

# STATE OF NEW YORK

7717

## IN SENATE

February 11, 2020

Introduced by Sen. KRUEGER -- 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 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:

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

### ARTICLE 5-C

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

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

##### 2. Judgment of parentage (581-201 - 581-207)

##### 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.

LBD14764-03-0

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

3 PART 1  
 4 GENERAL PROVISIONS

5 Section 581-101. Purpose.

6 581-102. Definitions.

7 § 581-101. Purpose. The purpose of this article is to legally estab-  
 8 lish a child's relationship to their parents where the child is  
 9 conceived through assisted reproduction, with third-party gametes, if  
 10 applicable, and including children born through surrogacy, including  
 11 genetic surrogacy. No fertilized egg, embryo or fetus shall have any  
 12 independent rights under the laws of this state, nor shall any ferti-  
 13 lized egg, embryo or fetus be viewed as a child under the laws of this  
 14 state, nor shall any fertilized egg, embryo or fetus be viewed as a  
 15 child under the laws of this state, nor shall any person providing any  
 16 fertilized egg or embryo in order to establish another person's pregnan-  
 17 cy thereby acquire any rights over that person's body.

18 § 581-102. Definitions. (a) "Acknowledgment of interim parental  
 19 responsibility": a written declaration valid at the birth of a child  
 20 conceived by assisted reproduction, with third-party gametes if applica-  
 21 ble, and born through surrogacy, including genetic surrogacy, that  
 22 states that the person acting as surrogate and the biologically-related  
 23 intended parent or parents, if applicable, or otherwise a non-biologi-  
 24 cally-related intended parent, assume parental responsibility for the  
 25 child and will share decision-making responsibility for the child,  
 26 except that the intended parent or parents, as applicable, will assume  
 27 full financial responsibility, until:

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

35 2. The person acting as surrogate under the terms of a genetic surro-  
 36 gacy agreement, has submitted a written declaration no sooner than eight  
 37 days following the birth of the child stating that they are, as applica-  
 38 ble, voluntarily consenting to disclaim and renounce their parental  
 39 rights under the terms of a genetic surrogacy agreement, and consenting  
 40 to the adoption of any children born pursuant to the genetic surrogacy  
 41 agreement; or

42 3. A final judgment of parentage has otherwise been issued as estab-  
 43 lished under the procedures of this article.

44 (b) "Assisted reproduction" means a method of causing pregnancy other  
 45 than sexual intercourse and includes but is not limited to:

- 46 1. intrauterine or vaginal insemination;
- 47 2. third-party gamete provision;
- 48 3. third-party embryo provision;
- 49 4. in vitro fertilization and transfer of embryos; and
- 50 5. intracytoplasmic sperm injection.

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

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

1 (e) "Gamete provider" means an individual who does not intend to be a  
2 parent who produces gametes and provides them to another person, other  
3 than the individual's spouse, for use in assisted reproduction. The  
4 term does not include a person who is a parent under part three of this  
5 article. Gamete provider also includes an individual who had disposi-  
6 tional control of an embryo who then transfers dispositional control and  
7 relinquishes all present and future parental and inheritance rights and  
8 obligations to a resulting child.

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

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

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

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

26 (j) "Gamete" means a cell containing a haploid complement of DNA that  
27 has the potential to form an embryo when combined with another gamete.  
28 Sperm and eggs are gametes. A human gamete used or intended for repro-  
29 duction may not contain nuclear or mitochondrial DNA that has been delib-  
30 erately altered, or nuclear DNA from one human combined with the mito-  
31 chondrial DNA of another human being.

32 (k) "Surrogacy agreement" is an agreement between at least one  
33 intended parent and a person acting as surrogate intended to result in a  
34 live birth where the child will be the legal child of the intended  
35 parent or parents. The person acting as surrogate does not use their  
36 own ovum.

37 (l) "Genetic surrogacy agreement" is an agreement between at least one  
38 intended parent and a person acting as surrogate intended to result in a  
39 live birth where the child will be the legal child of the intended  
40 parent or parents. The person acting as surrogate uses their own ovum.

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

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

51 (o) "Health care practitioner" means an individual licensed or certi-  
52 fied under title eight of the education law acting within his or her  
53 scope of practice.

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

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

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

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

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

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

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

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

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

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

27 PART 2

28 JUDGMENT OF PARENTAGE

29 Section 581-201. Judgment of parentage.

30 581-202. Acknowledgement of interim parental responsibility.

31 581-203. Proceeding for judgment of parentage of a child  
32 conceived by assisted reproduction.

33 581-204. Proceeding to establish parental rights of a child  
34 conceived by assisted reproduction and born pursuant  
35 to a surrogacy agreement or a genetic surrogacy  
36 agreement.

37 581-205. Judgment of parentage for intended parents who are  
38 spouses.

39 581-206. Inspection of records.

40 581-207. Jurisdiction, and exclusive continuing jurisdiction.

41 § 581-201. Judgment of parentage. (a) A civil proceeding may be main-  
42 tained to adjudicate the parentage of a child under the circumstances  
43 set forth in this article. This proceeding is governed by the civil  
44 practice law and rules.

45 (b) In the case of surrogacy, a judgment of parentage may be issued no  
46 sooner than eight days after the birth of the child, once the person  
47 acting as surrogate has provided notarized consent in writing relin-  
48 quishing the person's entitlement to parentage of the child, and assert-  
49 ing that they are doing so knowingly and voluntarily and without undue  
50 inducement.

51 (c) A petition for a judgment of parentage or nonparentage of a child  
52 conceived by assisted reproduction may be initiated by (1) a child, or  
53 (2) a parent, or (3) a participant, or (4) a person with a claim to  
54 parentage, or (5) the support/enforcement agency or other governmental

1 agency authorized by other law, or (6) a representative authorized by  
2 law to act for an individual who would otherwise be entitled to maintain  
3 a proceeding but who is deceased, incapacitated, or a minor, in order to  
4 legally establish the child-parent relationship of either a child  
5 conceived by assisted reproduction and born under part three of this  
6 article or a child born through surrogacy, including genetic surrogacy,  
7 pursuant to part four of this article or article eight of the domestic  
8 relations law.

9 § 581-202. Acknowledgment of interim parental responsibility. (a) In  
10 the case of surrogacy, not including genetic surrogacy, the petition for  
11 a judgment of parentage must include an acknowledgment of interim  
12 parental responsibility which shall be issued prior to the birth of the  
13 child but shall not become effective until the birth of the child.

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

20 § 581-203. Proceeding for judgment of parentage of a child conceived  
21 by assisted reproduction. (a) A proceeding for a judgment of parentage  
22 with respect to a child conceived by assisted reproduction, with third-  
23 party gametes, if applicable, but not born through surrogacy, may be  
24 commenced:

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

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

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

32 (c) Where a petition includes the following truthful statements, the  
33 court shall adjudicate any intended parent to be the parent of the  
34 child:

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

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

40 (3) in cases where there are two intended parents and one becomes  
41 pregnant by assisted reproduction, a statement from both intended  
42 parents that they consented to assisted reproduction pursuant to section  
43 581-304 of this article; and

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

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

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

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

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

14 (1) In the case of third-party gametes that were provided prior to  
15 January first, two thousand twenty-one, and where the gamete provider is  
16 anonymous, or where third-party gametes or embryos have previously been  
17 relinquished to a gamete or embryo storage facility or in the presence  
18 of a health care practitioner, a statement from the gamete or embryo  
19 storage facility or health care practitioner that the gamete provider  
20 does not retain any parental or proprietary interest in the gametes or  
21 embryos;

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

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

32 (A) before a notary public, or

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

34 (C) before a health care practitioner; or

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

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

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

55 (f) Where the requirements of subdivision (c) of this section are met  
56 or where the court finds the intended parent to be a parent under subdi-

1 vision (e) of this section, the court shall issue a judgment of parent-  
2 age:

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

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

8 (3) if there is a gamete provider, ordering that the gamete provider  
9 is not a parent of the child, pursuant to section twenty-five hundred  
10 ninety-nine-ii of the public health law; and

11 (4) ordering that upon the birth of the child, a copy of the judgment  
12 of parentage be served on the (i) department of health or New York city  
13 department of mental health and hygiene, or (ii) registrar of births in  
14 the hospital where the child is born and directing that the hospital  
15 report the parentage of the child to the appropriate department of  
16 health in conformity with the court order. If an original birth certif-  
17 icate has already been issued, the court shall issue an order directing  
18 the appropriate department of health to issue an amended birth certif-  
19 icate in an expedited manner and seal the original birth certificate  
20 except that it may be rendered accessible to the child at eighteen years  
21 of age, or the legal parent or parents.

22 § 581-204. Proceeding to establish parental rights of a child  
23 conceived by assisted reproduction and born pursuant to a surrogacy  
24 agreement or a genetic surrogacy agreement. (a) If there is a surrogacy  
25 agreement, the proceeding may be commenced at any time after the end of  
26 the first trimester of pregnancy by the filing of a petition for an  
27 acknowledgment of interim parental responsibility and a judgment of  
28 parentage as provided in this subdivision. Any party to the surrogacy  
29 agreement not joining in the petition must be served with notice of the  
30 proceeding.

