

# STATE OF NEW YORK

6832

2021-2022 Regular Sessions

## IN ASSEMBLY

April 12, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, the general business law, the public health law and the domestic relations law, in relation to surrogacy programs and arrangements

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

1 Section 1. Section 581-102 of the family court act, as added by  
2 section 1 of part L of chapter 56 of the laws of 2020, is amended to  
3 read as follows:  
4 § 581-102. Definitions. (a) "Assisted reproduction" means a method of  
5 causing pregnancy other than sexual intercourse and includes but is not  
6 limited to:  
7 1. intrauterine or vaginal insemination;  
8 2. donation of gametes;  
9 3. donation of embryos;  
10 4. in vitro fertilization and transfer of embryos; and  
11 5. intracytoplasmic sperm injection.  
12 (b) "Child" means a born individual of any age whose parentage may be  
13 determined under this act or other law.  
14 (c) "Compensation" means payment of any valuable consideration in  
15 excess of reasonable medical and ancillary costs.  
16 (d) "Donor" means an individual who does not intend to be a parent who  
17 produces gametes and provides them to another person, other than the  
18 individual's spouse, for use in assisted reproduction. The term does not  
19 include a person who is a parent under part three of this article. Donor  
20 also includes an individual who had dispositional control of an embryo  
21 or gametes who then transfers dispositional control and releases all  
22 present and future parental and inheritance rights and obligations to a  
23 resulting child.

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

LBD10517-02-1

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

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

9 (g) "Gamete" means a cell containing a haploid complement of DNA that  
10 has the potential to form an embryo when combined with another gamete.  
11 Sperm and eggs shall be considered gametes. A human gamete used or  
12 intended for reproduction may not contain nuclear DNA that has been  
13 deliberately altered, or nuclear DNA from one human combined with the  
14 cytoplasm or cytoplasmic DNA of another human being.

15 (h) "Health care practitioner" means an individual licensed or certi-  
16 fied under title eight of the education law, or a similar law of another  
17 state or country, acting within his or her scope of practice.

18 (i) "Independent escrow agent" means someone other than the parties to  
19 a surrogacy agreement and their attorneys. An independent escrow agent  
20 can, but need not, be a surrogacy program, provided such surrogacy  
21 program is owned [~~or managed~~] by an attorney licensed to practice law in  
22 the state of New York. If such independent escrow agent is not attorney  
23 owned, it shall be licensed, bonded and insured.

24 [~~(i) "Surrogacy agreement" is an agreement between at least one~~  
25 ~~intended parent and a person acting as surrogate intended to result in a~~  
26 ~~live birth where the child will be the legal child of the intended~~  
27 ~~parents.]~~

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

30 (k) "Intended parent" is an individual who manifests the intent to be  
31 legally bound as the parent of a child resulting from assisted reprod-  
32 uction or a surrogacy agreement, provided he or she meets the require-  
33 ments of this article.

34 (l) "Parent" as used in this article means an individual with a  
35 parent-child relationship created or recognized under this act or other  
36 law.

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

41 (n) "Person acting as surrogate" means an adult person, not an  
42 intended parent, who enters into a surrogacy agreement to bear a child  
43 who will be the legal child of the intended parent or parents so long as  
44 the person acting as surrogate has not provided the egg used to conceive  
45 the resulting child.

46 [~~(k) "Health care practitioner" means an individual licensed or certi-~~  
47 ~~fied under title eight of the education law, or a similar law of another~~  
48 ~~state or country, acting within his or her scope of practice.~~

49 [~~(l) "Intended parent" is an individual who manifests the intent to be~~  
50 ~~legally bound as the parent of a child resulting from assisted reprod-~~  
51 ~~uction or a surrogacy agreement provided he or she meets the require-~~  
52 ~~ments of this article.~~

53 [~~(m) "In vitro fertilization" means the formation of a human embryo~~  
54 ~~outside the human body.~~

1 ~~(n) "Parent" as used in this article means an individual with a~~  
2 ~~parent-child relationship created or recognized under this act or other~~  
3 ~~law.~~

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

8 (p) (o) "Record" means information inscribed in a tangible medium or  
9 stored in an electronic or other medium that is retrievable in perceiva-  
10 ble form.

11 [(q)] (p) "Retrieval" means the procurement of eggs or sperm from a  
12 gamete provider.

13 [(r)] (q) "Spouse" means an individual married to another, or who has  
14 a legal relationship entered into under the laws of the United States or  
15 of any state, local or foreign jurisdiction, which is substantially  
16 equivalent to a marriage, including a civil union or domestic partner-  
17 ship.

18 [(s)] (r) "State" means a state of the United States, the District of  
19 Columbia, Puerto Rico, the United States Virgin Islands, or any territo-  
20 ry or insular possession subject to the jurisdiction of the United  
21 States.

22 (s) "Surrogacy agreement" means an agreement between at least one  
23 intended parent and a person acting as surrogate intended to result in a  
24 live birth where the child will be the legal child of the intended  
25 parents.

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

28 § 2. Section 581-202 of the family court act, as added by section 1 of  
29 part L of chapter 56 of the laws of 2020, is amended to read as follows:

30 § 581-202. Proceeding for judgment of parentage of a child conceived  
31 through assisted reproduction. (a) A proceeding for a judgment of  
32 parentage with respect to a child conceived through assisted reproduc-  
33 tion may be commenced:

34 (1) if ~~the~~ an intended parent or child resides in New York state, in  
35 the county where the intended parent resides any time after pregnancy is  
36 achieved or in the county where the child was born or resides or in the  
37 county where the birth is scheduled to occur; or

38 (2) if ~~the~~ an intended parent ~~and~~ or child do not reside in New  
39 York state, in the county where the birth is scheduled to occur, up to  
40 ninety days after the birth of the child in the county where the child  
41 was born.

