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IN ASSEMBLY

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

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)

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

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- 1 5. Payment to donors and persons acting as surrogates (581-501 -
- 2 581-502)
- 3 6. Miscellaneous provisions (581-601 - 581-604)

PART 1

GENERAL PROVISIONS

Section 581-101. Purpose.

581-102. Definitions.

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

15 § 581-102. Definitions. (a) "Assisted reproduction" means a method of
 16 causing pregnancy other than sexual intercourse and includes but is not
 17 limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 PART 2

32 JUDGMENT OF PARENTAGE

33 Section 581-201. Judgment of parentage.

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

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

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

40 581-205. Inspection of records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (i) before a notary public, or

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

45 (iii) before a health care practitioner; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (2) declaring, that upon the birth of the child born during the term
56 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (1) it is in writing;

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

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

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

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

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

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

PART 4

SURROGACY AGREEMENT

26 Section 581-401. Surrogacy agreement authorized.

27 581-402. Eligibility to enter surrogacy agreement.

28 581-403. Requirements of surrogacy agreement.

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

31 581-405. Termination of surrogacy agreement.

32 581-406. Parentage under compliant surrogacy agreement.

33 581-407. Insufficient surrogacy agreement.

34 581-408. Absence of surrogacy agreement.

35 581-409. Dispute as to surrogacy agreement.

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

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

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

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

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

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

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

4 (4) the person acting as surrogate, and the spouse of the person
5 acting as surrogate, if applicable, have been represented throughout the
6 contractual process and the duration of the contract and its execution
7 by independent legal counsel of their own choosing which shall be paid
8 for by the intended parent or parents except that a person acting as
9 surrogate who is receiving no compensation may waive the right to have
10 the intended parent or parents pay the fee for such legal counsel; and

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

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

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

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

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

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

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

48 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement
49 shall be deemed to have satisfied the requirements of this article and
50 be enforceable if it meets the following requirements:

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

52 (1) each intended parent, and

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

55 (i) the person acting as surrogate and the spouse of the person acting
56 as surrogate are living separate and apart pursuant to a decree or judg-

1 ment of separation or pursuant to a written agreement of separation
2 subscribed by the parties thereto and acknowledged or proved in the form
3 required to entitle a deed to be recorded; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 § 581-404. Surrogacy agreement: effect of subsequent spousal relation-
32 ship. (a) After the execution of a surrogacy agreement under this arti-
33 cle, the subsequent spousal relationship of the person acting as surro-
34 gate does not affect the validity of a surrogacy agreement, the consent
35 of the spouse of the person acting as surrogate to the agreement shall
36 not be required, and the spouse of the person acting as surrogate shall
37 not be the presumed parent of any resulting children.

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

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

1 liable to the intended parent or parents for terminating a surrogacy
2 agreement as provided in this section.

3 § 581-406. Parentage under compliant surrogacy agreement. Upon the
4 birth of a child conceived by assisted reproduction under a surrogacy
5 agreement that complies with this part, each intended parent is, by
6 operation of law, a parent of the child and neither the person acting as
7 a gestational surrogate nor the person's spouse, if any, is a parent of
8 the child.

9 § 581-407. Insufficient surrogacy agreement. If a surrogacy agreement
10 does not meet the material requirements of this article, the agreement
11 is not enforceable and the court shall determine parentage based on the
12 intent of the parties, taking into account the best interests of the
13 child. An intended parent's absence of genetic connection to the child
14 is not a sufficient basis to deny that individual a judgment of legal
15 parentage.

16 § 581-408. Absence of surrogacy agreement. Where there is no surrogacy
17 agreement, the parentage of the child will be determined based on other
18 laws of this state.

19 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which
20 is related to a surrogacy agreement other than disputes as to parentage
21 shall be resolved by the supreme court, which shall determine the
22 respective rights and obligations of the parties.

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

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

32 PART 5

33 PAYMENT TO DONORS AND PERSONS ACTING AS SURROGATES

34 Section 581-501. Reimbursement.

35 581-502. Compensation.

36 § 581-501. Reimbursement. (a) A donor who has entered into a valid
37 agreement to be a donor may receive reimbursement from an intended
38 parent or parents for economic losses incurred in connection with the
39 donation which result from the retrieval or storage of gametes or embr-
40 yos.

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

44 § 581-502. Compensation. (a) Compensation may be paid to a donor or
45 person acting as surrogate based on medical risks, physical discomfort,
46 inconvenience and the responsibilities they are undertaking in
47 connection with their participation in the assisted reproduction. Under
48 no circumstances may compensation be paid to purchase gametes or embryos
49 or for the relinquishment of a parental interest in a child.

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

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

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

5 PART 6

6 MISCELLANEOUS PROVISIONS

7 Section 581-601. Remedial.

8 581-602. Severability.