31 (1) The petition for an acknowledgment of interim parental responsi-  
32 bility and a judgment of parentage shall be verified and shall include  
33 the following:

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

42 (ii) a statement that, upon the birth of the child, the person acting  
43 as surrogate and the biologically-related intended parent or parents, or  
44 otherwise a non-biologically related intended parent, assume parental  
45 responsibility for the child and will share decision-making responsibil-  
46 ity for the child, except that the intended parent or parents will  
47 assume full financial responsibility until the person acting as surro-  
48 gate under the terms of a surrogacy agreement pursuant to this article  
49 has, as applicable, submitted a notarized written declaration no sooner  
50 than eight days following the birth of the child stating that they are,  
51 as applicable, voluntarily consenting to renounce, disclaim and surren-  
52 der their parental rights, and a judgment of parentage in favor of the  
53 intended parent or parents, has been issued under the terms of a surro-  
54 gacy agreement;

55 (iii) an acknowledgment of interim parental responsibility;

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

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

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

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

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

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

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

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

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

38 (v) (A) order that upon the issuance of the judgment of parentage, a  
39 copy of the judgment of parentage be served on: (1) the department of  
40 health or the New York city department of mental health and hygiene; or  
41 (2) the registrar of births in the hospital where the child is born and  
42 directing that the hospital report the parentage of the child to the  
43 appropriate department of health in conformity with the court order.

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

50 (3) Notwithstanding the provisions of paragraph two of this subdivi-  
51 sion, the court may refuse to issue a judgment of parentage if it deter-  
52 mines that:

53 (A) the person acting as surrogate no longer consents to the termi-  
54 nation of her parental rights;

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



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

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

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

15 (1) The petition for an acknowledgment of interim parental responsi-  
16 bility and a judgment of parentage shall be verified and shall include  
17 the following:

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

26 (ii) a statement that, upon the birth of the child, the person acting  
27 as surrogate and the biologically-related intended parent or parents, or  
28 otherwise a non-biologically related intended parent, assume parental  
29 responsibility for the child and will share decision-making responsibil-  
30 ity for the child, except that the intended parent or parents will  
31 assume full financial responsibility until the person acting as surro-  
32 gate under the terms of a genetic surrogacy agreement pursuant to arti-  
33 cle eight of the domestic relations law, has submitted to the court a  
34 notarized written declaration stating that they are voluntarily consent-  
35 ing to renounce, disclaim, and surrender their parental rights under the  
36 terms of a genetic surrogacy agreement, and consenting to the adoption  
37 of any children born pursuant to the genetic surrogacy agreement. Such  
38 notarized written declaration shall be submitted no sooner than eight  
39 days following the birth of the child;

40 (iii) an acknowledgment of interim parental responsibility;

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

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

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

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

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

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

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

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

13 (v) (A) order that upon the issuance of the judgment of parentage, a  
14 copy of the judgment of parentage be served on: (1) the department of  
15 health or the New York city department of mental health and hygiene; or  
16 (2) the registrar of births in the hospital where the child is born and  
17 directing that the hospital report the parentage of the child to the  
18 appropriate department of health in conformity with the court order.

19 (3) In the event the certification required by subparagraph (iv) of  
20 paragraph two of this subdivision cannot be made because of a technical  
21 or non-material deviation from the requirements of this article; the  
22 court may nevertheless enforce the agreement and issue a judgment of  
23 parentage if the court determines the agreement is in substantial  
24 compliance with the requirements of this article.

25 § 581-205. Judgment of parentage for intended parents who are spouses.  
26 Notwithstanding or without limitation on presumptions of parentage that  
27 apply, a judgment of parentage may be obtained under this part by  
28 intended parents who are each other's spouse.

29 § 581-206. Inspection of records. Court records relating to  
30 proceedings under this article shall be sealed. The parties to the  
31 proceeding and the child shall have the right to inspect the entire  
32 court record, including, but not limited to, the name of the person  
33 acting as surrogate and any known gamete providers.

34 § 581-207. Jurisdiction, and exclusive continuing jurisdiction. (a)  
35 Proceedings pursuant to this article may be instituted in the supreme or  
36 family court.

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

### 42 PART 3

#### 43 CHILD OF ASSISTED REPRODUCTION

44 Section 581-301. Scope of article.

45 581-302. Status of gamete provider.

46 581-303. Parentage of child of assisted reproduction.

47 581-304. Consent to assisted reproduction.

48 581-305. Limitation on spouses' dispute of parentage of child of  
49 assisted reproduction.

50 581-306. Effect of embryo disposition agreement between intended  
51 parents which transfers legal rights and disposi-  
52 tional control to one intended parent.

53 581-307. Effect of death of intended parent.

1 § 581-301. Scope of article. This article does not apply to the birth  
2 of a child conceived by means of sexual intercourse.

3 § 581-302. Status of gamete provider. A gamete provider is not a  
4 parent of a child conceived by means of assisted reproduction with their  
5 gametes or embryos, pursuant to section twenty-five hundred ninety-nine-  
6 ii of the public health law.

7 § 581-303. Parentage of child of assisted reproduction. (a) An indi-  
8 vidual who is not a gamete provider but who uses their own gametes for,  
9 or who consents to, assisted reproduction with the intent to be a parent  
10 of the child with the consent of the pregnant intended parent as  
11 provided in section 581-304 of this part, is a parent of the resulting  
12 child for all legal purposes.

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

15 § 581-304. Consent to assisted reproduction. (a) Where the intended  
16 parent who gives birth to a child by means of assisted reproduction is a  
17 spouse, the consent of both spouses to the assisted reproduction is  
18 presumed and neither spouse may challenge the parentage of the child,  
19 except as provided in section 581-305 of this part.

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

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

30 § 581-305. Limitation on spouses' dispute of parentage of child of  
31 assisted reproduction. (a) Except as otherwise provided in subdivision  
32 (b) of this section, neither spouse may challenge the presumption of  
33 parentage of the child unless:

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

36 (2) the court finds by clear and convincing evidence that either  
37 spouse did not consent for the spouse who is not pregnant to be a parent  
38 of the child.

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

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

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

45 (3) the spouse never openly held out the child as their own.

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

49 § 581-306. Effect of embryo disposition agreement between intended  
50 parents which transfers legal rights and dispositional control to one  
51 intended parent. (a) An embryo disposition agreement between intended  
52 parents with joint dispositional control of an embryo shall be binding  
53 under the following circumstances:

54 (1) it is in writing;

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

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

3 (b) The intended parent who transfers legal rights and dispositional  
4 control of the embryo is not a parent of any child conceived from the  
5 embryo unless the agreement states that they consent to be a parent.

6 (c) If the intended parent transferring legal rights and dispositional  
7 control consents to be a parent, they may withdraw their consent to be a  
8 parent upon written notice to the embryo storage facility and to the  
9 other intended parent prior to transfer of the embryo. If they timely  
10 withdraw consent to be a parent they are not a parent for any purpose  
11 including support obligations but the embryo transfer may still proceed.

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

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

28 PART 4  
29 SURROGACY AGREEMENT

30 Section 581-401. Surrogacy agreement authorized.

31 581-402. Eligibility to enter a surrogacy agreement.

32 581-403. Requirements of a surrogacy agreement.

33 581-404. Surrogacy agreement; effect of subsequent spousal  
34 relationship.

35 581-405. Termination of a surrogacy agreement.

36 581-406. Parentage under a compliant surrogacy agreement.

37 581-407. Insufficient surrogacy agreement.

38 581-408. Absence of a surrogacy agreement.

39 581-409. Dispute as to a surrogacy agreement.

40 § 581-401. Surrogacy agreement authorized. (a) If eligible under this  
41 article to enter into a surrogacy agreement, a person acting as surro-  
42 gate, the spouse of the person acting as surrogate, if applicable, and  
43 the intended parent or parents may enter into a surrogacy agreement  
44 which will be enforceable provided the surrogacy agreement meets the  
45 requirements of this article, and provided further, that enforcement of  
46 a surrogacy agreement against a person acting as surrogate who objects  
47 to the termination of her parental rights prior to or during proceedings  
48 related to the issuance of a judgment of parentage is contrary to the  
49 public policy of this state and the surrogacy agreement is void and  
50 unenforceable.

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

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

1 § 581-402. Eligibility to enter a surrogacy agreement. (a) A person  
2 acting as surrogate shall be eligible to enter into an enforceable  
3 surrogacy agreement under this article if the person acting as surrogate  
4 has met the following requirements at the time the surrogacy agreement  
5 is executed:

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

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

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

16 (4) the person acting as surrogate has completed medical and psycho-  
17 logical evaluations with health care practitioners relating to the  
18 anticipated surrogate pregnancy and has received written medical clear-  
19 ance to become pregnant;

20 (5) the person acting as surrogate, and the spouse of the person  
21 acting as surrogate, if applicable, have been represented throughout the  
22 contractual process and the duration of the contract and its execution  
23 by independent legal counsel of their own choosing which shall be paid  
24 for by the intended parent or parents provided that such counsel must  
25 specifically declare that they have no conflicts relating to either the  
26 intended parent or parents or any intermediaries in the surrogacy  
27 arrangement. A person acting as surrogate who is receiving no compen-  
28 sation may waive the right to have the intended parent or parents pay  
29 the fee for such legal counsel. Where the intended parent or parents are  
30 paying for the independent legal counsel of the person acting as surro-  
31 gate, and the spouse of the person acting as surrogate, if applicable, a  
32 separate retainer agreement shall be prepared clearly stating that such  
33 legal counsel will only represent the person acting as surrogate and the  
34 spouse of the person acting as surrogate, if applicable, in all matters  
35 pertaining to the surrogacy agreement, that such legal counsel will not  
36 offer legal advice to any other parties to the surrogacy agreement, and  
37 that the attorney-client relationship lies with the person acting as  
38 surrogate and the spouse of the person acting as surrogate, if applica-  
39 ble;

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

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

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

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

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

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

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

4 (2) the intended parent or parents has been represented throughout the  
5 contractual process and the duration of the contract and its execution  
6 by independent legal counsel of their own choosing;

7 (3) they are an adult person who is not in a spousal relationship, or  
8 adult spouses together, or any two adults who are intimate partners  
9 together, except an adult in a spousal relationship is eligible to enter  
10 into an enforceable surrogacy agreement without their spouse if:

