

# STATE OF NEW YORK

2071

2019-2020 Regular Sessions

## IN SENATE

January 22, 2019

Introduced by Sens. HOYLMAN, BAILEY, GIANARIS, KAMINSKY, KENNEDY, PARKER, RIVERA, SANDERS, SAVINO, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, in relation to establishing the child-parent security act; and to repeal section 73 and article 8 of the domestic relations law, relating to legitimacy of children born by artificial insemination and surrogate parenting contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The family court act is amended by adding a new article 5-C  
2 to read as follows:

### ARTICLE 5-C

#### CHILD-PARENT SECURITY ACT

#### PART 1. General provisions (581-101 - 581-103)

3 2. Judgment of parentage (581-201 - 581-205)

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

5 4. Gestational agreement (581-401 - 581-411)

6 5. Payment to donors and gestational carriers (581-501 - 581-502)

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

### PART 1

#### GENERAL PROVISIONS

8 Section 581-101. Short title.

9 581-102. Purpose.

10 581-103. Definitions.

11 § 581-101. Short title. This article shall be known and may be cited  
12 as the "child-parent security act".

13 § 581-102. Purpose. The purpose of this article is to legally estab-  
14 lish a child's relationship to his or her parents where the child is  
15 conceived through collaborative reproduction.

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

LBD01279-01-9

1 § 581-103. Definitions. (a) "Assisted reproduction" means a method of  
2 causing pregnancy other than sexual intercourse and includes but is not  
3 limited to:

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

9 (b) "Assisted reproductive technology" or "ART" is any medical or  
10 scientific intervention, including, but not limited to, assisted repro-  
11 duction, provided for the purpose of achieving live birth that results  
12 from assisted conception. Assisted conception means the formation of a  
13 human embryo outside the body with the intent to produce a live birth.

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

16 (d) "Collaborative reproduction" involves artificial insemination with  
17 donor sperm and any assisted reproduction in which an individual other  
18 than the intended parent provides genetic material or agrees to act as a  
19 gestational carrier. It can include, but is not limited to, (1) attempts  
20 by the intended parent to create a child through means of a gestational  
21 arrangement, with or without the involvement of a donor, and (2)  
22 assisted reproduction involving a donor where a gestational carrier is  
23 not used.

24 (e) "Compensation" means payment of any valuable consideration for  
25 time, effort, pain and/or risk to health in excess of reasonable medical  
26 and ancillary costs.

27 (f) "Donor" means an individual who produces gametes and provides them  
28 to another person other than the individual's spouse for use in assisted  
29 reproduction, whether or not for compensation, and who does not intend  
30 to be a parent. Donor also includes an individual with dispositional  
31 control of an embryo who provides it to another person for the purpose  
32 of gestation and relinquishes all present and future parental and inher-  
33 itance rights and obligations to a resulting child.

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

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

42 (i) "Gamete" means a cell containing a haploid complement of DNA that  
43 has the potential to form an embryo when combined with another gamete.  
44 Sperm and eggs are gametes. A gamete may consist of nuclear DNA from one  
45 human being combined with the cytoplasm, including cytoplasmic DNA, of  
46 another human being.

47 (j) "Gestational agreement" is a contract between an intended parent  
48 and a gestational carrier intended to result in a live birth where the  
49 child will be the legal child of the intended parent.

50 (k) "Gestational carrier" means an adult person not an intended  
51 parent, who enters into a gestational agreement to bear a child who will  
52 be the legal child of the intended parent so long as she has not  
53 provided the egg used to conceive the resulting child.

54 (l) "Gestational carrier arrangement" means the process by which a  
55 gestational carrier attempts to carry and give birth to a child created

1 through assisted reproduction so long as the gestational carrier has not  
2 provided the egg used to conceive the resulting child.

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

6 (n) "Intended parent" is an individual who manifests the intent as  
7 provided in this act to be legally bound as the parent of a child  
8 resulting from assisted reproduction or collaborative reproduction.

