent is not a required party to
8 the agreement, the spouse is not an intended parent and shall not have
9 rights or obligations to the child.

10 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement
11 shall be deemed to have satisfied the requirements of this article and
12 be enforceable if it meets the following requirements:

13 (a) it shall be in a signed record verified by:

14 (1) each intended parent, and

15 (2) the person acting as surrogate, and the spouse of the person
16 acting as surrogate, if any, unless:

17 (i) the person acting as surrogate and the spouse of the person acting
18 as surrogate are living separate and apart pursuant to a decree or judg-
19 ment of separation or pursuant to a written agreement of separation
20 subscribed by the parties thereto and acknowledged or proved in the form
21 required to entitle a deed to be recorded; or

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

24 (b) it shall be executed prior to the embryo transfer; and

25 (c) it shall be executed by a person acting as surrogate meeting the
26 eligibility requirements of subdivision (a) of section 581-402 of this
27 part and by the spouse of the person acting as surrogate, unless the
28 signature of the spouse of the person acting as surrogate is not
29 required as set forth in this section; and

30 (d) it shall be executed by intended parent or parents who met the
31 eligibility requirements of subdivision (b) of section 581-402 of this
32 part; and

33 (e) the person acting as surrogate and the spouse of the person acting
34 as surrogate, if applicable, and the intended parent or parents shall
35 have been represented throughout the contractual process and the dura-
36 tion of the contract and its execution by separate, independent legal
37 counsel of their own choosing; and

38 (f) if the surrogacy agreement provides for the payment of compen-
39 sation to the person acting as surrogate, those funds shall have been
40 placed in escrow with an independent escrow agent prior to the person
41 acting as surrogate commencing with any medical procedure other than
42 medical evaluations necessary to determine the person acting as surro-
43 gate's eligibility; and

44 (g) the surrogacy agreement must include information disclosing how
45 the intended parent or parents will cover the medical expenses of the
46 person acting as surrogate and the child. If health care coverage is
47 used to cover the medical expenses, the disclosure shall include a
48 review of the health care policy provisions related to coverage for the
49 person acting as surrogate's pregnancy, including any possible liability
50 of the person acting as surrogate's third-party liability liens or other
51 insurance coverage, and any notice requirements that could affect cover-
52 age or liability of the person acting as surrogate.

53 (h) the surrogacy agreement must comply with all of the following
54 terms:

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

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

3 (ii) the person acting as surrogate and the spouse of the person
4 acting as surrogate, if applicable, agree to surrender custody of all
5 resulting children to the intended parent or parents immediately upon
6 birth; and

7 (iii) the surrogacy agreement shall include the name of the attorney
8 representing the person acting as surrogate and, if applicable, the
9 spouse of the person acting as surrogate; and

10 (iv) the surrogacy agreement must permit the person acting as surro-
11 gate to make all health and welfare decisions regarding themselves and
12 their pregnancy including but not limited to, whether to consent to a
13 cesarean section or multiple embryo transfer, and notwithstanding any
14 other provisions in this chapter, provisions in the agreement to the
15 contrary are void and unenforceable. This article does not diminish the
16 right of the person acting as surrogate to terminate a pregnancy; and

17 (v) the surrogacy agreement must permit the person acting as a surro-
18 gate to utilize the services of a health care practitioner of the
19 person's choosing; and

20 (vi) the surrogacy agreement must not limit the right of the person
21 acting as surrogate to terminate or continue the pregnancy or reduce or
22 retain the number of fetuses or embryos the person is carrying; and

23 (vii) the surrogacy agreement must provide that, upon request, the
24 intended parent or parents have or will procure and pay for a life
25 insurance policy for the person acting as surrogate; the person acting
26 as surrogate may designate the beneficiary of the person's choosing; and

27 (viii) the surrogacy agreement shall provide for the right of the
28 person acting as surrogate, upon request, to obtain counseling to
29 address issues resulting from the person's participation in the surroga-
30 cy agreement. The cost of that counseling shall be paid by the intended
31 parent or parents.

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

33 (i) the intended parent or parents agree to accept custody of all
34 resulting children immediately upon birth regardless of number, gender,
35 or mental or physical condition; and

36 (ii) the intended parent or parents agree to assume responsibility for
37 the support of all resulting children immediately upon birth; and

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

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

43 (v) the intended parent or parents agree to execute a will, prior to
44 the embryo transfer, designating a guardian for all resulting children
45 who is authorized to perform the intended parent's or parents' obli-
46 gations pursuant to the surrogacy agreement.

47 § 581-404. Surrogacy agreement: effect of subsequent spousal relation-
48 ship. (a) After the execution of a surrogacy agreement under this arti-
49 cle, the subsequent spousal relationship of the person acting as surro-
50 gate does not affect the validity of a surrogacy agreement, the consent
51 of the spouse of the person acting as surrogate to the agreement shall
52 not be required, and the spouse of the person acting as surrogate shall
53 not be the presumed parent of any resulting children.