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

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

17 (4) where the spouse of an intended parent is not a required party to  
18 the agreement, the spouse is not an intended parent and shall not have  
19 rights or obligations to the child;

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

24 (6) the intended parent or parents must have had medical and psycho-  
25 logical evaluations; and

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

28 § 581-403. Requirements of a surrogacy agreement. (a) A surrogacy  
29 agreement shall be deemed to have satisfied the requirements of this  
30 article and be enforceable except as provided in section 581-401 of this  
31 part if it meets the following requirements:

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

33 (i) each intended parent, and

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

36 (A) the person acting as surrogate and the spouse of the person acting  
37 as surrogate are living separate and apart pursuant to a decree or judg-  
38 ment of separation or pursuant to a written agreement of separation  
39 subscribed by the parties thereto and acknowledged or proved in the form  
40 required to entitle a deed to be recorded; or

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

43 (2) It shall include the following information:

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

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

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

54 (iv) the name of and contact information for the licensed and regis-  
55 tered surrogacy program handling the surrogacy agreement; and

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

5 (3) It shall be executed after the following have been completed, but  
6 prior to the person acting as surrogate taking any medication or the  
7 commencement of medical procedures in furtherance of embryo transfer:  
8 the medical and psychological screenings of the person acting as surro-  
9 gate, the medical and psychological screenings, background checks, and  
10 home study of the intended parent or parents, the informed consent proc-  
11 ess for the person acting as surrogate, the intended parent or parents,  
12 and any gamete providers, and the legal counseling of all parties.

13 (4) It shall be executed by a person acting as surrogate meeting the  
14 eligibility requirements of subdivision (a) of section 581-402 of this  
15 part and by the spouse of the person acting as surrogate, if applicable,  
16 unless the signature of the spouse of the person acting as surrogate is  
17 not required as set forth in this section.

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

21 (6) The person acting as surrogate and the spouse of the person acting  
22 as surrogate, if applicable, and the intended parent or parents shall  
23 have been represented throughout the contractual process and the dura-  
24 tion of the contract and its execution by separate, independent legal  
25 counsel of their own choosing.

26 (7) The person acting as surrogate has or the surrogacy agreement  
27 stipulates that the person acting as surrogate will obtain a health  
28 insurance policy that takes effect prior to taking any medication or  
29 commencing treatment to further embryo transfer that covers precon-  
30 ception care, pre-natal care, major medical treatments, hospitalization,  
31 and behavioral health care, and the health insurance policy has a term  
32 that extends throughout the duration of the expected pregnancy and for  
33 twelve months after the birth of the child, a stillbirth, a miscarriage  
34 resulting in termination of pregnancy, or termination of the pregnancy;  
35 the policy shall be paid for, whether directly or through reimbursement  
36 or other means, by the intended parent or parents on behalf of the  
37 person acting as surrogate pursuant to the surrogacy agreement, except  
38 that a person acting as surrogate who is receiving no compensation may  
39 waive the right to have the intended parent or parents pay for the  
40 health insurance policy. The intended parent or parents shall also pay  
41 for or reimburse the person acting as surrogate for all co-payments,  
42 deductibles and any other out-of-pocket medical costs associated with  
43 preconception, pregnancy, child birth, or post-natal care, that accrue  
44 through twelve months after the birth of the child, a stillbirth, a  
45 miscarriage, or termination of the pregnancy. A person acting as surro-  
46 gate who is receiving no compensation may waive the right to have the  
47 intended parent or parents make such payments or reimbursements.

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

1 termination of the pregnancy; the policy shall be paid for, whether  
2 directly or through reimbursement or other means, by the intended parent  
3 or parents on behalf of the person acting as surrogate pursuant to the  
4 surrogacy agreement, except that a person acting as surrogate who is  
5 receiving no compensation may waive the right to have the intended  
6 parent or parents pay for the disability insurance policy.

7 (9) The surrogacy agreement must provide that the intended parent or  
8 parents shall procure and pay for a life insurance policy for the person  
9 acting as surrogate that takes effect prior to taking any medication or  
10 the commencement of medical procedures to further embryo transfer,  
11 provides a minimum benefit of seven hundred fifty thousand dollars, and  
12 has a term that extends throughout the duration of the expected pregnan-  
13 cy and for twelve months after the birth of the child, a stillbirth, a  
14 miscarriage resulting in termination of pregnancy, or termination of the  
15 pregnancy, with a beneficiary or beneficiaries of their choosing. The  
16 policy shall be paid for, whether directly or through reimbursement or  
17 other means, by the intended parent or parents on behalf of the person  
18 acting as surrogate pursuant to the surrogacy agreement, except that a  
19 person acting as surrogate who is receiving no compensation may waive  
20 the right to have the intended parent or parents pay for the life insur-  
21 ance policy.

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

31 (11) If the surrogacy agreement provides for the payment of compen-  
32 sation to the person acting as surrogate, those funds shall have been  
33 placed in escrow with an independent escrow agent prior to the person  
34 acting as surrogate taking any medication or the commencement of medical  
35 procedures to further embryo transfer other than medical and psycholog-  
36 ical evaluations necessary to determine the person acting as surrogate's  
37 eligibility. Funds to cover the person acting as surrogate's medical  
38 expenses, including out-of-pocket medical expenses, shall also have been  
39 placed in escrow.

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

43 (b) The surrogacy agreement must comply with the following terms:

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

46 (i) the person acting as surrogate agrees to undergo embryo transfer  
47 and attempt to carry and give birth to the child subject to their right  
48 to terminate the pregnancy;

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

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



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

3 (iv) the surrogacy agreement must permit the person acting as surro-  
4 gate to exercise sole discretion over decisions regarding their behav-  
5 ior, other than behaviors that would harm their health, and to make all  
6 health and welfare decisions regarding themselves, their pregnancy, and  
7 child birth, including but not limited to, whether to consent to a medi-  
8 cally-indicated or non-medically indicated cesarean section, whether to  
9 terminate or continue the pregnancy, and whether to reduce or retain the  
10 number of fetuses or embryos they are carrying and notwithstanding any  
11 other provisions in this chapter, provisions in the agreement to the  
12 contrary are void and unenforceable. This article does not diminish the  
13 right of the person acting as surrogate to terminate a pregnancy. This  
14 article does not diminish the responsibility of health care providers to  
15 ensure adherence to standards of medical practice;

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

19 (vi) the person acting as surrogate has the right to obtain psycholog-  
20 ical counseling by a counselor of their choice to address issues result-  
21 ing from the person's participation in the surrogacy agreement. The cost  
22 of that counseling shall be paid by the intended parent or parents.

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

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

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

29 (iii) the surrogacy agreement shall provide that the rights and obli-  
30 gations of the intended parent or parents under the surrogacy agreement  
31 are not assignable;

32 (iv) the intended parent or parents agree to execute a will, prior to  
33 the embryo transfer, designating a guardian for all resulting children  
34 who is authorized to perform the intended parent's or parents' obli-  
35 gations pursuant to the surrogacy agreement; and

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

42 § 581-404. Surrogacy agreement; effect of subsequent spousal relation-  
43 ship. (a) After the execution of a surrogacy agreement under this arti-  
44 cle, the subsequent spousal relationship of the person acting as surro-  
45 gate does not affect the validity of a surrogacy agreement, the consent  
46 of the spouse of the person acting as surrogate to the agreement shall  
47 not be required, and the spouse of the person acting as surrogate shall  
48 not be the presumed parent of any resulting children.

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

52 § 581-405. Termination of a surrogacy agreement. A person acting as  
53 surrogate has the right to terminate a surrogacy agreement at any time  
54 throughout the duration of the pregnancy. If a person acting as surro-  
55 gate terminates a surrogacy agreement, any compensation already  
56 received, other than payment or reimbursement of medical, legal, and

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

3 § 581-406. Parentage under a compliant surrogacy agreement. Upon the  
4 birth of a child conceived by assisted reproduction under a surrogacy  
5 agreement that complies with this part, the biologically-related  
6 intended parent or parents, or, if none, the intended parent designated  
7 as interim decision-maker or both intended parents working together, and  
8 the person acting as surrogate assume interim parental responsibility  
9 for the child born and share decision making, except that the intended  
10 parent or parents will assume full financial responsibility, until the  
11 person acting as surrogate under the terms of a surrogacy agreement has  
12 submitted a written declaration to the court no sooner than eight days  
13 following the birth of any children stating that they are voluntarily  
14 consenting to disclaim and renounce their parental rights, and a judg-  
15 ment of parentage in favor of the intended parent or parents has been  
16 issued under the terms of a surrogacy agreement, at which time each  
17 intended parent is, by operation of law, a parent of the child and  
18 neither the person acting as surrogate nor the person's spouse, if any,  
19 is a parent of the child.

20 § 581-407. Insufficient surrogacy agreement. If a surrogacy agreement  
21 is defective in material and non-technical ways, the court shall enforce  
22 only such provisions as justice requires, except that unless the person  
23 acting as surrogate has disclaimed and renounced parental rights and  
24 obligations no sooner than eight days after the birth of the child, the  
25 court shall not terminate their parental status, rights or obligations.

26 § 581-408. Absence of a surrogacy agreement. In the absence of a  
27 surrogacy agreement, the person who gives birth to a child is the parent  
28 of that child, and assumes the rights and obligations of a parent and  
29 any intended parent who has contributed genetic material shall also be a  
30 parent of the child, and assume the rights and responsibilities of a  
31 parent, and the court shall determine child support and establish a  
32 parenting schedule according to the best interests of the child and such  
33 other laws of this state as are applicable. If neither intended parent  
34 has contributed genetic material, the person acting as surrogate shall  
35 be the sole parent and can retain their parental status and obligations  
36 or surrender the child for adoption by an intended parent or both of  
37 them provided they meet the requirements of law or if they decline to  
38 adopt, then to others in accordance with law.