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

43 (c) Where a verified petition includes the following truthful state-  
44 ments, the court shall adjudicate the intended parent to be the parent  
45 of the child without requiring a hearing unless the court, in its  
46 discretion, determines a hearing to be necessary to address the truth-  
47 fulness of the statements:

48 (1) a statement that an intended parent or child has been a resident  
49 of the state for at least six months, or if an intended parent or child  
50 is not a New York state resident, that the child ~~will be or was~~ is  
51 scheduled to be born in ~~the~~ New York state or that the child was born  
52 in the state within ninety days of filing; and

53 (2) a statement from the gestating intended parent that the gestating  
54 intended parent became pregnant as a result of assisted reproduction;  
55 and

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

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

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

8 (1) [~~in the case of an anonymous donor or~~] where gametes or embryos  
9 have [~~previously~~] been [~~released~~] relinquished to a gamete or embryo  
10 storage facility or were donated in the presence of a health care prac-  
11 titioner, either:

12 (i) a statement or documentation from the gamete or embryo storage  
13 facility or health care practitioner stating or demonstrating that the  
14 donor or donors of such gametes or embryos [~~were anonymously donated or~~  
15 ~~had previously been released~~] relinquished all parental or proprietary  
16 interest to them; [or]

17 (ii) a record from the gamete or embryo donor or donors evidencing  
18 intent to relinquish all parental or proprietary interest in the gametes  
19 or embryos; or

20 (iii) clear and convincing evidence that the gamete or embryo donor  
21 intended to donate gametes or embryos anonymously or intended to release  
22 such gametes or embryos to a gamete or embryo storage facility or health  
23 care practitioner; [~~or~~]

24 (2) [~~in the case of a donation from a known donor, either: a.~~] Subpar-  
25 agraph one of this paragraph shall not apply where the person providing  
26 the gametes or embryos is the spouse of the intended parent;

27 (3) where the gametes or embryos were not relinquished to a gamete or  
28 embryo storage facility or donated in the presence of a health care  
29 practitioner, a record from the gamete or embryo donor acknowledging the  
30 donation and confirming that the donor [~~has~~] or donors have no parental  
31 or proprietary interest in the gametes or embryos. The record shall be  
32 signed by the [~~gestating~~] intended parent or parents and the gamete or  
33 embryo donor or donors. The record may be, but is not required to be,  
34 signed:

35 (i) before a notary public, or

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

37 (iii) before a health care practitioner; or

38 [~~b.~~] (4) clear and convincing evidence that the gamete or embryo donor  
39 agreed, prior to conception, with the [~~gestating~~] intended parent or  
40 parents that the donor [~~has~~] or donors would have no parental or propri-  
41 etary interest in the gametes or embryos.

42 (e) [~~(1)~~] In the absence of evidence pursuant to [~~paragraph two of~~  
43 ~~this~~] subdivision (d) of this section, notice shall be given to the  
44 donor at least twenty days prior to the date set for the proceeding to  
45 determine the existence of donative intent by delivery of a copy of the  
46 petition and notice pursuant to section three hundred eight of the civil  
47 practice law and rules. Such notice shall also be given to the gestating  
48 intended parent, if any, and the gestating intended parent's spouse, if  
49 any, each of whom shall be a necessary party. Upon a showing to the  
50 court, by affidavit or otherwise, on or before the date of the proceed-  
51 ing or within such further time as the court may allow, that personal  
52 service cannot be effected at the [~~donor's~~] last known address or  
53 addresses of the donor or donors, gestating intended parent, if any,  
54 and/or the gestating intended parent's spouse, if any, with reasonable  
55 effort, notice may be given, without prior court order therefore, at  
56 least twenty days prior to the proceeding by registered or certified

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

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

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

11 (g) Where the requirements of subdivision (c) of this section are met  
12 or where the court finds the intended parent or parents to be a parent  
13 under subdivision [~~(e)~~] (f) of this section, the court shall issue a  
14 judgment of parentage:

15 (1) declaring[~~, that~~] the intended parent or parents to be the legal  
16 parent or parents of the child immediately upon the birth of the child[~~,  
17 the intended parent or parents is or are the legal parent or parents of  
18 the child~~]; and

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

22 (3) if there is a donor or donors, ordering that [~~the~~] any donor is  
23 not a parent of the child; and

24 (4) ordering that:

25 (i) Pursuant to section two hundred fifty-four of the judiciary law,  
26 the clerk of the court shall transmit to the state commissioner of  
27 health, or for a person born in New York city, to the commissioner of  
28 health of the city of New York, on a form prescribed by the commission-  
29 er, a written notification of such entry together with such other facts  
30 as may assist in identifying the birth record of the person whose  
31 parentage was in issue and, if such person whose parentage has been  
32 determined is under eighteen years of age, the clerk shall also transmit  
33 forthwith to the registry operated by the department of social services  
34 pursuant to section three hundred seventy-two-c of the social services  
35 law a notification of such determination; and

36 (ii) Pursuant to section forty-one hundred thirty-eight of the public  
37 health law and NYC Public Health Code section 207.05 that upon receipt  
38 of a judgment of parentage the local registrar where a child is born  
39 will report the parentage of the child to the appropriate department of  
40 health in conformity with the court order. If an original birth certif-  
41 icate has already been issued, the appropriate department of health will  
42 amend the birth certificate in an expedited manner and seal the previ-  
43 ously issued birth certificate except that it may be rendered accessible  
44 to the child at eighteen years of age or the legal parent or parents.

45 § 3. Section 581-203 of the family court act, as added by section 1 of  
46 part L of chapter 56 of the laws of 2020, is amended to read as follows:

47 § 581-203. Proceeding for judgment of parentage of a child conceived  
48 pursuant to a surrogacy agreement. (a) The proceeding may be commenced  
49 (1) in any county where an intended parent resided any time after the  
50 surrogacy agreement was executed; (2) in the county where the child was  
51 born or resides or in the county where the birth is scheduled to occur;  
52 or (3) in the county where the surrogate resided any time after the  
53 surrogacy agreement was executed.

