

STATE OF NEW YORK

4921--C

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- 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 domestic relations law and the general business law, in relation to surrogacy programs and agreements

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

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

LBD05288-10-4

1 include a person who is a parent under part three of this article. Donor
2 also includes an individual who had dispositional control of an embryo
3 or gametes who then transfers dispositional control and releases all
4 present and future parental and inheritance rights and obligations to a
5 resulting child.

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

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

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

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

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

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

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

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

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

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

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

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

54 ~~[(l) "Intended parent" is an individual who manifests the intent to be~~
55 ~~legally bound as the parent of a child resulting from assisted reprod-~~

~~action 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 born in ~~the~~ New York 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 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 such gametes or embryos ~~[were anonymously donated or]~~ had previously been released; ~~[or]~~

(ii) a record from the gamete or embryo donor or donors evidencing intent to release 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 donors confirmed, prior to donation, that the donor or donors would have no parental or proprietary interest in the gametes or embryos;

(2) ~~[in the case of a donation from a known donor, either: a.]~~ where the gametes or embryos were not released 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 or donors agreed, prior to [conception] the gametes or embryos being used for assisted reproduction, [with the gestating parent] that the donor [has] or donors would have no parental or proprietary interest in the gametes or embryos.

(3) Except for those agreements executed in compliance with section 581-306 of this article, 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 subparagraphs (i) and (ii) of paragraph one and subparagraph (i) of 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 unless the intended parent proceeded without the participation of their spouse in compliance with subdivision (b) of

1 section 581-305 or section 581-306 of this article. Upon a showing to
2 the court, by affidavit or otherwise, on or before the date of the
3 proceeding or within such further time as the court may allow, that
4 personal service cannot be effected at the [~~donor's~~] last known address
5 or addresses of the donor or donors, and/or the non-petitioning intended
6 parent, if any, with reasonable effort, notice may be given, without
7 prior court order therefore, at least twenty days prior to the proceed-
8 ing by registered or certified mail directed to [~~the donor's~~] such last
9 known address or addresses. Notice by publication shall not be required
10 to be given to [~~a donor~~] anyone entitled to notice pursuant to the
11 provisions of this section.

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

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

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

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

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

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

32 (4) ordering that:

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

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

49 [~~(ii)~~] (iii) Pursuant to section forty-one hundred thirty-eight of the
50 public health law and NYC Public Health Code section 207.05 that upon
51 receipt of a judgment of parentage the local registrar where a child is
52 born will report the parentage of the child to the appropriate depart-
53 ment of health in conformity with the court order. If an original birth
54 certificate has already been issued, the appropriate department of
55 health will amend the birth certificate in an expedited manner and seal
56 the previously issued birth certificate except that it may be rendered

1 accessible to the child at eighteen years of age or the legal parent or
2 parents; and

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

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

14 § 581-203. Proceeding for judgment of parentage of a child conceived
15 pursuant to a surrogacy agreement. (a) The proceeding may be commenced
16 (1) in any county where an intended parent resided any time after the
17 surrogacy agreement was executed; or (2) in the county where the child
18 was born or resides or in the county where the birth is intended to
19 occur; or (3) in the county where the surrogate resided any time after
20 the surrogacy agreement was executed.

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

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

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

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

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

42 (4) a copy of the executed surrogacy agreement.

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

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

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

53 (3) declaring that upon the birth of the child born during the term of
54 the surrogacy agreement, [~~the donors~~] any donor, if [~~any~~] applicable,
55 [~~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

~~(iii)~~ (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

1 providing child support services pursuant to title IV-d of the federal
2 social security act, when a party to a related support proceeding and to
3 the extent necessary to provide child support services or for the admin-
4 istration of the program pursuant to title IV-d of the federal social
5 security act, may obtain a copy of a judgment of parentage. The parties
6 to the proceeding and the child shall have the right to inspect and make
7 copies of the entire court record, including, but not limited to, the
8 name of the person acting as surrogate and any known ~~[donors]~~ donor.
9 Notwithstanding any other provision of law, the county clerk or the
10 clerk of the supreme, surrogate's or family court shall not display the
11 surname of the child or parties in any caption, document, index, minutes
12 or other record available to the public, whether filed in hard copy or
13 electronically.

