

STATE OF NEW YORK

2071--A

2019-2020 Regular Sessions

IN SENATE

January 22, 2019

Introduced by Sens. HOYLMAN, ADDABBO, BAILEY, BIAGGI, BROOKS, GAUGHRAN, GIANARIS, GOUNARDES, KAMINSKY, KAPLAN, KENNEDY, MARTINEZ, METZGER, MONTGOMERY, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SERRANO, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, 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; to amend the general business law, in relation to the regulation of surrogacy brokers; 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:

ARTICLE 5-C

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

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

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

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

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

5. Payment to donors and persons acting as surrogates (581-501 - 581-502)

6. Miscellaneous provisions (581-601 - 581-604)

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

LBD01279-19-9

PART 1GENERAL PROVISIONSSection 581-101. Purpose.581-102. Definitions.

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

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

1. intrauterine or vaginal insemination;
2. donation of gametes;
3. donation of embryos;
4. in vitro fertilization and transfer of embryos; and
5. intracytoplasmic sperm injection.

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

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

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

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

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

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

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

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

(j) "Health care practitioner" means an individual licensed or certified under title eight of the education law acting within his or her scope of practice.

(k) "Intended parent" is an individual who manifests the intent to be legally bound as the parent of a child resulting from assisted reprod-

1 uction or a surrogacy agreement provided he or she meets the require-
2 ments of this article.

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

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

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

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

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

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

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

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

26 PART 2

27 JUDGMENT OF PARENTAGE

28 Section 581-201. Judgment of parentage.

29 581-202. Proceeding for judgment of parentage of a child
30 conceived through assisted reproduction.

31 581-203. Proceeding for judgment of parentage of a child
32 conceived pursuant to a surrogacy agreement.

33 581-204. Judgment of parentage for intended parents who are
34 spouses.

35 581-205. Inspection of records.

36 581-206. Jurisdiction, and exclusive continuing jurisdiction.

37 § 581-201. Judgment of parentage. (a) A civil proceeding may be main-
38 tained to adjudicate the parentage of a child under the circumstances
39 set forth in this article. This proceeding is governed by the civil
40 practice law and rules.

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

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

54 § 581-202. Proceeding for judgment of parentage of a child conceived
55 through assisted reproduction. (a) A proceeding for a judgment of

1 parentage with respect to a child conceived through assisted repro-
2 duction may be commenced:

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

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

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

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

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

16 (2) a statement from the gestating intended parent that the gestating
17 intended parent became pregnant as a result of assisted reproduction;
18 and

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

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

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

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

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

38 (i) before a notary public, or

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

40 (iii) before a health care practitioner; or

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

44 (3) In the absence of evidence pursuant to paragraph two of this
45 subdivision, notice shall be given to the donor at least twenty days
46 prior to the proceeding by delivery of a copy of the petition and
47 notice. Upon a showing to the court, by affidavit or otherwise, on or
48 before the date of the proceeding or within such further time as the
49 court may allow, that personal service cannot be effected at the donor's
50 last known address with reasonable effort, notice may be given, without
51 prior court order therefore, at least twenty days prior to the proceed-
52 ing by registered or certified mail directed to the donor's last known
53 address. Notice by publication shall not be required to be given to a
54 donor entitled to notice pursuant to the provisions of this section.

55 (4) Notwithstanding the above, where sperm is provided under the
56 supervision of a health care practitioner to someone other than the

1 sperm provider's intimate partner or spouse without a record of the
2 sperm provider's intent to parent, the sperm provider is presumed to be
3 a donor and notice is not required.

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

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

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

13 (2) ordering the intended parent to assume responsibility for the
14 maintenance and support of the child immediately upon the birth of the
15 child; and

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

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

27 § 581-203. Proceeding for judgment of parentage of a child conceived
28 pursuant to a surrogacy agreement. (a) The proceeding may be commenced
29 at any time after the surrogacy agreement has been executed by all of
30 the parties. Any party to the surrogacy agreement not joining in the
31 petition must be served with notice of the proceeding. Failure to
32 respond to the notice shall be considered a default and no further
33 notice shall be required.