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

11 (p) "Parent" means an individual who has established a parent-child  
12 relationship under this act or other law and includes, but is not limit-  
13 ed to: (1) a child's birth parent who is not a gestational carrier or  
14 the spouse of the gestational carrier; (2) a child's genetic parent who  
15 is not the donor; (3) an individual who has legally adopted the child;  
16 (4) an individual who is a parent of the child pursuant to a legal  
17 presumption; (5) an individual who is a parent of the child pursuant to  
18 an acknowledgment or judgment of parentage pursuant to article two of  
19 this act or other law; (6) an individual who is a parent of the child  
20 pursuant to article three or four of this act.

21 (q) "Participant" means an individual who provides a biological or  
22 genetic component of assisted reproduction, an intended parent, and the  
23 spouse of an intended parent or gestational carrier. Gestation is a  
24 biological component within the meaning of this definition.

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

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

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

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

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

## 40 PART 2

### 41 JUDGMENT OF PARENTAGE

42 Section 581-201. Judgment of parentage.

43 581-202. Proceeding for judgment of parentage of a child born  
44 through assisted reproduction.

45 581-203. Proceeding for judgment of parentage of a child born  
46 pursuant to a gestational carrier arrangement.

47 581-204. Judgment of parentage for intended parents who are  
48 spouses.

49 581-205. Jurisdiction.

50 § 581-201. Judgment of parentage. (a) A civil proceeding may be main-  
51 tained to adjudicate the parentage of a child under the circumstances  
52 set forth in this article. This proceeding is governed by the civil  
53 practice law and rules.

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

1 (c) A judgment of parentage shall be issued by the court upon the  
2 petition of (1) a child, or (2) a parent or a presumed parent, or (3) a  
3 participant, or (4) the support/enforcement agency or other governmental  
4 agency authorized by other law, or (5) a representative authorized by  
5 law to act for an individual who would otherwise be entitled to maintain  
6 a proceeding but who is deceased, incapacitated, or a minor, in order to  
7 legally establish the child-parent relationship of either a child born  
8 through assisted reproduction under part three of this article or a  
9 child born pursuant to a gestational carrier arrangement under part four  
10 of this article.

11 § 581-202. Proceeding for judgment of parentage of a child born  
12 through assisted reproduction. (a) A proceeding for a judgment of  
13 parentage may be commenced:

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

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

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

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

25 (2) a statement from the gestating parent that the gestating parent  
26 became pregnant as a result of the donation of the gamete or embryo and  
27 a representation of non-access during the time of conception; and

28 (3) a statement that the non-gestating intended parent consented to  
29 assisted reproduction pursuant to section 581-304 of this article; and  
30 (4) proof of donor's donative intent.

31 (c) The following shall be deemed sufficient proof of a donor's dona-  
32 tive intent for purposes of this section:

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

38 (2) in the case of a donation from a known donor, a record from the  
39 gamete or embryo donor acknowledging the donation and confirming that  
40 the donor has no parental or proprietary interest in the gametes or  
41 embryos. The record shall be signed by the gamete or embryo donor:

42 i. before a notary public, or

43 ii. before two witnesses who are not the intended parents, or

44 iii. before the health care provider, who supervised the donation.

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

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

6 (d) Where a petition for parentage demonstrates the consent of the  
7 intended parent to assisted reproduction, the donative intent of the  
8 gamete or embryo donor and that the pregnancy resulted from the  
9 donation, the court shall issue a judgment of parentage:

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

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

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

24 § 581-203. Proceeding for judgment of parentage of a child born pursu-  
25 ant to a gestational carrier arrangement. (a) The proceeding may be  
26 commenced at any time after the gestational agreement has been executed  
27 by all of the parties. Any party to the gestational agreement not join-  
28 ing in the petition must be served with notice of the proceeding. Fail-  
29 ure to respond to the notice shall be considered a default and no  
30 further notice shall be required.

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

33 (1) A statement that the gestational carrier or the intended parent  
34 has been a resident of the state for at least ninety days at the time  
35 the gestational agreement was executed; and

36 (2) A certification from the attorneys representing the petitioners  
37 that the parties are eligible to participate in the gestational carrier  
38 arrangement as required by section 581-404 of this article and that the  
39 gestational agreement contains the required terms under section 581-405  
40 of this article; and

41 (3) A statement that the parties entered into the gestational agree-  
42 ment knowingly and voluntarily.

