# 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:**

Section 1. The family court act is amended by adding a new article 5-C 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 1
GENERAL PROVISIONS

Section 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-

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

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

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

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

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

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

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

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

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

## PART 2
## JUDGMENT OF PARENTAGE

Section 581-201. Judgment of parentage.
581-202. Proceeding for judgment of parentage of a child conceived through assisted reproduction.
581-203. Proceeding for judgment of parentage of a child conceived pursuant to a surrogacy agreement.
581-204. Judgment of parentage for intended parents who are spouses.
581-205. Inspection of records.
581-206. Jurisdiction, and exclusive continuing jurisdiction.

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

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

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

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

parentage with respect to a child conceived through assisted reproduction may be commenced:

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

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

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

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

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

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

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

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

(d) The following shall be deemed sufficient proof of a donor's donative intent for purposes of this section:

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

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

(i) before a notary public, or

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

(iii) before a health care practitioner; or

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

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

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

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

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

(f) Where the requirements of subdivision (c) of this section are met or where the court finds the intended parent to be a parent under subdivision (e) of this section, the court shall issue a judgment of parentage:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART 3
## CHILD OF ASSISTED REPRODUCTION

Section 581-301. Scope of article.
581-302. Status of donor.
581-303. Parentage of child of assisted reproduction.
581-304. Consent to assisted reproduction.
581-305. Limitation on spouses' dispute of parentage of child of assisted reproduction.
581-306. Effect of embryo disposition agreement between intended parents which transfers legal rights and dispositioned control to one intended parent.
581-307. Effect of death of intended parent.

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

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

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

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

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

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

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

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

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

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

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

(1) the spouse did not consent to assisted reproduction by the individual who gave birth; and

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

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

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

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

(1) it is in writing;

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

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

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

(c) If the intended parent transferring legal rights and dispositional control consents to be a parent, he or she may withdraw his or her consent to be a parent upon written notice to the embryo storage facility and to the other intended parent prior to transfer of the embryo. If 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

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

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

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

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

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

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

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

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

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

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

(1) each intended parent, and

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

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

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

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

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

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

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

(f) if the surrogacy agreement provides for the payment of compensation to the person acting as surrogate, those funds shall have been placed in escrow with an independent escrow agent prior to the person acting as surrogate commencing with any medical procedure other than medical evaluations necessary to determine the person acting as surrogate's eligibility; and

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

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

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

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

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

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

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

(v) the surrogacy agreement must permit the person acting as a surrogate to utilize the services of a health care practitioner of the person's choosing; and

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

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

insurance policy for the person acting as surrogate; the person acting as surrogate may designate the beneficiary of the person's choosing; and

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

(2) As to the intended parent or parents:

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

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

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

(iv) the surrogacy agreement shall provide that the rights and obligations of the intended parent or parents under the surrogacy agreement are not assignable; and

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

§ 581-404. Surrogacy agreement: effect of subsequent spousal relationship. (a) After the execution of a surrogacy agreement under this article, the subsequent spousal relationship of the person acting as surrogate does not affect the validity of a surrogacy agreement, the consent of the spouse of the person acting as surrogate to the agreement shall not be required, and the spouse of the person acting as surrogate shall not be the presumed parent of any resulting children.

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

§ 581-405. Termination of surrogacy agreement. After the execution of a surrogacy agreement but before the person acting as surrogate becomes pregnant by means of assisted reproduction, the person acting as surrogate, the spouse of the person acting as surrogate, if applicable, or any intended parent may terminate the surrogacy agreement by giving notice of termination in a record to all other parties. Upon proper termination of the surrogacy agreement the parties are released from all obligations recited in the surrogacy agreement except that the intended parent or parents remains responsible for all expenses that are reimbursable under the agreement which have been incurred by the person acting as surrogate through the date of termination. Unless the agreement provides otherwise, the person acting as surrogate is entitled to keep all payments received and obtain all payments to which the person is entitled up until the date of termination. Neither a person acting as surrogate nor the spouse of the person acting as surrogate, if any, is liable to the intended parent or parents for terminating a surrogacy agreement as provided in this section.

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

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

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

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

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

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

## PART 5
## PAYMENT TO DONORS AND PERSONS ACTING AS SURROGATES

Section 581-501. Reimbursement.
581-502. Compensation.

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

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

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

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

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

(d) Compensation may not be conditioned on actual genotypic or phenotypic characteristics of the donor or of any resulting children.

## PART 6
## MISCELLANEOUS PROVISIONS

Section 581-601. Remedial.
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

reproduction, the person in charge of such hospital or his or her designated representative shall provide to the [~~child's mother and~~] unmarried person who gave birth to the child and the putative father, if such father is readily identifiable and available, or to the person who gave birth and the other intended parent of a child conceived through assisted reproduction if such person is readily identifiable and available, the documents and written instructions necessary for such mother and putative [~~father~~] persons to complete an acknowledgment of [~~paternity~~] parentage witnessed by two persons not related to the signatory. Such acknowledgment, if signed by both parties, at any time following the birth of a child, shall be filed with the registrar at the same time at which the certificate of live birth is filed, if possible, or anytime thereafter. Nothing herein shall be deemed to require the person in charge of such hospital or his or her designee to seek out or otherwise locate a putative father or intended parent of a child conceived through assisted reproduction who is not readily identifiable or available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) that no further judicial or administrative proceedings are required to ratify an unchallenged acknowledgment of [~~paternity~~] parentage provided, however, that:

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

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

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

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

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

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

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

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

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

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

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

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

(b) Where a child's [~~paternity~~] parentage has not been acknowledged voluntarily pursuant to paragraph (a) of subdivision one of this section 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 may voluntarily acknowledge a child's [~~paternity~~] parentage pursuant to this paragraph by signing the acknowledgment of [~~paternity~~] parentage.

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

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

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

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

(b) A registrar with whom an acknowledgment of [~~paternity~~] parentage has been filed pursuant to subdivision one or two of this section shall file the acknowledgment with the state department of health and the 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;

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

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

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

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

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

§ 10. 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.