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

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

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

42 (3) a statement from all parties to the surrogacy agreement that they
43 entered into the surrogacy agreement knowingly and voluntarily.

44 (c) Where a petition satisfies subdivision (b) of this section the
45 court shall issue a judgment of parentage, without additional
46 proceedings or documentation:

47 (1) declaring, that upon the birth of the child born during the term
48 of the surrogacy agreement, the intended parent or parents is the legal
49 parent or parents of the child; and

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

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

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

4 (5) ordering that upon the birth of the child, a copy of the judgment
5 of parentage be served on the (i) department of health or New York city
6 department of mental health and hygiene, or (ii) registrar of births in
7 the hospital where the child is born and directing that the hospital
8 report the parentage of the child to the appropriate department of
9 health in conformity with the court order. If an original birth certifi-
10 cate has already issued, the court shall issue an order directing the
11 appropriate department of health to amend the birth certificate in an
12 expedited manner and seal the previously issued birth certificate.

13 (d) In the event the certification required by paragraph two of subdi-
14 vision (b) of this section cannot be made because of a technical or
15 non-material deviation from the requirements of this article; the court
16 may nevertheless enforce the agreement and issue a judgment of parentage
17 if the court determines the agreement is in substantial compliance with
18 the requirements of this article.

19 § 581-204. Judgment of parentage for intended parents who are spouses.
20 Notwithstanding or without limitation on presumptions of parentage that
21 apply, a judgment of parentage may be obtained under this part by
22 intended parents who are each other's spouse.

23 § 581-205. Inspection of records. Court records relating to
24 proceedings under this article shall be sealed. The parties to the
25 proceeding and the child shall have the right to inspect the entire
26 court record.

27 § 581-206. Jurisdiction, and exclusive continuing jurisdiction. (a)
28 Proceedings pursuant to this article may be instituted in the supreme or
29 family court.

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

35 PART 3

36 CHILD OF ASSISTED REPRODUCTION

37 Section 581-301. Scope of article.

38 581-302. Status of donor.

39 581-303. Parentage of child of assisted reproduction.

40 581-304. Consent to assisted reproduction.

41 581-305. Limitation on spouses' dispute of parentage of child of
42 assisted reproduction.

43 581-306. Effect of embryo disposition agreement between intended
44 parents which transfers legal rights and disposi-
45 tioned control to one intended parent.

46 581-307. Effect of death of intended parent.

47 § 581-301. Scope of article. This article does not apply to the birth
48 of a child conceived by means of sexual intercourse.

49 § 581-302. Status of donor. A donor is not a parent of a child
50 conceived by means of assisted reproduction.

51 § 581-303. Parentage of child of assisted reproduction. (a) An indi-
52 vidual who provides gametes for, or who consents to, assisted reprod-
53 uction with the intent to be a parent of the child with the consent of
54 the gestating parent as provided in section 581-304 of this part, is a
55 parent of the resulting child for all legal purposes.

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

3 § 581-304. Consent to assisted reproduction. (a) Where the intended
4 parent who gives birth to a child by means of assisted reproduction is a
5 spouse, the consent of both spouses to the assisted reproduction is
6 presumed and neither spouse may challenge the parentage of the child,
7 except as provided in section 581-305 of this part.

8 (b) Where the intended parent who gives birth to a child by means of
9 assisted reproduction is not a spouse, the consent to the assisted
10 reproduction must be in a record in such a manner as to indicate the
11 mutual agreement of the intended parents to conceive and parent a child
12 together.

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

18 § 581-305. Limitation on spouses' dispute of parentage of child of
19 assisted reproduction. (a) Except as otherwise provided in subdivision
20 (b) of this section, neither spouse may challenge the presumption of
21 parentage of the child unless:

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

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

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

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

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

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

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

37 § 581-306. Effect of embryo disposition agreement between intended
38 parents which transfers legal rights and dispositional control to one
39 intended parent. (a) An embryo disposition agreement between intended
40 parents with joint dispositional control of an embryo shall be binding
41 under the following circumstances:

42 (1) it is in writing;

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

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

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

51 (c) If the intended parent transferring legal rights and dispositional
52 control consents to be a parent, he or she may withdraw his or her
53 consent to be a parent upon written notice to the embryo storage facili-
54 ty and to the other intended parent prior to transfer of the embryo. If
55 he or she timely withdraws consent to be a parent he or she is not a

parent for any purpose including support obligations but the embryo transfer may still proceed.

