STATE OF NEW YORK

9847

IN ASSEMBLY

February 20, 2020

Introduced by M. of A. BARRETT, O'DONNELL -- read once and referred to the Committee on Judiciary

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 or gamete provider agreements; to amend the domestic relations law, in relation to proceedings regarding parental rights, status and obligations and to make conforming changes; to amend the public health law, in relation to voluntary acknowledgments of parentage, genetic surrogacy and regulations concerning gamete provision, and to establish the New York state office of assisted reproduction registrar and the assisted reproduction registry; to amend the general business law, in relation to the regulation of surrogacy programs, third-party gamete provision service providers and assisted reproduction service provider; to repeal section 73 of the domestic relations law, relating to legitimacy of children born by artificial insemination; and to repeal sections 122 and 123 of the domestic relations law, relating to surrogate parenting contracts

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 - 581-207)
3. Child of assisted reproduction (581-301 - 581-307)
4. Surrogacy agreement (581-401 - 581-409)
5. Third-party gamete provision agreement (581-501 - 581-507)
6. Informed consent (581-601 - 581-604)
7. Payment to gamete providers and persons acting as surrogates (581-701 - 581-702)
8. Surrogates' bill of rights (581-801 - 581-807)

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

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9. Gamete providers' bill of rights (581-901 - 581-905)
10. Miscellaneous provisions (581-1001 - 581-1004)

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 their parents where the child is conceived through assisted reproduction, with third-party gametes, if applicable, and including children born through surrogacy, including genetic surrogacy. 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, nor shall any fertilized egg, embryo or fetus be viewed as a child under the laws of this state, nor shall any person providing any fertilized egg or embryo in order to establish another person's pregnancy thereby acquire any rights over that person's body.

§ 581-102. Definitions. (a) "Acknowledgment of interim parental responsibility": a written declaration valid at the birth of a child conceived by assisted reproduction, with third-party gametes if applicable, and born through surrogacy, including genetic surrogacy, that states that the person acting as surrogate and the biologically-related intended parent or parents, if applicable, or otherwise a non-biologically-related intended parent, assume parental responsibility for the child and will share decision-making responsibility for the child, except that the intended parent or parents, as applicable, will assume full financial responsibility, until:

1. The person acting as surrogate under the terms of a surrogacy agreement has, as applicable, submitted a written declaration no sooner than eight days following the birth of the child stating that they are, as applicable, voluntarily consenting to disclaim and renounce their parental rights, and a judgment of parentage in favor of the intended parent or parents, as applicable, has been issued under the terms of a surrogacy agreement; or

2. The person acting as surrogate under the terms of a genetic surrogacy agreement, has submitted a written declaration no sooner than eight days following the birth of the child stating that they are, as applicable, voluntarily consenting to disclaim and renounce their parental rights under the terms of a genetic surrogacy agreement, and consenting to the adoption of any children born pursuant to the genetic surrogacy agreement; or

3. A final judgment of parentage has otherwise been issued as established under the procedures of this article.

(b) "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. third-party gamete provision;
3. third-party embryo provision;
4. in vitro fertilization and transfer of embryos; and
5. intracytoplasmic sperm injection.

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

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

(e) "Gamete provider" 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. Gamete provider 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.

(f) "Third-party gamete provision" means the provision of gametes by an individual who does not intend to be a parent who produces gametes and provides them to another person or entity, other than the gamete provider's spouse, for use in assisted reproduction.

(g) "Third-party embryo provision" means the transfer of dispositional control over an embryo and relinquishment of all present and future parental and inheritance rights and obligations to a resulting child, from a gamete provider or entity to an intended parent or parents, or entity.

(h) "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.

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

(j) "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. A human gamete used or intended for reproduction may not contain nuclear or mitochondrial DNA that has been deliberately altered, or nuclear DNA from one human combined with the mitochondrial DNA of another human being.

(k) "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 parent or parents. The person acting as surrogate does not use their own ovum.

(l) "Genetic 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 parent or parents. The person acting as surrogate uses their own ovum.

(m) "Gamete provision agreement" is an agreement between an intended gamete provider and at least one intended parent, an intended gamete provider and a gamete bank, or an intended gamete provider and a fertility clinic intended to result in provision of eggs or sperm to be used for the purposes of assisted reproduction or research.

(n) "Person acting as surrogate" means an adult person, not an intended parent, who enters into a surrogacy, including genetic surrogacy, agreement to bear a child who will be the legal child of the intended parent or parents, provided the person meets the requirements of this article.

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

(p) "Intended parent" is an individual who manifests the intent to be legally bound as the parent of a child conceived by assisted reprod-

uction and born through surrogacy, including genetic surrogacy, provided they meet the requirements of this article.

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

(r) "Parent" means an individual who has established a parent-child relationship under this act or other law. "Parent" also includes the person acting as surrogate, who is a parent at birth under this article.

(s) "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.

(t) "Record" means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

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

(v) "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 partnership.

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

(x) "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. Acknowledgement of interim parental responsibility.
581-203. Proceeding for judgment of parentage of a child conceived by assisted reproduction.
581-204. Proceeding to establish parental rights of a child conceived by assisted reproduction and born pursuant to a surrogacy agreement or a genetic surrogacy agreement.
581-205. Judgment of parentage for intended parents who are spouses.
581-206. Inspection of records.
581-207. Jurisdiction, and exclusive continuing jurisdiction.

§ 581-201. Judgment of parentage. (a) A civil proceeding may be maintained 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) In the case of surrogacy, a judgment of parentage may be issued no sooner than eight days after the birth of the child, once the person acting as surrogate has provided notarized consent in writing relinquishing the person's entitlement to parentage of the child, and asserting that they are doing so knowingly and voluntarily and without undue inducement.

(c) A petition for a judgment of parentage or nonparentage of a child conceived by 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 conceived by assisted reproduction and born under part three of this article or a child born through surrogacy, including genetic surrogacy, pursuant to part four of this article or article eight of the domestic relations law.

§ 581-202. Acknowledgment of interim parental responsibility. (a) In the case of surrogacy, not including genetic surrogacy, the petition for a judgment of parentage must include an acknowledgment of interim parental responsibility which shall be issued prior to the birth of the child but shall not become effective until the birth of the child.

(b) In the case of genetic surrogacy, the petition for an adoption proceeding to transfer parental rights of any children born pursuant to the genetic surrogacy agreement under article eight of the domestic relations law must include an acknowledgment of interim parental responsibility which shall be issued prior to the birth of the child but shall not become effective until the birth of the child.

§ 581-203. Proceeding for judgment of parentage of a child conceived by assisted reproduction. (a) A proceeding for a judgment of parentage with respect to a child conceived by assisted reproduction, with third-party gametes, if applicable, but not born through surrogacy, 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 truthful statements, the court shall adjudicate any intended parent to be the parent of the child:

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

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

(3) in cases where there are two intended parents and one becomes pregnant by assisted reproduction, a statement from both intended parents that they consented to assisted reproduction pursuant to section 581-304 of this article; and

(4) proof of any gamete provider's parental and proprietary intent pursuant to section twenty-five hundred ninety-nine-ii of the public health law.

(i) In the case of a sperm provider who provides sperm after January first, two thousand twenty-one to a licensed individual health care practitioner, gamete bank, fertility clinic, or other health care facility for use in assisted reproduction by an intended parent other than the sperm provider's intimate partner or spouse, and regardless of whether the sperm provider has chosen to disclose their identity to any children conceived by assisted reproduction using their gametes, the sperm provider is treated in law as if they were not the natural parent of any child thereby conceived, unless otherwise agreed to in a written

and notarized statement, signed by the sperm provider and the intended parent prior to conception by assisted reproduction.

(ii) In the case of an egg provider who provides ova after January first, two thousand twenty-one for use in assisted reproduction by an intended parent other than the egg provider's spouse or intimate partner, and regardless of whether the egg provider has chosen to disclose their identity to any children conceived by assisted reproduction using their gametes, the egg provider is treated in law as if the egg provider were not the natural parent of any child thereby conceived, unless the court finds satisfactory evidence that the egg provider and the intended parent intended for the egg provider to be a parent.

(d) The following shall be deemed sufficient proof of a gamete provider's parental and proprietary intent for purposes of this section:

(1) In the case of third-party gametes that were provided prior to January first, two thousand twenty-one, and where the gamete provider is anonymous, or where third-party 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 gamete provider does not retain any parental or proprietary interest in the gametes or embryos;

(2) In the case of third-party gametes that were provided prior to January first, two thousand twenty-one, and where the gamete provider is known, either:

(i) a record from the gamete or embryo provider acknowledging the third-party gamete provision and confirming that the gamete provider has no parental or proprietary interest in the gametes or embryos. The record shall be signed by the intended parent who plans to become pregnant by assisted reproduction using third-party gametes and the gamete or embryo provider. The record may be, but is not required to be, signed:

(A) before a notary public, or

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

(C) before a health care practitioner; or

(ii) clear and convincing evidence that the gamete or embryo provider agreed, prior to conception, with the intended parent who intends to become pregnant by assisted reproduction with third-party gametes that the gamete provider has no parental or proprietary interest in the gametes or embryos.

(3) In the absence of evidence pursuant to paragraph one or two of this subdivision, notice shall be given to the gamete provider 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 gamete provider's last known address with reasonable effort, notice may be given, without prior court order therefor, at least twenty days prior to the proceeding by registered or certified mail directed to the gamete provider's last known address. Notice by publication shall not be required to be given to a gamete provider entitled to notice pursuant to the provisions of this section.

(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 subdi-

vision (e) of this section, the court shall issue a judgment of parentage:

(1) declaring, that upon the birth of the child, the intended parent or parents is/are the legal parent or parents of the child;

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

(3) if there is a gamete provider, ordering that the gamete provider is not a parent of the child, pursuant to section twenty-five hundred ninety-nine-ii of the public health law; 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 been issued, the court shall issue an order directing the appropriate department of health to issue an amended birth certificate in an expedited manner and seal the original birth certificate except that it may be rendered accessible to the child at eighteen years of age, or the legal parent or parents.

§ 581-204. Proceeding to establish parental rights of a child conceived by assisted reproduction and born pursuant to a surrogacy agreement or a genetic surrogacy agreement. (a) If there is a surrogacy agreement, the proceeding may be commenced at any time after the end of the first trimester of pregnancy by the filing of a petition for an acknowledgment of interim parental responsibility and a judgment of parentage as provided in this subdivision. Any party to the surrogacy agreement not joining in the petition must be served with notice of the proceeding.

(1) The petition for an acknowledgment of interim parental responsibility and a judgment of parentage shall be verified and shall include the following:

(i) a statement that the person acting as surrogate and each intended parent is a United States citizen or permanent lawful resident and was a resident of the state of New York for at least twelve months at the time the surrogacy agreement was executed, except that an exception shall be made if the person acting as surrogate is a family member of an intended parent and is not being compensated to act as surrogate above and beyond being compensated or reimbursed for medical and pregnancy-related expenses;

(ii) a statement that, upon the birth of the child, the person acting as surrogate and the biologically-related intended parent or parents, or otherwise a non-biologically related intended parent, assume parental responsibility for the child and will share decision-making responsibility for the child, except that the intended parent or parents will assume full financial responsibility until the person acting as surrogate under the terms of a surrogacy agreement pursuant to this article has, as applicable, submitted a notarized written declaration no sooner than eight days following the birth of the child stating that they are, as applicable, voluntarily consenting to renounce, disclaim and surrender their parental rights, and a judgment of parentage in favor of the intended parent or parents, has been issued under the terms of a surrogacy agreement;

(iii) an acknowledgment of interim parental responsibility;

(iv) a statement that the person acting as surrogate and each intended parent is a U.S. citizen or permanent lawful resident and was a resident of the state of New York for at least twelve months at the time the surrogacy agreement was executed, except that an exemption will be provided for the person acting as surrogate if they are a family member of an intended parent and are not being compensated to act as surrogate other than being compensated or reimbursed for medical, legal, and pregnancy-related expenses;

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

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

(vii) a statement from the person acting as surrogate, notarized no sooner than eight days following the birth of any resulting children, that they do not object to the legal termination of their parental rights and that they consent to such termination and the transfer of the child, if transfer of the child has not already occurred, knowingly and voluntarily, without being coerced or unduly influenced.