39 § 581-409. Dispute as to a surrogacy agreement. (a) Any dispute which  
40 is related to a surrogacy agreement shall be resolved by the supreme  
41 court, which shall determine the respective rights and obligations of  
42 the parties according to the requirements of this article, the valid  
43 terms of the agreement, and such other laws as may be applicable.

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

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

51 PART 5

52 THIRD-PARTY GAMETE PROVISION AGREEMENT

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

1 581-502. Eligibility to enter a third-party gamete provision  
2 agreement.

3 581-503. Requirements of a third-party gamete provision agree-  
4 ment.

5 581-504. Third-party gamete provision agreement; effect of  
6 subsequent spousal relationship.

7 581-505. Termination of a third-party gamete provision agree-  
8 ment.

9 581-506. Parentage under a compliant third-party gamete  
10 provision agreement.

11 581-507. Dispute as to a third-party gamete provision agreement.

12 § 581-501. Third-party gamete provision agreement authorized. If  
13 eligible, a gamete provider and an intended parent or parents, or a  
14 gamete provider and an agent, gamete bank, fertility clinic or other  
15 entity may enter into a third-party gamete provision agreement which  
16 will be enforceable if the third-party gamete provision agreement meets  
17 the requirements of this article.

18 § 581-502. Eligibility to enter a third-party gamete provision agree-  
19 ment. (a) An intended parent or parents shall be eligible to enter into  
20 an enforceable third-party gamete provision agreement under this article  
21 if the intended parent or parents have met the following requirements at  
22 the time the third-party gamete provision agreement is executed:

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

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

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

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

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

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

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

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

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

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

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

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

24 § 581-503. Requirements of a third-party gamete provision agreement.

25 (a) A third-party gamete provision agreement shall be deemed to have  
26 satisfied the requirements of this article and be enforceable if it  
27 meets the following requirements:

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

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

31 (ii) the gamete provider.

32 (2) It shall include the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 § 581-504. Third-party gamete provision agreement; effect of subse-  
56 quent spousal relationship. After the execution of a third-party gamete

1 provision agreement under this article, the subsequent separation or  
2 divorce of the intended parents does not affect the rights, duties and  
3 responsibilities of the intended parents as outlined in the third-party  
4 gamete provision agreement.

5 § 581-505. Termination of a third-party gamete provision agreement.

6 (a) An egg provider has the right to terminate a third-party gamete  
7 provision agreement at any time prior to egg retrieval without penalty.  
8 If the agreement is terminated prior to egg retrieval, the egg provider  
9 is required to return any financial compensation received to date.

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

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

17 § 581-506. Parentage under a compliant third-party gamete provision  
18 agreement. Upon the birth of a child conceived by assisted reproduction  
19 under a third-party gamete provision agreement that complies with this  
20 part, each intended parent is, by operation of law, a parent of the  
21 child and the gamete provider or providers is not a parent of the child.

22 § 581-507. Dispute as to a third-party gamete provision agreement.

23 (a) Any dispute which is related to a third-party gamete provision  
24 agreement shall be resolved by the supreme court of the state of New  
25 York, which shall determine the respective rights and obligations of the  
26 parties.

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

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

34 PART 6  
35 INFORMED CONSENT

36 Section 581-601. Informed consent.

37 581-602. Informed consent procedures for gamete providers.

38 581-603. Informed consent procedures for persons acting as  
39 surrogates.

40 581-604. Informed consent procedures for intended parents.

41 § 581-601. Informed consent. Informed consent procedures are estab-  
42 lished, and shall be updated, to reflect research findings and current  
43 evidence-based best practices, to ensure that gamete providers, persons  
44 acting as surrogates, and intended parents are fully informed and able  
45 to voluntarily consent to agreement provisions.

46 § 581-602. Informed consent procedures for gamete providers. The  
47 following procedures shall be completed and documented, following best  
48 practices for informed consent procedure to ensure that gamete providers  
49 understand the material and voluntarily sign consent forms without being  
50 coerced or incentivized, prior to executing a third-party gamete  
51 provision agreement.

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

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

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

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

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

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

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

24 (f) An egg provider must be informed of the possibility that their  
25 eggs, or embryos created from their eggs, could be distributed to multi-  
26 ple intended parents using assisted reproduction to conceive, and surro-  
27 gacy, if applicable, to have a child, and must be asked to declare in  
28 writing that they will or will not allow their eggs, or embryos created  
29 from their eggs, to be distributed to more than one intended parent, or  
30 parents when there are two intended parents.

31 (g) A gamete provider must be counseled about their options regarding  
32 identity disclosure and the right of any children conceived by assisted  
33 reproduction with their gametes to receive their medical information,  
34 and their identifying information if the gamete provider has consented  
35 to the disclosure of such information. A gamete provider shall be  
36 informed that even if the gamete provider chooses to remain anonymous to  
37 any children conceived by assisted reproduction with their gametes,  
38 there is no guarantee that they will remain anonymous due to DNA test-  
39 ing, the possibility of data breaches, and unforeseen medical, scientif-  
40 ic and technological developments. Gamete providers must sign a declara-  
41 tion regarding identity disclosure.

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

44 (1) the purpose of the registry;

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

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

49 (4) how to request registry data.

50 § 581-603. Informed consent procedures for persons acting as surro-  
51 gates. The following procedures must be completed and documented,  
52 following best practices for informed consent procedure to ensure that  
53 persons acting as surrogates understand the material and voluntarily  
54 sign consent forms without being coerced or incentivized, prior to  
55 executing a surrogacy, including genetic surrogacy, agreement.

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

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

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

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

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

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

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

25 (1) the purpose of the registry;

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

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

30 (4) how to request registry data.

31 § 581-604. Informed consent procedures for intended parents. The  
32 following procedures must be completed and documented, following best  
33 practices for informed consent procedure to ensure that intended parents  
34 understand the material and voluntarily sign consent forms without being  
35 coerced or incentivized, prior to receiving assisted reproduction  
36 services, before executing a third-party gamete provision agreement,  
37 and/or before executing a surrogacy, including genetic surrogacy, agree-  
38 ment:

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

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

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

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

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



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

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

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

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

- 18 (1) the purpose of the registry;  
19 (2) personal and clinical data that is collected and how it is used;  
20 (3) the benefits of registering, how one's personal information is  
21 secured and kept confidential, and how to register or opt out of regis-  
22 tering; and  
23 (4) how to request registry data.

## 24 PART 7

### 25 PAYMENT TO GAMETE PROVIDERS AND PERSONS ACTING AS SURROGATES

#### 26 Section 581-701. Reimbursement.

##### 27 581-702. Compensation.

28 § 581-701. Reimbursement. (a) A gamete provider who has entered into  
29 a valid third-party gamete provision agreement to be a gamete provider  
30 may receive reimbursement from an intended parent or parents for econom-  
31 ic losses incurred in connection with the third-party gamete provision  
32 which result from the retrieval or storage of gametes or embryos.

33 (b) Premiums paid for insurance against economic losses directly  
34 resulting from the retrieval or storage of gametes or embryos for third-  
35 party gamete provision shall be reimbursed.

36 § 581-702. Compensation. (a) Compensation may be paid to a gamete  
37 provider or person acting as surrogate who is a party to a surrogacy or  
38 genetic surrogacy agreement based on medical risks, physical discomfort,  
39 inconvenience and the responsibilities they are undertaking in  
40 connection with their participation in the assisted reproduction. Under  
41 no circumstances may compensation be paid to purchase gametes or embryos  
42 or for the relinquishment of a parental interest in a child.

43 (b) The compensation, if any, paid to a gamete provider or person  
44 acting as surrogate must be reasonable and negotiated in good faith  
45 between the parties. The negotiated amount of compensation paid to  
46 persons acting as surrogates shall be effected on a payment schedule  
47 agreed to by the person acting as surrogate and the intended parent or  
48 parents, provided that the first payment is made when the person acting  
49 as surrogate commences taking medication to further embryo transfer, and  
50 the last payment is made between six and eight weeks after the birth of  
51 any resulting children.

52 (c) Compensation may not be conditioned upon the purported quality or  
53 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 gamete provider or of any resulting chil-  
3 dren.

4 PART 8  
5 SURROGATES' BILL OF RIGHTS

6 Section 581-801. Applicability.

7 581-802. Health and welfare decisions.

8 581-803. Independent legal counsel.

9 581-804. Health insurance and medical costs.

10 581-805. Counseling.

11 581-806. Life insurance.

12 581-807. Termination of surrogacy agreement.

13 § 581-801. Applicability. The rights enumerated in this part shall  
14 apply to any person acting as surrogate in this state, notwithstanding  
15 any surrogacy, including genetic surrogacy, agreement, judgment of  
16 parentage, memorandum of understanding, verbal agreement or contract to  
17 the contrary. Except as otherwise provided by law, any written or  
18 verbal agreement purporting to waive or limit any of the rights in this  
19 part is void as against public policy. The rights enumerated in this  
20 part are not exclusive, and are in addition to any other rights provided  
21 by law, regulation, or a surrogacy, including genetic surrogacy, agree-  
22 ment that meets the requirements of this article.

23 § 581-802. Health and welfare decisions. A person acting as surrogate  
24 has the right to exercise sole discretion over decisions regarding their  
25 behavior, other than behaviors that would harm their health, and to make  
26 all health and welfare decisions regarding themselves and their pregnancy,  
27 including but not limited to whether to consent to a medically indicated  
28 or non-medically indicated cesarean section, to utilize the services of  
29 a health care practitioner of their choosing, whether to terminate or  
30 continue the pregnancy, and whether to reduce or retain the number of  
31 fetuses or embryos they are carrying.