9 581-603. Parent under section seventy of the domestic relations
10 law.

11 581-604. Interpretation.

12 § 581-601. Remedial. This legislation is hereby declared to be a
13 remedial statute and is to be construed liberally to secure the benefi-
14 cial interests and purposes thereof for the best interests of the child.

15 § 581-602. Severability. The invalidation of any part of this legis-
16 lation by a court of competent jurisdiction shall not result in the
17 invalidation of any other part.

18 § 581-603. Parent under section seventy of the domestic relations law.
19 The term "parent" in section seventy of the domestic relations law shall
20 include a person established to be a parent under this article or any
21 other relevant law.

22 § 581-604. Interpretation. Unless the context indicates otherwise,
23 words importing the singular include and apply to several persons,
24 parties, or things; words importing the plural include the singular.

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

26 § 3. Section 121 of the domestic relations law, as added by chapter
27 308 of the laws of 1992, is amended to read as follows:

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

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

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

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

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

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

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

47 § 4. Section 122 of the domestic relations law, as added by chapter
48 308 of the laws of 1992, is amended to read as follows:

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

52 § 5. Section 123 of the domestic relations law, as added by chapter
53 308 of the laws of 1992, is amended to read as follows:

54 § 123. Prohibitions and penalties. ~~[1.]~~ No person or other entity
55 shall knowingly request, accept, receive, pay or give any fee, compen-

1 sation or other remuneration, directly or indirectly, in connection with
 2 any genetic surrogate parenting [~~contract~~] agreement, or induce, arrange
 3 or otherwise assist in arranging a genetic surrogate parenting
 4 [~~contract~~] agreement for a fee, compensation or other remuneration,
 5 except for:

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

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

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

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

30 § 6. Section 124 of the domestic relations law, as added by chapter
 31 308 of the laws of 1992, is amended to read as follows:

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

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

45 2. the court, having regard to the circumstances of the case and of
 46 the respective parties including the parties' relative ability to pay
 47 such fees and expenses, in its discretion and in the interests of
 48 justice, may award to either party reasonable and actual counsel fees
 49 and legal expenses incurred in connection with such action or proceed-
 50 ing. Such award may be made in the order or judgment by which the
 51 particular action or proceeding is finally determined, or by one or
 52 more orders from time to time before the final order or judgment, or by
 53 both such order or orders and the final order or judgment; provided,
 54 however, that in any dispute involving a [~~birth mother~~] genetic surro-
 55 gate who has executed a valid surrender or consent to the adoption,

1 nothing in this section shall empower a court to make any award that it
2 would not otherwise be empowered to direct.

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

7 § 4135-b. Voluntary acknowledgments of [~~paternity~~] parentage; child
8 born out of wedlock. 1. (a) Immediately preceding or following the
9 in-hospital birth of a child to an unmarried [~~woman~~] person or to a
10 person who gave birth to a child conceived through assisted
11 reproduction, the person in charge of such hospital or his or her desig-
12 nated representative shall provide to the [~~child's mother and~~] unmarried
13 person who gave birth to the child and the putative father, if such
14 father is readily identifiable and available, or to the person who gave
15 birth and the other intended parent of a child conceived through
16 assisted reproduction if such person is readily identifiable and avail-
17 able, the documents and written instructions necessary for such mother
18 and putative [~~father~~] persons to complete an acknowledgment of [~~paterni-~~
19 ~~ty~~] parentage witnessed by two persons not related to the signatory.
20 Such acknowledgment, if signed by both parties, at any time following
21 the birth of a child, shall be filed with the registrar at the same time
22 at which the certificate of live birth is filed, if possible, or anytime
23 thereafter. Nothing herein shall be deemed to require the person in
24 charge of such hospital or his or her designee to seek out or otherwise
25 locate a putative father or intended parent of a child conceived through
26 assisted reproduction who is not readily identifiable or available.

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

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

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

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

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

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

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

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

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

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

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

54 (vii) The person seeking to establish parentage asserts that he or she
55 is a parent of a child conceived through assisted reproduction and the

1 person is in fact, not a parent under section 581-303 of the family
2 court act.

3 (e) The acknowledgment shall be executed on a form provided by the
4 commissioner developed in consultation with the appropriate commissioner
5 of the department of family assistance, which shall include the social
6 security number of the [~~mother~~] person who gave birth to the child and
7 of the [~~putative father~~] acknowledged parent and provide in plain
8 language (i) a statement by the [~~mother~~] person who gave birth to the
9 child consenting to the acknowledgment of [~~paternity~~] parentage and a
10 statement that the [~~putative father~~] acknowledged parent is the only
11 possible [~~father~~] other genetic parent or that the acknowledged parent
12 is an intended parent and the child was conceived through assisted
13 reproduction, (ii) a statement by the putative father, if any, that he
14 is the biological father of the child, and (iii) a statement that the
15 signing of the acknowledgment of [~~paternity~~] parentage by both parties
16 shall have the same force and effect as an order of filiation entered
17 after a court hearing by a court of competent jurisdiction, including an
18 obligation to provide support for the child except that, only if filed
19 with the registrar of the district in which the birth certificate has
20 been filed, will the acknowledgment have such force and effect with
21 respect to inheritance rights.