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

16 § 581-206. Jurisdiction, and exclusive continuing jurisdiction. (a)
17 Proceedings pursuant to this article may be instituted in ~~[the]~~ New York
18 state supreme ~~[or]~~ court, family court or surrogates court.

19 (b) The court conducting a proceeding under this article shall have
20 exclusive, continuing jurisdiction of all matters relating to the deter-
21 mination of parentage until the child attains the age of one hundred
22 eighty days, whereafter continuing jurisdiction shall be determined by
23 the jurisdictional standards of section seventy-six of the domestic
24 relations law.

25 (c) Subject to the jurisdictional standards of section seventy-six of
26 the domestic relations law, the court conducting a proceeding under this
27 article has exclusive, continuing jurisdiction of all matters relating
28 to the determination of parentage until the child attains the age of one
29 hundred eighty days.

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

32 § 581-207. Certified copy of judgment of parentage. Upon issuing a
33 judgment of parentage pursuant to section 581-202 or 581-203 of this
34 part, the issuing court shall provide a certified copy of such judgment
35 to the intended parent or parents.

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

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

43 § 8. Paragraph 3 of subdivision (a) and subdivision (d) of section
44 581-306 of the family court act, as added by section 1 of part L of
45 chapter 56 of the laws of 2020, are amended to read as follows:

46 (3) where the intended parents are married, transfer of legal rights
47 and dispositional control ~~[occurs—only]~~ becomes effective upon: (i)
48 living separate and apart pursuant to a decree or judgment of separation
49 or pursuant to a written agreement of separation subscribed by the
50 parties thereto and acknowledged or proved in the form required to enti-
51 tle a deed to be recorded; or (ii) living separate and apart at least
52 three years; or (iii) divorce; or (iv) death.

53 (d) An embryo disposition agreement ~~[or advance directive]~~ that is not
54 in compliance with subdivision (a) of this section may still be found to
55 be enforceable by the court after balancing the respective interests of
56 the parties except that the intended parent who divested him or herself

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

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

7 § 581-402. Eligibility to enter surrogacy agreement. (a) A person
8 acting as surrogate shall be eligible to enter into an enforceable
9 surrogacy agreement under this article if the person acting as surrogate
10 has met the following requirements at the time the surrogacy agreement
11 is executed:

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

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

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

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

26 (5) the person acting as surrogate has given informed consent ~~[for the~~
27 ~~surrogacy]~~ to undergo the medical procedures after the licensed health
28 care practitioner ~~[inform]~~ has informed them of the medical risks of
29 surrogacy including the possibility of multiple births, risk of medica-
30 tions taken for the surrogacy, risk of pregnancy complications, psycho-
31 logical and psychosocial risks, and impacts on their personal lives;

32 (6) the person acting as surrogate, and the spouse of the person
33 acting as surrogate, if applicable, have been represented ~~[throughout]~~
34 from the initiation of the contractual process and throughout the dura-
35 tion of the ~~[contract and its execution]~~ surrogacy agreement by inde-
36 pendent legal counsel of their own choosing who is licensed to practice
37 law in the state of New York which shall be paid for by the intended
38 parent or parents, except that a person acting as surrogate who is
39 receiving no compensation may waive the right to have the intended
40 parent or parents pay the fee for such legal counsel. Where the
41 ~~[intended parent or parents are paying for the]~~ independent legal coun-
42 sel of the person acting as surrogate, and the spouse of the person
43 acting as surrogate, if applicable, is paid by the intended parent or
44 parents, a separate retainer agreement shall be prepared clearly stating
45 that such legal counsel will only represent the person acting as surro-
46 gate and the spouse of the person acting as surrogate, if applicable, in
47 all matters pertaining to the surrogacy agreement, that such legal coun-
48 sel will not offer legal advice to any other parties to the surrogacy
49 agreement, and that the attorney-client relationship lies with the
50 person acting as surrogate and the spouse of the person acting as surro-
51 gate, if applicable;