54 (b) The proceeding may be commenced at any time after [~~the surrogacy~~  
55 ~~agreement has been executed~~] pregnancy is achieved and the person acting  
56 as surrogate, the spouse of the person acting as surrogate, if any,

1 donors for whom there is not proof of donative intent as set forth in  
2 subdivision (d) of section 581-202 of this part, and all intended  
3 parents are necessary parties. The service provisions of subdivision  
4 (e) of section 581-202 of this title shall be applicable to donors enti-  
5 tled to notice pursuant to this provision.

6 (c) The petition for a judgment of parentage must be verified and  
7 include the following:

8 (1) a statement that the person acting as surrogate or at least one  
9 [~~of the~~] intended [~~parents~~] parent has been a resident of the state for  
10 at least six months at the time the surrogacy agreement was executed;  
11 and

12 (2) a certification from the attorney representing the intended parent  
13 or parents and the spouse of the person acting as a surrogate, if appli-  
14 cable, and the attorney representing the person acting as surrogate that  
15 the requirements of part four of this article have been met; and

16 (3) a statement from all parties to the surrogacy agreement that they  
17 knowingly and voluntarily entered into the surrogacy agreement and that  
18 the parties are jointly requesting the judgment of parentage.

19 (d) Where the court finds the statements required by subdivision (c)  
20 of this section to be true, the court shall issue a judgment of parent-  
21 age, without additional proceedings or documentation:

22 (1) declaring, that upon the birth of the child born during the term  
23 of the surrogacy agreement, the intended parent or parents are the only  
24 legal parent or parents of the child;

25 (2) declaring, that upon the birth of the child born during the term  
26 of the surrogacy agreement, the person acting as surrogate, and the  
27 spouse of the person acting as surrogate, if [~~any~~] applicable, is not  
28 the legal parent of the child;

29 (3) declaring that upon the birth of the child born during the term of  
30 the surrogacy agreement, [~~the~~] any donors, if [~~any~~] applicable, [~~are~~]  
31 not [~~the parents~~] a parent of the child;

32 (4) ordering the person acting as surrogate and the spouse of the  
33 person acting as surrogate, if any, to transfer the child to the  
34 intended parent or parents if this has not already occurred;

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

38 (6) ordering that:

39 (i) Pursuant to section two hundred fifty-four of the judiciary law,  
40 the clerk of the court shall transmit to the state commissioner of  
41 health, or for a person born in New York city, to the commissioner of  
42 health of the city of New York, on a form prescribed by the commission-  
43 er, a written notification of such entry together with such other facts  
44 as may assist in identifying the birth record of the person whose  
45 parentage was in issue and, if the person whose parentage has been  
46 determined is under eighteen years of age, the clerk shall also transmit  
47 to the registry operated by the department of social services pursuant  
48 to section three hundred seventy-two-c of the social services law a  
49 notification of the determination; and

50 (ii) Pursuant to section forty-one hundred thirty-eight of the public  
51 health law and NYC Public Health Code section 207.05 that upon receipt  
52 of a judgement of parentage the local registrar where a child is born  
53 will report the parentage of the child to the appropriate department of  
54 health in conformity with the court order. If an original birth certif-  
55 icate has already been issued, the appropriate department of health will  
56 amend the birth certificate in an expedited manner and seal the previ-

1 ously issued birth certificate except that it may be rendered accessible  
2 to the child at eighteen years of age or the legal parent or parents.

3 (e) In the event the certification required by paragraph two of subdi-  
4 vision (c) of this section cannot be made because of a technical or  
5 non-material deviation from the requirements of this article; the court  
6 may nevertheless enforce the agreement and issue a judgment of parentage  
7 if the court determines the agreement is in substantial compliance with  
8 the requirements of this article. In the event that any other require-  
9 ments of subdivision (c) of this section are not met, the court shall  
10 determine parentage according to part four of this article.

11 § 4. Section 581-205 of the family court act, as added by section 1 of  
12 part L of chapter 56 of the laws of 2020, is amended to read as follows:

13 § 581-205. Inspection of records. Court records relating to  
14 proceedings under this article shall be sealed, provided, however, that  
15 the office of temporary and disability assistance, a child support unit  
16 of a social services district or a child support agency of another state  
17 providing child support services pursuant to title IV-d of the federal  
18 social security act, when a party to a related support proceeding and to  
19 the extent necessary to provide child support services or for the admin-  
20 istration of the program pursuant to title IV-d of the federal social  
21 security act, may obtain a copy of a judgment of parentage. The parties  
22 to the proceeding and the child shall have the right to inspect and make  
23 copies of the entire court record, including, but not limited to, the  
24 name of the person acting as surrogate and any known ~~donors~~ donor.

25 § 5. Subdivision (a) of section 581-206 of the family court act, as  
26 added by section 1 of part L of chapter 56 of the laws of 2020, is  
27 amended to read as follows:

28 (a) Proceedings pursuant to this article may be instituted in ~~the~~  
29 New York state supreme ~~or~~ court, family court or surrogates court.

30 § 6. Subdivision (b) of section 581-303 of the family court act, as  
31 added by section 1 of part L of chapter 56 of the laws of 2020, is  
32 amended to read as follows:

33 (b) The court shall issue a judgment of parentage pursuant to this  
34 article upon application by any ~~participant~~ person authorized to file  
35 a petition pursuant to subdivision (c) of section 581-201 of this arti-  
36 cle.