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

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

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

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

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

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

50 (vi) that a copy of the acknowledgment of [~~paternity~~] parentage shall
51 be filed with the putative father registry pursuant to section three
52 hundred seventy-two-c of the social services law, and that such filing
53 may establish the child's right to inheritance from the putative father
54 pursuant to clause (B) of subparagraph two of paragraph (a) of section
55 4-1.2 of the estates, powers and trusts law;

1 (vii) that, if such acknowledgment is filed with the registrar of the
2 district in which the birth certificate has been filed, such acknowledg-
3 ment will establish inheritance rights from the putative father or the
4 other intended parent of a child conceived through assisted reproduction
5 pursuant to clause (A) of subparagraph two of paragraph (a) of section
6 4-1.2 of the estates, powers and trusts law;

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

10 (A) A signatory to an acknowledgment of [~~paternity~~] parentage, who had
11 attained the age of eighteen at the time of execution of the acknowledg-
12 ment, shall have the right to rescind the acknowledgment within the
13 earlier of sixty days from the date of signing the acknowledgment or the
14 date of an administrative or a judicial proceeding (including, but not
15 limited to, a proceeding to establish a support order) relating to the
16 child in which the signatory is a party, provided that the "date of an
17 administrative or a judicial proceeding" shall be the date by which the
18 respondent is required to answer the petition;

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

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

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

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

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

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

52 In addition, the governing body of such hospital shall insure that
53 appropriate staff shall provide to the [~~child's mother and putative~~
54 ~~father~~] person who gave birth to the child and the other signatory,
55 prior to the [~~mother's~~] discharge from the hospital of the person who
56 gave birth to the child, the opportunity to speak with hospital staff to

1 obtain clarifying information and answers to their questions about
2 [~~paternity~~] parentage establishment, and shall also provide the tele-
3 phone number of the local support collection unit.

4 [~~(e)~~] (g) Within ten days after receiving the certificate of birth,
5 the registrar shall furnish without charge to each parent or guardian of
6 the child or to the [~~mother~~] person who gave birth at the address desig-
7 nated by her for that purpose, a certified copy of the certificate of
8 birth and, if applicable, a certified copy of the written acknowledgment
9 of [~~paternity~~] parentage. If the [~~mother~~] person who gave birth is in
10 receipt of child support enforcement services pursuant to title six-A of
11 article three of the social services law, the registrar also shall
12 furnish without charge a certified copy of the certificate of birth and,
13 if applicable, a certified copy of the written acknowledgment of [~~pater-~~
14 ~~nity~~] parentage to the social services district of the county within
15 which the [~~mother~~] person who gave birth resides.

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

21 (b) Where a child's [~~paternity~~] parentage has not been acknowledged
22 voluntarily pursuant to paragraph (a) of subdivision one of this section
23 or paragraph (a) of this subdivision, the [~~child's mother and the puta-~~
24 ~~tive father~~] person who gave birth to the child and the other signatory
25 may voluntarily acknowledge a child's [~~paternity~~] parentage pursuant to
26 this paragraph by signing the acknowledgment of [~~paternity~~] parentage.

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

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

48 (e) After the expiration of the time limits set forth in paragraphs
49 (c) and (d) of this subdivision, any of the signatories may challenge
50 the acknowledgment of [~~paternity~~] parentage in court only on the basis
51 of fraud, duress, or material mistake of fact, with the burden of proof
52 on the party challenging the voluntary acknowledgment. The acknowledg-
53 ment shall have full force and effect once so signed. The original or a
54 copy of the acknowledgment shall be filed with the registrar of the
55 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.

1 § 1401. Brokers regulated under this article. The provisions of this
2 article apply to surrogacy brokers arranging or facilitating trans-
3 actions contemplated by a surrogacy agreement under part four of article
4 five-C of the family court act if:

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

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

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

10 § 1402. Conflicts of interest; prohibition on payments; funds in
11 escrow. A surrogacy broker to which this article applies:

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

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

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

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

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

26 § 1403. Regulations. The department of financial services shall
27 promulgate regulations to implement the requirements of this article,
28 and shall annually report to the state legislature regarding the prac-
29 tices of surrogacy brokers in New York state, with recommendations for
30 any necessary amendments to this article.

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