32 § 581-803. Independent legal counsel. A person acting as surrogate has  
33 the right to be represented throughout the contractual process and the  
34 duration of the surrogacy, including genetic surrogacy, agreement and  
35 its execution by independent legal counsel of their own choosing, to be  
36 paid for by the intended parent or parents.

37 § 581-804. Health insurance and medical costs. A person acting as  
38 surrogate has the right to have a health insurance policy that covers  
39 preconception care, pre-natal care, major medical treatments, hospitali-  
40 zation and behavioral health care for a term that extends throughout the  
41 duration of the expected pregnancy and for twelve months after the birth  
42 of the child, a stillbirth, a miscarriage resulting in termination of  
43 pregnancy, or termination of the pregnancy, to be paid for by the  
44 intended parent or parents. The intended parent or parents shall also  
45 pay for or reimburse the person acting as surrogate for all co-payments,  
46 deductibles and any other out-of-pocket medical costs associated with  
47 pregnancy, child birth, or post-natal care that accrue through twelve  
48 months after the birth of the child, a stillbirth, a miscarriage, or the  
49 termination of the pregnancy.

50 § 581-805. Counseling. A person acting as surrogate has the right to  
51 obtain a health insurance policy that covers behavioral health care and  
52 will cover the cost of psychological counseling to address issues  
53 resulting from their participation in a surrogacy, including a genetic

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

3 § 581-806. Life insurance. A person acting as surrogate has the right  
4 to be provided a life insurance policy that takes effect prior to taking  
5 any medication or commencement of treatment to further embryo transfer,  
6 provides a minimum benefit of seven hundred fifty thousand dollars, and  
7 has a term that extends throughout the duration of the expected pregnan-  
8 cy and for twelve months after the birth of the child, a stillbirth, a  
9 miscarriage resulting in termination of pregnancy, or termination of the  
10 pregnancy, with a beneficiary or beneficiaries of their choosing, to be  
11 paid for by the intended parent or parents.

12 § 581-807. Termination of surrogacy agreement. A person acting as  
13 surrogate has the right to terminate a surrogacy, including a genetic  
14 surrogacy, agreement at any time throughout the duration of the pregnan-  
15 cy. If a person acting as surrogate terminates a surrogacy agreement,  
16 any compensation already received, other than payment or reimbursement  
17 of medical, legal, and pregnancy-related expenses, must be returned to  
18 the intended parent or parents.

## 19 PART 9

### 20 GAMETE PROVIDERS' BILL OF RIGHTS

21 Section 581-901. Applicability.

22 581-902. Health and welfare decisions.

23 581-903. Health insurance and medical costs.

24 581-904. Counseling.

25 581-905. Termination of a third-party gamete provision agree-  
26 ment.

27 § 581-901. Applicability. The rights enumerated in this part shall  
28 apply to any gamete provider in this state, notwithstanding any third-  
29 party gamete provision agreement, judgment of parentage, memorandum of  
30 understanding, verbal agreement or contract to the contrary. Except as  
31 otherwise provided by law, any written or verbal agreement purporting to  
32 waive or limit any of the rights in this part is void as against public  
33 policy. The rights enumerated in this part are not exclusive, and are in  
34 addition to any other rights provided by law, regulation, or a third-  
35 party gamete provision agreement that meets the requirements of this  
36 article.

37 § 581-902. Health and welfare decisions. (a) An egg provider has the  
38 right to exercise sole discretion over decisions regarding their behav-  
39 ior, other than behaviors that would harm their health, and to make all  
40 health and welfare decisions regarding themselves, including but not  
41 limited to, the amount of time that transpires between egg retrieval  
42 cycles and/or third-party gamete provision agreements, and whether to  
43 terminate the third-party gamete provision agreement at any time;

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

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

51 § 581-903. Health insurance and medical costs. An egg provider has the  
52 right to obtain a health insurance policy that covers major medical  
53 treatments, hospitalizations, and behavioral health care for a term that  
54 takes effect prior to the egg provider taking any medication and

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

10 § 581-904. Counseling. A gamete provider has the right to obtain a  
 11 health insurance policy that covers behavioral health care and will  
 12 cover the cost of psychological counseling to address issues resulting  
 13 from participation in third-party gamete provision, to be paid for by  
 14 the intended parent or parents, as applicable, or by the agent, gamete  
 15 bank, fertility clinic or other entity as applicable.

16 § 581-905. Termination of a third-party gamete provision agreement.

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

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

27 PART 10

28 MISCELLANEOUS PROVISIONS

29 Section 581-1001. Remedial.

30 581-1002. Severability.

31 581-1003. Parent under section seventy of the domestic relations  
 32 law.

33 581-1004. Interpretation.

34 § 581-1001. Remedial. This article is hereby declared to be a remedi-  
 35 al statute and is to be construed liberally to secure the beneficial  
 36 interests and purposes thereof for the best interests of the child.

37 § 581-1002. Severability. The invalidation of any part of this arti-  
 38 cle by a court of competent jurisdiction shall not result in the invali-  
 39 dation of any other part.

40 § 581-1003. Parent under section seventy of the domestic relations  
 41 law. The term "parent" in section seventy of the domestic relations law  
 42 shall include a person established to be a parent under this article or  
 43 any other relevant law.

44 § 581-1004. Interpretation. Unless the context indicates otherwise,  
 45 words importing the singular include and apply to several persons,  
 46 parties, or things; words importing the plural include the singular.

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

48 § 3. Section 121 of the domestic relations law, as added by chapter  
 49 308 of the laws of 1992, is amended to read as follows:

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

52 1. "~~Birth mother~~" shall mean a woman who gives birth to a child pursu-  
 53 ~~ant to a surrogate parenting contract.~~

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

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

5 ~~4. "Surrogate parenting contract" shall mean any agreement, oral or~~  
6 ~~written, in which:~~

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

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

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

17 § 122. Genetic surrogacy agreement. 1. If eligible under this article  
18 to enter into a genetic surrogacy agreement, a person acting as surro-  
19 gate, the spouse of the person acting as surrogate, if applicable, and  
20 the intended parent or parents may enter into a genetic surrogacy agree-  
21 ment which will be enforceable provided the genetic surrogacy agreement  
22 meets the requirements of this article and further provided that  
23 enforcement of a genetic surrogacy agreement against a surrogate who  
24 objects to the termination of her parental rights prior to the issuance  
25 of an acknowledgement of interim parental responsibility or voluntary  
26 renunciation of parental rights is contrary to the public policy of this  
27 state and the genetic surrogacy agreement is void and unenforceable.

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

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

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

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

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

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

46 (iv) the person acting as surrogate has completed medical and psycho-  
47 logical evaluations with health care practitioners relating to the  
48 anticipated surrogate pregnancy and has received written medical clear-  
49 ance to become pregnant;

50 (v) the person acting as surrogate, and the spouse of the person  
51 acting as surrogate, if applicable, have been represented throughout the  
52 contractual process and the duration of the contract and its execution  
53 by independent legal counsel of their own choosing which shall be paid  
54 for by the intended parent or parents provided that such counsel must  
55 specifically declare that she or he has no conflicts relating to either  
56 the intending parents or any intermediaries in the genetic surrogacy

1 arrangement. A person acting as surrogate who is receiving no compen-  
2 sation may waive the right to have the intended parent or parents pay  
3 the fee for such legal counsel. Where the intended parent or parents are  
4 paying for the independent legal counsel of the person acting as surro-  
5 gate, and the spouse of the person acting as surrogate, if applicable, a  
6 separate retainer agreement shall be prepared clearly stating that such  
7 legal counsel will only represent the person acting as surrogate and the  
8 spouse of the person acting as surrogate, if applicable, in all matters  
9 pertaining to the genetic surrogacy agreement, that such legal counsel  
10 will not offer legal advice to any other parties to the genetic surroga-  
11 cy agreement, and that the attorney-client relationship lies with the  
12 person acting as surrogate and the spouse of the person acting as surro-  
13 gate, if applicable;

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

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

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

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

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

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

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

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

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

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

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

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

52 (vi) the intended parent or parents must have had medical and psycho-  
53 logical evaluations; and

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

1 5. A genetic surrogacy agreement shall be deemed to have satisfied the  
2 requirements of this section and be enforceable if it meets the follow-  
3 ing requirements:

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

5 (i) each intended parent, and

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

8 (A) the person acting as surrogate and the spouse of the person acting  
9 as surrogate are living separate and apart pursuant to a decree or judg-  
10 ment of separation or pursuant to a written agreement of separation  
11 subscribed by the parties thereto and acknowledged or proved in the form  
12 required to entitle a deed to be recorded; or

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

15 (b) It shall include the following information:

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

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

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

26 (iv) the name of and contact information for the licensed and regis-  
27 tered surrogacy program that is handling the genetic surrogacy agree-  
28 ment; and

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

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

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

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

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

42 (iv) legal counseling of all parties.

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

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

50 (f) The person acting as surrogate and the spouse of the person acting  
51 as surrogate, if applicable, and the intended parent or parents shall  
52 have been represented throughout the contractual process and the dura-  
53 tion of the contract and its execution by separate, independent legal  
54 counsel of their own choosing.

55 (g) If the genetic surrogacy agreement provides for the payment of  
56 compensation to the person acting as surrogate, those funds shall have

1 been placed in escrow with an independent escrow agent prior to the  
2 person acting as surrogate taking any medication or the commencement of  
3 medical procedures in furtherance of embryo transfer. Funds to cover the  
4 medical expenses of the person acting as surrogate, including out-of-  
5 pocket medical expenses shall also have been placed in escrow.

