

# STATE OF NEW YORK

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6832--B

2021-2022 Regular Sessions

## IN ASSEMBLY

April 12, 2021

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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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 § 581-203. Proceeding for judgment of parentage of a child conceived  
10 pursuant to a surrogacy agreement. (a) The proceeding may be commenced  
11 (1) in any county where an intended parent resided any time after the  
12 surrogacy agreement was executed; (2) in the county where the child was  
13 born or resides or in the county where the birth is intended to occur;  
14 ~~[or]~~ (3) in the county where the surrogate resided any time after the  
15 surrogacy agreement was executed; or (4) in the county where the surro-  
16 gacy program, if any, has its principal place of business, if that is  
17 within the state of New York.

18 (b) The proceeding may be commenced at any time after ~~[the surrogacy~~  
19 ~~agreement has been executed]~~ pregnancy is achieved and the person acting  
20 as surrogate, the spouse of the person acting as surrogate, if any,  
21 donors for whom there is not proof of donative intent as set forth in  
22 subdivision (d) of section 581-202 of this part, and all intended  
23 parents are necessary parties. The service provisions of subdivision  
24 (e) of section 581-202 of this title shall be applicable to donors enti-  
25 tled to notice pursuant to this provision.

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

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

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

36 (3) a statement from all parties to the surrogacy agreement that they  
37 knowingly and voluntarily entered into the surrogacy agreement and that  
38 the parties are jointly requesting the judgment of parentage; and  
39 (4) a copy of the executed surrogacy agreement.

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

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

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

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

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



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

4 (6) ordering that:

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

9 (ii) If a change to the child's birth certificate is necessitated by  
10 the judgment of parentage, then pursuant to section two hundred fifty-  
11 four of the judiciary law, the clerk of the court shall transmit to the  
12 state commissioner of health, or for a person born in New York city, to  
13 the commissioner of health of the city of New York, on a form prescribed  
14 by the commissioner, a written notification of such entry together with  
15 such other facts as may assist in identifying the birth record of the  
16 person whose parentage was in issue and, if the person whose parentage  
17 has been determined is under eighteen years of age, the clerk shall also  
18 transmit to the registry operated by the department of social services  
19 pursuant to section three hundred seventy-two-c of the social services  
20 law a notification of the determination; and

21 ~~[(i)]~~ (iii) Pursuant to section forty-one hundred thirty-eight of the  
22 public health law and NYC Public Health Code section 207.05 that upon  
23 receipt of a judgement of parentage the local registrar where a child is  
24 born will report the parentage of the child to the appropriate depart-  
25 ment of health in conformity with the court order. If an original birth  
26 certificate has already been issued, the appropriate department of  
27 health will amend the birth certificate in an expedited manner and seal  
28 the previously issued birth certificate except that it may be rendered  
29 accessible to the child at eighteen years of age or the legal parent or  
30 parents; and

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

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

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

50 § 581-205. Inspection of records. Court records relating to  
51 proceedings under this article shall be sealed, provided, however, that  
52 the office of temporary and disability assistance, a child support unit  
53 of a social services district or a child support agency of another state  
54 providing child support services pursuant to title IV-d of the federal  
55 social security act, when a party to a related support proceeding and to  
56 the extent necessary to provide child support services or for the admin-

1 istration of the program pursuant to title IV-d of the federal social  
2 security act, may obtain a copy of a judgment of parentage. The parties  
3 to the proceeding and the child shall have the right to inspect and make  
4 copies of the entire court record, including, but not limited to, the  
5 name of the person acting as surrogate and any known ~~[donors]~~ donor. The  
6 county clerk or the clerk of the surrogate's or family court shall not  
7 display the surname of the child or parties in any document, index,  
8 minutes or other record available to the public.

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

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

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

16 § 581-207. Certified copy of judgment of parentage. Upon issuing a  
17 judgment of parentage pursuant to section 581-202 or 581-203 of this  
18 article, the issuing court shall provide a certified copy of such judg-  
19 ment to the intended parent or parents.

