STATE OF NEW YORK

6832--B

2021-2022 Regular Sessions

IN ASSEMBLY

April 12, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Section 581-102 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:

§ 581-102. Definitions. (a) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse and includes but is not limited to:

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

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

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

(d) "Donor" means an individual who does not intend to be a parent who produces gametes and provides them to another person, other than the individual's spouse, for use in assisted reproduction. The term does not include a person who is a parent under part three of this article. Donor also includes an individual who had dispositional control of an embryo

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

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or gametes who then transfers dispositional control and releases all present and future parental and inheritance rights and obligations to a resulting child.

(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 **an** attorney owned **surrogacy program**, 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 intended to occur; or

(2) if [~~the~~] neither an intended parent [~~and~~] nor the child [~~do not~~] reside in New York state, 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 petition includes the following truthful~~] the court finds the following statements in the petition to be true, the court shall adjudicate the intended parent or parents to be the parent or parents of the child without the need for additional proceedings or documentation:

(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 intended 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.

The court may, in its discretion, dispense with testimony to establish the truthfulness of the statements.

(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.~~] **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, either:**

(i) a record from the gamete or embryo donor acknowledging the donation and confirming that the donor [~~has~~] **or donors shall 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[~~. The record may be, but is not required to be, signed~~] **or donors**:

[~~(i)~~] **(A)** before a notary public, or

[~~(ii)~~] **(B)** before two witnesses who are not the intended parents, or

[~~(iii)~~] **(C)** before a health care practitioner; or

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

(3) This subdivision shall not apply where the person providing the gametes or embryos is the spouse of the intended parent.

(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. **If an intended parent or an intended parent's spouse is not a petitioner, such notice shall also be given to such person who 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, and/or the non-petitioning intended parent, 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 mail directed to [~~the donor's~~] **such** last known address **or addresses**. Notice by publication shall not be required to be given to [~~a donor~~] **anyone** entitled to notice pursuant to the provisions of this section.

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

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

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

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

(2) 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

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

(4) ordering that:

(i) [~~Pursuant~~] **The hospital birth registrar shall report the parentage of the child on the record of live birth in conformity with the judgment of parentage, if the judgment of parentage is issued before the birth of the child; and**

(ii) If a change to the child's birth certificate is necessitated by the judgment of parentage, then 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 such person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit forthwith 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 such determination; and

[~~(ii)~~] **(iii)** 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 judgment 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 previously issued birth certificate except that it may be rendered accessible to the child at eighteen years of age or the legal parent or parents**; and**

(5) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner or petitioners, within seven days of such birth, to provide the court with notification thereof, together with

such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts. The court shall thereafter issue an amended judgment of parentage that includes the child's name as it appears on the child's birth certificate and the child's date of birth.

§ 3. Section 581-203 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:

§ 581-203. Proceeding for judgment of parentage of a child conceived pursuant to a surrogacy agreement. (a) The proceeding may be commenced (1) in any county where an intended parent resided any time after the surrogacy agreement was executed; (2) in the county where the child was born or resides or in the county where the birth is intended to occur; [~~or~~] (3) in the county where the surrogate resided any time after the surrogacy agreement was executed; or (4) in the county where the surrogacy program, if any, has its principal place of business, if that is within the state of New York.

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

(4) a copy of the executed surrogacy agreement.

(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~~] a legal parent of the child;

(3) declaring that upon the birth of the child born during the term of the surrogacy agreement, [~~the donors~~] any donor, if [~~any~~] applicable, [~~are~~] is 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~~] **The hospital birth registrar shall report the parentage of the child on the record of live birth in conformity with the judgment of parentage, if the judgment of parentage is issued before the birth of the child; and**

(ii) If a change to the child's birth certificate is necessitated by the judgment of parentage, then 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)~~] **(iii)** 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 previously issued birth certificate except that it may be rendered accessible to the child at eighteen years of age or the legal parent or parents**; and**

(7) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner or petitioners, within seven days of such birth, to provide the court with notification thereof, together with such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts. The court shall thereafter issue an amended judgment of parentage that includes the child's name as it appears on the child's birth certificate and the child's date of birth.