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

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

PART 4

SURROGACY AGREEMENT

Section 581-401. Surrogacy agreement authorized.

581-402. Eligibility to enter surrogacy agreement.

581-403. Requirements of surrogacy agreement.

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

581-405. Termination of surrogacy agreement.

581-406. Parentage under compliant surrogacy agreement.

581-407. Insufficient surrogacy agreement.

581-408. Absence of surrogacy agreement.

581-409. Dispute as to surrogacy agreement.

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

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

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

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

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

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

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

(4) the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, have been represented throughout the contractual process and the duration of the contract and its execution by independent legal counsel of their own choosing which shall be paid

1 for by the intended parent or parents except that a person acting as
2 surrogate who is receiving no compensation may waive the right to have
3 the intended parent or parents pay the fee for such legal counsel; and

4 (5) the person acting as surrogate has, or the surrogacy agreement
5 stipulates that prior to the embryo transfer, the person acting as
6 surrogate will obtain, a health insurance policy that covers major
7 medical treatments and hospitalization, and the health insurance policy
8 has a term that extends throughout the duration of the expected pregnan-
9 cy and for twelve weeks after the birth of the child; the policy shall
10 be paid for, whether directly or through reimbursement or other means,
11 by the intended parent or parents on behalf of the person acting as
12 surrogate pursuant to the surrogacy agreement, except that a person
13 acting as surrogate who is receiving no compensation may waive the right
14 to have the intended parent or parents pay for the health insurance
15 policy. The intended parent or parents shall also pay for or reimburse
16 the person acting as surrogate for all co-payments, deductibles and any
17 other out-of-pocket medical costs associated with pregnancy, except that
18 a person acting as surrogate who is receiving no compensation may waive
19 the right to have the intended parent or parents make such payments or
20 reimbursements.

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

25 (1) the intended parent or parents has been represented throughout the
26 contractual process and the duration of the contract and its execution
27 by independent legal counsel of his, her or their own choosing; and

28 (2) he or she is an adult person who is not in a spousal relationship,
29 or adult spouses together, or any two adults who are intimate partners
30 together, except an adult in a spousal relationship is eligible to enter
31 into an enforceable surrogacy agreement without his or her spouse if:

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

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

38 (3) where the spouse of an intended parent is not a required party to
39 the agreement, the spouse is not an intended parent and shall not have
40 rights or obligations to the child.

41 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement
42 shall be deemed to have satisfied the requirements of this article and
43 be enforceable if it meets the following requirements:

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

45 (1) each intended parent, and

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

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

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

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

1 (c) it shall be executed by a person acting as surrogate meeting the
2 eligibility requirements of subdivision (a) of section 581-402 of this
3 part and by the spouse of the person acting as surrogate, unless the
4 signature of the spouse of the person acting as surrogate is not
5 required as set forth in this section; and

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

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

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

20 (g) the surrogacy agreement must include information disclosing how
21 the intended parent or parents will cover the medical expenses of the
22 person acting as surrogate and the child. If health care coverage is
23 used to cover the medical expenses, the disclosure shall include a
24 review of the health care policy provisions related to coverage for the
25 person acting as surrogate's pregnancy, including any possible liability
26 of the person acting as surrogate's third-party liability liens or other
27 insurance coverage, and any notice requirements that could affect cover-
28 age or liability of the person acting as surrogate.

