

STATE OF NEW YORK

7749

2023-2024 Regular Sessions

IN SENATE

November 13, 2023

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the family court act, the public health law, the general business law and the insurance law, in relation to surrogacy programs and agreements; and to amend the social services law, in relation to enrollment in the state health insurance exchange

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) "Central assisted reproduction registry" means the registry estab-
13 lished pursuant to section twenty-five hundred ninety-nine-cc of the
14 public health law.

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

17 [~~e~~] (d) "Compensation" means payment of any valuable consideration
18 in excess of reasonable medical and ancillary costs.

19 [~~d~~] (e) "Donor" means an individual who does not intend to be a
20 parent who produces gametes and provides them to another person, other
21 than the individual's spouse, for use in assisted reproduction. For
22 purposes of parts eight and ten of this article and of governing stat-
23 utes and regulations, the term "donor" means an individual who does not

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

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1 intend to be a parent who receives compensation for time and effort to
2 produce gametes for use in assisted reproduction by an intended parent
3 or parents who are unknown to the donor of the gametes at the time of
4 donation. The term does not include a person who is a parent under part
5 three of this article. Donor also includes an individual who had dispo-
6 sitional control of an embryo or gametes who then transfers dispo-
7 sitional control and releases all present and future parental and inheri-
8 tance rights and obligations to a resulting child.

9 [~~(e)~~] (f) "Donor-conceived person or individual" means an individual
10 of any age who was conceived using assisted reproduction and donor
11 gametes that were produced by a donor who received compensation for time
12 and effort and who was unknown to the intended parent or parents at the
13 time of donation.

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

19 [~~(f)~~] (h) "Embryo transfer" means all medical and laboratory proce-
20 dures that are necessary to effectuate the transfer of an embryo into
21 the uterine cavity.

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

28 [~~(h)~~] (j) "Gamete donation agency agreement" means an agreement
29 between a gamete donor or an intended parent or parents and an agent,
30 gamete agency, gamete bank, fertility clinic, surrogacy program, or
31 health care provider that details the terms under which: (A) a donor
32 shall receive compensation for time and effort to produce gametes for
33 use in assisted reproduction by an intended parent or parents who is
34 unknown to the donor of the gametes at the time of donation; or (B) an
35 intended parent or parents shall receive fresh or frozen donor gametes.

36 (k) "Gamete donation matched agreement" means an agreement between a
37 gamete donor and an intended parent or parents that details the terms
38 under which a donor shall receive compensation for time and effort to
39 produce gametes for use in assisted reproduction by the intended parent
40 or parents who is unknown to the donor of the gametes at the time of
41 donation.

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

45 (m) "Identified gamete donation or identified gamete donor" means that
46 the gamete donor agrees to release identifying and medical information
47 upon request to a donor-conceived individual who was conceived using
48 their donor gametes and assisted reproduction once the donor-conceived
49 individual attains the age of eighteen, or to a legal parent or guardian
50 if the donor-conceived individual is under the age of eighteen.

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

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

5 ~~(j)]~~ (o) "Informed legal consent" means that a potential gamete donor,
6 a potential person acting as surrogate, or an intended parent or parents
7 provide fully-informed legal consent in a signed written statement to
8 enter into a gamete donation matched agreement, a gamete donation agency
9 agreement, or a surrogacy agreement after completing the required
10 informed legal consent procedures under part ten of this article.

11 (p) "Informed medical consent" means that a potential gamete donor, a
12 potential person acting as surrogate, or an intended parent or parents
13 provide fully-informed medical consent in a signed written statement to
14 enter into a gamete donation matched agreement, a gamete donation agency
15 agreement, or a surrogacy agreement after completing the informed
16 medical consent procedures under part ten of this article. Informed
17 medical consent to enter into a gamete donation or surrogacy agreement
18 does not replace the medical consent that a gamete donor, a person
19 acting as surrogate, or an intended parent or parents must provide prior
20 to undergoing individual medical procedures.

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

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

27 (s) "Nonidentified gamete donation or nonidentified gamete donor"
28 means that the gamete donor does not agree to release identifying infor-
29 mation to a donor-conceived individual who was conceived using their
30 donor gametes and assisted reproduction, or to a legal parent or guardi-
31 an of the donor-conceived individual. A nonidentified gamete donor is
32 informed that the department may release their nonidentifying medical
33 information upon request of a donor-conceived individual upon attaining
34 eighteen years of age, or of a legal parent or guardian if the donor-
35 conceived individual is under the age of eighteen.