52 (7) the person acting as surrogate has or the surrogacy agreement
53 stipulates that the person acting as surrogate will obtain ~~[a]~~ compre-
54 hensive health insurance ~~[policy]~~ coverage that takes effect after the
55 person acting as surrogate has been deemed medically eligible but prior
56 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 care. 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 preconception 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, major medical treatments, hospitalization, behavioral health 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 agreements. 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 but not the requirement to have such a 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]~~ from the initiation of the contractual process and ~~through-~~ out the duration of the ~~[contract and its execution]~~ surrogacy agreement 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]~~ from the initiation of the contractual process and the surrogacy agreement states that they shall be represented throughout the duration of the [contract and its execution] surrogacy agreement by separate, independent legal counsel of their own choosing, who is licensed to practice law in the state of New York;

(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 surrogacy agreement. 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

1 reviewed and summarized in relation to the anticipated pregnancy prior
2 to such policy being used to cover any of the person acting as surro-
3 gate's medical expenses incurred pursuant to the surrogacy agreement;
4 and

5 (h) ~~[it]~~ the surrogacy agreement shall include the following informa-
6 tion:

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

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

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

14 (4) the name of and contact information for the licensed and regis-
15 tered surrogacy program ~~[handling the]~~ arranging or facilitating the
16 transactions contemplated by the surrogacy agreement, if any; and

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

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

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

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

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

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

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

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

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

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

51 (viii) the surrogacy agreement shall provide for the right of the
52 person acting as surrogate, upon request, to obtain counseling to
53 address issues resulting from the person's participation in the surroga-
54 cy agreement, including, but not limited to, counseling following deliv-
55 ery. The cost of that counseling shall be paid by the intended parent
56 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 agreement after taking any medication or commencing treatment to further embryo transfer excluding medical procedures required to determine the medical eligibility to become a person acting as surrogate. 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 agreement.

(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.

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

6 (d) If any intended parent is adjudicated to be the parent of the
7 child, specific performance is a remedy available for: (1) breach of the
8 surrogacy agreement by a person acting as surrogate which prevents the
9 intended parent or parents from exercising the full rights of parentage
10 immediately upon the birth of the child; or (2) breach by the intended
11 parent or parents by failure to accept the duties of parentage imme-
12 diately upon the birth of the child.

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

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

21 § 581-502. Compensation. (a) Compensation may be paid to a donor or
22 person acting as surrogate based on medical risks, physical discomfort,
23 inconvenience and the responsibilities they are undertaking in
24 connection with their participation in the assisted reproduction. Under
25 no circumstances may compensation be paid to purchase gametes or embryos
26 or for the release of a parental interest in a child.

27 (b) The compensation, if any, paid to a donor or person acting as
28 surrogate must be reasonable and negotiated in good faith between the
29 parties~~[, and said payments]~~. Base compensation paid to a person acting
30 as surrogate shall not exceed the duration of the pregnancy and recuper-
31 ative period of ~~[up to]~~ eight weeks after the birth of any resulting
32 ~~[children]~~ child. Supplemental compensation for any medical procedure
33 associated with complications from the pregnancy or delivery as
34 confirmed by a health care practitioner, and any associated lost wages,
35 may be, but are not required to be, paid after the recuperative period
36 and until twelve months after the birth of the child, a stillbirth, a
37 miscarriage resulting in termination of the pregnancy, or termination of
38 the pregnancy.

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

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

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

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

49 § 581-601. Applicability. The rights enumerated in this part shall
50 apply to any person acting as surrogate ~~[in this state]~~ under the laws
51 of the state of New York, notwithstanding any surrogacy agreement, judg-
52 ment of parentage, memorandum of understanding, verbal agreement or
53 contract to the contrary. Except as otherwise provided by law, any writ-
54 ten or verbal agreement purporting to waive or limit any of the rights
55 in this part is void as against public policy. The rights enumerated in
56 this part are not exclusive, and are in addition to any other rights

1 provided by law, regulation, or a surrogacy agreement that meets the
2 requirements of this article.