(2) Where a petition satisfies the requirements of paragraph one of this subdivision, the court in which the petition has been filed may issue a judgment of parentage, provided that such judgment shall issue no sooner than eight days after the birth of the child. The judgment of parentage shall:

(i) declare that upon the issuance of the judgment of parentage, the intended parent is or parents are the legal parent or parents of the child if the judgment of parentage so provides;

(ii) declare that upon the issuance of the judgment of parentage, the person acting as surrogate is not the legal parent of the child if the judgment of parentage so provides;

(iii) order the person acting as surrogate to transfer the child to the intended parent or parents if the judgment of parentage so provides and this has not already occurred;

(iv) order the intended parent or parents to continue assuming responsibility for the maintenance and support of the child as provided by the acknowledgment of parental responsibility; and

(v) (A) order that upon the issuance of the judgment of parentage, a copy of the judgment of parentage be served on: (1) the department of health or the New York city department of mental health and hygiene; or (2) the 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.

(B) if an original birth certificate has already been issued, the court shall issue an order directing the appropriate department of health to issue an amended birth certificate in an expedited manner and seal the original birth certificate except that it may be rendered accessible to the child at eighteen years of age, or to the legal parent or parents.

(3) Notwithstanding the provisions of paragraph two of this subdivision, the court may refuse to issue a judgment of parentage if it determines that:

(A) the person acting as surrogate no longer consents to the termination of her parental rights;

(B) the surrogate's failure to object to such termination was unduly influenced by financial or other duress; or

(C) the judgment of parentage is not in the best interests of the child.

(4) In the event the certification required by subparagraph (v) of paragraph two of this subdivision 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.

(b) If there is a genetic surrogacy agreement, the proceeding may be commenced at any time after the end of the third trimester of pregnancy by the filing of a petition for an acknowledgment of interim parental responsibility and a judgment of parentage as provided in this subdivision. Any party to the genetic surrogacy agreement not joining in the petition must be served with notice of the proceeding.

(1) The petition for an acknowledgment of interim parental responsibility and a judgment of parentage shall be verified and shall include the following:

(i) a statement that the person acting as surrogate and each intended parent is a citizen of the United States or permanent lawful resident and was a resident of the state of New York for at least twelve months at the time the genetic surrogacy agreement was executed, except that an exemption will be provided for the person acting as surrogate if they are a family member of an intended parent and are not being compensated to act as surrogate other than being compensated or reimbursed for medical, legal, and pregnancy-related expenses;

(ii) a statement that, upon the birth of the child, the person acting as surrogate and the biologically-related intended parent or parents, or otherwise a non-biologically related intended parent, assume parental responsibility for the child and will share decision-making responsibility for the child, except that the intended parent or parents will assume full financial responsibility until the person acting as surrogate under the terms of a genetic surrogacy agreement pursuant to article eight of the domestic relations law, has submitted to the court a notarized written declaration stating that they are voluntarily consenting to renounce, disclaim, and surrender their parental rights under the terms of a genetic surrogacy agreement, and consenting to the adoption of any children born pursuant to the genetic surrogacy agreement. Such notarized written declaration shall be submitted no sooner than eight days following the birth of the child;

(iii) an acknowledgment of interim parental responsibility;

(iv) a certification from the attorney representing the intended parent or parents, the attorney representing the person acting as surrogate, and the surrogacy program coordinating the genetic surrogacy agreement that the requirements of section one hundred twenty-two of the domestic relations law, have been met;

(v) a statement from all parties to the genetic surrogacy agreement that they entered into the genetic surrogacy agreement knowingly and voluntarily; and

(vi) a statement from the person acting as surrogate, notarized no sooner than eight days following the birth of any resulting children, that they do not object to the legal termination of their parental rights and that they consent to such termination and the transfer of the child, if transfer of the child has not already occurred, knowingly and voluntarily, without being coerced or unduly influenced.

(2) Where a petition satisfies the requirements of paragraph one of this subdivision, the court in which the petition has been filed may

issue a judgment of parentage, provided that such judgment shall issue no sooner than eight days after the birth of the child. The judgment of parentage shall:

(i) declare that upon the issuance of the judgment of parentage, the intended parent is or parents are the legal parent or parents of the child if the judgment of parentage so provides;

(ii) declare that upon the issuance of the judgment of parentage, the person acting as a third-party gamete provider is not the legal parent of the child if the judgment of parentage so provides;

(iii) order the intended parent or parents to continue assuming responsibility for the maintenance and support of the child as provided by the acknowledgment of parental responsibility; and

(v) (A) order that upon the issuance of the judgment of parentage, a copy of the judgment of parentage be served on: (1) the department of health or the New York city department of mental health and hygiene; or (2) the 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.

(3) In the event the certification required by subparagraph (iv) of paragraph two of this subdivision 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.

§ 581-205. 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.

§ 581-206. 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, including, but not limited to, the name of the person acting as surrogate and any known gamete providers.

§ 581-207. 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 gamete provider.
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 dispositional 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 gamete provider. A gamete provider is not a parent of a child conceived by means of assisted reproduction with their gametes or embryos, pursuant to section twenty-five hundred ninety-nine-ii of the public health law.

§ 581-303. Parentage of child of assisted reproduction. (a) An individual who is not a gamete provider but who uses their own gametes for, or who consents to, assisted reproduction with the intent to be a parent of the child with the consent of the pregnant intended 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 spouse who is not pregnant 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 their 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 they consent to be a parent.

(c) If the intended parent transferring legal rights and dispositional control consents to be a parent, they may withdraw their 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 they timely withdraw consent to be a parent they are 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 themself of legal rights and dispositional control may not be declared to be a parent for any purpose without their 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 a surrogacy agreement.
581-403. Requirements of a surrogacy agreement.
581-404. Surrogacy agreement; effect of subsequent spousal relationship.
581-405. Termination of a surrogacy agreement.
581-406. Parentage under a compliant surrogacy agreement.
581-407. Insufficient surrogacy agreement.
581-408. Absence of a surrogacy agreement.
581-409. Dispute as to a 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, and provided further, that enforcement of a surrogacy agreement against a person acting as surrogate who objects to the termination of her parental rights prior to or during proceedings related to the issuance of a judgment of parentage is contrary to the public policy of this state and the surrogacy agreement is void and unenforceable.

(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 seven of this article.

§ 581-402. Eligibility to enter a 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;

(2) the person acting as surrogate is a United States citizen or a permanent lawful resident and was a resident of New York state for at least twelve months at the time the person executes a surrogacy agreement, except that an exemption shall be provided if the person acting as surrogate is a family member of an intended parent and is not being compensated to act as surrogate;

(3) the person acting as surrogate has not used their own ovum to conceive the resulting child;

(4) the person acting as surrogate has completed medical and psychological evaluations with health care practitioners relating to the anticipated surrogate pregnancy and has received written medical clearance to become pregnant;

(5) 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 provided that such counsel must specifically declare that they have no conflicts relating to either the intended parent or parents or any intermediaries in the surrogacy arrangement. 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. Where the intended parent or parents are paying for the independent legal counsel of the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, a separate retainer agreement shall be prepared clearly stating that such legal counsel will only represent the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, in all matters pertaining to the surrogacy agreement, that such legal counsel will not offer legal advice to any other parties to the surrogacy agreement, and that the attorney-client relationship lies with the person acting as surrogate and the spouse of the person acting as surrogate, if applicable;

(6) the person acting as surrogate must have previously delivered at least one healthy live birth from an uncomplicated pregnancy not pursuant to a surrogacy, including a genetic surrogacy agreement;

(7) the person acting as surrogate must not have delivered more than three prior children, whether or not acting as a surrogate;

(8) the person acting as surrogate must be free of any medical or psychological preexisting conditions that would qualify them as being high-risk to become pregnant;

(9) the person acting as surrogate must not be over age thirty-five at the time of conception; and

(10) the person acting as surrogate must not have acted as surrogate more than three times prior to executing the surrogacy agreement.

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

(1) each intended parent is a United States citizen or a permanent lawful resident and was a resident of New York state for at least twelve months at the time they execute a surrogacy contract;

(2) 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 their own choosing;

(3) they are 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 their 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;

(4) 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;

(5) at least one intended parent must have used their gametes to create the embryo that will be transferred to the person acting as surrogate, unless the intended parent or parents are unable to use their gametes for medical reasons;

(6) the intended parent or parents must have had medical and psychological evaluations; and

(7) the intended parent or parents must have had background checks and a home study completed.

§ 581-403. Requirements of a surrogacy agreement. (a) A surrogacy agreement shall be deemed to have satisfied the requirements of this article and be enforceable except as provided in section 581-401 of this part if it meets the following requirements:

(1) It shall be in a signed record verified by:

(i) each intended parent, and

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

(A) 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

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

(2) It shall include the following information:

(i) the date, city, and state where the surrogacy agreement was executed;

(ii) the first and last names of and contact information for the intended parent or parents and of the person acting as surrogate;

(iii) the first and last names of and contact information for the persons from which the gametes originated. If third-party gamete provision was used, the first and last name of and contact information for each gamete provider, if known, or the gamete provider identification number, if anonymous. The agreement shall specify whether the third-party gametes provided were eggs, sperm, or embryos;

(iv) the name of and contact information for the licensed and registered surrogacy program handling the surrogacy agreement; and

(v) the name of and contact information for the attorney representing the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, and the attorney representing the intended parent or parents.

(3) It shall be executed after the following have been completed, but prior to the person acting as surrogate taking any medication or the commencement of medical procedures in furtherance of embryo transfer: the medical and psychological screenings of the person acting as surrogate, the medical and psychological screenings, background checks, and home study of the intended parent or parents, the informed consent process for the person acting as surrogate, the intended parent or parents, and any gamete providers, and the legal counseling of all parties.

(4) 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, if applicable, unless the signature of the spouse of the person acting as surrogate is not required as set forth in this section.

(5) It shall be executed by an intended parent or parents who met the eligibility requirements of subdivision (b) of section 581-402 of this part.

(6) 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.

(7) The person acting as surrogate has or the surrogacy agreement stipulates that the person acting as surrogate will obtain a health insurance policy that takes effect prior to taking any medication or commencing treatment to further embryo transfer that covers preconception care, pre-natal care, major medical treatments, hospitalization, and behavioral health care, and the health insurance policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; 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 preconception, pregnancy, child birth, or post-natal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. 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.

(8) The surrogacy agreement shall provide that the person acting as surrogate will obtain a short- and long-term disability insurance policy that takes effect prior to taking any medication or commencing medical procedures to further embryo transfer that covers disability related to the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, and the disability insurance policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or

termination of the pregnancy; 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 disability insurance policy.

(9) The surrogacy agreement must provide that the intended parent or parents shall procure and pay for a life insurance policy for the person acting as surrogate that takes effect prior to taking any medication or the commencement of medical procedures to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing. 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 life insurance policy.

(10) 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 any child born pursuant to the surrogacy agreement. 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.

(11) 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 taking any medication or the commencement of medical procedures to further embryo transfer other than medical and psychological evaluations necessary to determine the person acting as surrogate's eligibility. Funds to cover the person acting as surrogate's medical expenses, including out-of-pocket medical expenses, shall also have been placed in escrow.

(12) The surrogacy agreement and all required documentation shall be certified to have been completed and in order by the surrogacy program handling the surrogacy agreement.

(b) The surrogacy agreement must comply with 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 subject to their right to terminate the pregnancy;

(ii) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, agree that all resulting children will go home with the intended parent or parents from the hospital once medical clearance is provided unless the person acting as surrogate decides otherwise;

(iii) the person acting as surrogate agrees to file with the court a notarized written declaration no sooner than eight days following the birth of any resulting children stating they are voluntarily consenting

to disclaim and renounce their parental rights under the terms of the surrogacy agreement;

(iv) the surrogacy agreement must permit the person acting as surrogate to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all health and welfare decisions regarding themselves, their pregnancy, and child birth, including but not limited to, whether to consent to a medically-indicated or non-medically indicated cesarean section, whether to terminate or continue the pregnancy, and whether to reduce or retain the number of fetuses or embryos they are carrying 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. This article does not diminish the responsibility of health care providers to ensure adherence to standards of medical practice;

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

(vi) the person acting as surrogate has the right to obtain psychological counseling by a counselor of their choice 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 interim parental responsibility for any resulting children immediately upon birth, regardless of number, gender, or mental or physical condition;

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

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

(iv) 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; and

(v) the intended parent or parents must enter into contracts with a surrogacy program, a third-party gamete provision service provider, if applicable, and an assisted reproduction service provider, if applicable, that are licensed by the department of health, with the exception of surrogacy agreement coordinators, and registered with the office of the assisted reproduction registrar.

§ 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 a surrogacy agreement. A person acting as surrogate has the right to terminate a surrogacy agreement at any time throughout the duration of the pregnancy. If a person acting as surrogate terminates a surrogacy agreement, any compensation already received, other than payment or reimbursement of medical, legal, and

pregnancy-related expenses, must be returned to the intended parent or parents.