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

46 (1) Declaring, that upon the birth of a child born during the term of  
47 the gestational agreement, the intended parent is the legal parent of  
48 the child; and

49 (2) Declaring, that upon the birth of a child born during the term of  
50 the gestational agreement, the gestational carrier, and the gestational  
51 carrier's spouse, if any, is not the legal parent of the child; and

52 (3) Ordering the gestational carrier and the gestational carrier's  
53 spouse, if any, to transfer the child to the intended parent if this has  
54 not already occurred; and

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

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

13 (d) In the event the certification required by paragraph two of subdi-  
14 vision (b) of this section cannot be made because of a technical or  
15 non-substantial deviation from the requirements of sections 581-404 or  
16 581-405 of this article; the court may nevertheless enforce the agree-  
17 ment and issue an order of parentage if the court determines the agree-  
18 ment is in substantial compliance with the requirements of sections  
19 581-404 and 581-405 of this article.

20 (e) The agreement of the intended parent to pay reasonable compen-  
21 sation to the gestational carrier in excess of reasonable medical and  
22 ancillary costs shall not be a bar to the issuance of a judgment of  
23 parentage.

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

28 § 581-205. Jurisdiction. Proceedings pursuant to this article may be  
29 instituted in the supreme, family or surrogate's court.

### 30 PART 3

#### 31 CHILD OF ASSISTED REPRODUCTION

32 Section 581-301. Scope of article.

33 581-302. Status of donor.

34 581-303. Parentage of child of assisted reproduction.

35 581-304. Consent to assisted reproduction.

36 581-305. Limitation on spouses' dispute of parentage of child of  
37 assisted reproduction.

38 581-306. Effect of embryo disposition agreement between intended  
39 parents which transfers custody and control to one  
40 intended parent.

41 581-307. Effect of death of intended parent.

42 § 581-301. Scope of article. This article does not apply to the birth  
43 of a child conceived by means of sexual intercourse.

44 § 581-302. Status of donor. A donor is not a parent of a child  
45 conceived by means of assisted reproduction.

46 § 581-303. Parentage of child of assisted reproduction. (a) An indi-  
47 vidual who provides gametes for assisted reproduction with the intent to  
48 be a parent of the child and consents to assisted reproduction with the  
49 consent of the gestating parent as provided in section 581-304 of this  
50 part, is a parent of the resulting child for all legal purposes.

51 (b) Upon application by any participant, the court shall issue a judg-  
52 ment of parentage to any participant who is a parent pursuant to this  
53 act.

54 § 581-304. Consent to assisted reproduction. (a) Where the intended  
55 parent who gives birth to a child by means of assisted reproduction is a



1 spouse, the consent of both spouses to the assisted reproduction is  
2 presumed and neither spouse may challenge the parentage of the child,  
3 except as provided in section 581-305 of this part.

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

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

14 § 581-305. Limitation on spouses' dispute of parentage of child of  
15 assisted reproduction. (a) Except as otherwise provided in subdivision  
16 (b) of this section, neither spouse may challenge the presumption of  
17 parentage of the child unless:

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

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

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

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

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

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

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

33 § 581-306. Effect of embryo disposition agreement between intended  
34 parents which transfers custody and control to one intended parent. (a)  
35 An embryo disposition agreement between intended parents with joint  
36 custody and control of an embryo shall be binding under the following  
37 circumstances:

38 (1) it is in writing;

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

41 (3) where the intended parents are married, transfer of custody and  
42 control occurs only upon divorce.

43 (b) The intended parent who transfers custody and control of the  
44 embryo is not a parent of any child born from the embryo unless the  
45 agreement states that he or she consents to be a parent.

46 (c) If the intended parent transferring custody and control consents  
47 to be a parent, he or she may withdraw his or her consent to be a parent  
48 upon notice to the embryo storage facility and to the other intended  
49 parent prior to transfer of the embryo. If he or she timely withdraws  
50 consent to parent he or she is not a parent for any purpose including  
51 support obligations but the embryo transfer may still proceed.