6 (h) The person acting as surrogate has or will obtain a health insur-  
7 ance policy that takes effect prior to taking any medication or the  
8 commencement of medical procedures to further embryo transfer that  
9 covers pre-conception care, pre-natal care, major medical treatments,  
10 hospitalization, and behavioral health care, and the health insurance  
11 policy has a term that extends throughout the duration of the expected  
12 pregnancy and for twelve months after the birth of the child, a still-  
13 birth, a miscarriage resulting in termination of pregnancy, or termi-  
14 nation of the pregnancy; the policy shall be paid for, whether directly  
15 or through reimbursement or other means, by the intended parent or  
16 parents on behalf of the person acting as surrogate pursuant to the  
17 genetic surrogacy agreement, except that a person acting as surrogate  
18 who is receiving no compensation may waive the right to have the  
19 intended parent or parents pay for the health insurance policy. The  
20 intended parent or parents shall also pay for or reimburse the person  
21 acting as surrogate for all co-payments, deductibles and any other out-  
22 of-pocket medical costs associated with preconception, pregnancy, child  
23 birth, or post-natal care, that accrue through twelve months after the  
24 birth of the child, a stillbirth, a miscarriage or termination of the  
25 pregnancy. A person acting as surrogate who is receiving no compensation  
26 may waive the right to have the intended parent or parents make such  
27 payments or reimbursements.

28 (i) The genetic surrogacy agreement stipulates that the person acting  
29 as surrogate will obtain a short- and long-term disability insurance  
30 policy that takes effect prior to taking any medication or commencing  
31 medical procedures to further embryo transfer that covers disability  
32 related to the birth of the child, a stillbirth, a miscarriage  
33 resulting in termination of pregnancy, or termination of the pregnancy,  
34 and the disability insurance policy has a term that extends throughout  
35 the duration of the expected pregnancy and for twelve months after the  
36 birth of the child, a stillbirth, a miscarriage resulting in termination  
37 of pregnancy, or termination of the pregnancy; the policy shall be paid  
38 for, whether directly or through reimbursement or other means, by the  
39 intended parent or parents on behalf of the person acting as surrogate  
40 pursuant to the genetic surrogacy agreement, except that a person acting  
41 as surrogate who is receiving no compensation may waive the right to  
42 have the intended parent or parents pay for the disability insurance  
43 policy.

44 (j) The genetic surrogacy agreement must provide that the intended  
45 parent or parents shall procure and pay for a life insurance policy for  
46 the person acting as surrogate that takes effect prior to the person  
47 acting as surrogate taking any medication or the commencement of medical  
48 procedures to further embryo transfer, provides a minimum benefit of  
49 seven hundred and fifty thousand dollars, and has a term that extends  
50 throughout the duration of the expected pregnancy and for twelve months  
51 after the birth of the child, a stillbirth, a miscarriage resulting in  
52 termination of pregnancy, or termination of the pregnancy; the policy  
53 shall be paid for, whether directly or through reimbursement or other  
54 means, by the intended parent or parents on behalf of the person acting  
55 as surrogate pursuant to the genetic surrogacy agreement, except that a  
56 person acting as surrogate who is receiving no compensation may waive



1 the right to have the intended parent or parents pay for the life insur-  
2 ance policy.

3 (k) The genetic surrogacy agreement must include information disclos-  
4 ing how the intended parent or parents will cover the medical expenses  
5 of the person acting as surrogate and any child born pursuant to the  
6 genetic surrogacy agreement. The disclosure shall include a review of  
7 the health care policy provisions related to coverage for the person  
8 acting as surrogate's pregnancy, including any possible liability of the  
9 person acting as surrogate's third-party liability liens or other insur-  
10 ance coverage, and any notice requirements that could affect coverage or  
11 liability of the person acting as surrogate.

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

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

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

19 (i) the person acting as surrogate agrees to undergo embryo transfer  
20 and attempt to carry and give birth to the child subject to their right  
21 to terminate the pregnancy;

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

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

33 (iv) the genetic surrogacy agreement must permit the person acting as  
34 surrogate to exercise sole discretion over decisions regarding their  
35 behavior, other than behaviors that would harm their health, and to make  
36 all health and welfare decisions regarding themselves, their pregnancy,  
37 and child birth, including but not limited to, whether to consent to a  
38 medically-indicated or non-medically indicated cesarean section, whether  
39 to terminate or continue the pregnancy, and whether to reduce or retain  
40 the number of fetuses or embryos they are carrying and notwithstanding  
41 any other provisions in this chapter, provisions in the agreement to the  
42 contrary are void and unenforceable. This article does not diminish the  
43 right of the person acting as surrogate to terminate a pregnancy. This  
44 article does not diminish the responsibility of health care providers to  
45 ensure adherence to standards of medical practice;

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

49 (vi) the person acting as surrogate has the right to obtain psycholog-  
50 ical counseling by a counselor of their choice to address issues result-  
51 ing from the person's participation in the genetic surrogacy agreement.  
52 The cost of that counseling shall be paid by the intended parent or  
53 parents.

54 (b) As to the intended parent or parents:

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

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

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

9 (iv) the intended parent or parents agree to execute a will, prior to  
10 the embryo transfer, designating a guardian for all resulting children  
11 who is authorized to perform the intended parent's or parents' obli-  
12 gations pursuant to the genetic surrogacy agreement; and

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

19 7. (a) After the execution of a genetic surrogacy agreement under this  
20 article, the subsequent spousal relationship of the person acting as  
21 surrogate does not affect the validity of a genetic surrogacy agreement,  
22 the consent of the spouse of the person acting as surrogate to the  
23 agreement shall not be required, and the spouse of the person acting as  
24 surrogate shall not be the presumed parent of any resulting children.

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

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

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

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

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

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

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

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

21 (c) There shall be no specific performance remedy available for a  
 22 breach by the person acting as surrogate of a genetic surrogacy agree-  
 23 ment term.

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

25 § 6. Section 124 of the domestic relations law, as added by chapter  
 26 308 of the laws of 1992, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

35 (i) The person giving birth to the child has not signed the acknowl-  
36 edgment of parentage;

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

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

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

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

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

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

53 (e) The acknowledgment shall be executed on a form provided by the  
54 commissioner developed in consultation with the appropriate commissioner  
55 of the department of family assistance, which shall include the social  
56 security number of the [~~mother~~] person who gave birth to the child and

1 of the [~~putative father~~] acknowledged parent and provide in plain  
2 language (i) a statement by the [~~mother~~] person who gave birth to the  
3 child consenting to the acknowledgment of [~~paternity~~] parentage and a  
4 statement that the [~~putative father~~] acknowledged parent is the only  
5 possible [~~father~~] other biologically-related parent or that the acknowl-  
6 edged parent is an intended parent and the child was conceived through  
7 assisted reproduction, (ii) a statement by the putative father, if any,  
8 that he is the biological father of the child, and (iii) a statement  
9 that the signing of the acknowledgment of [~~paternity~~] parentage by both  
10 parties shall have the same force and effect as an order of filiation  
11 entered after a court hearing by a court of competent jurisdiction,  
12 including an obligation to provide support for the child except that,  
13 only if filed with the registrar of the district in which the birth  
14 certificate has been filed, will the acknowledgment have such force and  
15 effect with respect to inheritance rights.

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

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

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

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

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

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

44 (vi) that a copy of the acknowledgment of [~~paternity~~] parentage shall  
45 be filed with the putative father registry pursuant to section three  
46 hundred seventy-two-c of the social services law, and that such filing  
47 may establish the child's right to inheritance from the putative father  
48 pursuant to clause (B) of subparagraph two of paragraph (a) of section  
49 4-1.2 of the estates, powers and trusts law;

50 (vii) that, if such acknowledgment is filed with the registrar of the  
51 district in which the birth certificate has been filed, such acknowledg-  
52 ment will establish inheritance rights from the putative father or the  
53 other intended parent of a child conceived through assisted reproduction  
54 pursuant to clause (A) of subparagraph two of paragraph (a) of section  
55 4-1.2 of the estates, powers and trusts law;

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

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

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

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

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

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

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

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

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

54 [~~(e)~~] (g) Within ten days after receiving the certificate of birth,  
55 the registrar shall furnish without charge to each parent or guardian of  
56 the child or to the [~~mother~~] person who gave birth at the address desig-

1 nated by her for that purpose, a certified copy of the certificate of  
2 birth and, if applicable, a certified copy of the written acknowledgment  
3 of [~~paternity~~] parentage. If the [~~mother~~] person who gave birth is in  
4 receipt of child support enforcement services pursuant to title six-A of  
5 article three of the social services law, the registrar also shall  
6 furnish without charge a certified copy of the certificate of birth and,  
7 if applicable, a certified copy of the written acknowledgment of [~~pater-~~  
8 ~~nity~~] parentage to the social services district of the county within  
9 which the [~~mother~~] person who gave birth resides.

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

15 (b) Where a child's [~~paternity~~] parentage has not been acknowledged  
16 voluntarily pursuant to paragraph (a) of subdivision one of this section  
17 or paragraph (a) of this subdivision, the [~~child's mother and the puta-~~  
18 ~~tive father~~] person who gave birth to the child and the other signatory  
19 may voluntarily acknowledge a child's [~~paternity~~] parentage pursuant to  
20 this paragraph by signing the acknowledgment of [~~paternity~~] parentage.

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

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

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

50 3. (a) An executed acknowledgment of [~~paternity~~] parentage executed by  
51 [~~the mother and father of a child born out of wedlock~~] any two people  
52 eligible to sign such an acknowledgment under paragraph (b) of subdivi-  
53 sion one of this section, married or unmarried, shall establish the  
54 [~~paternity~~] parentage of a child and shall have the same force and  
55 effect as an order of [~~paternity~~] parentage or filiation issued by a  
56 court of competent jurisdiction. Such acknowledgement shall thereafter

1 be filed with the registrar pursuant to subdivision one or two of this  
2 section.