§ 581-406. Parentage under a compliant surrogacy agreement. Upon the birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with this part, the biologically-related intended parent or parents, or, if none, the intended parent designated as interim decision-maker or both intended parents working together, and the person acting as surrogate assume interim parental responsibility for the child born and share decision making, except that the intended parent or parents will assume full financial responsibility, until the person acting as surrogate under the terms of a surrogacy agreement has submitted a written declaration to the court no sooner than eight days following the birth of any children stating that they are voluntarily consenting to disclaim and renounce their parental rights, and a judgment of parentage in favor of the intended parent or parents has been issued under the terms of a surrogacy agreement, at which time each intended parent is, by operation of law, a parent of the child and neither the person acting as surrogate nor the person's spouse, if any, is a parent of the child.

§ 581-407. Insufficient surrogacy agreement. If a surrogacy agreement is defective in material and non-technical ways, the court shall enforce only such provisions as justice requires, except that unless the person acting as surrogate has disclaimed and renounced parental rights and obligations no sooner than eight days after the birth of the child, the court shall not terminate their parental status, rights or obligations.

§ 581-408. Absence of a surrogacy agreement. In the absence of a surrogacy agreement, the person who gives birth to a child is the parent of that child, and assumes the rights and obligations of a parent and any intended parent who has contributed genetic material shall also be a parent of the child, and assume the rights and responsibilities of a parent, and the court shall determine child support and establish a parenting schedule according to the best interests of the child and such other laws of this state as are applicable. If neither intended parent has contributed genetic material, the person acting as surrogate shall be the sole parent and can retain their parental status and obligations or surrender the child for adoption by an intended parent or both of them provided they meet the requirements of law or if they decline to adopt, then to others in accordance with law.

§ 581-409. Dispute as to a surrogacy agreement. (a) Any dispute which is related to a surrogacy agreement shall be resolved by the supreme court, which shall determine the respective rights and obligations of the parties according to the requirements of this article, the valid terms of the agreement, and such other laws as may be applicable.

(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 any surrogacy agreement term.

PART 5
THIRD-PARTY GAMETE PROVISION AGREEMENT

Section 581-501. Third-party gamete provision agreement authorized.

581-502. Eligibility to enter a third-party gamete provision agreement.
581-503. Requirements of a third-party gamete provision agreement.
581-504. Third-party gamete provision agreement; effect of subsequent spousal relationship.
581-505. Termination of a third-party gamete provision agreement.
581-506. Parentage under a compliant third-party gamete provision agreement.
581-507. Dispute as to a third-party gamete provision agreement.

§ 581-501. Third-party gamete provision agreement authorized. If eligible, a gamete provider and an intended parent or parents, or a gamete provider and an agent, gamete bank, fertility clinic or other entity may enter into a third-party gamete provision agreement which will be enforceable if the third-party gamete provision agreement meets the requirements of this article.

§ 581-502. Eligibility to enter a third-party gamete provision agreement. (a) An intended parent or parents shall be eligible to enter into an enforceable third-party gamete provision agreement under this article if the intended parent or parents have met the following requirements at the time the third-party gamete provision agreement is executed:

(1) if the intended parent or parents are entering into a third-party gamete provision agreement with an agent, gamete bank, fertility clinic or other entity, the entity must be licensed by the department of health and registered with the office of the assisted reproduction registrar;

(2) if the intended parent or parents are entering into a third-party gamete provision agreement with a gamete provider, the broker agent, gamete bank, fertility clinic or other entity must be licensed with the department of health and registered with the office of the assisted reproduction registrar; and

(3) if the intended parent or parents are entering into a third-party gamete provision agreement with a gamete provider, agent, gamete bank, fertility clinic or other entity, and they are also entering into a surrogacy, including genetic surrogacy, agreement, each intended parent must be a United States citizen or permanent lawful resident and was a resident of New York state for at least twelve months at the time each intended parent executes the surrogacy, including genetic surrogacy, agreement.

(b) A gamete provider shall be eligible to enter into an enforceable third-party gamete provision agreement under this article if the gamete provider has met the following requirements at the time the third-party gamete provision agreement is executed:

(1) An egg provider must be at least twenty-one years of age, and no more than thirty-five years of age, unless the agent, gamete bank, fertility clinic, or other entity requires a maximum age that is less than thirty-five. A sperm provider must be at least twenty-one years of age, and no more than thirty-five years of age, unless the agent, gamete bank, fertility clinic, or other entity requires a maximum age that is less than thirty-nine years of age; and

(2) An egg provider may not have entered into and fulfilled more than a total of four third-party gamete provision agreements prior to entering a new third-party gamete provision agreement; and

(3) A gamete provider may not enter into a new third-party gamete provision agreement if ten children have already been conceived by

assisted reproduction with the gamete provider's gametes and born, whether or not through surrogacy, including genetic surrogacy; and

(4) If the gamete provider is entering into a third-party gamete provision agreement with an intended parent or parents, the broker agent, gamete bank, fertility clinic, or other entity must be licensed by the department of health and registered with the office of the assisted reproduction registrar; and

(5) If the gamete provider is entering into a third-party gamete provision agreement with an agent, gamete bank, fertility clinic, or other entity, the entity must be licensed with the department of health and licensed with the office of the assisted reproduction registrar; and

(6) A gamete provider must have completed medical and psychological evaluations relating to third-party gamete provision and have received written medical clearance to provide gametes; and

(7) An egg provider may not have a history of health or genetic conditions that would put them at risk of experiencing health complications resulting from ovarian stimulation and/or egg retrieval, or that would put any children conceived by assisted reproduction with their eggs, or embryos created from their eggs, at risk of contracting any health conditions as a result. A sperm provider may not have a history of health or genetic conditions that would put any children conceived by assisted reproduction with their sperm, or embryos created from their sperm, at risk of contracting any health conditions as a result.

§ 581-503. Requirements of a third-party gamete provision agreement. (a) A third-party gamete provision agreement shall be deemed to have satisfied the requirements of this article and be enforceable if it meets the following requirements:

(1) It shall be in a signed record verified by:

(i) each intended parent, if applicable, or the agent, gamete bank, fertility clinic or other entity; and

(ii) the gamete provider.

(2) It shall include the following information:

(i) the date, city, and state where the third-party gamete provision agreement was executed;

(ii) first and last names of and contact information for the intended parent or parents, if applicable, and the name of and contact information for the agent, gamete bank, fertility clinic or other entity;

(iii) the first and last name of the gamete provider, if known, or the gamete provider identification number, if anonymous; and

(iv) a statement specifying whether the gametes provided were eggs, sperm or embryos.

(3) It shall be executed after the following have been completed, but prior to the egg provider taking any medication or the commencement of medical procedures in furtherance of ovarian stimulation and egg retrieval: (i) the required medical and psychological screenings of the gamete provider; (ii) the psychological screenings of the intended parent or parents; (iii) the informed consent process for the gamete provider; and (iv) the informed consent process for the intended parent or parents, if applicable.

(4) It shall be executed by a gamete provider who met the eligibility requirements of subdivision (b) of section 581-502 of this part.

(5) It shall be executed by an intended parent or parents who met the eligibility requirements of subdivision (a) of section 581-502 of this part.

(6) The third-party gamete provision agreement stipulates that the egg provider will obtain a health insurance policy that covers major medical

treatment, hospitalization, and behavioral health care for a term that takes effect prior to the egg provider taking any medication and or the commencement of medical procedures in furtherance of ovarian stimulation and egg retrieval, and that extends for six months after egg retrieval is completed, or for twelve months if health complications occur; the policy shall be paid for by the agent, gamete bank, fertility clinic, or other entity, or by the intended parent or parents, which shall also pay for or reimburse the egg provider for all co-payments, deductibles and any other out-of-pocket medical costs associated with third-party gamete provision, or medical or psychological complications pursuant to the third-party gamete provision agreement.

(7) The third-party gamete provision agreement shall provide for the right of the gamete provider to obtain psychological counseling by a mental health practitioner of their choice to address issues resulting from the gamete provider's participation in the third-party gamete provision agreement. The cost of psychological counseling shall be paid by the intended parent or parents, or by the agent, gamete bank, fertility clinic, or other entity.

(8) The third-party gamete provision agreement and all required documentation shall be certified to have been completed and in order by the agent, gamete bank, fertility clinic or other entity.

(9) The third-party gamete provision agreement may not include more than one cycle of egg retrieval, and may not require the egg provider to sign another third-party gamete provision agreement immediately upon fulfillment of the agreement at hand.

(10) The third-party gamete provision agreement must indicate that the egg or sperm provider has declared that their eggs or sperm, or embryos created their eggs or sperm, may be used for research, or that their eggs or sperm, or embryos created from their eggs or sperm, may not be used for research at any time.

(11) The third-party gamete provision agreement must indicate that the egg provider has declared that their eggs, or embryos created from their eggs, may be distributed to multiple intended parents, or that their eggs, or embryos created from their eggs, may only be distributed to and used by one intended parent, unless two intended parents are involved, using assisted reproduction and third-party gamete provision, and surrogacy, if applicable to have a child.

(12) The third-party gamete provision agreement shall indicate that the gamete provider has declared they agree to disclose their identity to a child conceived by assisted reproduction with the gamete provider's gametes, on request, once the child attains eighteen years of age, or that the gamete provider does not agree presently to disclose the gamete provider's identity to the child.

(b) The third-party gamete provision agreement must comply with the following terms:

(1) the egg provider agrees to undergo ovarian stimulation and egg retrieval subject to their right to terminate the agreement;

(2) the sperm provider agrees to provide sperm as spelled out in the third-party gamete provision agreement subject to their right to terminate the agreement; and

(3) the gamete provider agrees to relinquish parental and proprietary interest in gametes provided under the third-party gamete provision agreement or pursuant to section twenty-five hundred ninety-nine-ii of the public health law.

§ 581-504. Third-party gamete provision agreement; effect of subsequent spousal relationship. After the execution of a third-party gamete

provision agreement under this article, 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 third-party gamete provision agreement.

§ 581-505. Termination of a third-party gamete provision agreement. (a) An egg provider has the right to terminate a third-party gamete provision agreement at any time prior to egg retrieval without penalty. If the agreement is terminated prior to egg retrieval, the egg provider is required to return any financial compensation received to date.

(b) A sperm provider has the right to terminate a third-party gamete provision agreement at any time prior to the fulfillment of the agreement without penalty. If the agreement is terminated prior to it being fulfilled, the sperm provider is required to return any financial compensation received in advance.

(c) An intended parent or parents may terminate a third-party gamete provision agreement at any time without penalty.

§ 581-506. Parentage under a compliant third-party gamete provision agreement. Upon the birth of a child conceived by assisted reproduction under a third-party gamete provision agreement that complies with this part, each intended parent is, by operation of law, a parent of the child and the gamete provider or providers is not a parent of the child.

§ 581-507. Dispute as to a third-party gamete provision agreement. (a) Any dispute which is related to a third-party gamete provision agreement shall be resolved by the supreme court of the state of New York, which shall determine the respective rights and obligations of the parties.

(b) Except as expressly provided in the third-party gamete provision agreement, the intended parent or parents and the third-party gamete provider shall be entitled to all remedies available at law or equity in any dispute related to the gamete provision agreement.

(c) There shall be no specific performance remedy available for a breach by the gamete provider of any third-party gamete provision agreement term.

PART 6
INFORMED CONSENT

Section 581-601. Informed consent.
581-602. Informed consent procedures for gamete providers.
581-603. Informed consent procedures for persons acting as surrogates.
581-604. Informed consent procedures for intended parents.

§ 581-601. Informed consent. Informed consent procedures are established, and shall be updated, to reflect research findings and current evidence-based best practices, to ensure that gamete providers, persons acting as surrogates, and intended parents are fully informed and able to voluntarily consent to agreement provisions.

§ 581-602. Informed consent procedures for gamete providers. The following procedures shall be completed and documented, following best practices for informed consent procedure to ensure that gamete providers understand the material and voluntarily sign consent forms without being coerced or incentivized, prior to executing a third-party gamete provision agreement.

(a) A gamete provider shall have been given a copy of the gamete providers' bill of rights.

(b) A gamete provider shall have completed a medical evaluation with a health care practitioner and have received written medical clearance to proceed with ovarian stimulation and egg retrieval.

(c) A gamete provider shall have received written clearance to provide gametes after completing psychological screening and counseling regarding issues related to third-party gamete provision, including, but not limited to:

(1) potential psychological and emotional impacts on the gamete provider and any children conceived by assisted reproduction using their gametes; and

(2) considerations and evidence-based best practices for talking with current or future partners or spouses and their children about third-party gamete provision.