29 (h) the surrogacy agreement must comply with all of the following
30 terms:

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

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

35 (ii) the person acting as surrogate and the spouse of the person
36 acting as surrogate, if applicable, agree to surrender custody of all
37 resulting children to the intended parent or parents immediately upon
38 birth; and

39 (iii) the surrogacy agreement shall include the name of the attorney
40 representing the person acting as surrogate and, if applicable, the
41 spouse of the person acting as surrogate; and

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

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

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

55 (vii) the surrogacy agreement must provide that, upon request, the
56 intended parent or parents have or will procure and pay for a life

1 insurance policy for the person acting as surrogate; the person acting
2 as surrogate may designate the beneficiary of the person's choosing; and
3 (viii) the surrogacy agreement shall provide for the right of the
4 person acting as surrogate, upon request, to obtain counseling to
5 address issues resulting from the person's participation in the surroga-
6 cy agreement. The cost of that counseling shall be paid by the intended
7 parent or parents.

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

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

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

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

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

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

23 § 581-404. Surrogacy agreement: effect of subsequent spousal relation-
24 ship. (a) After the execution of a surrogacy agreement under this arti-
25 cle, the subsequent spousal relationship of the person acting as surro-
26 gate does not affect the validity of a surrogacy agreement, the consent
27 of the spouse of the person acting as surrogate to the agreement shall
28 not be required, and the spouse of the person acting as surrogate shall
29 not be the presumed parent of any resulting children.

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

33 § 581-405. Termination of surrogacy agreement. After the execution of
34 a surrogacy agreement but before the person acting as surrogate becomes
35 pregnant by means of assisted reproduction, the person acting as surro-
36 gate, the spouse of the person acting as surrogate, if applicable, or
37 any intended parent may terminate the surrogacy agreement by giving
38 notice of termination in a record to all other parties. Upon proper
39 termination of the surrogacy agreement the parties are released from all
40 obligations recited in the surrogacy agreement except that the intended
41 parent or parents remains responsible for all expenses that are reim-
42 bursable under the agreement which have been incurred by the person
43 acting as surrogate through the date of termination. Unless the agree-
44 ment provides otherwise, the person acting as surrogate is entitled to
45 keep all payments received and obtain all payments to which the person
46 is entitled up until the date of termination. Neither a person acting as
47 surrogate nor the spouse of the person acting as surrogate, if any, is
48 liable to the intended parent or parents for terminating a surrogacy
49 agreement as provided in this section.

50 § 581-406. Parentage under compliant surrogacy agreement. Upon the
51 birth of a child conceived by assisted reproduction under a surrogacy
52 agreement that complies with this part, each intended parent is, by
53 operation of law, a parent of the child and neither the person acting as
54 a gestational surrogate nor the person's spouse, if any, is a parent of
55 the child.

1 § 581-407. Insufficient surrogacy agreement. If a surrogacy agreement
2 does not meet the material requirements of this article, the agreement
3 is not enforceable and the court shall determine parentage based on the
4 intent of the parties, taking into account the best interests of the
5 child. An intended parent's absence of genetic connection to the child
6 is not a sufficient basis to deny that individual a judgment of legal
7 parentage.

8 § 581-408. Absence of surrogacy agreement. Where there is no surrogacy
9 agreement, the parentage of the child will be determined based on other
10 laws of this state.

11 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which
12 is related to a surrogacy agreement other than disputes as to parentage
13 shall be resolved by the supreme court, which shall determine the
14 respective rights and obligations of the parties.

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

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

24 PART 5

25 PAYMENT TO DONORS AND PERSONS ACTING AS SURROGATES

26 Section 581-501. Reimbursement.

27 581-502. Compensation.

28 § 581-501. Reimbursement. (a) A donor who has entered into a valid
29 agreement to be a donor may receive reimbursement from an intended
30 parent or parents for economic losses incurred in connection with the
31 donation which result from the retrieval or storage of gametes or embr-
32 yos.

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

36 § 581-502. Compensation. (a) Compensation may be paid to a donor or
37 person acting as surrogate based on medical risks, physical discomfort,
38 inconvenience and the responsibilities they are undertaking in
39 connection with their participation in the assisted reproduction. Under
40 no circumstances may compensation be paid to purchase gametes or embryos
41 or for the relinquishment of a parental interest in a child.

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

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

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

51 PART 6

52 MISCELLANEOUS PROVISIONS

53 Section 581-601. Remedial.

54 581-602. Severability.