37 § 7. Subdivision (d) of section 581-306 of the family court act, as  
38 added by section 1 of part L of chapter 56 of the laws of 2020, is  
39 amended to read as follows:

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

48 § 8. Section 581-402 of the family court act, as added by section 1 of  
49 part L of chapter 56 of the laws of 2020, is amended to read as follows:

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

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

1 (2) the person acting as surrogate: (i) is a United States citizen or  
2 a lawful permanent resident, and~~[, where at least one intended parent is~~  
3 ~~not]~~ (ii) has been a resident of New York state for six months~~[, was]~~ if  
4 neither intended parent has been a resident of New York state for at  
5 least six months;

6 (3) the person acting as surrogate has not provided the egg used to  
7 conceive the resulting child;

8 (4) the person acting as surrogate has completed a medical evaluation  
9 with a health care practitioner relating to the anticipated pregnancy.  
10 Such medical evaluation shall include a screening of the medical history  
11 of the potential surrogate including known health conditions that may  
12 pose risks to the potential surrogate or embryo during pregnancy;

13 (5) the person acting as surrogate has given informed consent for the  
14 surrogacy arrangement after the licensed health care practitioner inform  
15 them of the medical risks of surrogacy including the possibility of  
16 multiple births, risk of medications taken for the surrogacy, risk of  
17 pregnancy complications, psychological and psychosocial risks, and  
18 impacts on their personal lives;

19 (6) the person acting as surrogate, and the spouse of the person  
20 acting as surrogate, if applicable, have been represented throughout the  
21 contractual process and shall be represented throughout the duration of  
22 the ~~[contract and its execution]~~ surrogacy arrangement by independent  
23 legal counsel of their own choosing who is licensed to practice law in  
24 the state of New York which shall be paid for by the intended parent or  
25 parents, except that a person acting as surrogate who is receiving no  
26 compensation may waive the right to have the intended parent or parents  
27 pay the fee for such legal counsel. Where the ~~[intended parent or~~  
28 ~~parents are paying for the]~~ independent legal counsel of the person  
29 acting as surrogate, and the spouse of the person acting as surrogate,  
30 if applicable, is paid by the intended parent or parents, a separate  
31 retainer agreement shall be prepared clearly stating that such legal  
32 counsel will only represent the person acting as surrogate and the  
33 spouse of the person acting as surrogate, if applicable, in all matters  
34 pertaining to the surrogacy ~~[agreement]~~ arrangement, that such legal  
35 counsel will not offer legal advice to any other parties to the surroga-  
36 cy agreement, and that the attorney-client relationship lies with the  
37 person acting as surrogate and the spouse of the person acting as surro-  
38 gate, if applicable. The intended parent or parents shall not be  
39 required to pay the legal fees for the person acting as surrogate, and  
40 the spouse of the person acting as surrogate, if applicable, in  
41 connection with a litigated dispute between the parties unless otherwise  
42 ordered by an arbiter or court of competent jurisdiction;

43 (7) the person acting as surrogate has or the surrogacy agreement  
44 stipulates that the person acting as surrogate will obtain ~~[a comprehen-~~  
45 ~~sive]~~ health insurance ~~[policy]~~ coverage that takes effect prior to  
46 taking any medication or commencing treatment to further embryo transfer  
47 that covers ~~[preconception care, prenatal care, major medical treat-~~  
48 ~~ments, hospitalization, and behavioral health care, and the comprehen-~~  
49 ~~sive policy has a term that extends throughout the duration of the~~  
50 ~~expected pregnancy and for twelve months after the birth of the child, a~~  
51 ~~stillbirth, a miscarriage resulting in termination of pregnancy, or~~  
52 ~~termination of the pregnancy, the policy shall be paid for, whether~~  
53 ~~directly or through reimbursement or other means, by the intended parent~~  
54 ~~or parents on behalf of the person acting as surrogate pursuant to the~~  
55 ~~surrogacy agreement, except that a person acting as surrogate who is~~  
56 ~~receiving no compensation may waive the right to have the intended~~

~~parent or parents pay for the health insurance policy. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements];~~

(i) preconception medical expenses. The surrogacy agreement shall state that the intended parent or parents will be responsible for all medical costs of the person acting as surrogate associated with their pre-conception care including but not limited to medical and psychological screenings, medications, embryo transfer procedure, monitoring subsequent to the embryo transfer procedure and any complications associated with the foregoing. The intended parent or parents shall be responsible for the costs of any such complications either through insurance or by placing and maintaining sufficient funds in escrow to cover such expenses. If the surrogacy agreement is terminated before a pregnancy is achieved, such funds shall remain in escrow for a minimum period of six months from the date the surrogacy agreement is terminated;

(ii) medical expenses associated with pregnancy. The person acting as surrogate has, or the surrogacy agreement shall stipulate that the person acting as surrogate will obtain, comprehensive health insurance coverage, via one or more insurance policies, prior to or immediately upon confirmation of pregnancy that covers prenatal care, childbirth and postnatal care, and that such comprehensive coverage must be in place throughout the duration of the pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of the pregnancy, or termination of the pregnancy. The policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate to the extent that there is an additional cost to the person acting as surrogate for such health insurance coverage. The intended parent or parent shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of the pregnancy, or termination of the pregnancy; and

(iii) uncompensated surrogacy arrangements. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make the payments set forth in this section;

(8) the surrogacy agreement must provide that the intended parent or parents shall [~~procure and~~] pay for a life insurance, contractual liability or accidental death insurance policy for the person acting as surrogate that takes effect prior to taking any medication or the commencement of medical procedures to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars or the maximum amount the person acting as surrogate qualifies for if less than seven hundred fifty thousand dollars, and [~~has a term that extends~~] such coverage shall extend throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person

1 acting as surrogate's choosing. 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 life insurance, contractual liability or  
7 accidental death insurance policy; and

8 (9) the person acting as surrogate meets all other requirements deemed  
9 appropriate by the commissioner of health regarding the health of the  
10 prospective surrogate.

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

15 (1) at least one intended parent is:

16 (i) a United States citizen or a lawful permanent resident; and  
17 ~~[was]~~ (ii) has been a resident of New York state for at least six  
18 months if the person acting as surrogate has not been a resident of the  
19 state of New York for at least six months;

20 (2) ~~[the intended parent or parents has]~~ they have been represented  
21 throughout the contractual process and shall be represented throughout  
22 the duration of the ~~[contract and its execution]~~ surrogacy arrangement  
23 by independent legal counsel of his, her or their own choosing who is  
24 licensed to practice law in the state of New York; and

25 (3) ~~[he or she is]~~ they are an adult person who is not in a spousal  
26 relationship, or ~~[adult]~~ any two adults who are spouses together, or any  
27 two adults who are intimate partners together, except an adult in a  
28 spousal relationship is eligible to enter into an enforceable surrogacy  
29 agreement without ~~[his or her]~~ their spouse if:

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

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

36 (c) where the spouse of an intended parent is not a required party to  
37 the agreement, the spouse is not an intended parent and shall not have  
38 rights or obligations to the child.