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

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

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

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

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

27 [~~SURROGATE PARENTING CONTRACTS~~] GENETIC SURROGACY

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

#### 30 ARTICLE 44

#### 31 REGULATION OF SURROGACY PROGRAMS, THIRD-PARTY GAMETE PROVISION

#### 32 SERVICE PROVIDERS AND ASSISTED REPRODUCTION SERVICE PROVIDERS

#### 33 Section 1400. Definitions.

34 1401. Surrogacy programs regulated under this article.

35 1402. Third-party gamete provision service providers regulated  
36 under this article.

37 1403. Assisted reproduction service providers regulated under  
38 this article.

39 1404. Conflicts of interest; prohibition on payments; funds in  
40 escrow; licensure; notice of surrogates' and gamete  
41 providers' bill of rights.

42 1405. Regulations.

43 § 1400. Definitions. As used in this section:

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

46 2. "Payment" means any type of monetary compensation or other valu-  
47 able consideration including but not limited to a rebate, refund,  
48 commission, unearned discount, or profit by means of credit or other  
49 valuable consideration.

50 3. "Surrogacy program" does not include any party to a surrogacy,  
51 including a genetic surrogacy, agreement or any person licensed to prac-  
52 tice law and representing a party to the surrogacy agreement, but does  
53 include and is not limited to any agency, agent, business or surrogacy  
54 agreement coordinator, that is licensed by the department of health,  
55 with the exception of surrogacy agreement coordinators, and registered  
56 with the office of the assisted reproduction registrar, and engaged in,



1 arranging, or facilitating transactions contemplated by a surrogacy  
2 agreement, regardless of whether such agreement ultimately comports with  
3 the requirements of article five-C of the family court act or article  
4 eight of the domestic relations law.

5 4. "Surrogacy agreement coordinator" does not include any party to a  
6 surrogacy, including a genetic surrogacy, agreement or any person  
7 licensed to practice law and representing a party to the agreement, but  
8 does include a licensed lawyer or social worker engaged in, arranging,  
9 or facilitating transactions contemplated by a surrogacy agreement,  
10 regardless of whether such agreement ultimately comports with the  
11 requirements of article five-C of the family court act or article eight  
12 of the family court act.

13 § 1401. Surrogacy programs regulated under this article. The  
14 provisions of this article apply to surrogacy programs arranging or  
15 facilitating transactions contemplated by a surrogacy, including a  
16 genetic surrogacy, agreement under part four of article five-C of the  
17 family court act or article eight of the domestic relations law if:

18 1. The surrogacy program does business in the state;

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

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

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

25 (i) surrogate recruitment; or

26 (ii) surrogate matching.

27 § 1402. Third-party gamete provision service providers regulated under  
28 this article. 1. The provisions of this article apply to agents, gamete  
29 banks, fertility clinics, and other entities arranging or facilitating  
30 transactions contemplated by a third-party gamete provision agreement  
31 under part five of article five-C of the family court act if:

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

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

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

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

41 (i) third-party gamete provision;

42 (ii) third-party embryo provision;

43 (iii) gamete freezing;

44 (iv) gamete provider recruitment; or

45 (v) gamete provider matching.

46 § 1403. Assisted reproduction service providers regulated under this  
47 article. The provisions of this article apply to fertility clinics,  
48 other health care facilities, and health care practitioners that provide  
49 assisted reproduction services to intended parents not using surrogacy  
50 under this article when:

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

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

1 (a) Intrauterine or vaginal insemination; or

2 (b) In vitro fertilization and transfer of embryos.

3 § 1404. Conflicts of interest; prohibition on payments; funds in  
4 escrow; licensure; notice of surrogates' and gamete providers' bill of  
5 rights. A surrogacy program to which this article applies:

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

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

10 3. May not pay or receive payment, directly or indirectly, to or from  
11 any person licensed to practice law and representing a party to the  
12 surrogacy agreement in connection with the referral of any person or  
13 party for the purpose of a surrogacy agreement;

14 4. May not pay or receive payment, directly or indirectly, to or from  
15 any health care provider providing any health services, including  
16 assisted reproduction, to a party to the surrogacy agreement;

17 5. May not be owned or managed, in any part, directly or indirectly,  
18 by any health care provider providing any health services, including  
19 assisted reproduction, to a party to the surrogacy agreement;

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

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

29 § 1405. Regulations. 1. The department of financial services, in  
30 consultation with the department of health, shall promulgate regulations  
31 to implement the requirements of this article regarding surrogacy  
32 programs, in a manner that prioritizes the short- and long-term health  
33 and safety of gamete providers, persons acting as surrogates, and any  
34 children conceived by assisted reproduction with third-party gametes, if  
35 applicable, and born through surrogacy, including genetic surrogacy,  
36 including but not limited to, regulations:

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

41 (b) requiring surrogacy programs:

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

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

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

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

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

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

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

13 (viii) to report clinical data from services provided to the depart-  
14 ment of health.

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

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

25 (b) requiring assisted reproduction service providers:

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

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

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

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

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

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

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

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

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

3 4. The department of financial services shall annually report to the  
4 state legislature regarding the practices of surrogacy programs and  
5 third-party gamete provision service providers and all business trans-  
6 actions related to surrogacy and third-party gamete provision in the  
7 state, with recommendations for any necessary amendments to this arti-  
8 cle.

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

11 ARTICLE 25-B

12 ASSISTED REPRODUCTION

13 Section 2599-cc. Assisted reproduction.

14 2599-dd. Third-party gamete provision.

15 2599-ee. Surrogacy.

16 2599-ff. Genetic surrogacy.

17 2599-gg. New York state office of the assisted reproduction  
18 registrar.

19 2599-hh. Central, confidential assisted reproduction registry.

20 2599-ii. Third-party gamete provision and parentage.

21 2599-jj. Gamete provider identity disclosure.

22 § 2599-cc. Assisted reproduction. The commissioner, in consultation  
23 with the Task Force on Life and the Law, shall promulgate regulations on  
24 the provision of assisted reproduction services to intended parents who  
25 are not using surrogacy. Such regulations shall include, but not be  
26 limited to:

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

34 2. the development and distribution, in printed form and on the  
35 department's website, of informational material relating to assisted  
36 reproduction, including but not limited to the scope of information  
37 provided on the website of the Human Fertilisation & Embryology Authori-  
38 ty of the United Kingdom.

39 § 2599-dd. Third-party gamete provision. The commissioner, in consul-  
40 tation with the transplant council or the Task Force on Life and the  
41 Law, shall promulgate regulations on third-party gamete provision. Such  
42 regulations shall include, but not be limited to:

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

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

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

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

6 § 2599-ee. Surrogacy. The commissioner, in consultation with the task-  
7 force on life and the law, shall promulgate regulations on the practice  
8 of surrogacy. Such regulations shall include, but not be limited to:

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

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

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

26 § 2599-ff. Genetic surrogacy. The commissioner shall promulgate regu-  
27 lations on the practice of genetic surrogacy. Such regulations shall  
28 include, but not be limited to:

29 1. guidelines and procedures for obtaining fully informed consent from  
30 potential persons acting as surrogates and intended parents, to include  
31 but not be limited to the informed consent procedures for persons acting  
32 as surrogates listed under section 581-603 of the family court act and  
33 the informed consent procedures for intended parents listed under  
34 section 581-604 of the family court act, highlighting the potential  
35 known and unknown health risks to persons acting as surrogates and chil-  
36 dren conceived by assisted reproduction and born through genetic surro-  
37 gacy, and ensuring that persons acting as surrogates and intended  
38 parents are able to review and understand informed consent materials;

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

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

47 § 2599-gg. New York state office of the assisted reproduction regist-  
48 rar. 1. There is hereby established within the department the New York  
49 state office of the assisted reproduction registrar which shall have  
50 exclusive jurisdiction to exercise the powers and duties provided by  
51 this article. The office shall exercise its authority by and through an  
52 executive director.

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

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

1 (a) to issue or refuse to issue registrations and registration  
2 renewals of surrogacy programs, assisted reproduction service providers,  
3 third-party gamete provision service providers, health care practition-  
4 ers, persons acting as surrogates, gamete providers, intended parents  
5 who use assisted reproduction to become pregnant, parents, and children  
6 conceived by assisted reproduction, with third-party gametes, if appli-  
7 cable, and born through surrogacy, if applicable;

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) The executive director of the office shall serve as the chair-  
2 person of the board. The vice chairperson shall be elected from among  
3 the members of the advisory board by members of the board and shall  
4 represent the board in the absence of the chairperson at all official  
5 board functions.

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

10 § 2599-hh. Central, confidential assisted reproduction registry. 1.  
11 The New York state office of the assisted reproduction registrar shall  
12 establish an assisted reproduction registry for the purposes of:

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

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

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

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

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

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

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

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

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

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

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

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

1 commissioner shall establish rules and procedures designed to keep such  
2 records and information separate and apart from other records of the  
3 department and kept in a manner where access to such records and infor-  
4 mation is strictly limited to such designated employees and shall  
5 promulgate regulations designed to effectuate the purposes of this  
6 section. Notwithstanding any inconsistent provision of this chapter or  
7 any other law to the contrary, the commissioner shall have access to the  
8 information authorized to be released pursuant to this section contained  
9 in surrogacy, including genetic surrogacy, agreements, third-party  
10 gamete provision agreements, and clinical data maintained by the office  
11 of the assisted reproduction registrar and any agency, court or depart-  
12 ment having appropriate records which will enable the commissioner to  
13 effectuate the purposes of this section and may require the cooperation  
14 of such agency, court or department in providing the information author-  
15 ized to be released pursuant to this section, provided, however, that  
16 the commissioner shall not have access to the actual records of any  
17 agency, court or department maintaining such records.