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

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

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

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

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

55 ~~(m) "In vitro fertilization" means the formation of a human embryo~~
56 ~~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)~~ (w) "Record" means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

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

~~(r)~~ (y) "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)~~ (z) "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.

~~(t)~~ (aa) "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.

(bb) "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 the first trimester of pregnancy ~~[is achieved]~~ or in the county where the child was born or resides; 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:

(1) a statement that an intended parent has been a resident of the state for at least six months, or if an intended parent is not a New York state resident, that the child will be or 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

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

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

4 (1) in the case of [~~an—anonymous~~] a nonidentified donor [~~or~~] who
5 received compensation for time and effort to produce gametes for use in
6 assisted reproduction by an intended parent or parents who were unknown
7 to the donor of the gametes at the time of donation, a signed record
8 from the gamete storage facility, fertility clinic, health care practi-
9 tioner, or other entity that collected the donor gametes, or that
10 received the donor gametes from another entity, stating or demonstrating
11 that such gametes were donated on a nonidentified basis and that the
12 gamete donor has no proprietary or parental interest in the gametes or
13 embryos. The record shall be signed by the health care practitioner or
14 by a representative of the gamete storage facility, fertility clinic, or
15 other entity:

16 (i) before a notary public, or

17 (ii) before two witnesses who are neither the intended parents nor
18 employed by the health care practitioner, gamete storage facility,
19 fertility clinic, or other entity; provided that if the record is signed
20 before two witnesses, the name, phone number, email address, and mailing
21 address of each witness must be recorded; or

22 (2) in the case of an identified donor who received compensation for
23 time and effort to produce gametes for use in assisted reproduction by
24 an intended parent or parents who were unknown to the donor of the
25 gametes at the time of donation, a signed record from the gamete donor
26 certifying that they agreed to identified gamete donation and have no
27 proprietary or parental interest in the gametes or embryos. The record
28 shall be signed:

29 (i) before a notary public, or

30 (ii) before two witnesses who are not the intended parents; provided
31 that if the record is signed before two witnesses, the name, phone
32 number, email address, and mailing address of each witness must be
33 recorded; or

34 (3) where gametes or embryos have previously been released to a gamete
35 or embryo storage facility or in the presence of a health care practi-
36 tioner, either:

37 (i) a statement or documentation from the gamete or embryo storage
38 facility or health care practitioner stating or demonstrating that such
39 gametes or embryos were [~~anonymously~~] on an identified or noni-
40 dentified basis, or had previously been released; or

41 (ii) clear and convincing evidence that the gamete or embryo donor
42 intended to donate gametes or embryos [~~anonymously~~] on an identified or
43 nonidentified basis, or intended to release such gametes or embryos to a
44 gamete or embryo storage facility or health care practitioner; or

45 [~~(2)~~] (4) in the case of a donation from a [~~known~~] donor who is known
46 to the intended parent or parents, either: [~~a-~~]

47 (i) a record from the gamete or embryo donor acknowledging the
48 donation and confirming that the donor has no parental or proprietary
49 interest in the gametes or embryos. The record shall be signed by the
50 gestating intended parent and the gamete or embryo donor [~~,—The record~~
51 ~~may be, but is not required to be, signed]~~ or donors:

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

53 [~~(ii)~~] (B) before two witnesses who are not the intended parents;
54 provided that if the record is signed before two witnesses who are not
55 the intended parents, the name, phone number, email address, and mailing
56 address of each witness must be recorded, or

1 [~~(iii)~~] (C) before a health care practitioner; or
2 [~~b-~~] (ii) clear and convincing evidence that the gamete or embryo
3 donor agreed, prior to conception, with the gestating parent and non-
4 gestating parent, if applicable, that the donor [~~has~~] or donors have no
5 parental or proprietary interest in the gametes or embryos.

6 (e) (1) In the absence of evidence pursuant to paragraph two of this
7 subdivision, notice shall be given to the donor at least twenty days
8 prior to the date set for the proceeding to determine the existence of
9 donative intent by delivery of a copy of the petition and notice pursu-

10 ant to section three hundred eight of the civil practice law and rules.
11 Such notice shall also be given to the gestating intended parent, the
12 non-gestating intended parent, if applicable, and the gestating intended
13 parent's spouse, if applicable, each of whom shall be a necessary party.

14 Upon a showing to the court, by affidavit or otherwise, on or before the
15 date of the proceeding or within such further time as the court may
16 allow, that personal service cannot be effected at the [~~donor's~~] last
17 known address or addresses of the donor or donors, and/or the non-peti-
18 tioning intended parent, if any, with reasonable effort, notice may be
19 given, without prior court order therefore, at least twenty days prior
20 to the proceeding by registered or certified mail directed to [~~the~~
21 ~~donor's~~] such last known address or addresses. Notice by publication
22 shall not be required to be given to [~~a donor~~] anyone entitled to notice
23 pursuant to the provisions of this section.