39 § 9. Section 581-403 of the family court act, as added by section 1 of  
40 part L of chapter 56 of the laws of 2020, is amended to read as follows:

41 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement  
42 shall be deemed to have satisfied the requirements of this article and  
43 be enforceable if it meets the following requirements:

44 (a) it shall be in a ~~[signed]~~ record ~~[verified or executed before]~~  
45 with each signature either notarized or witnessed by two ~~[non-party~~  
46 ~~witnesses]~~ non-parties and signed by:

47 (1) each intended parent, and

48 (2) the person acting as surrogate, and the spouse of the person  
49 acting as surrogate, if ~~[any]~~ applicable, unless:

50 (i) ~~[the person acting as surrogate and the spouse of the person~~  
51 ~~acting as surrogate]~~ they are living separate and apart pursuant to a  
52 decree or judgment of separation or pursuant to a written agreement of  
53 separation subscribed by the parties thereto and acknowledged or proved  
54 in the form required to entitle a deed to be recorded; or

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

1 (b) it shall be executed prior to the person acting as surrogate  
2 taking any medication or the commencement of medical procedures in the  
3 furtherance of embryo transfer, provided the person acting as surrogate  
4 shall have provided informed consent to undergo such medical treatment  
5 or medical procedures prior to executing the agreement;

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

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

14 (e) the person acting as surrogate and the spouse of the person acting  
15 as surrogate, if applicable, and the intended parent or parents shall  
16 have been represented throughout the contractual process and the surro-  
17 gacy agreement states that they shall be represented throughout the  
18 duration of the [~~contract and its execution~~] surrogacy arrangement by  
19 separate, independent legal counsel of their own choosing;

20 (f) if the surrogacy agreement provides for the payment of compen-  
21 sation to the person acting as surrogate, the funds for base compen-  
22 sation and reasonable anticipated additional expenses shall have been  
23 placed in escrow with an independent escrow agent, who consents to the  
24 jurisdiction of New York courts for all proceedings related to the  
25 enforcement of the escrow agreement, prior to the person acting as  
26 surrogate commencing [~~with~~] any medical procedure other than medical  
27 evaluations necessary to determine the person acting as surrogate's  
28 eligibility;

29 (g) the surrogacy agreement must include information disclosing how  
30 the intended parent or parents will cover the medical expenses of the  
31 person acting as surrogate and the child. The surrogacy agreement shall  
32 specify the amount that the intended parent or parents shall place in  
33 escrow to cover such reasonable anticipated costs including precon-  
34 ception medical care and extending throughout the duration of the  
35 expected pregnancy, and for twelve months after the birth of the child,  
36 a stillbirth, a miscarriage resulting in the termination of the pregnan-  
37 cy, or termination of the pregnancy or until the surrogacy agreement is  
38 terminated if pregnancy is not achieved. If it is anticipated that  
39 comprehensive health care coverage [~~is~~] will be used to cover the  
40 medical expenses for the person acting as surrogate, the [~~disclosure~~  
41 ~~shall include a review and summary of the~~] health care policy provisions  
42 related to coverage and exclusions for the person acting as [~~surro-~~  
43 ~~gate's~~] surrogate shall be reviewed and summarized in relation to the  
44 anticipated pregnancy prior to such policy being used to cover any of  
45 the person acting as surrogate's medical expenses incurred pursuant to  
46 the surrogacy arrangement; and

47 (h) [~~it~~] the surrogacy arrangement shall include the following infor-  
48 mation:

49 (1) the date, city and state where the surrogacy agreement was  
50 executed;

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

53 (3) the first and last names of and contact information for the  
54 persons from which the gametes originated, if known. The agreement shall  
55 specify whether the gametes provided were eggs, sperm, or embryos;

1 (4) the name of and contact information for the licensed and regis-  
2 tered surrogacy program handling the surrogacy agreement, if any; and

3 (5) the name of and contact information for the attorney representing  
4 the person acting as surrogate, and the spouse of the person acting as  
5 surrogate, if applicable, and the attorney representing the intended  
6 parent or parents; and

7 (i) the surrogacy agreement must comply with all of the following  
8 terms:

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

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

13 (ii) the person acting as surrogate and the spouse of the person  
14 acting as surrogate, if applicable, agree to surrender custody of all  
15 resulting children to the intended parent or parents immediately upon  
16 birth;

17 (iii) the surrogacy agreement shall include the name of the attorney  
18 representing the person acting as surrogate and, if applicable, the  
19 spouse of the person acting as surrogate;

20 (iv) the surrogacy agreement must include an acknowledgement by the  
21 person acting as surrogate and the spouse of the person acting as surro-  
22 gate, if applicable, that they have received a copy of the Surrogate's  
23 Bill of Rights from their legal counsel;

24 (v) the surrogacy agreement must permit the person acting as surrogate  
25 to make all health and welfare decisions regarding themselves and their  
26 pregnancy including but not limited to, whether to consent to a cesarean  
27 section or multiple embryo transfer, and notwithstanding any other  
28 provisions in this chapter, provisions in the agreement to the contrary  
29 are void and unenforceable. This article does not diminish the right of  
30 the person acting as surrogate to terminate or continue a pregnancy;

31 (vi) the surrogacy agreement shall permit the person acting as a  
32 surrogate to utilize the services of a health care practitioner of the  
33 person's choosing;

34 (vii) the surrogacy agreement shall not limit the right of the person  
35 acting as surrogate to terminate or continue the pregnancy or reduce or  
36 retain the number of fetuses or embryos the person is carrying;

