

STATE OF NEW YORK

6386

2021-2022 Regular Sessions

IN SENATE

April 26, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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.

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

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

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

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

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

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

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

(k) "Intended parent" is an individual who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a surrogacy agreement, provided he or she meets the requirements of this article.

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

(m) "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.

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

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

~~[(l) "Intended parent" is an individual who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a surrogacy agreement provided he or she meets the requirements of this article.]~~

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

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

~~(o) "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.~~

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

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

~~(r)~~ (q) "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.

~~(s)~~ (r) "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.

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

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

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

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

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

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

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

(c) Where a verified petition includes the following truthful statements, the court shall adjudicate the intended parent to be the parent of the child without requiring a hearing unless the court, in its discretion, determines a hearing to be necessary to address the truthfulness of the statements:

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

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

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

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

(d) The following shall be deemed sufficient proof of a donor's donative intent for purposes of this section:

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

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

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

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

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

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

(i) before a notary public, or

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

(iii) before a health care practitioner; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) ordering that:

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

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

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

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

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

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

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

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

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

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

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

(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 him or herself of legal rights and dispositional control may not be declared to be a parent for any purpose without his or her consent. The intended parent awarded legal rights and dispositional control of the embryos shall, in this instance, be declared to be the only parent of the child.

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

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

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

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

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

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

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

(6) the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, have been represented throughout the contractual process and shall be represented throughout the duration of the ~~[contract and its execution]~~ surrogacy arrangement by independent legal counsel of their own choosing who is licensed to practice law in the state of New York which shall be paid for by the intended parent or parents, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay the fee for such legal counsel. Where the ~~[intended parent or parents are paying for the]~~ independent legal counsel of the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, is paid by the intended parent or parents, a separate retainer agreement shall be prepared clearly stating that such legal counsel will only represent the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, in all matters pertaining to the surrogacy ~~[agreement]~~ arrangement, that such legal counsel will not offer legal advice to any other parties to the surrogacy agreement, and that the attorney-client relationship lies with the person acting as surrogate and the spouse of the person acting as surrogate, if applicable. The intended parent or parents shall not be required to pay the legal fees for the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, in connection with a litigated dispute between the parties unless otherwise ordered by an arbiter or court of competent jurisdiction;

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

~~parent or parents pay for the health insurance policy. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Compensation may not be conditioned on actual genotypic or phenotypic characteristics of the donor or donors or of any resulting children.

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

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

§ 581-601. Applicability. The rights enumerated in this part shall apply to any person acting as surrogate ~~[in]~~ under the laws of this state, notwithstanding any surrogacy agreement, judgment of parentage, memorandum of understanding, verbal agreement or contract to the contrary. Except as otherwise provided by law, any written or verbal agreement purporting to waive or limit any of the rights in this part is void as against public policy. The rights enumerated in this part are not exclusive, and are in addition to any other rights provided by law, regulation, or a surrogacy agreement that meets the requirements of this article.

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

§ 581-603. Independent legal counsel. A person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, has the right to be represented throughout the contractual process and the duration of the surrogacy ~~[agreement and its execution]~~ arrangement by independent legal counsel of their own choosing who is licensed to practice law in the state of New York, to be paid for by the intended parent or parents. The intended parent or parents shall not be required to pay the legal fees for the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, in connection with a litigated dispute between the parties unless otherwise ordered by an arbiter or court of competent jurisdiction.

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

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

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 twen-
56 ty-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.