581-603. Parent under section seventy of the domestic relations law.

581-604. Interpretation.

§ 581-601. Remedial. This legislation is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof for the best interests of the child.

§ 581-602. Severability. The invalidation of any part of this legislation by a court of competent jurisdiction shall not result in the invalidation of any other part.

§ 581-603. Parent under section seventy of the domestic relations law. The term "parent" in section seventy of the domestic relations law shall include a person established to be a parent under this article or any other relevant law.

§ 581-604. Interpretation. Unless the context indicates otherwise, words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular.

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

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

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

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

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

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

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

(a) a [~~woman~~] genetic surrogate agrees either to be inseminated with the sperm of a [~~man~~] person who is not [~~her husband~~] their spouse or to be impregnated with an embryo that is the product of [~~an~~] the genetic surrogate's ovum fertilized with the sperm of a [~~man~~] person who is not [~~her husband~~] their spouse; and

(b) the [~~woman~~] genetic surrogate agrees to, or intends to, surrender or consent to the adoption of the child born as a result of such insemination or impregnation.

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

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

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

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

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

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

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

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

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

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

1. the court shall not consider the [~~birth mother's~~] genetic surrogate's participation in a genetic surrogate parenting [~~contract~~] agreement as adverse to [~~her~~] their parental rights, status, or obligations; and

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

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

§ 4135-b. Voluntary acknowledgments of [~~paternity~~] parentage; child born out of wedlock. 1. (a) Immediately preceding or following the in-hospital birth of a child to an unmarried [~~woman~~] person or to a person who gave birth to a child conceived through assisted

1 reproduction, the person in charge of such hospital or his or her design-
2 nated representative shall provide to the [~~child's mother and~~] unmarried
3 person who gave birth to the child and the putative father, if such
4 father is readily identifiable and available, or to the person who gave
5 birth and the other intended parent of a child conceived through
6 assisted reproduction if such person is readily identifiable and avail-
7 able, the documents and written instructions necessary for such mother
8 and putative [~~father~~] persons to complete an acknowledgment of [~~paterni-~~
9 ~~ty~~] parentage witnessed by two persons not related to the signatory.
10 Such acknowledgment, if signed by both parties, at any time following
11 the birth of a child, shall be filed with the registrar at the same time
12 at which the certificate of live birth is filed, if possible, or anytime
13 thereafter. Nothing herein shall be deemed to require the person in
14 charge of such hospital or his or her designee to seek out or otherwise
15 locate a putative father or intended parent of a child conceived through
16 assisted reproduction who is not readily identifiable or available.

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

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

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

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

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

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

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

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

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

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

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

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

48 (e) The acknowledgment shall be executed on a form provided by the
49 commissioner developed in consultation with the appropriate commissioner
50 of the department of family assistance, which shall include the social
51 security number of the [~~mother~~] person who gave birth to the child and
52 of the [~~putative father~~] acknowledged parent and provide in plain
53 language (i) a statement by the [~~mother~~] person who gave birth to the
54 child consenting to the acknowledgment of [~~paternity~~] parentage and a
55 statement that the [~~putative father~~] acknowledged parent is the only
56 possible [~~father~~] other genetic parent or that the acknowledged parent

1 is an intended parent and the child was conceived through assisted
2 reproduction, (ii) a statement by the putative father, if any, that he
3 is the biological father of the child, and (iii) a statement that the
4 signing of the acknowledgment of ~~[paternity]~~ parentage by both parties
5 shall have the same force and effect as an order of filiation entered
6 after a court hearing by a court of competent jurisdiction, including an
7 obligation to provide support for the child except that, only if filed
8 with the registrar of the district in which the birth certificate has
9 been filed, will the acknowledgment have such force and effect with
10 respect to inheritance rights.