(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 admin-

istration 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. The county clerk or the clerk of the surrogate's or family court shall not display the surname of the child or parties in any document, index, minutes or other record available to the public.

§ 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. The family court act is amended by adding a new section 581-207 to read as follows:

§ 581-207. Certified copy of judgment of parentage. Upon issuing a judgment of parentage pursuant to section 581-202 or 581-203 of this article, the issuing court shall provide a certified copy of such judgment to the intended parent or parents.

§ 7. 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.

§ 8. Paragraph 3 of subdivision (a) and 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, are amended to read as follows:

(3) where the intended parents are married, transfer of legal rights and dispositional control occurs only upon: (i) living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or (ii) living separate and apart at least three years prior to execution of the agreement; or (iii) divorce; or (iv) death.

(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.

§ 9. 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 prior and 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 after the person acting as surrogate has taken any medication or commenced treatment to further embryo transfer but before 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 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 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 it is 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 acting as surrogate's choosing. 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 life insurance**, contractual liability or accidental death insurance** policy; and

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

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

(1) at least one intended parent is**:**

(i) a United States citizen or a lawful permanent resident**;** and

[~~was~~] **(ii) has been** a resident of New York state for at least six months **if the person acting as surrogate has not been a resident of the state of New York for at least six months**;

(2) [~~the intended parent or parents has~~] **they 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 his, her or their own choosing who is licensed to practice law in the state of New York; and

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

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

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

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

§ 10. Section 581-403 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:

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

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

(1) each intended parent, and

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

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

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

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

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

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

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

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

(g) the surrogacy agreement must include information disclosing how the intended parent or parents will cover the medical expenses of the person acting as surrogate and the child. **The surrogacy agreement shall specify the amount that the intended parent or parents shall place in escrow to cover such reasonable anticipated costs including preconception medical care and extending throughout the duration of the expected pregnancy, and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in the termination of the pregnancy, or termination of the pregnancy or until the surrogacy agreement is terminated if pregnancy is not achieved.** If **it is anticipated that** comprehensive health care coverage [~~is~~] **will be** used to cover the medical expenses **for the person acting as surrogate**, the [~~disclosure shall include a review and summary of the~~] health care policy provisions related to coverage and exclusions for the person acting as [~~surrogate's~~] **surrogate shall be reviewed and summarized in relation to the anticipated** pregnancy **prior to such policy being used to cover any of the person acting as surrogate's medical expenses incurred pursuant to the surrogacy arrangement**; and

(h) [~~it~~] **the surrogacy agreement** shall include the following information:

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

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

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

(4) the name of and contact information for the licensed and registered surrogacy program handling the surrogacy [~~agreement~~] **arrangement, if any**; and

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

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

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

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

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

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

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

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

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

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

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

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

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

person acting as surrogate for any lost wages the person acting as surrogate incurs in connection with their participation in the surrogacy arrangement.

(2) As to the intended parent or parents:

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

(ii) the intended parent or parents [~~agree to~~] shall assume responsibility for the support of all resulting children immediately upon birth; and

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

(iv) the surrogacy agreement shall provide that the rights and obligations of the intended parent or parents under the surrogacy agreement are not assignable; and

(v) the intended parent or parents [~~agree to~~] shall execute a will, prior to the embryo transfer, designating a guardian for all resulting children and authorizing their executor to perform the [~~intended parent's or parents'~~] obligations of the intended parent or parents pursuant to the surrogacy agreement, including filing a proceeding for a judgment of parentage for a child conceived pursuant to a surrogacy agreement pursuant to section 581-203 of this article if there is no intended parent living.

§ 11. Subdivision (b) of section 581-404 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 subsequent separation or divorce of the intended parents does not affect the rights, duties and responsibilities of the intended parents as outlined in the surrogacy agreement. After the execution of a surrogacy agreement under this article, the subsequent spousal relationship of the intended parent does not affect the validity of a surrogacy agreement, and the consent of the new spouse of [~~the~~] an intended parent to the agreement shall not be required.