(d) An egg provider shall be informed of the potential short- and long-term health risks involved with third-party egg provision that are currently known to, or being investigated by, the medical community, and that all of the possible short- and long-term health risks are not known due to a lack of tracking and research.

(e) A gamete provider must be informed of the possibility that their gametes, or embryos created from their gametes, could be used for research and must be asked to declare in writing that they will or will not allow their gametes, or embryos created from their gametes, to be used for research at any time.

(f) An egg provider must be informed of the possibility that their eggs, or embryos created from their eggs, could be distributed to multiple intended parents using assisted reproduction to conceive, and surrogacy, if applicable, to have a child, and must be asked to declare in writing that they will or will not allow their eggs, or embryos created from their eggs, to be distributed to more than one intended parent, or parents when there are two intended parents.

(g) A gamete provider must be counseled about their options regarding identity disclosure and the right of any children conceived by assisted reproduction with their gametes to receive their medical information, and their identifying information if the gamete provider has consented to the disclosure of such information. A gamete provider shall be informed that even if the gamete provider chooses to remain anonymous to any children conceived by assisted reproduction with their gametes, there is no guarantee that they will remain anonymous due to DNA testing, the possibility of data breaches, and unforeseen medical, scientific and technological developments. Gamete providers must sign a declaration regarding identity disclosure.

(h) A gamete provider shall be provided information about the New York state assisted reproduction registry, including, but not limited to:

(1) the purpose of the registry;

(2) personal and clinical data that is collected and how it is used;

(3) the benefits of registering, how the gamete provider's personal information is secured and kept confidential, and how to register or opt out of registering; and

(4) how to request registry data.

§ 581-603. Informed consent procedures for persons acting as surrogates. The following procedures must be completed and documented, following best practices for informed consent procedure to ensure that persons acting as surrogates understand the material and voluntarily sign consent forms without being coerced or incentivized, prior to executing a surrogacy, including genetic surrogacy, agreement.

(a) A person acting as surrogate must have been given a copy of the surrogates' bill of rights.

(b) A person acting as surrogate has completed a medical evaluation with a health care practitioner relating to the anticipated surrogate pregnancy and has received written medical clearance to become pregnant.

(c) A person acting as surrogate has received written clearance to act as surrogate after completing psychological screening and counseling regarding issues related to acting as surrogate, including, but not limited to:

(1) potential psychological and emotional impacts on the person acting as surrogate, the person's spouse or partner, and current children, as applicable; and

(2) evidence-based best practices for how to talk to current children and other family members about surrogacy.

(d) A person acting as surrogate must be informed of the potential short- and long-term health risks to themselves and to any children conceived by assisted reproduction, with third-party gametes if applicable, and born through surrogacy, associated with surrogate pregnancy and delivery currently known to, or being investigated by, the medical community, and that all of the health risks are not known due to a lack of tracking and research.

(e) A person acting as surrogate shall be provided information about the New York state assisted reproduction registry, including, but not limited to:

(1) the purpose of the registry;

(2) personal and clinical data that is collected and how it is used;

(3) the benefits of registering, how one's personal information is secured and kept confidential, and how to register or opt out of registering; and

(4) how to request registry data.

§ 581-604. Informed consent procedures for intended parents. The following procedures must be completed and documented, following best practices for informed consent procedure to ensure that intended parents understand the material and voluntarily sign consent forms without being coerced or incentivized, prior to receiving assisted reproduction services, before executing a third-party gamete provision agreement, and/or before executing a surrogacy, including genetic surrogacy, agreement:

(a) Each intended parent must have been given a copy of the gamete providers' bill of rights and/or the surrogates' bill of rights, as applicable.

(b) Prior to executing a surrogacy, including genetic surrogacy, agreement, each intended parent has completed a medical evaluation with a health care practitioner.

(c) Each intended parent has completed psychological screening and counseling regarding issues related to having children conceived by assisted reproduction, with third-party gametes if applicable, and surrogacy, including genetic surrogacy, if applicable, including, but not limited to:

(1) potential psychological and emotional impacts on the intended parent or parents, any children born, and any current children, if applicable; and

(2) considerations and evidence-based best practices for talking with any children born and current children, as applicable, about third-party gamete provision and surrogacy, including genetic surrogacy, as applicable.

(d) Each intended parent must be informed of the following short- and long-term health risks currently known to, or being investigated by, the medical community, and that all of the health risks are not known due to a lack of tracking and research, as applicable:

(1) pregnancy and delivery health risks to the intended parent who receives assisted reproduction services with third-party gamete provision, if applicable, to become pregnant, and health risks to any children conceived by assisted reproduction, with third-party gametes, if applicable; and

(2) pregnancy and delivery health risks to the person acting as surrogate if surrogacy, including genetic surrogacy, is used, and health risks to any children conceived by assisted reproduction, with third-party gametes if applicable, and born through surrogacy, including genetic surrogacy.

(e) Each intended parent must be provided information about the New York State Assisted Reproduction Registry, including, but not limited to:

(1) the purpose of the registry;

(2) personal and clinical data that is collected and how it is used;

(3) the benefits of registering, how one's personal information is secured and kept confidential, and how to register or opt out of registering; and

(4) how to request registry data.

PART 7
PAYMENT TO GAMETE PROVIDERS AND PERSONS ACTING AS SURROGATES

Section 581-701. Reimbursement.
581-702. Compensation.

§ 581-701. Reimbursement. (a) A gamete provider who has entered into a valid third-party gamete provision agreement to be a gamete provider may receive reimbursement from an intended parent or parents for economic losses incurred in connection with the third-party gamete provision 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 third-party gamete provision shall be reimbursed.

§ 581-702. Compensation. (a) Compensation may be paid to a gamete provider or person acting as surrogate who is a party to a surrogacy or genetic surrogacy agreement 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 gamete provider or person acting as surrogate must be reasonable and negotiated in good faith between the parties. The negotiated amount of compensation paid to persons acting as surrogates shall be effected on a payment schedule agreed to by the person acting as surrogate and the intended parent or parents, provided that the first payment is made when the person acting as surrogate commences taking medication to further embryo transfer, and the last payment is made between six and 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 gamete provider or of any resulting children.

PART 8
SURROGATES' BILL OF RIGHTS

Section 581-801. Applicability.
581-802. Health and welfare decisions.
581-803. Independent legal counsel.
581-804. Health insurance and medical costs.
581-805. Counseling.
581-806. Life insurance.
581-807. Termination of surrogacy agreement.

§ 581-801. Applicability. The rights enumerated in this part shall apply to any person acting as surrogate in this state, notwithstanding any surrogacy, including genetic surrogacy, agreement, judgment of parentage, memorandum of understanding, verbal agreement or contract to the contrary. Except as otherwise provided by law, any written or verbal agreement purporting to waive or limit any of the rights in this part is void as against public policy. The rights enumerated in this part are not exclusive, and are in addition to any other rights provided by law, regulation, or a surrogacy, including genetic surrogacy, agreement that meets the requirements of this article.

§ 581-802. Health and welfare decisions. A person acting as surrogate has the right to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all health and welfare decisions regarding themself and their pregnancy, including but not limited to whether to consent to a medically indicated or non-medically indicated cesarean section, to utilize the services of a health care practitioner of their choosing, whether to terminate or continue the pregnancy, and whether to reduce or retain the number of fetuses or embryos they are carrying.

§ 581-803. Independent legal counsel. A person acting as surrogate has the right to be represented throughout the contractual process and the duration of the surrogacy, including genetic surrogacy, agreement and its execution by independent legal counsel of their own choosing, to be paid for by the intended parent or parents.

§ 581-804. Health insurance and medical costs. A person acting as surrogate has the right to have a health insurance policy that covers preconception care, pre-natal care, major medical treatments, hospitalization and behavioral health care for a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, to be paid for by the intended parent or parents. 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, child birth, or post-natal care that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or the termination of the pregnancy.

§ 581-805. Counseling. A person acting as surrogate has the right to obtain a health insurance policy that covers behavioral health care and will cover the cost of psychological counseling to address issues resulting from their participation in a surrogacy, including a genetic

surrogacy, agreement, which policy shall be paid for by the intended parent or parents.

§ 581-806. Life insurance. A person acting as surrogate has the right to be provided a life insurance policy that takes effect prior to taking any medication or commencement of treatment to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing, to be paid for by the intended parent or parents.

§ 581-807. Termination of surrogacy agreement. A person acting as surrogate has the right to terminate a surrogacy, including a genetic surrogacy, agreement at any time throughout the duration of the pregnancy. If a person acting as surrogate terminates a surrogacy agreement, any compensation already received, other than payment or reimbursement of medical, legal, and pregnancy-related expenses, must be returned to the intended parent or parents.

PART 9
GAMETE PROVIDERS' BILL OF RIGHTS

Section 581-901. Applicability.
581-902. Health and welfare decisions.
581-903. Health insurance and medical costs.
581-904. Counseling.
581-905. Termination of a third-party gamete provision agreement.

§ 581-901. Applicability. The rights enumerated in this part shall apply to any gamete provider in this state, notwithstanding any third-party gamete provision agreement, judgment of parentage, memorandum of understanding, verbal agreement or contract to the contrary. Except as otherwise provided by law, any written or verbal agreement purporting to waive or limit any of the rights in this part is void as against public policy. The rights enumerated in this part are not exclusive, and are in addition to any other rights provided by law, regulation, or a third-party gamete provision agreement that meets the requirements of this article.

§ 581-902. Health and welfare decisions. (a) An egg provider has the right to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all health and welfare decisions regarding themselves, including but not limited to, the amount of time that transpires between egg retrieval cycles and/or third-party gamete provision agreements, and whether to terminate the third-party gamete provision agreement at any time;

(b) Sperm providers have the right to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all health and welfare decisions regarding themselves, including the right to terminate the third-party gamete provision agreement at any time; and

(c) This article does not diminish the responsibility of health care providers to ensure adherence to standards of medical practice.

§ 581-903. Health insurance and medical costs. An egg provider has the right to obtain a health insurance policy that covers major medical treatments, hospitalizations, and behavioral health care for a term that takes effect prior to the egg provider taking any medication and

commencing medical procedures in furtherance of ovarian stimulation and egg retrieval and that extends for six months after egg retrieval is completed, or for twelve months if health complications occur. Such policy shall be paid for by the agent, gamete bank, fertility clinic or other entity or by the intended parent or parents, as applicable, which shall also pay for or reimburse the egg provider for all co-payments, deductibles and any other out-of-pocket medical costs associated with third-party gamete provision or psychological or health complications pursuant to the third-party gamete provision agreement.

§ 581-904. Counseling. A gamete provider has the right to obtain a health insurance policy that covers behavioral health care and will cover the cost of psychological counseling to address issues resulting from participation in third-party gamete provision, to be paid for by the intended parent or parents, as applicable, or by the agent, gamete bank, fertility clinic or other entity as applicable.

§ 581-905. Termination of a third-party gamete provision agreement. (a) An egg provider has the right to terminate a third-party gamete provision agreement at any time prior to egg retrieval without penalty. If the agreement is terminated prior to egg retrieval, the egg provider is required to return any financial compensation received to date, other than payment or reimbursement for medical or psychological services.

(b) A sperm provider has the right to terminate a third-party gamete provision agreement at any time prior to the fulfillment of the agreement without penalty. If the agreement is terminated prior to it being fulfilled, the sperm provider is required to return any financial compensation received in advance.

PART 10
MISCELLANEOUS PROVISIONS

Section 581-1001. Remedial.
581-1002. Severability.
581-1003. Parent under section seventy of the domestic relations law.
581-1004. Interpretation.

§ 581-1001. Remedial. This article 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.

§ 581-1002. Severability. The invalidation of any part of this article by a court of competent jurisdiction shall not result in the invalidation of any other part.

§ 581-1003. 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.

§ 581-1004. 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" shall mean a woman who gives birth to a child pursuant to a surrogate parenting contract.~~

~~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" shall mean any agreement, oral or written, in which:~~

~~(a) a woman agrees either to be inseminated with the sperm of a man who is not her husband or to be impregnated with an embryo that is the product of an ovum fertilized with the sperm of a man who is not her husband; and~~

~~(b) the woman agrees to, or intends to, surrender or consent to the adoption of the child born as a result of such insemination or impregnation.~~] The definitions set forth in section 581-102 of the family court act shall apply to this article.

§ 4. Section 122 of the domestic relations law is REPEALED and a new section 122 is added to read as follows:

§ 122. Genetic surrogacy agreement. 1. If eligible under this article to enter into a genetic 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 genetic surrogacy agreement which will be enforceable provided the genetic surrogacy agreement meets the requirements of this article and further provided that enforcement of a genetic surrogacy agreement against a surrogate who objects to the termination of her parental rights prior to the issuance of an acknowledgement of interim parental responsibility or voluntary renunciation of parental rights is contrary to the public policy of this state and the genetic surrogacy agreement is void and unenforceable.