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

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

27 § 8. Paragraph 3 of subdivision (a) and subdivision (d) of section  
28 581-306 of the family court act, as added by section 1 of part L of  
29 chapter 56 of the laws of 2020, are amended to read as follows:

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

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

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

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

54 (2) the person acting as surrogate: (i) is a United States citizen or  
55 a lawful permanent resident, and~~[, where at least one intended parent is~~  
56 ~~not]~~ (ii) has been a resident of New York state for six months~~[, was]~~ if



1 neither intended parent has been a resident of New York state for at  
2 least six months;

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

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

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

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

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

1 or parents on behalf of the person acting as surrogate pursuant to the  
2 surrogacy agreement, except that a person acting as surrogate who is  
3 receiving no compensation may waive the right to have the intended  
4 parent or parents pay for the life insurance, contractual liability or  
5 accidental death insurance policy; and

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

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

13 (1) at least one intended parent is:

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

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

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

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

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

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

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

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

40 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement  
41 shall be deemed to have satisfied the requirements of this article and  
42 be enforceable if it meets the following requirements:

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

46 (1) each intended parent, and

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

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

54 (ii) they have been living separate and apart for at least three years  
55 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 agreement shall include the following informa-  
48 tion:

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;

(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



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

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

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

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

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

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

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

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

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

37 § 12. Section 581-405 of the family court act, as added by section 1  
38 of part L of chapter 56 of the laws of 2020, is amended to read as  
39 follows:

40 § 581-405. Termination of surrogacy agreement. After the execution of  
41 a surrogacy agreement but before the [~~person acting as surrogate becomes~~  
42 ~~pregnant by means of assisted reproduction,~~] embryo transfer occurs or  
43 after an unsuccessful embryo transfer, the person acting as surrogate,  
44 the spouse of the person acting as surrogate, if applicable, or any  
45 intended parent may terminate the surrogacy agreement by giving notice  
46 of termination in a record to all other parties. Upon proper termination  
47 of the surrogacy agreement the parties are released from all obligations  
48 recited in the surrogacy agreement except that the intended parent or  
49 parents [~~remains~~] shall remain responsible for all [~~expenses that are~~  
50 ~~reimbursable~~] lost wages and other financial obligations which have  
51 accrued under the agreement [~~which have been incurred by the person~~  
52 ~~acting as surrogate~~] through the date of termination. If the intended  
53 parent or parents terminate the surrogacy agreement pursuant to this  
54 section after the person acting as surrogate has taken any medication or  
55 commenced treatment to further embryo transfer, such intended parent or  
56 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

1 proceedings raising parentage issues may be transferred to the family or  
2 surrogate's court.

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

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

12 (b) The compensation, if any, paid to a donor or person acting as  
13 surrogate must be reasonable and negotiated in good faith between the  
14 parties~~[, and said payments]~~. Base compensation paid to a person acting  
15 as surrogate shall not exceed the duration of the pregnancy and recuper-  
16 ative period of ~~[up to]~~ eight weeks after the birth of any resulting  
17 ~~[children]~~ child. Supplemental compensation for any medical procedure  
18 associated with complications from the pregnancy or delivery as  
19 confirmed by a health care practitioner, and any associated lost wages,  
20 may be, but are not required to be, paid after the recuperative period  
21 and until twelve months after the birth of the child, a stillbirth, a  
22 miscarriage resulting in termination of the pregnancy, or termination of  
23 the pregnancy.

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

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

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

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

34 § 581-601. Applicability. The rights enumerated in this part shall  
35 apply to any person acting as surrogate ~~[in]~~ under the laws of this  
36 state, notwithstanding any surrogacy agreement, judgment of parentage,  
37 memorandum of understanding, verbal agreement or contract to the contra-  
38 ry. Except as otherwise provided by law, any written or verbal agreement  
39 purporting to waive or limit any of the rights in this part is void as  
40 against public policy. The rights enumerated in this part are not exclu-  
41 sive, and are in addition to any other rights provided by law, regu-  
42 lation, or a surrogacy agreement that meets the requirements of this  
43 article.

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

47 § 581-603. Independent legal counsel. A person acting as surrogate,  
48 and the spouse of the person acting as surrogate, if applicable, has the  
49 right to be represented throughout the contractual process and the dura-  
50 tion of the surrogacy ~~[agreement and its execution]~~ arrangement by inde-  
51 pendent legal counsel of their own choosing who is licensed to practice  
52 law in the state of New York, to be paid for by the intended parent or  
53 parents. The intended parent or parents shall not be required to pay the  
54 legal fees for the person acting as surrogate, and the spouse of the  
55 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:

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

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

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

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

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

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

25 § 27. This act shall take effect immediately.