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

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

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

35 (1) declaring, that upon the birth of the child, the intended parent
36 or parents is or are the legal parent or parents of the child; and

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

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

42 (4) ordering that:

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

54 (ii) Pursuant to section forty-one hundred thirty-eight of the public
55 health law and NYC Public Health Code section 207.05 that upon receipt
56 of a judgment of parentage the local registrar where a donor-conceived

1 or surrogate-born child is born will report the parentage of the donor-
2 conceived or surrogate-born child to the appropriate department of
3 health in conformity with the court order. [~~If-an~~] After the original
4 birth certificate has [~~already~~] been issued, the appropriate department
5 of health will amend the birth certificate in an expedited manner and
6 seal the [~~previously issued~~] original birth certificate [~~except that it~~
7 ~~may be rendered~~] which shall be accessible to the [~~child~~] donor-con-
8 ceived or surrogate-born person at eighteen years of age or [~~the~~] to a
9 legal parent or [~~parents-~~] guardian if the donor-conceived or surro-
10 gate-born person is under the age of eighteen; and

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

20 (h) For the purposes of this section, "original birth certificate"
21 means the unamended birth certificate that contains the information
22 required under section forty-one hundred thirty-two of the public health
23 law, including the name of the person who acted as surrogate who gave
24 birth to the child, and the name of any identified gamete donor or the
25 donor reference number of any nonidentified gamete donor whose gametes
26 were used in assisted reproduction to conceive the child.

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

29 § 581-203. Proceeding for judgment of parentage of a child conceived
30 pursuant to a surrogacy agreement. (a) The proceeding may be commenced:

31 (1) in any county where an intended parent resided any time after the
32 surrogacy agreement was executed;

33 (2) in the county where the child was born or resides; or

34 (3) in the county where the surrogate resided any time after the
35 surrogacy agreement was executed.

36 (b) The proceeding may be commenced at any time after the [~~surrogacy~~
37 ~~agreement has been executed~~] first trimester of the surrogate pregnancy
38 and the person acting as surrogate, the spouse of the person acting as
39 surrogate, if applicable, any donor for whom there is not proof of dona-
40 tive intent as set forth in subdivision (d) of section 581-202 of this
41 part, if any, and all intended parents are necessary parties. The
42 service provisions of subdivision (e) of section 581-202 of this part
43 shall be applicable to donors entitled to notice pursuant to this
44 provision.

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

47 (1) a statement that the person acting as surrogate [~~or at least one~~
48 ~~of~~] and the intended parent or parents [~~has~~] have been [~~a resident~~]
49 residents of the state for at least six months at the time the surrogacy
50 agreement was executed and have certified that they will maintain New
51 York state residency for the duration of the surrogate pregnancy and for
52 at least one month following the birth of any children; [and]

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

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

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

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

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

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

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

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

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

24 (6) ordering that:

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

36 (ii) Pursuant to section forty-one hundred thirty-eight of the public
37 health law and NYC Public Health Code section 207.05 that upon receipt
38 of a judgement of parentage the local registrar where a child is born
39 will report the parentage of the child to the appropriate department of
40 health in conformity with the court order. [~~If an~~] After the original
41 birth certificate has [~~already~~] been issued, the appropriate department
42 of health will amend the birth certificate in an expedited manner and
43 seal the [~~previously issued~~] original birth certificate [~~except that it~~
44 ~~may be rendered~~] which shall be accessible to the [~~child~~] donor-con-
45 ceived or surrogate-born person at eighteen years of age or [~~the~~] to a
46 legal parent or [~~parents~~] guardian if the donor-conceived or surrogate-
47 born person is under the age of eighteen; and

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

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

9 (f) For the purposes of this section, "original birth certificate"
10 means the unamended birth certificate that contains the information
11 required under section forty-one hundred thirty-two of the public health
12 law, including the name of the person who acted as surrogate who gave
13 birth to the child, and the name of any identified gamete donor or the
14 donor reference number of any nonidentified gamete donor whose gametes
15 were used in assisted reproduction to conceive the child.