54 (b) The subsequent separation or divorce of the intended parents does
55 not affect the rights, duties and responsibilities of the intended
56 parents as outlined in the surrogacy agreement.

1 § 581-405. Termination of surrogacy agreement. After the execution of
2 a surrogacy agreement but before the person acting as surrogate becomes
3 pregnant by means of assisted reproduction, the person acting as surro-
4 gate, the spouse of the person acting as surrogate, if applicable, or
5 any intended parent may terminate the surrogacy agreement by giving
6 notice of termination in a record to all other parties. Upon proper
7 termination of the surrogacy agreement the parties are released from all
8 obligations recited in the surrogacy agreement except that the intended
9 parent or parents remains responsible for all expenses that are reim-
10 bursable under the agreement which have been incurred by the person
11 acting as surrogate through the date of termination. Unless the agree-
12 ment provides otherwise, the person acting as surrogate is entitled to
13 keep all payments received and obtain all payments to which the person
14 is entitled up until the date of termination. Neither a person acting as
15 surrogate nor the spouse of the person acting as surrogate, if any, is
16 liable to the intended parent or parents for terminating a surrogacy
17 agreement as provided in this section.

18 § 581-406. Parentage under compliant surrogacy agreement. Upon the
19 birth of a child conceived by assisted reproduction under a surrogacy
20 agreement that complies with this part, each intended parent is, by
21 operation of law, a parent of the child and neither the person acting as
22 a surrogate nor the person's spouse, if any, is a parent of the child.

23 § 581-407. Insufficient surrogacy agreement. If a surrogacy agreement
24 does not meet the material requirements of this article, the agreement
25 is not enforceable and the court shall determine parentage based on the
26 intent of the parties, taking into account the best interests of the
27 child. An intended parent's absence of genetic connection to the child
28 is not a sufficient basis to deny that individual a judgment of legal
29 parentage.

30 § 581-408. Absence of surrogacy agreement. Where there is no surrogacy
31 agreement, the parentage of the child will be determined based on other
32 laws of this state.

33 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which
34 is related to a surrogacy agreement other than disputes as to parentage
35 shall be resolved by the supreme court, which shall determine the
36 respective rights and obligations of the parties.

37 (b) Except as expressly provided in the surrogacy agreement, the
38 intended parent or parents and the person acting as surrogate shall be
39 entitled to all remedies available at law or equity in any dispute
40 related to the surrogacy agreement.

41 (c) There shall be no specific performance remedy available for a
42 breach by the person acting as surrogate of a surrogacy agreement term
43 that requires the person acting as surrogate to be impregnated or to
44 terminate or continue the pregnancy or to reduce or retain the number of
45 fetuses or embryos the person acting as surrogate is carrying.

46 PART 5

47 PAYMENT TO DONORS AND PERSONS ACTING AS SURROGATES

48 Section 581-501. Reimbursement.

49 581-502. Compensation.

50 § 581-501. Reimbursement. (a) A donor who has entered into a valid
51 agreement to be a donor may receive reimbursement from an intended
52 parent or parents for economic losses incurred in connection with the
53 donation which result from the retrieval or storage of gametes or embr-
54 vos.

1 (b) Premiums paid for insurance against economic losses directly
2 resulting from the retrieval or storage of gametes or embryos for
3 donation may be reimbursed.

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

10 (b) The compensation, if any, paid to a donor or person acting as
11 surrogate must be reasonable and negotiated in good faith between the
12 parties, and said payments to a person acting as surrogate shall not
13 exceed the duration of the pregnancy and recuperative period of up to
14 eight weeks after the birth of any resulting children.

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

17 (d) Compensation may not be conditioned on actual genotypic or pheno-
18 typic characteristics of the donor or of any resulting children.

19 PART 6

20 SURROGATES' BILL OF RIGHTS

21 Section 581-601. Applicability.

22 581-602. Health and welfare decisions.

23 581-603. Independent legal counsel.

24 581-604. Health insurance and medical costs.

25 581-605. Counseling.

26 581-606. Life insurance.

27 581-607. Termination of surrogacy agreement.

28 § 581-601. Applicability. The rights enumerated in this part shall
29 apply to any person acting as surrogate in this state, notwithstanding
30 any surrogacy agreement, judgment of parentage, memorandum of under-
31 standing, verbal agreement or contract to the contrary. Except as
32 otherwise provided by law, any written or verbal agreement purporting to
33 waive or limit any of the rights in this part is void as against public
34 policy. The rights enumerated in this part are not exclusive, and are
35 in addition to any other rights provided by law, regulation, or a surro-
36 gacy agreement that meets the requirements of this article.