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

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

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

29 (iii) that if made a respondent in a proceeding to establish ~~[paterni-~~
30 ty] parentage the ~~[putative father]~~ signatory other than the person who
31 gave birth to the child has a right to free legal representation if
32 indigent;

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

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

39 (vi) that a copy of the acknowledgment of ~~[paternity]~~ parentage shall
40 be filed with the putative father registry pursuant to section three
41 hundred seventy-two-c of the social services law, and that such filing
42 may establish the child's right to inheritance from the putative father
43 pursuant to clause (B) of subparagraph two of paragraph (a) of section
44 4-1.2 of the estates, powers and trusts law;

45 (vii) that, if such acknowledgment is filed with the registrar of the
46 district in which the birth certificate has been filed, such acknowledg-
47 ment will establish inheritance rights from the putative father or the
48 other intended parent of a child conceived through assisted reproduction
49 pursuant to clause (A) of subparagraph two of paragraph (a) of section
50 4-1.2 of the estates, powers and trusts law;

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

54 (A) A signatory to an acknowledgment of ~~[paternity]~~ parentage, who had
55 attained the age of eighteen at the time of execution of the acknowledg-
56 ment, shall have the right to rescind the acknowledgment within the

1 earlier of sixty days from the date of signing the acknowledgment or the
2 date of an administrative or a judicial proceeding (including, but not
3 limited to, a proceeding to establish a support order) relating to the
4 child in which the signatory is a party, provided that the "date of an
5 administrative or a judicial proceeding" shall be the date by which the
6 respondent is required to answer the petition;

7 (B) A signatory to an acknowledgment of [~~paternity~~] parentage, who had
8 not attained the age of eighteen at the time of execution of the
9 acknowledgment, shall have the right to rescind the acknowledgment
10 anytime up to sixty days after the signatory's attaining the age of
11 eighteen years or sixty days after the date on which the respondent is
12 required to answer a petition (including, but not limited to, a petition
13 to establish a support order) relating to the child, whichever is earli-
14 er; provided, however, that the signatory must have been advised at such
15 proceeding of his or her right to file a petition to vacate the acknowl-
16 edgment within sixty days of the date of such proceeding;

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

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

28 (xi) that the acknowledgment of [~~paternity~~] parentage may be the basis
29 for the [~~putative father~~] signatory other than the person who gave birth
30 to the child establishing custody and visitation rights to the child and
31 for requiring the [~~putative father's~~] consent of the signatory other
32 than the person who gave birth to the child prior to an adoption
33 proceeding;

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

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

40 In addition, the governing body of such hospital shall insure that
41 appropriate staff shall provide to the [~~child's mother and putative~~
42 ~~father~~] person who gave birth to the child and the other signatory,
43 prior to the [~~mother's~~] discharge from the hospital of the person who
44 gave birth to the child, the opportunity to speak with hospital staff to
45 obtain clarifying information and answers to their questions about
46 [~~paternity~~] parentage establishment, and shall also provide the tele-
47 phone number of the local support collection unit.

48 [~~(e)~~] (g) Within ten days after receiving the certificate of birth,
49 the registrar shall furnish without charge to each parent or guardian of
50 the child or to the [~~mother~~] person who gave birth at the address desig-
51 nated by her for that purpose, a certified copy of the certificate of
52 birth and, if applicable, a certified copy of the written acknowledgment
53 of [~~paternity~~] parentage. If the [~~mother~~] person who gave birth is in
54 receipt of child support enforcement services pursuant to title six-A of
55 article three of the social services law, the registrar also shall
56 furnish without charge a certified copy of the certificate of birth and,

1 if applicable, a certified copy of the written acknowledgment of [~~paternity~~ parentage] to the social services district of the county within
2 which the [~~mother~~ person who gave birth] resides.

3
4 2. (a) When a child's [~~paternity~~ parentage] is acknowledged voluntarily pursuant to section one hundred eleven-k of the social services law,
5 the social services official shall file the executed acknowledgment with
6 the registrar of the district in which the birth occurred and in which
7 the birth certificate has been filed.

8
9 (b) Where a child's [~~paternity~~ parentage] has not been acknowledged
10 voluntarily pursuant to paragraph (a) of subdivision one of this section
11 or paragraph (a) of this subdivision, the [~~child's mother and the putative father~~ person who gave birth to the child and the other signatory]
12 may voluntarily acknowledge a child's [~~paternity~~ parentage] pursuant to
13 this paragraph by signing the acknowledgment of [~~paternity~~ parentage].