2. A genetic surrogacy agreement shall not apply to the birth of a child conceived by means of sexual intercourse.

3. A genetic surrogacy agreement may provide for payment of compensation under this part seven of article five-C of the family court act.

4.(a) A person acting as surrogate shall be eligible to enter into an enforceable genetic surrogacy agreement under this section if the person acting as surrogate has met the following requirements at the time the genetic surrogacy agreement is executed:

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

(ii) the person acting as surrogate is a United States citizen or a permanent lawful resident and was a resident of New York state for at least twelve months at the time the person executes a genetic surrogacy agreement, except that an exception shall be provided if the person acting as surrogate is a family member of an intended parent and is not being compensated to act as surrogate;

(iii) the person acting as surrogate has used their own gametes to conceive the resulting child;

(iv) the person acting as surrogate has completed medical and psychological evaluations with health care practitioners relating to the anticipated surrogate pregnancy and has received written medical clearance to become pregnant;

(v) 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 provided that such counsel must specifically declare that she or he has no conflicts relating to either the intending parents or any intermediaries in the genetic surrogacy

arrangement. 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. Where the intended parent or parents are paying for the independent legal counsel of the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, a separate retainer agreement shall be prepared clearly stating that such legal counsel will only represent the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, in all matters pertaining to the genetic surrogacy agreement, that such legal counsel will not offer legal advice to any other parties to the genetic surrogacy agreement, and that the attorney-client relationship lies with the person acting as surrogate and the spouse of the person acting as surrogate, if applicable;

(vi) the person acting as surrogate must have previously delivered at least one healthy live birth from an uncomplicated pregnancy not pursuant to a surrogacy, including genetic surrogacy, agreement;

(vii) the person acting as surrogate must not have delivered more than three prior children, whether or not acting as a surrogate;

(viii) the person acting as surrogate must be free of any medical or psychological preexisting conditions that would qualify them as being high-risk to become pregnant; and

(ix) the person acting as surrogate must not be over age thirty-five at the time of conception.

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

(i) each intended parent is a United States citizen or a permanent lawful resident and was a resident of New York State for at least twelve months at the time they execute a genetic surrogacy contract; and

(ii) 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

(iii) they are 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 genetic surrogacy agreement without their spouse if:

(A) 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

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

(iv) 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; and

(v) at least one intended parent must have used their gametes to create the embryo that will be transferred to the person acting as surrogate, unless the intended parent or parents are unable to use their gametes for medical reasons; and

(vi) the intended parent or parents must have had medical and psychological evaluations; and

(vii) the intended parent or parents must have had background checks and a home study completed.

5. A genetic surrogacy agreement shall be deemed to have satisfied the requirements of this section and be enforceable if it meets the following requirements:

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

(i) each intended parent, and

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

(A) 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

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

(b) It shall include the following information:

(i) the date, city, and state where the genetic surrogacy agreement was executed; and

(ii) first and last names of and contact information for the intended parent or parents and of the person acting as surrogate; and

(iii) the first and last names of and contact information for the persons from which the gametes originated. If third-party gamete provision was used, the first and last name of and contact information for each gamete provider, if known, or the gamete provider identification number, if anonymous. The agreement shall specify whether the third-party gametes provided were eggs, sperm or embryos; and

(iv) the name of and contact information for the licensed and registered surrogacy program that is handling the genetic surrogacy agreement; and

(v) the names of and contact information for the attorney representing the person acting as surrogate and, if applicable, the spouse of the person acting as surrogate, and the attorney representing the intended parent or parents.

(c) It shall be executed after the following have been completed, but prior to the person acting as surrogate taking any medication or the commencement of medical procedures in furtherance of embryo transfer:

(i) the medical and psychological screenings of the person acting as surrogate;

(ii) the medical and psychological screenings, background checks, and home study of the intended parent or parents;

(iii) the informed consent process for the person acting as surrogate, the intended parent or parents, and any gamete providers; and

(iv) legal counseling of all parties.

(d) It shall be executed by a person acting as surrogate meeting the eligibility requirements of subdivision four of this section and by the spouse of the person acting as surrogate, if applicable, unless the signature of the spouse of the person acting as surrogate is not required as set forth in this section.

(e) It shall be executed by an intended parent or parents who met the eligibility requirements of subdivision four of this section.

(f) 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.

(g) If the genetic 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 taking any medication or the commencement of medical procedures in furtherance of embryo transfer. Funds to cover the medical expenses of the person acting as surrogate, including out-of-pocket medical expenses shall also have been placed in escrow.

(h) The person acting as surrogate has or will obtain a health insurance policy that takes effect prior to taking any medication or the commencement of medical procedures to further embryo transfer that covers pre-conception care, pre-natal care, major medical treatments, hospitalization, and behavioral health care, and the health insurance policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; 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 genetic 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 preconception, pregnancy, child birth, or post-natal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage or termination of the pregnancy. 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.

(i) The genetic surrogacy agreement stipulates that the person acting as surrogate will obtain a short- and long-term disability insurance policy that takes effect prior to taking any medication or commencing medical procedures to further embryo transfer that covers disability related to the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, and the disability insurance policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; 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 genetic 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 disability insurance policy.

(j) The genetic surrogacy agreement must provide that the intended parent or parents shall procure and pay for a life insurance policy for the person acting as surrogate that takes effect prior to the person acting as surrogate taking any medication or the commencement of medical procedures to further embryo transfer, provides a minimum benefit of seven hundred and fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; 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 genetic 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 life insurance policy.

(k) The genetic surrogacy agreement must include information disclosing how the intended parent or parents will cover the medical expenses of the person acting as surrogate and any child born pursuant to the genetic surrogacy agreement. 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.

(l) The genetic surrogacy agreement and all required documentation shall be certified to have been completed and in order by the surrogacy program handling the genetic surrogacy agreement.

6. The genetic surrogacy agreement shall comply with all of the following terms:

(a) 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 subject to their right to terminate the pregnancy;

(ii) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, agree that all resulting children will go home with the intended parent or parents from the hospital once medical clearance is provided unless the person acting as surrogate decides otherwise;

(iii) the person acting as surrogate agrees to file with the court a notarized written declaration no sooner than eight days following the birth of any resulting children stating they are voluntarily consenting to disclaim and renounce their parental rights under the terms of the genetic surrogacy agreement, and consenting to the adoption of any children born pursuant to the genetic surrogacy agreement;

(iv) the genetic surrogacy agreement must permit the person acting as surrogate to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all health and welfare decisions regarding themselves, their pregnancy, and child birth, including but not limited to, whether to consent to a medically-indicated or non-medically indicated cesarean section, whether to terminate or continue the pregnancy, and whether to reduce or retain the number of fetuses or embryos they are carrying 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. This article does not diminish the responsibility of health care providers to ensure adherence to standards of medical practice;

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

(vi) the person acting as surrogate has the right to obtain psychological counseling by a counselor of their choice to address issues resulting from the person's participation in the genetic surrogacy agreement. The cost of that counseling shall be paid by the intended parent or parents.

(b) As to the intended parent or parents:

(i) the intended parent or parents agree to accept interim parental responsibility for any resulting children immediately upon birth regardless of number, gender, or mental or physical condition;

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

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

(iv) 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 genetic surrogacy agreement; and

(v) the intended parent or parents must enter into contracts with a surrogacy program, a third-party gamete provision service provider, if applicable, and an assisted reproduction service provider, if applicable, that are licensed by the New York State department of health, with the exception of surrogacy agreement coordinators, and registered with the office of the assisted reproduction registrar.

7. (a) After the execution of a genetic surrogacy agreement under this article, the subsequent spousal relationship of the person acting as surrogate does not affect the validity of a genetic 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 genetic surrogacy agreement.

8. A person acting as surrogate has the right to terminate a genetic surrogacy agreement at any time throughout the duration of the pregnancy. If a person acting as surrogate terminates a genetic surrogacy agreement, any compensation already received, other than payment or reimbursement of medical, legal, and pregnancy-related expenses, must be returned to the intended parent or parents.

9. Upon the birth of a child conceived by assisted reproduction and born through genetic surrogacy pursuant to article eight of the domestic relations law, the biologically-related intended parent or parents and the person acting as surrogate assume interim parental responsibility for the child born and share decision making, except that the intended parent or parents will assume full financial responsibility, until the person acting as surrogate under the terms of a genetic surrogacy agreement has submitted a written declaration to the court no sooner than eight days following the birth of any children stating that they are voluntarily consenting to disclaim and renounce their parental rights, and consenting to an adoption proceeding. Once the adoption proceeding is completed, the intended parent or parents is, by operation of law, a parent of the child and neither the person acting as surrogate nor the person's spouse, if any, is a parent of the child.

10. If a genetic surrogacy agreement is defective in material and non-technical ways, the court shall enforce only such provisions as justice requires, except that unless the person acting as surrogate has disclaimed and renounced parental rights and obligations, and consented to an adoption no sooner than eight days after the birth of the child, the court shall not terminate their parental status, rights or obligations.

11. In the absence of a genetic surrogacy agreement, the person who gives birth to a child is the parent of that child, and assumes the

rights and obligations of a parent and any intended parent who has contributed genetic material shall also be a parent of the child, and assume the rights and responsibilities of a parent, and the court shall determine child support and establish a parenting schedule according to the best interests of the child and such other laws of this state as are applicable. If neither intended parent has contributed genetic material, the person acting as surrogate shall be the sole parent and can retain their parental status and obligations or surrender the child for adoption by an intended parent or both of them provided they meet the requirements of law or if they decline to adopt, then to others in accordance with law.

12. (a) Any dispute which is related to a genetic surrogacy agreement shall be resolved by the supreme court, which shall determine the respective rights and obligations of the parties according to the requirements of this section, the valid terms of the agreement and such other laws as may be applicable.

(b) Except as expressly provided in the genetic 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 genetic surrogacy agreement.

(c) There shall be no specific performance remedy available for a breach by the person acting as surrogate of a genetic surrogacy agreement term.

§ 5. Section 123 of the domestic relations law is REPEALED.

§ 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~~] person acting as 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 surrogacy agreement, regarding parental rights, status or obligations with respect to a child born pursuant to a [~~surrogate parenting contract~~] genetic surrogacy agreement:

1. the court shall not consider the [~~birth mother's~~] person acting as surrogate's participation in a [~~surrogate parenting contract~~] genetic surrogacy 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~~] person acting as 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 biologically-related 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) The person giving birth to the child has not signed the acknowledgment of parentage;

(ii) 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;

(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 provider 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 biologically-related 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 desig-

nated 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:

[~~SURROGATE PARENTING CONTRACTS~~] GENETIC SURROGACY

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

ARTICLE 44

REGULATION OF SURROGACY PROGRAMS, THIRD-PARTY GAMETE PROVISION SERVICE PROVIDERS AND ASSISTED REPRODUCTION SERVICE PROVIDERS

Section 1400. Definitions.
1401. Surrogacy programs regulated under this article.
1402. Third-party gamete provision service providers regulated under this article.
1403. Assisted reproduction service providers regulated under this article.
1404. Conflicts of interest; prohibition on payments; funds in escrow; licensure; notice of surrogates' and gamete providers' bill of rights.
1405. Regulations.

§ 1400. Definitions. As used in this section:

1. The definitions in section 581-102 of the family court act shall apply.

2. "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.

3. "Surrogacy program" does not include any party to a surrogacy, including a genetic surrogacy, agreement or any person licensed to practice law and representing a party to the surrogacy agreement, but does include and is not limited to any agency, agent, business or surrogacy agreement coordinator, that is licensed by the department of health, with the exception of surrogacy agreement coordinators, and registered with the office of the assisted reproduction registrar, and 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 or article eight of the domestic relations law.

4. "Surrogacy agreement coordinator" does not include any party to a surrogacy, including a genetic surrogacy, agreement or any person licensed to practice law and representing a party to the agreement, but does include a licensed lawyer or social worker 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 or article eight of the family court act.

§ 1401. Surrogacy programs regulated under this article. The provisions of this article apply to surrogacy programs arranging or facilitating transactions contemplated by a surrogacy, including a genetic surrogacy, agreement under part four of article five-C of the family court act or article eight of the domestic relations law if:

1. The surrogacy program does business in the state;

2. A person acting as surrogate who is party to a surrogacy, including genetic surrogacy, agreement resides in this state during the term of the surrogacy, including genetic surrogacy, agreement;

3. Any medical procedures under the surrogacy, including genetic surrogacy, agreement are performed in this state; or

4. The surrogacy program provides any of the following services:

(i) surrogate recruitment; or

(ii) surrogate matching.