37 § 581-602. Health and welfare decisions. A person acting as surrogate
38 has the right to make all health and welfare decisions regarding them-
39 self and their pregnancy, including but not limited to whether to
40 consent to a cesarean section or multiple embryo transfer, to utilize
41 the services of a health care practitioner of their choosing, whether to
42 terminate or continue the pregnancy, and whether to reduce or retain the
43 number of fetuses or embryos they are carrying.

44 § 581-603. Independent legal counsel. A person acting as surrogate has
45 the right to be represented throughout the contractual process and the
46 duration of the surrogacy agreement and its execution by independent
47 legal counsel of their own choosing, to be paid for by the intended
48 parent or parents.

49 § 581-604. Health insurance and medical costs. A person acting as
50 surrogate has the right to a health insurance policy that covers major
51 medical treatments and hospitalization for a term that extends through-
52 out the duration of the expected pregnancy and for twelve weeks after
53 the birth of the child, to be paid for by the intended parent or
54 parents. The intended parent or parents shall also pay for or reimburse
55 the person acting as surrogate for all co-payments, deductibles and any

1 other out-of-pocket medical costs associated with pregnancy that accrue
 2 through twelve weeks after the birth of the child or termination of the
 3 pregnancy, except that such responsibility shall be extended for up to
 4 six months after the birth of the child or termination of the pregnancy
 5 in the event a medical complication related to the pregnancy is diag-
 6 gnosed within twelve weeks after the birth of the child or termination of
 7 the pregnancy.

8 § 581-605. Counseling. A person acting as surrogate has the right to
 9 obtain counseling to address issues resulting from their participation
 10 in a surrogacy agreement, to be paid for by the intended parent or
 11 parents.

12 § 581-606. Life insurance. A person acting as surrogate has the right
 13 to be provided with a life insurance policy for the duration of the
 14 surrogacy agreement, with a beneficiary or beneficiaries of their choos-
 15 ing, to be paid for by the intended parent or parents.

16 § 581-607. Termination of surrogacy agreement. A person acting as
 17 surrogate has the right to terminate a surrogacy agreement prior to
 18 becoming pregnant by means of assisted reproduction pursuant to section
 19 581-405 of this article.

PART 7

MISCELLANEOUS PROVISIONS

22 Section 581-701. Remedial.

23 581-702. Severability.

24 581-703. Parent under section seventy of the domestic relations
 25 law.

26 581-704. Interpretation.

27 § 581-701. Remedial. This legislation is hereby declared to be a
 28 remedial statute and is to be construed liberally to secure the benefi-
 29 cial interests and purposes thereof for the best interests of the child.

30 § 581-702. Severability. The invalidation of any part of this legis-
 31 lation by a court of competent jurisdiction shall not result in the
 32 invalidation of any other part.

33 § 581-703. Parent under section seventy of the domestic relations law.
 34 The term "parent" in section seventy of the domestic relations law shall
 35 include a person established to be a parent under this article or any
 36 other relevant law.

37 § 581-704. Interpretation. Unless the context indicates otherwise,
 38 words importing the singular include and apply to several persons,
 39 parties, or things; words importing the plural include the singular.

40 § 2. Section 73 of the domestic relations law is REPEALED.

41 § 3. Section 121 of the domestic relations law, as added by chapter
 42 308 of the laws of 1992, is amended to read as follows:

43 § 121. Definitions. When used in this article, unless the context or
 44 subject matter manifestly requires a different interpretation:

45 1. [~~"Birth mother"~~] "Genetic surrogate" shall mean a [~~woman~~] person
 46 who gives birth to a child who is the person's genetic child pursuant to
 47 a genetic surrogate parenting [~~contract~~] agreement.

48 2. [~~"Genetic father" shall mean a man who provides sperm for the birth~~
 49 ~~of a child born pursuant to a surrogate parenting contract.~~

50 3. [~~"Genetic mother" shall mean a woman who provides an ovum for the~~
 51 ~~birth of a child born pursuant to a surrogate parenting contract.~~

52 4. [~~"Surrogate parenting contract"~~] "Genetic surrogate parenting agree-
 53 ment" shall mean any agreement, oral or written, in which:

54 (a) a [~~woman~~] genetic surrogate agrees either to be inseminated with
 55 the sperm of a [~~man~~] person who is not [~~her husband~~] their spouse or to

1 be impregnated with an embryo that is the product of ~~[an]~~ the genetic
2 surrogate's ovum fertilized with the sperm of a ~~[man]~~ person who is not
3 ~~[her husband]~~ their spouse; and

4 (b) the ~~[woman]~~ genetic surrogate agrees to, or intends to, surrender
5 or consent to the adoption of the child born as a result of such insemi-
6 nation or impregnation.

7 § 4. Section 122 of the domestic relations law, as added by chapter
8 308 of the laws of 1992, is amended to read as follows:

9 § 122. Public policy. ~~[Surrogate]~~ Genetic surrogate parenting
10 ~~[contracts]~~ agreements are hereby declared contrary to the public policy
11 of this state, and are void and unenforceable.