3 § 17. Section 581-603 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 § 581-603. Independent legal counsel. A person acting as surrogate,
7 and the spouse of the person acting as surrogate, if applicable, has the
8 right to be represented [~~throughout~~] from the initiation of the contrac-
9 tual process and throughout the duration of the surrogacy agreement [~~and~~
10 ~~its execution~~] by independent legal counsel of their own choosing who is
11 licensed to practice law in the state of New York, to be paid for by the
12 intended parent or parents.

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

16 § 581-604. Health insurance and medical costs. A person acting as
17 surrogate has the right to have [~~a~~] comprehensive health insurance
18 [~~policy~~] coverage that covers preconception [~~care, prenatal care, major~~
19 ~~medical treatments, hospitalization and behavioral health care~~] medical
20 expenses and medical expenses associated with the pregnancy for a [~~term~~]
21 period that extends throughout the duration of the expected pregnancy
22 and for twelve months after the birth of the child, a stillbirth, a
23 miscarriage resulting in termination of pregnancy, or termination of the
24 pregnancy, to be paid for by the intended parent or parents. [~~The~~
25 ~~intended parent or parents shall also pay for or reimburse the person~~
26 ~~acting as surrogate for all co-payments, deductibles and any other out-~~
27 ~~of-pocket medical costs associated with pregnancy, childbirth, or post-~~
28 ~~natal care that accrue through~~] In addition, a person acting as a
29 surrogate shall have the right to have the intended parent or parents
30 pay for all of their medical expenses incurred in connection with the
31 surrogacy agreement, continuing through the duration of the expected
32 pregnancy and for twelve months after the birth of the child, a still-
33 birth, a miscarriage resulting in the termination of pregnancy, or the
34 termination of the pregnancy. A person acting as a surrogate who is
35 receiving no compensation may waive the right to have the intended
36 parent or parents make such payments or reimbursements.

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

46 § 20. Section 581-606 of the family court act, as added by section 1
47 of part L of chapter 56 of the laws of 2020, is amended to read as
48 follows:

49 § 581-606. Life insurance, contractual liability, or accidental death
50 insurance policy. A person acting as surrogate has the right to be
51 provided a life insurance, contractual liability or accidental death
52 insurance policy that takes effect prior to taking any medication or
53 commencement of treatment to further embryo transfer, provides a minimum
54 benefit of seven hundred fifty thousand dollars, or the maximum amount
55 the person acting as surrogate [~~qualifying~~] qualifies for [~~it~~] if less
56 than seven hundred fifty thousand dollars, and [~~has a term that extends~~]

1 such coverage shall extend throughout the duration of the expected preg-
2 nancy and for twelve months after the birth of the child, a stillbirth,
3 a miscarriage resulting in termination of pregnancy, or termination of
4 the pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person
5 acting as surrogate's choosing, to be paid for by the intended parent or
6 parents.

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

9 § 581-705. Adjudication. (a) A court adjudicating the parentage of a
10 child conceived through assisted reproduction or adjudicating the
11 enforceability of an embryo disposition agreement may apply section
12 581-202 and part three of this article retroactively.

13 (b) The participants in a surrogacy agreement that involved the
14 payment of compensation prior to February fifteenth, two thousand twen-
15 ty-one shall not be eligible to receive a judgment of parentage pursuant
16 to section 581-203 or section 581-406 of this article, but shall be
17 entitled to seek a judgment of parentage pursuant to section 581-407 of
18 this article.

19 (c) This article shall apply retroactively to uncompensated surrogacy
20 agreements entered into prior to February fifteenth, two thousand twen-
21 ty-two.

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

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

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

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

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

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

53 § 1401. Surrogacy programs regulated under this article. The
54 provisions of this article apply to surrogacy programs arranging or
55 facilitating transactions contemplated by a surrogacy agreement, regard-

1 less of whether such agreement ultimately comports with the requirements
2 under part four of article five-C of the family court act if:

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

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

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

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

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

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

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

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

28 (a) Require surrogacy programs to monitor compliance with [~~surrogacy~~
29 ~~agreements~~] eligibility [~~and requirements in state law~~] criteria for the
30 intended parents and persons acting as surrogates pursuant to section
31 581-402 of the family court act; and

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

36 § 27. This act shall take effect immediately.