37 (viii) the surrogacy agreement shall provide for the right of the  
38 person acting as surrogate, upon request, to obtain counseling to  
39 address issues resulting from the person's participation in the surroga-  
40 cy [~~agreement~~] arrangement, including, but not limited to, counseling  
41 following delivery. The cost of that counseling shall be paid by the  
42 intended parent or parents;

43 (ix) the surrogacy agreement must include a notice that any compen-  
44 sation received pursuant to the agreement may affect the eligibility of  
45 the person acting as [~~surrogate's ability~~] surrogate and the person  
46 acting as surrogate's spouse, if applicable, for public benefits or the  
47 amount of such benefits; and

48 (x) the surrogacy agreement shall provide that, upon the person acting  
49 as surrogate's request, the intended parent or parents [~~have or will~~  
50 ~~procure and~~] shall pay for a disability insurance policy [~~for~~] or other  
51 insurance policy to cover any lost wages incurred by the person acting  
52 as surrogate in connection with their participation in the surrogacy  
53 arrangement; the person acting as surrogate may designate the benefi-  
54 ciary of the person's choosing. In the event that such insurance coverage  
55 is not available, the intended parent or parents shall reimburse the

1 person acting as surrogate for any lost wages they incur in connection  
2 with their participation in the surrogacy arrangement.

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

4 (i) the intended parent or parents agree to accept custody of all  
5 resulting children immediately upon birth regardless of number, gender,  
6 or mental or physical condition and regardless of whether the intended  
7 embryo or embryos was or were transferred due to a laboratory error  
8 without diminishing the rights, if any, of anyone claiming to have a  
9 superior parental interest in the child; and

10 (ii) the intended parent or parents [~~agree to~~] shall assume responsi-  
11 bility for the support of all resulting children immediately upon birth;  
12 and

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

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

18 (v) the intended parent or parents [~~agree to~~] shall execute a will,  
19 prior to the embryo transfer, designating a guardian for all resulting  
20 children and authorizing their executor to perform the [~~intended~~  
21 ~~parent's or parents'~~] obligations of the intended parent or parents  
22 pursuant to the surrogacy agreement.

23 § 10. Subdivision (b) of section 581-404 of the family court act, as  
24 added by section 1 of part L of chapter 56 of the laws of 2020, is  
25 amended to read as follows:

26 (b) The subsequent separation or divorce of the intended parents does  
27 not affect the rights, duties and responsibilities of the intended  
28 parents as outlined in the surrogacy agreement. After the execution of a  
29 surrogacy agreement under this article, the subsequent spousal relation-  
30 ship of the intended parent does not affect the validity of a surrogacy  
31 agreement, and the consent of the spouse of [~~the~~] an intended parent to  
32 the agreement shall not be required.

33 § 11. Section 581-405 of the family court act, as added by section 1  
34 of part L of chapter 56 of the laws of 2020, is amended to read as  
35 follows:

36 § 581-405. Termination of surrogacy agreement. After the execution of  
37 a surrogacy agreement but before the person acting as surrogate becomes  
38 pregnant by means of assisted reproduction, the person acting as surro-  
39 gate, the spouse of the person acting as surrogate, if applicable, or  
40 any intended parent may terminate the surrogacy agreement by giving  
41 notice of termination in a record to all other parties. Upon proper  
42 termination of the surrogacy agreement the parties are released from all  
43 obligations recited in the surrogacy agreement except that the intended  
44 parent or parents [~~remains~~] shall remain responsible for all [~~expenses~~  
45 ~~that are reimbursable~~] lost wages and other financial obligations which  
46 have accrued under the agreement [~~which have been incurred by the person~~  
47 ~~acting as surrogate~~] through the date of termination. If the intended  
48 parent or parents terminate the surrogacy agreement pursuant to this  
49 section after the person acting as surrogate has taken any medication or  
50 commenced treatment to further embryo transfer, such intended parent or  
51 parents shall be responsible for paying [~~for or reimbursing the person~~  
52 ~~acting as surrogate for all co payments, deductibles,~~] any other out-of-  
53 pocket medical costs[, ~~and any other economic losses~~] incurred within  
54 twelve months of the termination of the agreement [~~and~~] which, as docu-  
55 mented by a health care practitioner, are associated with taking such  
56 medication or undertaking such treatment. Unless the agreement provides

1 otherwise, the person acting as surrogate is entitled to keep all  
2 payments received and obtain all payments to which the person is enti-  
3 tled up until the date of termination of the agreement. Neither a  
4 person acting as surrogate nor the spouse of the person acting as surro-  
5 gate, if [~~any~~] applicable, is liable to the intended parent or parents  
6 for terminating a surrogacy agreement as provided in this section.

7 § 12. Section 581-406 of the family court act, as added by section 1  
8 of part L of chapter 56 of the laws of 2020, is amended to read as  
9 follows:

10 § 581-406. Parentage under compliant surrogacy agreement. Upon the  
11 birth of a child conceived by assisted reproduction under a surrogacy  
12 agreement that complies with this part, each intended parent is, by  
13 operation of law, a parent of the child and neither the person acting as  
14 [~~a~~] surrogate nor the person's spouse, if [~~any~~] applicable, is a parent  
15 of the child.

16 § 13. Section 581-409 of the family court act, as added by section 1  
17 of part L of chapter 56 of the laws of 2020, is amended to read as  
18 follows:

19 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is  
20 related to a surrogacy agreement other than disputes as to parentage,  
21 which are not resolved through alternative dispute resolution methods  
22 shall be resolved by the supreme court, which shall determine the  
23 respective rights and obligations of the parties[~~, in~~]. In any proceed-  
24 ing initiated pursuant to this section, the court may, at its  
25 discretion, authorize the use of conferencing or mediation at any point  
26 in the proceedings.