12 § 5. Section 123 of the domestic relations law, as added by chapter
13 308 of the laws of 1992, is amended to read as follows:

14 § 123. Prohibitions and penalties. ~~[1.]~~ No person or other entity
15 shall knowingly request, accept, receive, pay or give any fee, compen-
16 sation or other remuneration, directly or indirectly, in connection with
17 any genetic surrogate parenting ~~[contract]~~ agreement, or induce, arrange
18 or otherwise assist in arranging a genetic surrogate parenting
19 ~~[contract]~~ agreement for a fee, compensation or other remuneration,
20 except for:

21 (a) payments in connection with the adoption of a child permitted by
22 subdivision six of section three hundred seventy-four of the social
23 services law and disclosed pursuant to subdivision eight of section one
24 hundred fifteen of this chapter; or

25 (b) payments for reasonable and actual medical fees and hospital
26 expenses for artificial insemination or in vitro fertilization services
27 incurred by the ~~[mother]~~ genetic surrogate in connection with the birth
28 of the child.

29 ~~[2. (a) A birth mother or her husband, a genetic father and his wife,
30 and, if the genetic mother is not the birth mother, the genetic mother
31 and her husband who violate this section shall be subject to a civil
32 penalty not to exceed five hundred dollars.~~

33 ~~(b) Any other person or entity who or which induces, arranges or
34 otherwise assists in the formation of a surrogate parenting contract for
35 a fee, compensation or other remuneration or otherwise violates this
36 section shall be subject to a civil penalty not to exceed ten thousand
37 dollars and forfeiture to the state of any such fee, compensation or
38 remuneration in accordance with the provisions of subdivision (a) of
39 section seven thousand two hundred one of the civil practice law and
40 rules, for the first such offense. Any person or entity who or which
41 induces, arranges or otherwise assists in the formation of a surrogate
42 parenting contract for a fee, compensation or other remuneration or
43 otherwise violates this section, after having been once subject to a
44 civil penalty for violating this section, shall be guilty of a felony.]~~

45 § 6. Section 124 of the domestic relations law, as added by chapter
46 308 of the laws of 1992, is amended to read as follows:

47 § 124. Proceedings regarding parental rights, status or obligations.
48 In any action or proceeding involving a dispute between the ~~[birth moth-~~
49 ~~er]~~ genetic surrogate and ~~[(i) the genetic father, (ii) the genetic~~
50 ~~mother, (iii) both the genetic father and genetic mother, or (iv) the~~
51 ~~parent or parents of the genetic father or genetic mother]~~ any party
52 with a claim to legal parentage pursuant to a genetic surrogate parent-
53 ing agreement, regarding parental rights, status or obligations with
54 respect to a child born pursuant to a genetic surrogate parenting
55 ~~[contract]~~ agreement:

1 1. the court shall not consider the [~~birth-mother's~~] genetic surro-
2 gate's participation in a genetic surrogate parenting [~~contract~~] agree-
3 ment as adverse to [~~her~~] their parental rights, status, or obligations;
4 and

5 2. the court, having regard to the circumstances of the case and of
6 the respective parties including the parties' relative ability to pay
7 such fees and expenses, in its discretion and in the interests of
8 justice, may award to either party reasonable and actual counsel fees
9 and legal expenses incurred in connection with such action or proceed-
10 ing. Such award may be made in the order or judgment by which the
11 particular action or proceeding is finally determined, or by one or
12 more orders from time to time before the final order or judgment, or by
13 both such order or orders and the final order or judgment; provided,
14 however, that in any dispute involving a [~~birth-mother~~] genetic surro-
15 gate who has executed a valid surrender or consent to the adoption,
16 nothing in this section shall empower a court to make any award that it
17 would not otherwise be empowered to direct.

18 § 7. Section 4135-b of the public health law, as added by chapter 59
19 of the laws of 1993, subdivisions 1 and 2 as amended by chapter 402 of
20 the laws of 2013, and subdivision 3 as amended by chapter 170 of the
21 laws of 1994, is amended to read as follows:

22 § 4135-b. Voluntary acknowledgments of [~~paternity~~] parentage; child
23 born out of wedlock. 1. (a) Immediately preceding or following the
24 in-hospital birth of a child to an unmarried [~~woman~~] person or to a
25 person who gave birth to a child conceived through assisted
26 reproduction, the person in charge of such hospital or his or her desig-
27 nated representative shall provide to the [~~child's mother and~~] unmarried
28 person who gave birth to the child and the putative father, if such
29 father is readily identifiable and available, or to the person who gave
30 birth and the other intended parent of a child conceived through
31 assisted reproduction if such person is readily identifiable and avail-
32 able, the documents and written instructions necessary for such mother
33 and putative [~~father~~] persons to complete an acknowledgment of [~~paterni-~~
34 ~~ty~~] parentage witnessed by two persons not related to the signatory.
35 Such acknowledgment, if signed by both parties, at any time following
36 the birth of a child, shall be filed with the registrar at the same time
37 at which the certificate of live birth is filed, if possible, or anytime
38 thereafter. Nothing herein shall be deemed to require the person in
39 charge of such hospital or his or her designee to seek out or otherwise
40 locate a putative father or intended parent of a child conceived through
41 assisted reproduction who is not readily identifiable or available.