52 (d) An embryo disposition agreement or advance directive that is not  
53 in compliance with subdivision (a) of this section may still be found to  
54 be enforceable by the court after balancing the respective interests of  
55 the parties except that under no circumstances may the intended parent  
56 who divested him or herself of custody and control be declared to be a

1 parent for any purpose without his or her consent. The parent awarded  
2 custody and control of the embryos shall, in this instance, be declared  
3 to be the only parent of the child.

4 § 581-307. Effect of death of intended parent. If an individual who  
5 consented in a record to be a parent by assisted reproduction dies  
6 before the transfer of eggs, sperm, or embryos, the deceased individual  
7 is not a parent of the resulting child unless the deceased individual  
8 consented in a signed record that if assisted reproduction were to occur  
9 after death, the deceased individual would be a parent of the child,  
10 provided that the record complies with the estates, powers and trusts  
11 law.

#### 12 PART 4

#### 13 GESTATIONAL AGREEMENT

14 Section 581-401. Gestational agreement authorized.

15 581-404. Eligibility.

16 581-405. Requirements of gestational agreement.

17 581-406. Termination of gestational agreement.

18 581-407. Gestational agreement: effect of subsequent spousal  
19 relationship.

20 581-408. Failure to obtain a judgment of parentage.

21 581-409. Dispute as to gestational agreement.

22 581-410. Inspection of records.

23 581-411. Exclusive, continuing jurisdiction.

24 § 581-401. Gestational agreement authorized. (a) If eligible under  
25 this article to enter into a gestational agreement, a gestational carri-  
26 er, the gestational carrier's spouse if applicable, and the intended  
27 parent may enter into a gestational agreement which will be enforceable  
28 provided the gestational agreement meets the requirements of this arti-  
29 cle.

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

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

34 (d) A gestational agreement may not limit the right of the gestational  
35 carrier to make decisions to safeguard the gestational carrier's health  
36 or that of any fetus or embryo the gestational carrier is carrying.

37 (e) A gestational agreement may not limit the right of the gestational  
38 carrier to terminate the pregnancy or reduce the number of fetuses or  
39 embryos the gestational carrier is carrying.

40 § 581-404. Eligibility. (a) A gestational carrier shall be eligible  
41 to enter into an enforceable gestational agreement under this article if  
42 the gestational carrier has met the following requirements at the time  
43 the gestational agreement is executed:

44 (1) The gestational carrier is at least twenty-one years of age; and

45 (2) The gestational carrier has not provided the egg used to conceive  
46 the resulting child; and

47 (3) The gestational carrier has completed a medical evaluation with a  
48 health care practitioner relating to the anticipated pregnancy; and

49 (4) The gestational carrier, and the gestational carrier's spouse if  
50 applicable have undergone legal consultation with independent legal  
51 counsel of their own choosing which may be paid for by the intended  
52 parent regarding the terms of the gestational agreement and the poten-  
53 tial legal consequences of the gestational carrier arrangement; and

54 (5) The gestational carrier has, or the gestational agreement stipu-  
55 lates that prior to the embryo transfer, the gestational carrier will



1 obtain, a health insurance policy that covers major medical treatments  
2 and hospitalization, and the health insurance policy has a term that  
3 extends throughout the duration of the expected pregnancy and for eight  
4 weeks after the birth of the child; the policy may be procured and paid  
5 for by the intended parents on behalf of the gestational carrier pursu-  
6 ant to the gestational agreement.

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

11 (1) He, she, or they have undergone legal consultation with independ-  
12 ent legal counsel regarding the terms of the gestational agreement and  
13 the potential legal consequences of the gestational carrier arrangement;  
14 and

15 (2) He or she is an adult person who is not in a spousal relationship,  
16 or adult spouses together, or any two adults who are intimate partners  
17 together, except the spouse of the intended parent is not required to be  
18 a party to the gestational agreement and shall not have parental rights  
19 or obligations to the child where the intended parent and his or her  
20 spouse:

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

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

27 § 581-405. Requirements of gestational agreement. (a) A gestational  
28 agreement shall be deemed to have satisfied the requirements of this  
29 article and be enforceable if it meets the following requirements:

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

31 i. the intended parents, and

32 ii. the gestational carrier, and the gestational carrier's spouse,  
33 unless;

34 A. the gestational carrier and the gestational carrier's spouse are  
35 living separate and apart pursuant to a decree or judgment of separation  
36 or pursuant to a written agreement of separation subscribed by the  
37 parties thereto and acknowledged or proved in the form required to enti-  
38 tle a deed to be recorded; or

39 B. have been living separate and apart for at least three years prior  
40 to execution of the gestational agreement; and

41 (2) It shall be executed prior to the embryo transfer; and

42 (3) It shall be executed by a gestational carrier meeting the eligi-  
43 bility requirements of subdivision (a) of section 581-404 of this part  
44 and by the gestational carrier's spouse, unless the gestational carri-  
45 er's spouse's signature is not required as set forth in this section;  
46 and

47 (4) It shall be executed by intended parents meeting the eligibility  
48 requirements of subdivision (b) of section 581-404 of this part; and

49 (5) The gestational carrier and the gestational carrier's spouse if  
50 applicable and the intended parents shall have been represented by sepa-  
51 rate, independent counsel in all matters concerning the gestational  
52 agreement; and

53 (6) If the gestational agreement provides for the payment of compen-  
54 sation to the gestational carrier, the compensation shall have been  
55 placed in escrow with an independent escrow agent prior to the gesta-  
56 tional carrier's commencement of any medical procedure other than

1 medical evaluations necessary to determine the gestational carrier's  
2 eligibility; and

3 (7) The agreement must include information disclosing how the intended  
4 parents will cover the medical expenses of the surrogate and the child.  
5 If health care coverage is used to cover the medical expenses, the  
6 disclosure shall include a review of the health care policy provisions  
7 related to coverage for surrogate pregnancy, including any possible  
8 liability of the surrogate, third-party liability liens or other insur-  
9 ance coverage, and any notice requirements that could affect coverage or  
10 liability of the surrogate.

11 (8) The gestational agreement must include the following terms:

12 (i) As to the gestational carrier and the gestational carrier's  
13 spouse, if any:

14 (A) the agreement of the gestational carrier to undergo embryo trans-  
15 fer and attempt to carry and give birth to the child; and

16 (B) the agreement of the gestational carrier and the gestational  
17 carrier's spouse, if any, to surrender custody of all resulting children  
18 to the intended parent immediately upon the birth; and

19 (C) the right of the gestational carrier to utilize the services of a  
20 health care practitioner of the gestational carrier's choosing, to  
21 provide her care during the pregnancy; and

22 (ii) As to the intended parent:

23 (A) the agreement to accept custody of all resulting children imme-  
24 diately upon birth regardless of number, gender, or mental or physical  
25 condition; and

26 (B) the agreement to assume sole responsibility for the support of the  
27 child immediately upon the child's birth; and

28 (C) the agreement that the rights and obligations of the intended  
29 parent under the gestational agreement are not assignable.

30 § 581-406. Termination of gestational agreement. After the execution  
31 of a gestational agreement but before the gestational carrier becomes  
32 pregnant by means of assisted reproduction, the gestational carrier, the  
33 gestational carrier's spouse, if any, or any intended parent may termi-  
34 nate the gestational agreement by giving notice of termination in a  
35 record to all other parties. Upon proper termination of the gestational  
36 agreement the parties are released from all obligations recited in the  
37 agreement except that the intended parent remains responsible for all  
38 expenses that are reimbursable under the agreement which have been  
39 incurred by the gestational carrier through the date of termination.  
40 Unless the agreement provides otherwise, the gestational carrier is  
41 entitled to keep all payments she has received and obtain all payments  
42 to which the gestational carrier is entitled. Neither a prospective  
43 gestational carrier nor the gestational carrier's spouse, if any, is  
44 liable to the intended parent for terminating a gestational agreement as  
45 provided in this section.

46 § 581-407. Gestational agreement: effect of subsequent spousal  
47 relationship. After the execution of a gestational agreement under this  
48 article, the subsequent spousal relationship of the gestational carrier  
49 does not affect the validity of a gestational agreement, the gestational  
50 carrier's spouse's consent to the agreement shall not be required, and  
51 the gestational carrier's spouse shall not be the presumed parent of the  
52 resulting child.