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

31 ~~(c) There shall be no specific performance remedy available for a~~  
32 ~~breach] or subdivisions (c) or (d) of this section, if the agreement is~~  
33 ~~breached by the person acting as surrogate or one or more intended~~  
34 ~~parent, the non-breaching party shall be entitled to all remedies avail-~~  
35 ~~able at law or in equity in any dispute related to the surrogacy agree-~~  
36 ~~ment.~~

37 (c) Specific performance shall not be a remedy available for a breach  
38 by a person acting as surrogate of a provision in the surrogacy agree-  
39 ment that the person acting as surrogate be impregnated, agree to a  
40 multiple embryo transfer, terminate or not terminate a pregnancy, or  
41 submit to medical procedures including a cesarean section.

42 (d) If any intended parent is determined to be the parent of the  
43 child, specific performance is a remedy available for: (1) breach of the  
44 surrogacy agreement by a person acting as surrogate which prevents the  
45 intended parent or parents from exercising the full rights of parentage  
46 immediately upon the birth of the child; or (2) breach by the intended  
47 parent or parents which prevents their acceptance of the duties of  
48 parentage immediately upon the birth of the child.

49 (e) In any proceeding initiated pursuant to this section, where the  
50 supreme court determines that the dispute involves both contractual and  
51 parentage issues, the court may order that the portion of the  
52 proceedings raising parentage issues may be transferred to the family or  
53 surrogate's court.

54 § 14. Section 581-502 of the family court act, as added by section 1  
55 of part L of chapter 56 of the laws of 2020, is amended to read as  
56 follows:

1 § 581-502. Compensation. (a) Compensation may be paid to a donor or  
2 person acting as surrogate based on medical risks, physical discomfort,  
3 inconvenience and the responsibilities they are undertaking in  
4 connection with their participation in the assisted reproduction. Under  
5 no circumstances may compensation be paid to purchase gametes or embryos  
6 or for the release of a parental interest in a child.

7 (b) The compensation, if any, paid to a donor or person acting as  
8 surrogate must be reasonable and negotiated in good faith between the  
9 parties, and said payments to a person acting as surrogate shall not  
10 exceed the duration of the pregnancy and a minimum recuperative period  
11 of ~~[up to]~~ eight weeks after the birth of any resulting children.

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

14 (d) Compensation may not be conditioned on actual genotypic or pheno-  
15 typic characteristics of the donor or donors or of any resulting chil-  
16 dren.

17 (e) Compensation to ~~[an]~~ any embryo donor shall be limited to storage  
18 fees, transportation costs and attorneys' fees.

19 § 15. Section 581-601 of the family court act, as added by section 1  
20 of part L of chapter 56 of the laws of 2020, is amended to read as  
21 follows:

22 § 581-601. Applicability. The rights enumerated in this part shall  
23 apply to any person acting as surrogate ~~[in]~~ under the laws of this  
24 state, notwithstanding any surrogacy agreement, judgment of parentage,  
25 memorandum of understanding, verbal agreement or contract to the contra-  
26 ry. Except as otherwise provided by law, any written or verbal agreement  
27 purporting to waive or limit any of the rights in this part is void as  
28 against public policy. The rights enumerated in this part are not exclu-  
29 sive, and are in addition to any other rights provided by law, regu-  
30 lation, or a surrogacy agreement that meets the requirements of this  
31 article.

32 § 16. Section 581-603 of the family court act, as added by section 1  
33 of part L of chapter 56 of the laws of 2020, is amended to read as  
34 follows:

35 § 581-603. Independent legal counsel. A person acting as surrogate,  
36 and the spouse of the person acting as surrogate, if applicable, has the  
37 right to be represented throughout the contractual process and the dura-  
38 tion of the surrogacy ~~[agreement and its execution]~~ arrangement by inde-  
39 pendent legal counsel of their own choosing who is licensed to practice  
40 law in the state of New York, to be paid for by the intended parent or  
41 parents. The intended parent or parents shall not be required to pay the  
42 legal fees for the person acting as surrogate, and the spouse of the  
43 person acting as surrogate, if applicable, in connection with a liti-  
44 gated dispute between the parties unless otherwise ordered by an arbiter  
45 or court of competent jurisdiction.

46 § 17. Section 581-604 of the family court act, as added by section 1  
47 of part L of chapter 56 of the laws of 2020, is amended to read as  
48 follows:

49 § 581-604. Health insurance and medical costs. A person acting as  
50 surrogate has the right to have a comprehensive health insurance policy  
51 that covers preconception ~~[care, prenatal care, major medical treat-~~  
52 ~~ments, hospitalization and behavioral health care]~~ medical expenses and  
53 medical expenses associated with the pregnancy for a term that extends  
54 throughout the duration of the expected pregnancy and for twelve months  
55 after the birth of the child, a stillbirth, a miscarriage resulting in  
56 termination of pregnancy, or termination of the pregnancy, to be paid

1 for by the intended parent or parents. [~~The intended parent or parents~~  
2 ~~shall also pay for or reimburse the person acting as surrogate for all~~  
3 ~~co-payments, deductibles and any other out-of-pocket medical costs asso-~~  
4 ~~ciated with pregnancy, childbirth, or postnatal care that accrue~~  
5 ~~through~~] In addition, a person acting as a surrogate shall have the  
6 right to have the intended parent or parents pay for all of their  
7 medical expenses incurred in connection with the surrogacy arrangement,  
8 continuing through the duration of the expected pregnancy and for twelve  
9 months after the birth of the child, a stillbirth, a miscarriage result-  
10 ing in the termination of pregnancy, or the termination of the pregnan-  
11 cy. A person acting as a surrogate who is receiving no compensation may  
12 waive the right to have the intended parent or parents make such  
13 payments or reimbursements.

14 § 18. Section 581-605 of the family court act, as added by section 1  
15 of part L of chapter 56 of the laws of 2020, is amended to read as  
16 follows:

17 § 581-605. Counseling. A person acting as surrogate has the right to  
18 [~~obtain a comprehensive health insurance policy that covers behavioral~~  
19 ~~health care and will cover the cost of psychological~~] mental health  
20 counseling to address issues resulting from their participation in [a]  
21 the surrogacy [and such policy] arrangement, which shall be paid for by  
22 an insurance policy or by the intended parent or parents.