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

18 § 581-205. Inspection of records. (a) Court records relating to
19 proceedings under this article shall be sealed, provided, however, that
20 the office of temporary and disability assistance, a child support unit
21 of a social services district or a child support agency of another state
22 providing child support services pursuant to title IV-d of the federal
23 social security act, when a party to a related support proceeding and to
24 the extent necessary to provide child support services or for the admin-
25 istration of the program pursuant to title IV-d of the federal social
26 security act, may obtain a copy of a judgment of parentage. The parties
27 to the proceeding and the child shall have the right to inspect and make
28 copies of the entire court record, including, but not limited to, the
29 name of the person acting as surrogate and, prior to the effective date
30 of section fourteen hundred five of the general business law, the name
31 of any [~~known-donors~~] identified gamete donor or the donor reference
32 number of any nonidentified gamete donor, and after the effective date
33 of section fourteen hundred five of the general business law, the name
34 of any identified gamete donor. Pursuant to section forty-one hundred
35 thirty-eight-e of the public health law, a person who is donor-conceived
36 or surrogate-born under section 581-202 or 581-203 of this part has the
37 right to obtain a certified copy of their original birth certificate.
38 Notwithstanding any other provision of law, the county clerk or the
39 clerk of the supreme, surrogate's or family court shall not display the
40 surname of the child or parties in any document, index, minutes or other
41 record available to the public.

42 (b) For the purposes of this section, "original birth certificate"
43 means the unamended birth certificate that contains the information
44 required under section forty-one hundred thirty-two of the public health
45 law, including the name of the person who acted as surrogate who gave
46 birth to the child, and the name of any identified gamete donor or the
47 donor reference number of any nonidentified gamete donor whose gametes
48 were used in assisted reproduction to conceive the child.

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

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

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

1 § 581-207. Certified copy of judgment of parentage. Upon issuing a
2 judgment of parentage pursuant to section 581-202 or 581-203 of this
3 part, the issuing court shall provide a certified copy of such judgment
4 to the intended parent or parents and if the judgment of parentage is
5 issued pursuant to section 581-203 of this part, to the person acting as
6 surrogate, and the spouse of the person acting as surrogate, if applica-
7 ble.

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

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

15 § 8. Paragraph 3 of subdivision (a) and subdivision (d) of section
16 581-306 of the family court act, as added by section 1 of part L of
17 chapter 56 of the laws of 2020, are amended to read as follows:

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

25 (d) An embryo disposition agreement [~~or advance directive~~] that is not
26 in compliance with subdivision (a) of this section may still be found to
27 be enforceable by the court after balancing the respective interests of
28 the parties except that the intended parent who divested him or herself
29 of legal rights and dispositional control may not be declared to be a
30 parent for any purpose without his or her consent. The intended parent
31 awarded legal rights and dispositional control of the embryos shall, in
32 this instance, be declared to be the only parent of the child.

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

35 § 581-402. Eligibility to enter surrogacy agreement. (a) A person
36 acting as surrogate shall be eligible to enter into an enforceable
37 surrogacy agreement under this article if the person acting as surrogate
38 has met the following requirements at the time the surrogacy agreement
39 is executed:

40 (1) the person acting as surrogate is at least twenty-one years of age
41 and less than thirty-five years of age at the time of conception;

42 (2) the person acting as surrogate has met and has certified that they
43 will continue to meet residency requirements, including:

44 (i) the person acting as surrogate is a United States citizen or a
45 lawful permanent resident [~~and, where at least one intended parent is~~
46 ~~not~~];

47 (ii) the person acting as surrogate has been a resident of New York
48 state for at least six months [~~, was a resident of New York state for at~~
49 ~~least six months~~] at the time the surrogacy agreement was executed; and

50 (iii) the person acting as surrogate will maintain New York state
51 residency for the duration of the surrogate pregnancy and for at least
52 one month following the birth of any children;

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

55 (4) the person acting as surrogate has [~~completed~~] obtained written
56 medical clearance to undergo a surrogate pregnancy under this part after

1 completing a medical evaluation and psychological screening with [~~a~~] an
2 independent health care practitioner licensed under title eight of the
3 education law relating to the anticipated surrogate pregnancy. [~~Such~~]
4 The department shall maintain a list of independent health care provid-
5 ers. The medical evaluation shall include a screening of the medical
6 history of the potential surrogate including known health conditions
7 that may pose risks to the potential surrogate or embryo during pregnan-
8 cy and any guidelines, procedures, or protocols developed pursuant to
9 paragraph (d) of subdivision one of section twenty-five hundred ninety-
10 nine-cc of the public health law. A potential surrogate shall not
11 obtain written medical clearance to undergo a surrogate pregnancy if
12 they meet any of the disqualifying criteria under paragraph (d) of
13 subdivision one of section twenty-five hundred ninety-nine-cc of the
14 public health law;