42 (b) The following persons may sign an acknowledgment of parentage to
43 establish the parentage of the child:

44 (i) An unmarried person who gave birth to the child and another person
45 who is a genetic parent.

46 (ii) A married or unmarried person who gave birth to the child and
47 another person who is an intended parent under section 581-303 of the
48 family court act of a child conceived through assisted reproduction.

49 (c) An acknowledgment of parentage shall be in a record signed by the
50 person who gave birth to the child and by either the genetic parent
51 other than the person who gave birth to the child or a person who is a
52 parent under section 581-303 of the family court act of the child
53 conceived through assisted reproduction.

54 (d) An acknowledgment of parentage is void if, at the time of signing,
55 any of the following are true:

1 (i) A person other than the person who gave birth to the child or a
2 person seeking to establish parentage through an acknowledgment of
3 parentage is a presumed parent of the child under section twenty-four of
4 the domestic relations law;

5 (ii) A court has entered a judgment of parentage of the child;

6 (iii) Another person has signed a valid acknowledgment of parentage
7 with regard to the child;

8 (iv) The child has a parent under section 581-303 of the family court
9 act other than the signatories;

10 (v) The person seeking to establish parentage is a gamete donor under
11 section 581-302 of the family court act;

12 (vi) The person seeking to establish parentage asserts that he or she
13 is a parent under section twenty-four of the domestic relations law;

14 (vii) The person seeking to establish parentage asserts that he or she
15 is a parent of a child conceived through assisted reproduction and the
16 person is in fact, not a parent under section 581-303 of the family
17 court act.

18 (e) The acknowledgment shall be executed on a form provided by the
19 commissioner developed in consultation with the appropriate commissioner
20 of the department of family assistance, which shall include the social
21 security number of the [~~mother~~] person who gave birth to the child and
22 of the [~~putative father~~] acknowledged parent and provide in plain
23 language (i) a statement by the [~~mother~~] person who gave birth to the
24 child consenting to the acknowledgment of [~~paternity~~] parentage and a
25 statement that the [~~putative father~~] acknowledged parent is the only
26 possible [~~father~~] other genetic parent or that the acknowledged parent
27 is an intended parent and the child was conceived through assisted
28 reproduction, (ii) a statement by the putative father, if any, that he
29 is the biological father of the child, and (iii) a statement that the
30 signing of the acknowledgment of [~~paternity~~] parentage by both parties
31 shall have the same force and effect as an order of filiation entered
32 after a court hearing by a court of competent jurisdiction, including an
33 obligation to provide support for the child except that, only if filed
34 with the registrar of the district in which the birth certificate has
35 been filed, will the acknowledgment have such force and effect with
36 respect to inheritance rights.

37 [~~(b)~~] (f) Prior to the execution of an acknowledgment of [~~paternity~~]
38 parentage, the [~~mother~~] person who gave birth to the child and the
39 [~~putative father~~] other signatory shall be provided orally, which may be
40 through the use of audio or video equipment, and in writing with such
41 information as is required pursuant to this section with respect to
42 their rights and the consequences of signing a voluntary acknowledgment
43 of [~~paternity~~] parentage including, but not limited to:

44 (i) that the signing of the acknowledgment of [~~paternity~~] parentage
45 shall establish the [~~paternity~~] parentage of the child and shall have
46 the same force and effect as an order of [~~paternity~~] parentage or filia-
47 tion issued by a court of competent jurisdiction establishing the duty
48 of both parties to provide support for the child;

49 (ii) that if such an acknowledgment is not made, the [~~putative father~~]
50 signatory other than the person who gave birth to the child can be held
51 liable for support only if the family court, after a hearing, makes an
52 order declaring that the [~~putative father~~] person is the [~~father~~] parent
53 of the child whereupon the court may make an order of support which may
54 be retroactive to the birth of the child;

55 (iii) that if made a respondent in a proceeding to establish [~~paterni-~~
56 ty] parentage the [~~putative father~~] signatory other than the person who

1 gave birth to the child has a right to free legal representation if
2 indigent;

3 (iv) that [~~the putative father~~] an alleged genetic parent has a right
4 to a genetic marker test or to a DNA test when available;

5 (v) that by executing the acknowledgment, the [~~putative father~~]
6 alleged genetic parent waives [~~his~~] their right to a hearing, to which
7 [~~he~~] they would otherwise be entitled, on the issue of [~~paternity~~]
8 parentage;

