

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:

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

ARTICLE 5-C

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

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

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

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

4. Surrogacy agreement (581-401 - 581-409)

5. Third-party gamete provision agreement (581-501 - 581-507)

6. Informed consent (581-601 - 581-604)

7. Payment to gamete providers and persons acting as surrogates (581-701 - 581-702)

8. Surrogates' bill of rights (581-801 - 581-807)

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

LBD14764-03-0

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

PART 1
GENERAL PROVISIONS

Section 581-101. Purpose.

581-102. Definitions.

§ 581-101. Purpose. The purpose of this article is to legally establish a child's relationship to their parents where the child is conceived through assisted reproduction, with third-party gametes, if applicable, and including children born through surrogacy, including genetic surrogacy. No fertilized egg, embryo or fetus shall have any independent rights under the laws of this state, nor shall any fertilized egg, embryo or fetus be viewed as a child under the laws of this state, nor shall any fertilized egg, embryo or fetus be viewed as a child under the laws of this state, nor shall any person providing any fertilized egg or embryo in order to establish another person's pregnancy thereby acquire any rights over that person's body.

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

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

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

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

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

1. intrauterine or vaginal insemination;

2. third-party gamete provision;

3. third-party embryo provision;

4. in vitro fertilization and transfer of embryos; and

5. intracytoplasmic sperm injection.

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

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

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-

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

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

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

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

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

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

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

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

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

PART 2

JUDGMENT OF PARENTAGE

Section 581-201. Judgment of parentage.

581-202. Acknowledgement of interim parental responsibility.

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

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

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

581-206. Inspection of records.

581-207. Jurisdiction, and exclusive continuing jurisdiction.

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

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

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

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

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

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

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

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

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

PART 4 SURROGACY AGREEMENT

Section 581-401. Surrogacy agreement authorized.

581-402. Eligibility to enter a surrogacy agreement.

581-403. Requirements of a surrogacy agreement.

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

581-405. Termination of a surrogacy agreement.

581-406. Parentage under a compliant surrogacy agreement.

581-407. Insufficient surrogacy agreement.

581-408. Absence of a surrogacy agreement.

581-409. Dispute as to a surrogacy agreement.

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

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

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

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, fertil-
18 ity 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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4135-b. Voluntary acknowledgments of ~~[paternity]~~ parentage; child born out of wedlock. 1. (a) Immediately preceding or following the in-hospital birth of a child to an unmarried ~~[woman]~~ person or to a person who gave birth to a child conceived through assisted reproduction, the person in charge of such hospital or his or her designated representative shall provide to the ~~[child's mother and]~~ unmarried person who gave birth to the child and the putative father, if such father is readily identifiable and available, or to the person who gave birth and the other intended parent of a child conceived through assisted reproduction if such person is readily identifiable and available, the documents and written instructions necessary for such mother and putative ~~[father]~~ persons to complete an acknowledgment of ~~[paternity]~~ parentage witnessed by two persons not related to the signatory. Such acknowledgment, if signed by both parties, at any time following the birth of a child, shall be filed with the registrar at the same time at which the certificate of live birth is filed, if possible, or anytime thereafter. Nothing herein shall be deemed to require the person in charge of such hospital or his or her designee to seek out or otherwise locate a putative father or intended parent of a child conceived through assisted reproduction who is not readily identifiable or available.

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

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

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

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

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

(i) The person giving birth to the child has not signed the acknowledgment of parentage;

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

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

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

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

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

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

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

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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 25-B

ASSISTED REPRODUCTION

Section 2599-cc. Assisted reproduction.

2599-dd. Third-party gamete provision.

2599-ee. Surrogacy.

2599-ff. Genetic surrogacy.

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

2599-hh. Central, confidential assisted reproduction registry.

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

2599-jj. Gamete provider identity disclosure.

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

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

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

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

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

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

1 provided on the website of the Human Fertilisation & Embryology Authori-
2 ty 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 titioner 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.

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

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

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

New York Statutory Forms for Assisted Reproduction, Form 1:

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

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

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

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

SIGNATURES

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

(signature) (date)

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

(signature) (date)

NOTARY ACKNOWLEDGMENT

State of New York

County of ()

On _____ before me,

(insert name and title of the officer)

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

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.