§ 1402. Third-party gamete provision service providers regulated under this article. 1. The provisions of this article apply to agents, gamete banks, fertility clinics, and other entities arranging or facilitating transactions contemplated by a third-party gamete provision agreement under part five of article five-C of the family court act if:

(a) The agent, gamete bank, fertility clinic, or other entity does business in this state;

(b) A gamete provider who is party to a third-party gamete provision agreement resides in this state during the term of the third-party gamete provision agreement;

(c) Any medical procedures under the gamete provision agreement are performed in this state; or

(d) The agent, gamete bank, fertility clinic, or other entity provides any of the following services:

(i) third-party gamete provision;

(ii) third-party embryo provision;

(iii) gamete freezing;

(iv) gamete provider recruitment; or

(v) gamete provider matching.

§ 1403. Assisted reproduction service providers regulated under this article. The provisions of this article apply to fertility clinics, other health care facilities, and health care practitioners that provide assisted reproduction services to intended parents not using surrogacy under this article when:

1. The fertility clinic, other health care facility, or health care practitioner that provides assisted reproduction services to intended parents not using surrogacy does business in New York state.

2. The fertility clinic, other health care facility, or health care practitioner provides any of the following assisted reproduction services to intended parents not using surrogacy:

(a) Intrauterine or vaginal insemination; or

(b) In vitro fertilization and transfer of embryos.

§ 1404. Conflicts of interest; prohibition on payments; funds in escrow; licensure; notice of surrogates' and gamete providers' bill of rights. A surrogacy program to which this article applies:

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

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

3. 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;

4. 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;

5. 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;

6. Must be licensed by the department of health and registered with the office of assisted reproduction registrar pursuant to regulations promulgated by the department of financial services in consultation with the department of health; and

7. Must ensure that all potential parties to a surrogacy, including a genetic surrogacy, agreement, at the time of consultation with such surrogacy program, are provided with written notice of the surrogates' and gamete providers' bill of rights, as applicable, enumerated in parts eight and nine of article five-C of the family court act.

§ 1405. Regulations. 1. The department of financial services, in consultation with the department of health, shall promulgate regulations to implement the requirements of this article regarding surrogacy programs, in a manner that prioritizes the short- and long-term health and safety of gamete providers, persons acting as surrogates, and any children conceived by assisted reproduction with third-party gametes, if applicable, and born through surrogacy, including genetic surrogacy, including but not limited to, regulations:

(a) mandating surrogacy programs to be licensed by the department of health, with the exception of surrogacy agreement coordinators, and registered with the office of the assisted reproduction registrar and to maintain active registration status; and

(b) requiring surrogacy programs:

(i) to verify with the office of the assisted reproduction registrar that a potential person acting as surrogate has not already given birth to a total of four children, whether or not pursuant to a surrogacy, including genetic surrogacy, agreement prior to the execution of a surrogacy, including genetic surrogacy, agreement;

(ii) to report the person acting as surrogate's participation in the surrogacy, including genetic surrogacay, agreement to the office of the assisted reproduction registrar;

(iii) to report any pregnancy outcomes that result from the surrogacy, including genetic surrogacy, agreement to the office of the assisted reproduction registrar;

(iv) to monitor compliance with agreement eligibility and provision requirements and state law;

(v) to provide a copy of surrogacy, including genetic surrogacy, agreements, once executed, to the office of the assisted reproduction registrar;

(vi) to administer an informed consent procedure that complies with regulations promulgated by the department of health;

(vii) to verify with the office of the assisted reproduction registrar whether each person who acts as surrogate and each intended parent who executes a surrogacy agreement brokered by the surrogacy program already has an assigned identification number, and if not, to assign the identification number and provide it to the office of the assisted reproduction registrar along with the individual's identifying information; and

(viii) to report clinical data from services provided to the department of health.

2. The department of financial services, in consultation with the department of health, shall promulgate regulations to implement the requirements of this article regarding assisted reproduction service providers, in a manner that prioritizes the short- and long-term health and safety of intended parents and any children conceived by assisted reproduction, including but not limited to:

(a) mandating assisted reproduction service providers to be licensed by the department of health and registered with the office of the assisted reproduction registrar, and to maintain active registration status; and

(b) requiring assisted reproduction service providers:

(i) to verify with the office of the assisted reproduction registrar whether each intended parent who receives assisted reproduction services already has an assigned identification number, and if not, to assign the identification number and provide it to the office of the assisted reproduction registrar along with the individual's identifying information;

(ii) to administer an informed consent procedure that complies with regulations promulgated by the department of health; and

(iii) to report clinical data from services provided and any pregnancy outcomes to the state department of health.

3. The department of financial services, in consultation with the department of health, shall promulgate regulations to implement the requirements of this article regarding third-party gamete provision service providers, in a manner that prioritizes the short- and long-term health and safety of gamete providers and any children conceived by assisted reproduction, including but not limited to:

(a) mandating third-party gamete provision service providers to be licensed by the department of health and registered with the central, confidential assisted reproduction registry and to maintain active registration status;

(b) requiring third-party gamete provision service providers:

(i) to verify with the office of the assisted reproduction registrar whether each gamete provider and each intended parent, if applicable, who executes a third-party gamete provision agreement brokered by the entity already has an assigned identification number, and if not, to assign the identification number and provide it to the office of the assisted reproduction registrar along with the individual's identifying information;

(ii) to administer an informed consent procedure that complies with regulations promulgated by the department of health; and

(iii) to report clinical data from services provided and any pregnancy and live birth outcomes to the department of health.

4. The department of financial services shall annually report to the state legislature regarding the practices of surrogacy programs and third-party gamete provision service providers and all business transactions related to surrogacy and third-party gamete provision in the state, with recommendations for any necessary amendments to this article.

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

ARTICLE 25-B
ASSISTED REPRODUCTION

Section 2599-cc. Assisted reproduction.
2599-dd. Third-party gamete provision.
2599-ee. Surrogacy.
2599-ff. Genetic surrogacy.
2599-gg. New York state office of the assisted reproduction registrar.
2599-hh. Central, confidential assisted reproduction registry.
2599-ii. Third-party gamete provision and parentage.
2599-jj. Gamete provider identity disclosure.

§ 2599-cc. Assisted reproduction. The commissioner, in consultation with the Task Force on Life and the Law, shall promulgate regulations on the provision of assisted reproduction services to intended parents who are not using surrogacy. Such regulations shall include, but not be limited to:

1. guidelines and procedures for obtaining fully informed consent from intended parents, to include but not be limited to the informed consent procedures for intended parents pursuant to section 581-604 of the family court act, highlighting the potential known and unknown health risks to intended parents and children conceived by assisted reproduction, and ensuring that intended parents are able to review and understand informed consent materials;

2. the development and distribution, in printed form and on the department's website, of informational material relating to assisted reproduction, including but not limited to the scope of information provided on the website of the Human Fertilisation & Embryology Authority of the United Kingdom.

§ 2599-dd. Third-party gamete provision. The commissioner, in consultation with the transplant council or the Task Force on Life and the Law, shall promulgate regulations on third-party gamete provision. Such regulations shall include, but not be limited to:

1. guidelines and procedures for obtaining fully informed consent from gamete providers and intended parents, if applicable, to include but not be limited to the informed consent procedures for gamete providers listed under section 581-602 of the family court act and the informed consent procedures for intended parents under section 581-604 of the family court act, highlighting the potential known and unknown health risks to gamete providers, intended parents, and children conceived by assisted reproduction, and ensuring that gamete providers and intended parents, if applicable, are able to review and understand informed consent materials;

2. the development and distribution, in printed form and on the department's website, of informational material relating to third-party gamete provision, including but not limited to the scope of information

provided on the website of the Human Fertilisation & Embryology Authority of the United Kingdom; and

3. guidelines and procedures for drafting third-party gamete provision agreements in compliance with part five of article five-C of the family court act.

§ 2599-ee. Surrogacy. The commissioner, in consultation with the task-force on life and the law, shall promulgate regulations on the practice of surrogacy. Such regulations shall include, but not be limited to:

1. guidelines and procedures for obtaining fully informed consent from potential persons acting as surrogates and intended parents, to include but not be limited to the informed consent procedures for persons acting as surrogate listed under section 581-603 of the family court act and the informed consent procedures for intended parents listed under section 581-604 of the family court act, highlighting the potential known and unknown health risks to persons acting as surrogates and children conceived by assisted reproduction and born through surrogacy, and ensuring that persons acting as surrogates and intended parents are able to review and understand informed consent materials;

2. the development and distribution, in printed form and on the department's website, of informational material relating to surrogacy; including but not limited to the scope of information provided on the website of the Human Fertilisation & Embryology Authority of the United Kingdom; and

3. guidelines and procedures for drafting surrogacy agreements in compliance with part four of article five-C of the family court act.

§ 2599-ff. Genetic surrogacy. The commissioner shall promulgate regulations on the practice of genetic surrogacy. Such regulations shall include, but not be limited to:

1. guidelines and procedures for obtaining fully informed consent from potential persons acting as surrogates and intended parents, to include but not be limited to the informed consent procedures for persons acting as surrogates listed under section 581-603 of the family court act and the informed consent procedures for intended parents listed under section 581-604 of the family court act, highlighting the potential known and unknown health risks to persons acting as surrogates and children conceived by assisted reproduction and born through genetic surrogacy, and ensuring that persons acting as surrogates and intended parents are able to review and understand informed consent materials;

2. the development and distribution, in printed form and on the department's website, of informational material relating to genetic surrogacy, including but not limited to the scope of information provided on the website of the Human Fertilisation & Embryology Authority of the United Kingdom; and

3. guidelines and procedures for drafting genetic surrogacy agreements in compliance with section one hundred twenty-two of the domestic relations law.

§ 2599-gg. New York state office of the assisted reproduction registrar. 1. There is hereby established within the department the New York state office of the assisted reproduction registrar which shall have exclusive jurisdiction to exercise the powers and duties provided by this article. The office shall exercise its authority by and through an executive director.

2. The executive director shall be appointed by the commissioner.

3. The office of the assisted reproduction registrar, by and through its executive director, shall have the following powers and duties:

(a) to issue or refuse to issue registrations and registration renewals of surrogacy programs, assisted reproduction service providers, third-party gamete provision service providers, health care practitioners, persons acting as surrogates, gamete providers, intended parents who use assisted reproduction to become pregnant, parents, and children conceived by assisted reproduction, with third-party gametes, if applicable, and born through surrogacy, if applicable;

(b) to limit, or not to limit, the number of registrations to be issued in a manner that prioritizes health and safety, evidence-based practices, and social responsibility;

(c) to administer the assisted reproduction registry and respond to requests for medical information and identifying information of gamete providers and persons acting as surrogates;

(d) to maintain copies of third-party gamete provision and surrogacy, including genetic surrogacy, agreements, along with relevant documents in a manner that protects confidentiality and privacy of information;

(e) to develop print and electronic materials with educational information, current best practices, and research findings on topics related to assisted reproductive technology, third-party gamete provision, and surrogacy, including genetic surrogacy; and

(f) to develop content and maintain a website with information and resources on assisted reproduction, third-party gamete provision, and surrogacy, including genetic surrogacy.

4. (a) The office shall perform such acts, prescribe such forms and propose such rules, regulations and orders as it may deem necessary or proper to fully effectuate the provisions of this article.

(b) The office shall have the power to promulgate any and all necessary rules and regulations governing assisted reproduction, third-party gamete provision, and surrogacy, including genetic surrogacy, practices in this state.

(c)(i) The office shall establish a scale of registration and renewal fees, to be paid by surrogacy programs, third-party gamete provision service providers, assisted reproduction service providers, and health care practitioners. Persons acting as surrogates, gamete providers, intended parents who use assisted reproduction, and children conceived by assisted reproduction, with third-party gametes, if applicable, and born through surrogacy, if applicable are not required to pay a registration or renewal fee.

(ii) The office shall charge each registered entity a registration and renewal fee, as applicable.

(iii) All registration and renewal fees shall be set on a scaled basis by the office, dependent on the size and capacity of the entity.

(iv) All registration and registration renewal fees collected by the office shall be allocated to continuing the work of the office, research and tracking of impacts of assisted reproductive technology on gamete providers, persons acting as surrogates, intended parents, and children conceived by assisted reproduction, with third-party gametes, if applicable, and born through surrogacy, including genetic surrogacy, if applicable, and if there is any additional revenue available, to state efforts to address maternal morbidity and mortality.