9 (vi) that a copy of the acknowledgment of [~~paternity~~] parentage shall
10 be filed with the putative father registry pursuant to section three
11 hundred seventy-two-c of the social services law, and that such filing
12 may establish the child's right to inheritance from the putative father
13 pursuant to clause (B) of subparagraph two of paragraph (a) of section
14 4-1.2 of the estates, powers and trusts law;

15 (vii) that, if such acknowledgment is filed with the registrar of the
16 district in which the birth certificate has been filed, such acknowledg-
17 ment will establish inheritance rights from the putative father or the
18 other intended parent of a child conceived through assisted reproduction
19 pursuant to clause (A) of subparagraph two of paragraph (a) of section
20 4-1.2 of the estates, powers and trusts law;

21 (viii) that no further judicial or administrative proceedings are
22 required to ratify an unchallenged acknowledgment of [~~paternity~~] parent-
23 age provided, however, that:

24 (A) A signatory to an acknowledgment of [~~paternity~~] parentage, who had
25 attained the age of eighteen at the time of execution of the acknowledg-
26 ment, shall have the right to rescind the acknowledgment within the
27 earlier of sixty days from the date of signing the acknowledgment or the
28 date of an administrative or a judicial proceeding (including, but not
29 limited to, a proceeding to establish a support order) relating to the
30 child in which the signatory is a party, provided that the "date of an
31 administrative or a judicial proceeding" shall be the date by which the
32 respondent is required to answer the petition;

33 (B) A signatory to an acknowledgment of [~~paternity~~] parentage, who had
34 not attained the age of eighteen at the time of execution of the
35 acknowledgment, shall have the right to rescind the acknowledgment
36 anytime up to sixty days after the signatory's attaining the age of
37 eighteen years or sixty days after the date on which the respondent is
38 required to answer a petition (including, but not limited to, a petition
39 to establish a support order) relating to the child, whichever is earli-
40 er; provided, however, that the signatory must have been advised at such
41 proceeding of his or her right to file a petition to vacate the acknowl-
42 edgment within sixty days of the date of such proceeding;

43 (ix) that after the expiration of the time limits set forth in clauses
44 (A) and (B) of subparagraph (viii) of this paragraph, any of the signa-
45 tories may challenge the acknowledgment of [~~paternity~~] parentage in
46 court only on the basis of fraud, duress, or material mistake of fact,
47 with the burden of proof on the party challenging the voluntary acknowl-
48 edgment;

49 (x) that the [~~putative father and mother~~] person who gave birth to the
50 child and the other signatory may wish to consult with attorneys before
51 executing the acknowledgment; and that they have the right to seek legal
52 representation and supportive services including counseling regarding
53 such acknowledgment;

54 (xi) that the acknowledgment of [~~paternity~~] parentage may be the basis
55 for the [~~putative father~~] signatory other than the person who gave birth
56 to the child establishing custody and visitation rights to the child and

1 for requiring the [~~putative father's~~] consent of the signatory other
2 than the person who gave birth to the child prior to an adoption
3 proceeding;

4 (xii) that the [~~mother's~~] refusal of the person who gave birth to the
5 child to sign the acknowledgment shall not be deemed a failure to coop-
6 erate in establishing [~~paternity-for~~] parentage of the child; and

7 (xiii) that the child may bear the last name of either parent, or any
8 combination thereof, which name shall not affect the legal status of the
9 child.

10 In addition, the governing body of such hospital shall insure that
11 appropriate staff shall provide to the [~~child's mother and putative~~
12 ~~father~~] person who gave birth to the child and the other signatory,
13 prior to the [~~mother's~~] discharge from the hospital of the person who
14 gave birth to the child, the opportunity to speak with hospital staff to
15 obtain clarifying information and answers to their questions about
16 [~~paternity~~] parentage establishment, and shall also provide the tele-
17 phone number of the local support collection unit.

18 [~~(e)~~] (g) Within ten days after receiving the certificate of birth,
19 the registrar shall furnish without charge to each parent or guardian of
20 the child or to the [~~mother~~] person who gave birth at the address desig-
21 nated by her for that purpose, a certified copy of the certificate of
22 birth and, if applicable, a certified copy of the written acknowledgment
23 of [~~paternity~~] parentage. If the [~~mother~~] person who gave birth is in
24 receipt of child support enforcement services pursuant to title six-A of
25 article three of the social services law, the registrar also shall
26 furnish without charge a certified copy of the certificate of birth and,
27 if applicable, a certified copy of the written acknowledgment of [~~pater-~~
28 ~~nity~~] parentage to the social services district of the county within
29 which the [~~mother~~] person who gave birth resides.

30 2. (a) When a child's [~~paternity~~] parentage is acknowledged voluntar-
31 ily pursuant to section one hundred eleven-k of the social services law,
32 the social services official shall file the executed acknowledgment with
33 the registrar of the district in which the birth occurred and in which
34 the birth certificate has been filed.