53 § 581-408. Failure to obtain a judgment of parentage. Where an  
54 intended parent or the gestational carrier fails to obtain a judgment of  
55 parentage pursuant to section 581-203 of this article, either because  
56 the gestational agreement does not meet the requirements of this article

1 or there was no gestational agreement, the parentage of a child will be  
2 determined based on the best interests of the child taking into account  
3 genetics and the intent of the parties. An intended parent's absence of  
4 genetic connection to the child is not a sufficient basis to deny that  
5 individual a judgment of legal parentage.

6 § 581-409. Dispute as to gestational agreement. (a) Any dispute which  
7 is related to a gestational agreement other than disputes as to parent-  
8 age shall be resolved by the supreme court, which shall determine the  
9 respective rights and obligations of the parties. If a gestational  
10 agreement does not meet the requirements of this article, except as set  
11 forth in subdivision (d) of section 581-203 of this article the agree-  
12 ment is not enforceable.

13 (b) Except as expressly provided in the gestational agreement, the  
14 intended parent and the gestational carrier shall be entitled to all  
15 remedies available at law or equity in any dispute related to the gesta-  
16 tional agreement.

17 (c) There shall be no specific performance remedy available for a  
18 breach by the gestational carrier of a gestational agreement term that  
19 requires the gestational carrier to be impregnated or to terminate the  
20 pregnancy or to reduce the number of fetuses or embryos the gestational  
21 carrier is carrying.

22 § 581-410. Inspection of records. The proceedings, records, and iden-  
23 tities of the individual parties to a gestational agreement under this  
24 article shall be sealed except upon the petition of the parties to the  
25 gestational agreement or the child born as a result of the gestational  
26 carrier arrangement.

27 § 581-411. Exclusive, continuing jurisdiction. Subject to the juris-  
28 ditional standards of section seventy-six of the domestic relations  
29 law, the court conducting a proceeding under this article has exclusive,  
30 continuing jurisdiction of all matters arising out of the gestational  
31 agreement until a child born to the gestational carrier during the peri-  
32 od governed by the agreement attains the age of one hundred eighty days.

## 33 PART 5

### 34 PAYMENT TO DONORS AND GESTATIONAL CARRIERS

35 Section 581-501. Reimbursement.

36 581-502. Compensation.

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

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

44 § 581-502. Compensation. (a) Compensation may be paid to a donor or  
45 gestational carrier based on services rendered, expenses and or medical  
46 risks that have been or will be incurred, time, and inconvenience. Under  
47 no circumstances may compensation be paid to purchase gametes or embryos  
48 or to pay for the relinquishment of a parental interest in a child.

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

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

1 (d) Compensation may not be conditioned on actual genotypic or pheno-  
2 typic characteristics of the donor or of the child.

3 PART 6

4 MISCELLANEOUS PROVISIONS

5 Section 581-601. Remedial.

6 581-602. Severability.

7 581-603. Parent under section seventy of the domestic relations  
8 law.

9 581-604. Interpretation.

10 § 581-601. Remedial. This legislation is hereby declared to be a  
11 remedial statute and is to be construed liberally to secure the benefi-  
12 cial interests and purposes thereof for the best interests of the child.

13 § 581-602. Severability. The invalidation of any part of this legis-  
14 lation by a court of competent jurisdiction shall not result in the  
15 invalidation of any other part.

16 § 581-603. Parent under section seventy of the domestic relations law.  
17 The term "parent" in section seventy of the domestic relations law shall  
18 include a person established to be a parent under this article or any  
19 other relevant law.

20 § 581-604. Interpretation. Unless the context indicates otherwise,  
21 words importing the singular include and apply to several persons,  
22 parties, or things; words importing the plural include the singular.

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

24 § 3. Article 8 of the domestic relations law is REPEALED.

25 § 4. This act shall take effect on the one hundred twentieth day after  
26 it shall have become a law. Effective immediately, the addition, amend-  
27 ment and/or repeal of any rule or regulation necessary for the implemen-  
28 tation of this act on its effective date are authorized to be made on or  
29 before such date.