§ 12. Section 581-405 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:

§ 581-405. Termination of surrogacy agreement. After the execution of a surrogacy agreement but before the [~~person acting as surrogate becomes pregnant by means of assisted reproduction,~~] embryo transfer occurs or after an unsuccessful embryo transfer, the person acting as surrogate, the spouse of the person acting as surrogate, if applicable, or any intended parent may terminate the surrogacy agreement by giving notice of termination in a record to all other parties. Upon proper termination of the surrogacy agreement the parties are released from all obligations recited in the surrogacy agreement except that the intended parent or parents [~~remains~~] shall remain responsible for all [~~expenses that are reimbursable~~] lost wages and other financial obligations which have accrued under the agreement [~~which have been incurred by the person acting as surrogate~~] through the date of termination. If the intended parent or parents terminate the surrogacy agreement pursuant to this section after the person acting as surrogate has taken any medication or commenced treatment to further embryo transfer, such intended parent or parents shall be responsible for paying [~~for or reimbursing the person~~

~~acting as surrogate for all co-payments, deductibles,~~] any other out-of-pocket medical costs[~~, and any other economic losses~~] incurred within twelve months [~~of~~] after the termination of the agreement [~~and~~] which, as documented by a health care practitioner, are associated with taking such 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.

§ 13. 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.

§ 14. 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 subdivision (c) or (d) of this section, if the agreement is breached by the person acting as surrogate, the spouse of the person acting as surrogate, if applicable, 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 adjudicated 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 by failure to accept 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.

§ 15. 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~~]**. Base compensation paid** to a person acting as surrogate shall not exceed the duration of the pregnancy and recuperative period of [~~up to~~] eight weeks after the birth of any resulting [~~children~~] **child. Supplemental compensation for any medical procedure associated with complications from the pregnancy or delivery as confirmed by a health care practitioner, and any associated lost wages, may be, but are not required to be, paid after the recuperative period and until twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of the pregnancy, or termination of the pregnancy**.

(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.

§ 16. 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.

§ 17. 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 liti-**

gated dispute between the parties unless otherwise ordered by an arbiter or court of competent jurisdiction.

§ 18. 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~~] period 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 for by the intended parent or parents. [~~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 pregnancy, childbirth, or postnatal care that accrue through~~] In addition, a person acting as a surrogate shall have the right to have the intended parent or parents pay for all of their medical expenses incurred in connection with the surrogacy arrangement, continuing through the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in the termination of pregnancy, or the termination of the pregnancy. A person acting as a surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements.

§ 19. Section 581-605 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:

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

§ 20. Section 581-606 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:

§ 581-606. Life insurance, contractual liability, or accidental death insurance policy. A person acting as surrogate has the right to be provided a life insurance, contractual liability or accidental death insurance policy that takes effect prior to taking any medication or commencement of treatment to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars, or the maximum amount the person acting as surrogate [~~qualifying~~] qualifies for [~~it~~] 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 acting as surrogate's choosing, to be paid for by the intended parent or parents.

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

§ 581-705. Adjudication. (a) A court adjudicating the parentage of a child conceived through assisted reproduction or adjudicating the

enforceability of an embryo disposition agreement may apply section 581-202 and part three of this article retroactively.

(b) The participants in a surrogacy arrangement that involved the payment of compensation prior to February fifteenth, two thousand twenty-one shall not be eligible to receive a judgment of parentage pursuant to section 581-203 or section 581-406 of this article, but shall be entitled to seek a judgment of parentage pursuant to section 581-407 of this article.

(c) This article shall apply retroactively to uncompensated surrogacy arrangements entered into prior to February fifteenth, two thousand twenty-one.

(d) Surrogacy agreements that were executed on or after February fifteenth, two thousand twenty-one, but before the effective date of the chapter of the laws of two thousand twenty-two that added this subdivision that were in compliance with this article before it was amended by the chapter of the laws of two thousand twenty-two that added this subdivision shall be deemed a compliant surrogacy agreement pursuant to section 581-406 of this article regardless of any deviations from the current provisions of this article.

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

(a) Any party to a genetic surrogate parenting agreement or the spouse of any [~~part~~] party to a genetic surrogate parenting agreement who violate this section shall be subject to a civil penalty not to exceed five hundred dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 27. This act shall take effect immediately.