35 (b) Where a child's [~~paternity~~] parentage has not been acknowledged
36 voluntarily pursuant to paragraph (a) of subdivision one of this section
37 or paragraph (a) of this subdivision, the [~~child's mother and the puta-~~
38 ~~tive father~~] person who gave birth to the child and the other signatory
39 may voluntarily acknowledge a child's [~~paternity~~] parentage pursuant to
40 this paragraph by signing the acknowledgment of [~~paternity~~] parentage.

41 (c) A signatory to an acknowledgment of [~~paternity~~] parentage, who has
42 attained the age of eighteen at the time of execution of the acknowledg-
43 ment shall have the right to rescind the acknowledgment within the
44 earlier of sixty days from the date of signing the acknowledgment or the
45 date of an administrative or a judicial proceeding (including, but not
46 limited to, a proceeding to establish a support order) relating to the
47 child in which either signatory is a party; provided that for purposes
48 of this section, the "date of an administrative or a judicial proceed-
49 ing" shall be the date by which the respondent is required to answer the
50 petition.

51 (d) A signatory to an acknowledgment of [~~paternity~~] parentage, who has
52 not attained the age of eighteen at the time of execution of the
53 acknowledgment, shall have the right to rescind the acknowledgment
54 anytime up to sixty days after the signatory's attaining the age of
55 eighteen years or sixty days after the date on which the respondent is
56 required to answer a petition (including, but not limited to, a petition

1 to establish a support order) relating to the child in which the signa-
 2 tory is a party, whichever is earlier; provided, however, that the
 3 signatory must have been advised at such proceeding of his or her right
 4 to file a petition to vacate the acknowledgment within sixty days of the
 5 date of such proceeding.

6 (e) After the expiration of the time limits set forth in paragraphs
 7 (c) and (d) of this subdivision, any of the signatories may challenge
 8 the acknowledgment of [~~paternity~~] parentage in court only on the basis
 9 of fraud, duress, or material mistake of fact, with the burden of proof
 10 on the party challenging the voluntary acknowledgment. The acknowledg-
 11 ment shall have full force and effect once so signed. The original or a
 12 copy of the acknowledgment shall be filed with the registrar of the
 13 district in which the birth certificate has been filed.

14 3. (a) An executed acknowledgment of [~~paternity~~] parentage executed by
 15 [~~the mother and father of a child born out of wedlock~~] any two people
 16 eligible to sign such an acknowledgment under paragraph (b) of subdivi-
 17 sion one of this section, married or unmarried, shall establish the
 18 [~~paternity~~] parentage of a child and shall have the same force and
 19 effect as an order of [~~paternity~~] parentage or filiation issued by a
 20 court of competent jurisdiction. Such acknowledgement shall thereafter
 21 be filed with the registrar pursuant to subdivision one or two of this
 22 section.

23 (b) A registrar with whom an acknowledgment of [~~paternity~~] parentage
 24 has been filed pursuant to subdivision one or two of this section shall
 25 file the acknowledgment with the state department of health and the
 26 putative father registry.

27 4. The court shall give full faith and credit to an acknowledgment of
 28 parentage effective in another state if the acknowledgment was in a
 29 signed record and otherwise complies with the law of the other state.

30 5. A new certificate of birth shall be issued if the certificate of
 31 birth of [~~a~~] the child [~~born out of wedlock~~] as defined in paragraph (b)
 32 of subdivision one of section four thousand one hundred thirty-five of
 33 this article has been filed without entry of the name of the [~~father~~]
 34 signatory other than the person who gave birth, and the commissioner
 35 thereafter receives a notarized acknowledgment of [~~paternity~~] parentage
 36 accompanied by the written consent of the [~~putative father and mother~~]
 37 person who gave birth to the child and other signatory to the entry of
 38 the name of such [~~father~~] person, which consent may also be to a change
 39 in the surname of the child.

40 6. Any reference to an acknowledgment of paternity in any law of this
 41 state shall be interpreted to mean an acknowledgment of parentage signed
 42 pursuant to this section or signed in another state consistent with the
 43 law of that state.

44 § 8. The article heading of article 8 of the domestic relations law,
 45 as added by chapter 308 of the laws of 1992, is amended to read as
 46 follows:

47 GENETIC SURROGATE PARENTING CONTRACTS

48 § 9. The general business law is amended by adding a new article 44 to
 49 read as follows:

50 ARTICLE 44

51 REGULATION OF SURROGACY PROGRAMS

52 Section 1400. Definitions.

53 1401. Programs regulated under this article.

54 1402. Conflicts of interest; prohibition on payments; funds in
 55 escrow; licensure; notice of surrogates' bill of rights.

1 1403. Regulations.

2 § 1400. Definitions. As used in this section:

3 (a) The definitions in section 581-102 of the family court act shall
4 apply.

5 (b) "Payment" means any type of monetary compensation or other valu-
6 able consideration including but not limited to a rebate, refund,
7 commission, unearned discount, or profit by means of credit or other
8 valuable consideration.