14
15 (c) A signatory to an acknowledgment of [~~paternity~~ parentage], who has
16 attained the age of eighteen at the time of execution of the acknowledgment
17 shall have the right to rescind the acknowledgment within the
18 earlier of sixty days from the date of signing the acknowledgment or the
19 date of an administrative or a judicial proceeding (including, but not
20 limited to, a proceeding to establish a support order) relating to the
21 child in which either signatory is a party; provided that for purposes
22 of this section, the "date of an administrative or a judicial proceeding"
23 shall be the date by which the respondent is required to answer the
24 petition.

25 (d) A signatory to an acknowledgment of [~~paternity~~ parentage], who has
26 not attained the age of eighteen at the time of execution of the
27 acknowledgment, shall have the right to rescind the acknowledgment
28 anytime up to sixty days after the signatory's attaining the age of
29 eighteen years or sixty days after the date on which the respondent is
30 required to answer a petition (including, but not limited to, a petition
31 to establish a support order) relating to the child in which the signatory
32 is a party, whichever is earlier; provided, however, that the
33 signatory must have been advised at such proceeding of his or her right
34 to file a petition to vacate the acknowledgment within sixty days of the
35 date of such proceeding.

36 (e) After the expiration of the time limits set forth in paragraphs
37 (c) and (d) of this subdivision, any of the signatories may challenge
38 the acknowledgment of [~~paternity~~ parentage] in court only on the basis
39 of fraud, duress, or material mistake of fact, with the burden of proof
40 on the party challenging the voluntary acknowledgment. The acknowledgment
41 shall have full force and effect once so signed. The original or a
42 copy of the acknowledgment shall be filed with the registrar of the
43 district in which the birth certificate has been filed.

44 3. (a) An executed acknowledgment of [~~paternity~~ parentage] executed by
45 [~~the mother and father of a child born out of wedlock~~ any two people]
46 eligible to sign such an acknowledgment under paragraph (b) of subdivision one of this section, married or unmarried, shall establish the
47 [~~paternity~~ parentage] of a child and shall have the same force and
48 effect as an order of [~~paternity~~ parentage] or filiation issued by a
49 court of competent jurisdiction. Such acknowledgement shall thereafter
50 be filed with the registrar pursuant to subdivision one or two of this
51 section.

52
53 (b) A registrar with whom an acknowledgment of [~~paternity~~ parentage]
54 has been filed pursuant to subdivision one or two of this section shall
55 file the acknowledgment with the state department of health and the
56 putative father registry.

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

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

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

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

GENETIC SURROGATE PARENTING CONTRACTS

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

ARTICLE 44

REGULATION OF SURROGACY BROKERS

Section 1400. Definitions.

1401. Brokers regulated under this article.

1402. Conflicts of interest; prohibition on payments; funds in escrow.

1403. Regulations.

§ 1400. Definitions. As used in this section:

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

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

(c) "Surrogacy broker" includes but is not limited to any agency, agent, business, or individual engaged in, arranging, or facilitating transactions contemplated by a surrogacy agreement, regardless of whether such agreement ultimately comports with the requirements of article five-C of the family court act.

§ 1401. Brokers regulated under this article. The provisions of this article apply to surrogacy brokers arranging or facilitating transactions contemplated by a surrogacy agreement under part four of article five-C of the family court act if:

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

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

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

§ 1402. Conflicts of interest; prohibition on payments; funds in escrow. A surrogacy broker to which this article applies:

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

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

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

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

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

13 § 1403. Regulations. The department of financial services shall
14 promulgate regulations to implement the requirements of this article,
15 and shall annually report to the state legislature regarding the prac-
16 tices of surrogacy brokers in New York state, with recommendations for
17 any necessary amendments to this article.

18 § 10. This act shall take effect on the one hundred twentieth day
19 after it shall have become a law. Effective immediately, the addition,
20 amendment and/or repeal of any rule or regulation necessary for the
21 implementation of this act on its effective date are authorized to be
22 made and completed on or before such date.