18 3. The following persons and entities are required to register with  
19 the assisted reproduction registry and to annually renew their registra-  
20 tion in order to operate in the state:

21 (a) gamete banks, fertility clinics, other health care facilities, and  
22 individual health care practitioner that or who provide assisted repro-  
23 duction services in the state;

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

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

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

39 (b) If an intended parent, gamete provider, or person acting as surro-  
40 gate chooses to register:

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

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

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

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

50 (C) the child or the child's parent requesting the identifying infor-  
51 mation is registered with the registry.

52 (c) If an intended parent, gamete provider, or person acting as surro-  
53 gate chooses to opt out of registering:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (vi) the number of embryos transferred during the cycle, if applica-  
2 ble;

3 (vii) whether the cycle resulted in a clinical pregnancy, and if so:

4 (A) the number of fetuses carried;

5 (B) the outcome of the pregnancy; and

6 (C) If the cycle resulted in a live birth, the number of children  
7 born; and

8 (viii) if third-party gamete or embryo provision was used, whether the  
9 gametes provided material was eggs, sperm, or embryos, and the identifi-  
10 cation number of each gamete provider and the identification numbers of  
11 the persons who provided genetic material for the embryo, as applicable.

12 (b) The following clinical and participant data will be collected from  
13 gamete banks, fertility clinics and other health care facilities that  
14 provide third-party gamete provision services in the state:

15 (i) gamete provider's name or identification number;

16 (ii) gamete provider age and sex or gender;

17 (iii) the name of gamete bank, fertility clinic or other health care  
18 facility where gametes were provided;

19 (iv) injection and medication protocol for each cycle of ovarian stim-  
20 ulation for purposes of egg retrieval;

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

23 (vi) the number of eggs retrieved during the cycle;

24 (vii) for each egg provided, whether such egg:

25 (A) resulted in a clinical pregnancy and the outcome of that pregnan-  
26 cy;

27 (B) was used for research;

28 (C) was disposed of; or

29 (D) was distributed to another intended parent as an egg or embryo.

30 (c) The following clinical and participant data will be collected from  
31 surrogacy programs, fertility clinics, gamete banks and other entities  
32 that provide services related to surrogacy, including genetic surrogac-  
33 ty, agreements and provide surrogacy services in the state:

34 (i) the person acting as surrogate's identification number;

35 (ii) the person acting as surrogate's age and sex or gender;

36 (iii) the name of the surrogacy program handling the surrogacy,  
37 including genetic surrogacy, agreement;

38 (iv) the name of the fertility clinic, other health care facility, or  
39 health care practitioner providing assisted reproduction services;

40 (v) medication and insemination or embryo incubation/transfer proto-  
41 cols, if applicable, for each cycle of ovarian stimulation for egg  
42 retrieval or fertility treatment, artificial insemination, IUI, or IVF,  
43 including any add-on IVF procedures;

44 (vi) any adverse reactions or health complications related to embryo  
45 transfer, pregnancy, delivery, or the post-partum period;

46 (vii) the number of embryos transferred each cycle;

47 (viii) the number of embryo transfer cycles required for the person  
48 acting as surrogate to become pregnant, if applicable;

49 (ix) the method of delivery of any children born through surrogacy,  
50 including genetic surrogacy;

51 (x) number of fetuses carried and the number of children born;

52 (xi) the age and sex or gender of each intended parent; and

53 (xii) the zip code of each intended parent.

54 7. Within the department, access to registry data shall be limited to  
55 employees designated by the commissioner and records and information  
56 shall be kept strictly confidential except as specifically authorized by

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

7 § 2599-ii. Third-party gamete provision and parentage. 1. The gamete  
8 provider of sperm provided to a licensed individual health care practi-  
9 tioner or to a gamete bank, fertility clinic or other health care facil-  
10 ity for use in assisted reproduction by an intended parent other than  
11 the gamete provider's spouse or intimate partner is treated in law as if  
12 they were not the natural parent of a child thereby conceived, unless  
13 otherwise agreed to in a written, notarized statement signed by the  
14 sperm provider and the intended parent prior to conception by assisted  
15 reproduction.

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

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

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

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

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

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

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

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

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

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

8 New York Statutory Forms for Assisted Reproduction, Form 1:

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

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

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

31 I, \_\_\_\_\_ (print name of person not giving birth),  
32 intend to be a parent of a child that \_\_\_\_\_ (print name  
33 of person giving birth) will or has conceived through assisted reprod-  
34 uction using sperm and/or egg provision. I consent to the use of  
35 assisted reproduction by the person who will give birth. I INTEND to be  
36 a parent of the child conceived.

37 SIGNATURES

38 Intended parent who will give birth: \_\_\_\_\_ (print name)

39 \_\_\_\_\_  
40 (signature) \_\_\_\_\_ (date)

41 Intended parent who will not give birth: \_\_\_\_\_ (print name)

42 \_\_\_\_\_  
43 (signature) \_\_\_\_\_ (date)  
44 \_\_\_\_\_

45 NOTARY ACKNOWLEDGMENT

46 State of New York

47 County of ( )

48 On \_\_\_\_\_ before me,

49 (insert name and title of the officer)

50 personally appeared \_\_\_\_\_, who proved to me on the

51 basis of satisfactory evidence to be the person(s) whose name(s) is/are

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

8 Signature \_\_\_\_\_ (Seal)

9 New York Statutory Forms for Assisted Reproduction, Form 2:  
 10 Unmarried, Intended Parents Using Intended Parent's Sperm to Conceive  
 11 a Child

12 Use this form if: (1) Neither you nor the other person are married or  
 13 in a registered domestic partnership (including a registered domestic  
 14 partnership or civil union from another state); (2) one of you will give  
 15 birth to a child conceived through assisted reproduction using the  
 16 intended parent's sperm; and (3) you both intend to be parents of that  
 17 child. Do not use this form if you are conceiving using a person acting  
 18 as surrogate.

19 WARNING: If you do not sign this form, or a similar agreement, you may  
 20 be treated as a sperm provider if you conceive without having sexual  
 21 intercourse according to Section 2599-ii of the Public Health Law. The  
 22 laws about parentage of a child are complicated. You are strongly  
 23 encouraged to consult with an attorney about your rights.

24 This form demonstrates your intent to be parents of the child you plan  
 25 to conceive through assisted reproduction using sperm provision.

26 I, \_\_\_\_\_ (print name of parent giving birth), plan to  
 27 use assisted reproduction with another intended parent who is providing  
 28 sperm to conceive the child. I am not married and am not in a registered  
 29 domestic partnership (including a registered domestic partnership or  
 30 civil union from another jurisdiction), and I INTEND for the person  
 31 providing sperm to be a parent of the child to be conceived. I,  
 32 \_\_\_\_\_ (print name of parent providing sperm), plan to use  
 33 assisted reproduction to conceive a child using my sperm with the parent  
 34 giving birth. I am not married and am not in a registered domestic part-  
 35 nership (including a registered domestic partnership or civil union from  
 36 another jurisdiction), and I INTEND to be a parent of the child to be  
 37 conceived.

38 SIGNATURES

39 Intended parent giving birth: \_\_\_\_\_  
 40 (print name) \_\_\_\_\_ (signature) \_\_\_\_\_ (date)

41 Intended parent providing sperm: \_\_\_\_\_  
 42 (print name) \_\_\_\_\_ (signature) \_\_\_\_\_ (date)

44 NOTARY ACKNOWLEDGMENT

45 State of New York  
 46 County of ( \_\_\_\_\_ )

47 On \_\_\_\_\_ before me, \_\_\_\_\_ (insert  
 48 name and title of the \_\_\_\_\_ officer) personally appeared  
 49 \_\_\_\_\_, 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)

1 Sperm Donor: (print name)  
 2 (signature) (date) (If applicable) Egg Donor:  
 3 (print name) (signature)  
 4 (date) (If applicable)  
 5 Intended parent not giving birth: (print name)  
 6 (signature) (date)

7  
8 NOTARY ACKNOWLEDGMENT

9 State of New York

10 County of( )

11 On before me, (insert name and title  
 12 of the officer) personally appeared  
 13 \_\_\_\_\_, who proved to me on the basis of satisfac-  
 14 tory evidence to be the person(s) whose name(s) is/are subscribed to the  
 15 within instrument and acknowledged to me that he/she/they executed the  
 16 same in his/her/their authorized capacity, and that by his/her/their  
 17 signature(s) on the instrument the person(s), or the entity upon behalf  
 18 of which the person(s) acted, executed the instrument. I certify under  
 19 PENALTY OF PERJURY under the laws of the State of New York that the  
 20 foregoing paragraph is true and correct.

21 WITNESS my hand and official seal.

22 Signature (Seal)

23 § 2599-jj. Gamete provider identity disclosure. 1. For purposes of  
24 this section:

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

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

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

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

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

49 (b) An entity shall disclose the information collected under subdivi-  
50 sion one as provided in this section.

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

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



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

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

5 (ii) obtain a declaration in writing from the gamete provider regard-  
6 ing identity disclosure;

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

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

18 (b) An entity shall give a gamete provider the choice to sign a decla-  
19 ration, attested by a notary or witnessed, that does either of the  
20 following:

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

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

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

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

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

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

43 4. (a) Requests for a third-party gamete provider identifying informa-  
44 tion are to be submitted to the office of the assisted reproduction  
45 registrar.

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

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

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

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

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

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

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

28 § 11. Severability. If any clause, sentence, paragraph, section or  
29 part of this act shall be adjudged by any court of competent jurisdic-  
30 tion to be invalid and after exhaustion of all further judicial review,  
31 the judgment shall not affect, impair or invalidate the remainder there-  
32 of, but shall be confined in its operation to the clause, sentence,  
33 paragraph, section or part of this act directly involved in the contro-  
34 versy in which the judgment shall have been rendered.

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