9 (c) "Surrogacy program" does not include any party to a surrogacy
10 agreement or any person licensed to practice law and representing a
11 party to the surrogacy agreement, but does include and is not limited to
12 any agency, agent, business, or individual engaged in, arranging, or
13 facilitating transactions contemplated by a surrogacy agreement, regard-
14 less of whether such agreement ultimately comports with the requirements
15 of article five-C of the family court act.

16 § 1401. Programs regulated under this article. The provisions of this
17 article apply to surrogacy programs arranging or facilitating trans-
18 actions contemplated by a surrogacy agreement under part four of article
19 five-C of the family court act if:

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

21 (b) A person acting as surrogate who is party to a surrogacy agreement
22 resides in New York state during the term of the surrogacy agreement; or

23 (c) Any medical procedures under the surrogacy agreement are performed
24 in New York state.

25 § 1402. Conflicts of interest; prohibition on payments; funds in
26 escrow; licensure; notice of surrogates' bill of rights. A surrogacy
27 program to which this article applies:

28 (a) Must keep all funds paid by or on behalf of the intended parent or
29 parents in a separate, licensed escrow fund;

30 (b) May not be owned or managed, in any part, directly or indirectly,
31 by any attorney representing a party to the surrogacy agreement;

32 (c) May not pay or receive payment, directly or indirectly, to or from
33 any person licensed to practice law and representing a party to the
34 surrogacy agreement in connection with the referral of any person or
35 party for the purpose of a surrogacy agreement;

36 (d) May not pay or receive payment, directly or indirectly, to or from
37 any health care provider providing any health services, including
38 assisted reproduction, to a party to the surrogacy agreement; and

39 (e) May not be owned or managed, in any part, directly or indirectly,
40 by any health care provider providing any health services, including
41 assisted reproduction, to a party to the surrogacy agreement.

42 (f) Must be licensed to operate in New York state pursuant to regu-
43 lations promulgated by the department of financial services in consulta-
44 tion with the department of health.

45 (g) Must ensure that all potential parties to a surrogacy agreement,
46 at the time of consultation with such surrogacy program, are provided
47 with written notice of the surrogates' bill of rights enumerated in part
48 six of article five-C of the family court act.

49 § 1403. Regulations. The department of financial services, in consul-
50 tation with the department of health, shall promulgate regulations to
51 implement the requirements of this article, and shall annually report to
52 the state legislature regarding the practices of surrogacy programs and
53 all business transactions related to surrogacy in New York state, with
54 recommendations for any necessary amendments to this article.

55 § 10. The public health law is amended by adding a new article 25-B to
56 read as follows:

ARTICLE 25-B
GESTATIONAL SURROGACY

Section 2599-cc. Gestational surrogacy.

§ 2599-cc. Gestational surrogacy. 1. The commissioner shall promulgate regulations on the practice of gestational surrogacy. Such regulations shall include, but not be limited to:

(a) guidelines and procedures for obtaining fully informed consent from potential persons acting as surrogates, including but not limited to a full disclosure of any known health risks associated with acting as a surrogate;

(b) the development and distribution, in printed form and on the department's website, of informational material relating to gestational surrogacy; and

(c) the establishment of a voluntary central tracking registry of persons acting as surrogates, as reported by surrogacy programs licensed by the department pursuant to article forty-four of the general business law upon the affirmative consent of a person acting as surrogate. Such registry shall provide a means for gathering and maintaining accurate information on the:

- (i) number of times a person has acted as a surrogate;
- (ii) health information of the person acting as surrogate; and
- (iii) other information deemed appropriate by the commissioner.

2. All such regulations shall maintain the anonymity of the person acting as surrogate and any resulting offspring and govern access to information maintained by the registry.

§ 11. Subdivisions 4, 5, 6, 7 and 8 of section 4365 of the public health law are renumbered subdivisions 5, 6, 7, 8, and 9 and a new subdivision 4 is added to read as follows:

4. The commissioner, in consultation with the transplant council, shall promulgate regulations on the donation of ova. Such regulations shall include, but not be limited to:

(a) guidelines and procedures for obtaining fully informed consent from potential donors, including but not limited to a full disclosure of any known health risks of the ova donation process;

(b) the development and distribution, in printed form and on the department's website, of informational material relating to the donation of ova; and

(c) the establishment of a voluntary central tracking registry of ova donor information, as reported by banks and storage facilities licensed pursuant to this article upon the affirmative consent of an ova donor. Such registry shall provide a means for gathering and maintaining accurate information on the:

- (i) number of ova donated from a single donor;
- (ii) health information of the donor at the time of the donation; and
- (iii) other information deemed appropriate by the commissioner.

In addition, all such regulations shall maintain the anonymity of the donor and any resulting offspring and govern access to information maintained by the registry.

§ 12. 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 are authorized to be made and completed on or before such date.