23 § 19. Section 581-606 of the family court act, as added by section 1  
24 of part L of chapter 56 of the laws of 2020, is amended to read as  
25 follows:

26 § 581-606. Life insurance, contractual liability, or accidental death  
27 insurance policy. A person acting as surrogate has the right to be  
28 provided a life insurance, contractual liability or accidental death  
29 insurance policy that takes effect prior to taking any medication or  
30 commencement of treatment to further embryo transfer, provides a minimum  
31 benefit of seven hundred fifty thousand dollars, or the maximum amount  
32 the person acting as surrogate [~~qualifying~~] qualifies for [~~it~~] if less  
33 than seven hundred fifty thousand dollars, and [~~has a term that extends~~]  
34 such coverage shall extend throughout the duration of the expected preg-  
35 nancy and for twelve months after the birth of the child, a stillbirth,  
36 a miscarriage resulting in termination of pregnancy, or termination of  
37 the pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person  
38 acting as surrogate's choosing, to be paid for by the intended parent or  
39 parents.

40 § 20. The family court act is amended by adding a new section 581-705  
41 to read as follows:

42 § 581-705. A court adjudicating the parentage of a child conceived  
43 through assisted reproduction or adjudicating the enforceability of an  
44 embryo disposition agreement may apply to section 581-202 and part three  
45 of this article retroactively. The participants in a surrogacy arrange-  
46 ment that involved the payment of compensation prior to February  
47 fifteenth, two thousand twenty-one shall not be eligible to receive a  
48 judgment of parentage pursuant to section 581-203 or section 581-406 of  
49 this article, but shall be entitled to seek a judgment of parentage  
50 pursuant to section 581-407 of this article.

51 § 21. Paragraph (a) of subdivision 2 of section 123 of the domestic  
52 relations law, as amended by section 5 of part L of chapter 56 of the  
53 laws of 2020, is amended to read as follows:

54 (a) Any party to a genetic surrogate parenting agreement or the spouse  
55 of any [~~part~~] party to a genetic surrogate parenting agreement who

1 violate this section shall be subject to a civil penalty not to exceed  
2 five hundred dollars.

3 § 22. Subdivision (c) of section 1400 of the general business law, as  
4 added by section 11 of part L of chapter 56 of the laws of 2020, is  
5 amended to read as follows:

6 (c) "Surrogacy program" does not include any party to a surrogacy  
7 agreement or any person licensed to practice law and representing a  
8 party to the surrogacy agreement, but does include and is not limited to  
9 any agency, agent, business, or individual engaged in, arranging, or  
10 facilitating transactions contemplated by a surrogacy agreement, regard-  
11 less of whether such agreement ultimately comports with the requirements  
12 of article five-C of the family court act. Any person licensed to prac-  
13 tice law shall be deemed a surrogacy program only in those cases where  
14 such person is providing matching services to the intended parent or  
15 parents and the person acting as a surrogate.

16 § 23. Section 1401 of the general business law, as added by section 11  
17 of part L of chapter 56 of the laws of 2020, is amended to read as  
18 follows:

19 § 1401. Surrogacy programs regulated under this article. The  
20 provisions of this article apply to surrogacy programs arranging or  
21 facilitating transactions contemplated by a surrogacy agreement, regard-  
22 less of whether such agreement ultimately comports with the requirements  
23 under part four of article five-C of the family court act if:

24 (a) The surrogacy program does business in New York state; or

25 (b) A person acting as surrogate who is party to a surrogacy agreement  
26 resides in New York state [~~during the term~~] at the time of the surrogacy  
27 agreement[~~, or~~

28 ~~(c) Any medical procedures under the surrogacy agreement are performed~~  
29 ~~in New York state] is executed.~~

30 § 24. Subdivisions (a) and (f) of section 1403 of the general business  
31 law, as added by section 11 of part L of chapter 56 of the laws of 2020,  
32 are amended to read as follows:

33 (a) Shall keep all funds paid by or on behalf of the intended parent  
34 or parents other than funds paid to the surrogacy program for its fees,  
35 in an escrow account separate from its operating accounts; and

36 (f) Shall be licensed to operate in New York state pursuant to regu-  
37 lations promulgated by the department of health in consultation with the  
38 department of financial services[~~, once such regulations are promulgated~~  
39 ~~and become effective~~]; and

40 § 25. Subdivision 1 of section 1404 of the general business law, as  
41 added by section 11 of part L of chapter 56 of the laws of 2020, is  
42 amended to read as follows:

43 1. The department of health, in consultation with the department of  
44 financial services, shall promulgate rules and regulations to implement  
45 the requirements of this article regarding surrogacy programs and  
46 assisted reproduction service providers in a manner that ensures the  
47 safety and health of gamete providers and persons serving as surrogates.  
48 Such regulations shall:

49 (a) Require surrogacy programs to monitor compliance with [~~surrogacy~~  
50 ~~agreements~~] eligibility [~~and requirements in state law~~] criteria and for  
51 the intended parents and persons acting as surrogates under this  
52 article; and

53 (b) Require the [~~surrogacy programs and~~] assisted reproduction service  
54 providers to administer informed consent procedures that comply with  
55 regulations promulgated by the department of health under section twenty-  
56 five hundred ninety-nine-cc of the public health law.

1 § 26. The opening paragraph of paragraph (c) of subdivision 1 of  
2 section 2599-cc of the public health law, as added by section 12 of part  
3 L of chapter 56 of the laws of 2020, is amended to read as follows:  
4 the establishment of a voluntary central tracking registry of persons  
5 acting as surrogates, as reported by [~~surrogacy programs licensed by the~~  
6 ~~department pursuant to article forty-four of the general business law~~  
7 assisted reproduction service providers upon the affirmative consent of  
8 a person acting as surrogate. Such registry shall provide a means for  
9 gathering and maintaining accurate information on the:  
10 § 27. This act shall take effect immediately.