5. (a) The New York State Task Force on Life and the Law shall act as advisory board for the office of the assisted reproduction registrar. The advisory board shall consider all matters submitted to it by the executive director, including rulemaking, advising the office and legislature on assisted reproduction, third-party gamete provision, and surrogacy, including genetic surrogacy, practices and issues.

(b) The executive director of the office shall serve as the chairperson of the board. The vice chairperson shall be elected from among the members of the advisory board by members of the board and shall represent the board in the absence of the chairperson at all official board functions.

6. The action, proceedings, authority, and orders of the office in enforcing the provisions of this article and applying them to specific cases shall at all times be regarded as in their nature judicial and shall be treated as prima facie just and legal.

§ 2599-hh. Central, confidential assisted reproduction registry. 1. The New York state office of the assisted reproduction registrar shall establish an assisted reproduction registry for the purposes of:

(a) tracking assisted reproduction, clinical third-party gamete provision and surrogacy, including genetic surrogacy practices;

(b) registering surrogacy programs, agents, gamete banks, fertility clinics, and health care practitioners providing assisted reproduction, third-party gamete provision, and surrogacy, including genetic surrogacy, services in this state;

(c) tracking and enforcing limits on participation in surrogacy, including genetic surrogacy, and third-party gamete provision agreements to protect the health and safety of persons acting as surrogates and egg providers, and to manage the number of children conceived by assisted reproduction with the gametes of each gamete provider;

(d) facilitating research on short- and long-term health outcomes of assisted reproduction, third-party gamete provision, and surrogacy, including genetic surrogacy, procedures on egg providers, persons acting as surrogates, intended parents who use assisted reproduction to become pregnant, and children conceived by assisted reproduction using third-party gametes, if applicable, and born through surrogacy, if applicable;

(e) enabling gamete providers, persons acting as surrogates, intended parents who use assisted reproduction to become pregnant, and children conceived by assisted reproduction, with third-party gametes, if applicable, and born through surrogacy, if applicable, to update their own medical information;

(f) enabling children conceived by assisted reproduction, with third-party gametes, if applicable, and born through surrogacy, if applicable, to receive medical information about gamete providers and persons acting as surrogates once they attain sixteen years of age, or their parents or guardians can request the information before the child attains sixteen years of age;

(g) enabling children born through surrogacy to obtain identifying information about persons acting as surrogates once they reach eighteen years of age; and

(h) enabling children conceived by assisted reproduction to receive identifying information once they attain eighteen years of age about gamete providers, if:

(i) the gamete provider has opted to be known;

(ii) the gamete provider is registered on the registry and provides consent; and

(iii) the child has reached eighteen years of age and is registered on the registry.

2. The assisted reproduction registry shall be operated by employees of the department specifically designated by the commissioner. Access to all records and information in the registry shall be limited to such designated employees and such records and information shall be kept strictly confidential except as specifically authorized by law. The

commissioner shall establish rules and procedures designed to keep such records and information separate and apart from other records of the department and kept in a manner where access to such records and information is strictly limited to such designated employees and shall promulgate regulations designed to effectuate the purposes of this section. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the commissioner shall have access to the information authorized to be released pursuant to this section contained in surrogacy, including genetic surrogacy, agreements, third-party gamete provision agreements, and clinical data maintained by the office of the assisted reproduction registrar and any agency, court or department having appropriate records which will enable the commissioner to effectuate the purposes of this section and may require the cooperation of such agency, court or department in providing the information authorized to be released pursuant to this section, provided, however, that the commissioner shall not have access to the actual records of any agency, court or department maintaining such records.

3. The following persons and entities are required to register with the assisted reproduction registry and to annually renew their registration in order to operate in the state:

(a) gamete banks, fertility clinics, other health care facilities, and individual health care practitioner that or who provide assisted reproduction services in the state;

(b) surrogacy programs, including surrogacy agreement coordinators, that operate in the state or that provide services to residents of the state;

(c) agents, gamete banks, fertility clinics, and other health care facilities that provide third-party gamete provision services in the state.

4. (a) At the time of execution of a surrogacy, including genetic surrogacy, or third-party gamete provision agreement, or of receiving assisted reproduction services, each intended parent, gamete provider, and person acting as surrogate, as applicable, shall be given the choice to register with the New York state assisted reproduction registry, or to opt out of registering, in writing. The decision to opt-out cannot be contractually determined by either the surrogacy, including genetic surrogacy, or gamete provision agreement, and there shall be no consideration given for the choice to register or to opt out.

(b) If an intended parent, gamete provider, or person acting as surrogate chooses to register:

(i) They will be able to request information, and receive medical and research updates from the registry.

(ii) A gamete provider's identifying information will be provided to a child conceived by assisted reproduction with their gametes if:

(A) the gamete provider has consented to disclose their identity pursuant to section twenty-five hundred ninety-nine-jj of this article;

(B) the child requests the identifying information and has attained eighteen years of age, or if the child has not attained eighteen years of age, the child's parent requests the identifying information; and

(C) the child or the child's parent requesting the identifying information is registered with the registry.

(c) If an intended parent, gamete provider, or person acting as surrogate chooses to opt out of registering:

(i) They will be unable to request information, or receive medical or research updates from the registry.

(ii) Clinical information related to assisted reproduction services, third-party gamete provision, and surrogacy, including genetic surrogacy, will be submitted to the registry for research purposes.

(iii) A gamete provider's non-identifying medical information will be provided to a child conceived by assisted reproduction with their gametes if:

(A) the child requests the non-identifying medical information and has attained sixteen years of age, or if the child has not attained sixteen years of age, the child's parent requests the non-identifying medical information; and

(B) the child or the child's parent requesting the non-identifying medical information is registered with the registry.

(iv) A person acting as surrogate's identifying and non-identifying medical information, as applicable, will be provided to a child they gave birth to pursuant to a surrogacy or genetic surrogacy agreement if:

(A) the child requests the non-identifying medical information and has attained sixteen years of age, or if the child has not attained sixteen years of age, the child's parent requests the non-identifying medical information;

(B) the child requests the identifying information and has attained eighteen years of age, or if the child has not attained eighteen years of age, the child's parent requests the identifying information; and

(C) the child or the child's parent requesting the non-identifying medical or identifying information is registered with the registry.

(v) An intended parent, gamete provider, or person acting as surrogate may submit their updated non-identifying medical information to the registry at any time.

(vi) An intended parent, gamete provider, and person acting as surrogate may choose to register with the registry at any time in the future.

(d) A child conceived by assisted reproduction, with third-party gametes, if applicable, and born through surrogacy, including genetic surrogacy, if applicable, is not required to opt-out of registering with the registry, and may submit their updated medical information to the registry at any time, but is required to register in order to request information, or to receive medical or research updates from the registry.

5. The assisted reproduction registry shall collect and track data as follows:

(a) The following clinical and participant data will be collected from fertility clinics, other health care facilities, and health care practitioners that provide assisted reproduction services to intended parents not using surrogacy in New York state:

(i) the age and sex or gender of the intended parent receiving assisted reproduction services and of their partner, if applicable, and whether the partner's genetic material is being used;

(ii) the name of fertility clinic, other health care facility, or health care practitioner that provided the assisted reproduction services;

(iii) medication and insemination or embryo incubation/transfer protocols, if applicable, for each cycle of ovarian stimulation for egg retrieval or fertility treatment, artificial insemination, IUI, or IVF, including any add-on IVF procedures;

(iv) any adverse reactions or health complications during the cycle, and if the cycle had to be terminated;

(v) the number of eggs retrieved during the cycle, if applicable;

(vi) the number of embryos transferred during the cycle, if applicable;
(vii) whether the cycle resulted in a clinical pregnancy, and if so:
(A) the number of fetuses carried;
(B) the outcome of the pregnancy; and
(C) If the cycle resulted in a live birth, the number of children born; and
(viii) if third-party gamete or embryo provision was used, whether the gametes provided material was eggs, sperm, or embryos, and the identification number of each gamete provider and the identification numbers of the persons who provided genetic material for the embryo, as applicable.
(b) The following clinical and participant data will be collected from gamete banks, fertility clinics and other health care facilities that provide third-party gamete provision services in the state:
(i) gamete provider's name or identification number;
(ii) gamete provider age and sex or gender;
(iii) the name of gamete bank, fertility clinic or other health care facility where gametes were provided;
(iv) injection and medication protocol for each cycle of ovarian stimulation for purposes of egg retrieval;
(v) any adverse reactions or health complications during the cycle, and if the cycle had to be terminated;
(vi) the number of eggs retrieved during the cycle;
(vii) for each egg provided, whether such egg:
(A) resulted in a clinical pregnancy and the outcome of that pregnancy;
(B) was used for research;
(C) was disposed of; or
(D) was distributed to another intended parent as an egg or embryo.
(c) The following clinical and participant data will be collected from surrogacy programs, fertility clinics, gamete banks and other entities that provide services related to surrogacy, including genetic surrogacy, agreements and provide surrogacy services in the state:
(i) the person acting as surrogate's identification number;
(ii) the person acting as surrogate's age and sex or gender;
(iii) the name of the surrogacy program handling the surrogacy, including genetic surrogacy, agreement;
(iv) the name of the fertility clinic, other health care facility, or health care practitioner providing assisted reproduction services;
(v) medication and insemination or embryo incubation/transfer protocols, if applicable, for each cycle of ovarian stimulation for egg retrieval or fertility treatment, artificial insemination, IUI, or IVF, including any add-on IVF procedures;
(vi) any adverse reactions or health complications related to embryo transfer, pregnancy, delivery, or the post-partum period;
(vii) the number of embryos transferred each cycle;
(viii) the number of embryo transfer cycles required for the person acting as surrogate to become pregnant, if applicable;
(ix) the method of delivery of any children born through surrogacy, including genetic surrogacy;
(x) number of fetuses carried and the number of children born;
(xi) the age and sex or gender of each intended parent; and
(xii) the zip code of each intended parent.
7. Within the department, access to registry data shall be limited to employees designated by the commissioner and records and information shall be kept strictly confidential except as specifically authorized by

law. The commissioner shall establish rules and procedures designed to keep such records and information separate and apart from other records of the department and kept in a manner where access to such records and information is strictly limited to such designated employees and shall promulgate regulations designed to effectuate the purposes of this section.

§ 2599-ii. Third-party gamete provision and parentage. 1. The gamete provider of sperm provided to a licensed individual health care practitioner or to a gamete bank, fertility clinic or other health care facility for use in assisted reproduction by an intended parent other than the gamete provider's spouse or intimate partner is treated in law as if they were not the natural parent of a child thereby conceived, unless otherwise agreed to in a written, notarized statement signed by the sperm provider and the intended parent prior to conception by assisted reproduction.

2. If the sperm provided by a sperm provider is not provided to a licensed individual health care practitioner or to a gamete bank, fertility clinic or other healthcare facility as specified in paragraph (a) of this subdivision, the gamete provider of sperm for use in assisted reproduction by an intended parent other than the gamete provider's spouse or intimate partner is treated in law as if they were not the natural parent of a child thereby conceived if either of the following are met:

(a) The gamete provider and the intended parent agreed in a written, notarized statement signed by the sperm provider and the intended parent prior to conception by assisted reproduction that the gamete provider would not be a parent.

(b) A court finds by clear and convincing evidence that the child was conceived by assisted reproduction and that, prior to the conception of the child, the intended parent and the gamete provider had an oral agreement that the gamete provider would not be a parent.

3. Paragraphs (a) and (b) of subdivision two of this section do not apply to a gamete provider who provided sperm for use in assisted reproduction by an intended parent other than the gamete provider's spouse or intimate partner pursuant to a written agreement signed by the gamete provider and the intended parent prior to conception of the child stating that they intended for the gamete provider to be a parent.

4. The gamete provider of ova for use in assisted reproduction by an intended parent other than the gamete provider's spouse or intimate partner is treated in law as if the gamete provider were not the natural parent of a child thereby conceived unless the court finds satisfactory evidence that the gamete provider and the intended parent intended for the gamete provider to be a parent.

5. (a) An intended parent may, but is not required to, use the New York state statutory forms for assisted reproduction set forth in this section to demonstrate their intent to be a legal parent of a child conceived by assisted reproduction. These forms shall satisfy the written requirement specified in this section, and are designed to provide clarity regarding the intentions, at the time of conception, of intended parents using assisted reproduction. These forms do not affect any presumptions of parentage based on article five-C of the family court act, and do not preclude a court from considering any other claims to parentage under New York state statute or case law.

(b) These forms apply only in very limited circumstances. Please read the forms carefully to see if you qualify for use of the forms.

(c) These forms do not apply to assisted reproduction agreements for persons acting as surrogates or surrogacy, including genetic surrogacy, agreements.

(d) Nothing in this section shall be interpreted to require the use of one of these forms to satisfy the written requirement of this section.

(e) The following are the optional New York State Statutory Forms for Assisted Reproduction:

New York Statutory Forms for Assisted Reproduction, Form 1:

Two Married or Unmarried People Using Assisted Reproduction to Conceive a Child

Use this form if: You and another intended parent, who may be your spouse, intimate partner or registered domestic partner, are conceiving a child through assisted reproduction using sperm and/or egg provision; and one of you will be giving birth. WARNING: Signing this form does not terminate the parentage claim of a sperm provider. A sperm provider's claim to parentage is terminated if the sperm is provided to a licensed individual health care practitioner or to a gamete bank, fertility clinic or other health care facility prior to insemination, or if you conceive without having sexual intercourse and you have a written agreement signed by you and the sperm or egg provider that you will conceive using assisted reproduction and do not intend for the sperm or egg provider to be a parent, as required by Section 2599-ii of the Public Health Law. The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights. Even if you do not fill out this form, a spouse or domestic partner of the parent giving birth is presumed to be a legal parent of any child born during the marriage or domestic partnership.

_____

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using sperm and/or egg provision.

I, _____ (print name of person not giving birth), intend to be a parent of a child that _____ (print name of person giving birth) will or has conceived through assisted reproduction using sperm and/or egg provision. I consent to the use of assisted reproduction by the person who will give birth. I INTEND to be a parent of the child conceived.

SIGNATURES

Intended parent who will give birth: _____ (print name)

_____

(signature) _____ (date)

Intended parent who will not give birth: _____ (print name)

_____

(signature) _____ (date)

_____

NOTARY ACKNOWLEDGMENT

State of New York

County of ( )

On _____ before me, _____

(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are

subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature _____ (Seal)

New York Statutory Forms for Assisted Reproduction, Form 2:
Unmarried, Intended Parents Using Intended Parent's Sperm to Conceive a Child
Use this form if: (1) Neither you nor the other person are married or in a registered domestic partnership (including a registered domestic partnership or civil union from another state); (2) one of you will give birth to a child conceived through assisted reproduction using the intended parent's sperm; and (3) you both intend to be parents of that child. Do not use this form if you are conceiving using a person acting as surrogate.
WARNING: If you do not sign this form, or a similar agreement, you may be treated as a sperm provider if you conceive without having sexual intercourse according to Section 2599-ii of the Public Health Law. The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights.

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using sperm provision.
I, _____ (print name of parent giving birth), plan to use assisted reproduction with another intended parent who is providing sperm to conceive the child. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND for the person providing sperm to be a parent of the child to be conceived. I, _____ (print name of parent providing sperm), plan to use assisted reproduction to conceive a child using my sperm with the parent giving birth. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND to be a parent of the child to be conceived.
SIGNATURES
Intended parent giving birth: _____
(print name) _____ (signature) _____ (date)
Intended parent providing sperm: _____
(print name) _____ (signature) _____ (date)

NOTARY ACKNOWLEDGMENT
State of New York
County of (_____)
On _____ before me, _____ (insert name and title of the officer) personally appeared _____, who proved to me on the basis of satisfac-

tory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

New York Statutory Forms for Assisted Reproduction, Form 3:

Intended Parents Conceiving a Child Using Eggs from One Parent and the Other Parent Will Give Birth

Use this form if: (1) You are conceiving a child using the eggs from one of you and the other person will give birth to the child; (2) and you both intend to be parents to that child. Do not use this form if you are conceiving using a surrogate. WARNING: Signing this form does not terminate the parentage claim of a sperm donor. A sperm donor's claim to parentage is terminated if the sperm is provided to a licensed physician and surgeon or to a licensed sperm bank prior to insemination, or if you conceive without having sexual intercourse and you have a written agreement signed by you and the sperm provider that you will conceive using assisted reproduction and do not intend for the sperm provider to be a parent, as required by Section 2599-ii of the Public Health Law. The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights.

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using eggs from one parent and the other parent will give birth to the child.

I, _____ (print name of parent giving birth), plan to use assisted reproduction to conceive and give birth to a child with another person who will provide eggs to conceive the child. I INTEND for the person providing eggs to be a parent of the child to be conceived. I, _____ (print name of parent providing eggs), plan to use assisted reproduction to conceive a child with another person who will give birth to the child conceived using my eggs. I INTEND to be a parent of the child to be conceived.

SIGNATURES

Intended parent giving birth: _____

(print name) _____ (signature) _____ (date)

Intended parent providing eggs: _____

(print name) _____ (signature) _____ (date)

NOTARY ACKNOWLEDGMENT

State of New York

County of ( )

On _____ before me, _____ (insert name and title of the officer) personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under

PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

New York Statutory Forms for Assisted Reproduction, Form 4:

Intended Parent(s) Using a Known Sperm and/or Egg Donor(s) to Conceive a Child

Use this form if: You are using a known sperm and/or egg donor(s), or embryo donation, to conceive a child and you do not intend for the donor(s) to be a parent. Do not use this form if you are conceiving using a surrogate. If you do not sign this form or a similar agreement, your sperm donor may be treated as a parent unless the sperm is provided to a licensed physician and surgeon or to a licensed sperm bank prior to insemination, or a court finds by clear and convincing evidence that you planned to conceive through assisted reproduction and did not intend for the donor to be a parent, as required by Section 2599-ii of the Public Health Law. If you do not sign this form or a similar agreement, your egg donor may be treated as a parent unless a court finds that there is satisfactory evidence that you planned to conceive through assisted reproduction and did not intend for the donor to be a parent, as required by Section 2599-ii of the Public Health Law. The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights.

This form demonstrates your intent that your sperm and/or egg or embryo donor(s) will not be a parent or parents of the child you plan to conceive through assisted reproduction.

I, (print name of parent giving birth), plan to use assisted reproduction to conceive using a sperm and/or egg donor(s) or embryo donation, and I DO NOT INTEND for the sperm and/or egg or embryo donor(s) to be a parent of the child to be conceived. (If applicable) I, (print name of sperm donor), plan to donate my sperm to (print name of parent giving birth and second parent if applicable). I am not married and am not in a registered domestic partnership (including a registered domestic partnership or a civil union from another jurisdiction) with (print name of parent giving birth), and I DO NOT INTEND to be a parent of the child to be conceived. (If applicable) I, (print name of egg donor), plan to donate my ova to (print name of parent giving birth and second parent if applicable). I am not married and am not in a registered domestic partnership (including a registered domestic partnership or a civil union from another jurisdiction) with (print name of parent giving birth), or any intimate and nonmarital relationship with (print name of parent giving birth) and I DO NOT INTEND to be a parent of the child to be conceived. (If applicable) I, (print name of intended parent not giving birth), INTEND to be a parent of the child that (print name of parent giving birth) will conceive through assisted reproduction using sperm and/or egg donation and I DO NOT INTEND for the sperm and/or egg or embryo donor(s) to be a parent. I consent to the use of assisted reproduction by the person who will give birth.

SIGNATURES

Intended parent giving birth: (print name)

(signature) (date) (If applicable)

Sperm Donor: (print name) (signature) (date) (If applicable) Egg Donor: (print name) (signature) (date) (If applicable)

Intended parent not giving birth: (print name) (signature) (date)

NOTARY ACKNOWLEDGMENT

State of New York
County of( )
On before me, (insert name and title of the officer) personally appeared , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature (Seal)

§ 2599-jj. Gamete provider identity disclosure. 1. For purposes of this section:

(a) "gamete provider," "third-party gamete provision," and "parent" shall have the meaning as defined for those terms in section 581-102 of the family court act;

(b) "entity" means an agent, gamete bank, fertility clinic, or other facility that collects, processes, stores, freezes, distributes, or conducts research on third-party gametes, or that recruits third-party gamete providers or provides matching services;

(c) "identifying information" means the full name of the provider, the provider's date of birth, and the permanent address or other contact information, or both, given at the time of donation, or, if different, the current address or other contact information, or both, of the donor retained by an agent, gamete bank, and fertility clinic; and

(d) "medical information" means information regarding a present illness of the third-party gamete provider, past illness of the third-party gamete provider, and social, genetic, and family history of the third-party gamete provider.

2. (a) An entity, licensed by the department and registered with the office of the assisted reproduction registrar, shall collect and retain from a gamete provider the gamete provider's identifying information and medical information at the time a third-party gamete provision agreement is executed. An entity that receives gametes from a third-party gamete provider collected by another entity shall collect and retain the name, address, telephone number, and email address of the entity from which the third-party gametes were received.

(b) An entity shall disclose the information collected under subdivision one as provided in this section.

(c) This subdivision does not apply to gametes collected from a gamete provider whose identity is known to the recipient of the gametes at the time of the third-party gamete provision.

(d) This subdivision shall apply only to third-party gametes collected on or after January first, two thousand twenty-one.

3. (a) An entity that collects third-party gametes from a gamete provider shall do all of the following:

(i) provide the gamete provider with information in a record about the gamete provider's choice regarding identity disclosure;

(ii) obtain a declaration in writing from the gamete provider regarding identity disclosure;

(iii) maintain identifying information and medical information for each third-party gamete provider. The entity shall maintain records of gamete screening and testing and comply with reporting requirements, in accordance with federal law and applicable law of this state other than this chapter; and

(iv) Submit the third-party gamete provider's signed declaration, identifying information, and medical information, and the name, address, telephone number, and email address of the entity that collected the gametes, if the entity received the gametes from the entity that collected the gametes, to the office of the assisted reproduction registrar.

(b) An entity shall give a gamete provider the choice to sign a declaration, attested by a notary or witnessed, that does either of the following:

(i) states that the third-party gamete provider agrees to disclose their identity to a child conceived by assisted reproduction with the gamete provider's gametes, on request, once the child attains eighteen years of age; or

(ii) states that the third-party gamete provider does not agree presently to disclose the gamete provider's identity to the child.

(c) An entity shall permit a third-party gamete provider who has signed a declaration that the gamete provider does not agree to disclose the gamete provider's identity under paragraph (a) of subdivision two of this section to withdraw the declaration at any time by signing a declaration that the gamete provider agrees to disclose the third-party gamete provider's identity under paragraph (a) of subdivision two of this section.

(d) An entity is not required to collect gametes from a third-party gamete provider who does not agree to disclose the third-party gamete provider's identity under paragraph (a) of subdivision two of this section.

(e) This subdivision does not apply to gametes collected from a third-party gamete provider whose identity is known to the recipient of the gametes at the time of the third-party gamete provision.

(f) This subdivision shall apply only to gametes collected on or after January first, two thousand twenty-one.

4. (a) Requests for a third-party gamete provider identifying information are to be submitted to the office of the assisted reproduction registrar.

(b) On request of a child conceived by assisted reproduction using third-party gametes who attains eighteen years of age, the office of the assisted reproduction registrar shall provide the child, once registered with the assisted reproduction registry, with identifying information of the third-party gamete provider who provided the third-party gametes, provided that the third-party gamete provider is registered with the assisted reproduction registry, unless the gamete provider signed and did not withdraw a declaration under paragraph (c) of subdivision three of this section. If the third-party gamete provider signed and did not withdraw the declaration, the office of the assisted reproduction registrar shall make a good faith effort to notify the third-party

gamete provider, who may elect to withdraw the declaration under paragraph (c) of subdivision three of this section and agree to release the third-party gamete provider's identifying information.

(c) If an entity received third-party gametes from another entity that collected the third-party gametes, on request of a child conceived by assisted reproduction with third-party gametes who attains eighteen years of age, the office of the assisted reproduction registrar shall disclose the name, address, telephone number, and email address of the entity that collected the third-party gametes.

(d) Regardless whether a gamete provider signed a declaration under paragraph (c) of subdivision three of this section, on request from a child conceived by assisted reproduction with third-party gametes who attains sixteen years of age, or, if the child is a minor, by a parent or guardian of the child, the office of the assisted reproduction registrar shall provide the child or, if the child is under sixteen, the parent or guardian of the child, access to nonidentifying medical information provided by the third-party gamete provider.

(e) This subdivision does not apply to third-party gametes collected from a gamete provider whose identity is known to the recipient of the third-party gametes at the time of the third-party gamete provision.

(f) This subdivision shall apply only to gametes collected on or after January first, two thousand twenty-one.

5. Access to gamete provider identifying information. All records and information specified in this article shall be available only to parents, the child, the local child support agency, the county welfare department, the county counsel, the department, and the courts, or upon order of a court of record.

§ 11. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

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