15 (5) the person acting as surrogate must have previously delivered at
16 least one healthy live birth from an uncomplicated pregnancy that was
17 not pursuant to a surrogacy agreement, and all previous pregnancies must
18 have been without serious complications;

19 (6) the person acting as surrogate has not delivered more than a total
20 of four live children;

21 (7) the person acting as surrogate has not had any previous cesarean
22 sections;

23 (8) the person acting as surrogate has given informed medical and
24 legal consent [~~for the surrogacy after the licensed health care practi-~~
25 ~~tioner inform them of the medical risks of surrogacy including the~~
26 ~~possibility of multiple births, risk of medications taken for the surro-~~
27 ~~gacy, risk of pregnancy complications, psychological and psychosocial~~
28 ~~risks, and impacts on their personal lives,] to enter into the surrogacy
29 agreement after completing the informed medical and legal consent proce-
30 dures pursuant to this article;~~

31 [~~(6)~~] (9) the person acting as surrogate, and the spouse of the person
32 acting as surrogate, if applicable, have been represented from the
33 initiation of and throughout the contractual process and the duration of
34 the [~~contract and its execution~~] surrogacy agreement until all of the
35 acts contemplated by the surrogacy agreement have been fulfilled by
36 seperate, independent legal counsel of their own choosing who is
37 licensed to practice law in the state of New York which shall be paid
38 for by the intended parent or parents, except that a person acting as
39 surrogate who is receiving no compensation may waive the right to have
40 the intended parent or parents pay the fee for such legal counsel. Where
41 the intended parent or parents are paying for the independent legal
42 counsel of the person acting as surrogate, and the spouse of the person
43 acting as surrogate, if applicable, a separate retainer agreement shall
44 be prepared clearly stating that such legal counsel will only represent
45 the person acting as surrogate and the spouse of the person acting as
46 surrogate, if applicable, in all matters pertaining to the surrogacy
47 agreement, that such legal counsel will not offer legal advice to any
48 other parties to the surrogacy agreement, and that the attorney-client
49 relationship lies with the person acting as surrogate and the spouse of
50 the person acting as surrogate, if applicable;

51 [~~(7) the person acting as surrogate has or the surrogacy agreement~~
52 ~~stipulates that the person acting as surrogate will obtain a comprehen-~~
53 ~~sive]~~

54 (10) the surrogacy agreement must provide that the person acting as
55 surrogate has or will obtain a comprehensive health insurance policy
56 that takes effect prior to taking any medication or commencing treatment

1 to further embryo transfer that covers preconception care, prenatal
2 care, major medical treatments, hospitalization, and behavioral health
3 care, and the comprehensive health insurance policy has a term that
4 extends throughout the duration of the expected pregnancy and for twelve
5 months after the birth of the child, a stillbirth, a miscarriage result-
6 ing in termination of pregnancy, or termination of the pregnancy; the
7 policy shall be paid for, whether directly or through reimbursement or
8 other means, by the intended parent or parents on behalf of the person
9 acting as surrogate pursuant to the surrogacy agreement, except that a
10 person acting as surrogate who is receiving no compensation may waive
11 the right to have the intended parent or parents pay for the health
12 insurance policy. The intended parent or parents shall also pay for or
13 reimburse the person acting as surrogate for all co-payments, deduct-
14 ibles and any other out-of-pocket medical costs associated with precon-
15 ception, pregnancy, childbirth, or postnatal care, that accrue through
16 twelve months after the birth of the child, a stillbirth, a miscarriage,
17 or termination of the pregnancy. A person acting as surrogate who is
18 receiving no compensation may waive the right to have the intended
19 parent or parents make such payments or reimbursements;

20 [~~(8) the surrogacy agreement must provide that the intended parent or~~
21 ~~parents shall procure and pay for a life insurance policy for the person~~
22 ~~acting as surrogate that takes effect prior to taking any medication or~~
23 ~~the commencement of medical procedures to further embryo transfer,~~
24 ~~provides a minimum benefit of seven hundred fifty thousand dollars or~~
25 ~~the maximum amount the person acting as surrogate qualifies for if less~~
26 ~~than seven hundred fifty thousand dollars, and has a term that extends~~
27 ~~throughout the duration of the expected pregnancy and for twelve months~~
28 ~~after the birth of the child, a stillbirth, a miscarriage resulting in~~
29 ~~termination of pregnancy, or termination of the pregnancy, with a bene-~~
30 ~~ficiary or beneficiaries of their choosing. The policy shall be paid~~
31 ~~for, whether directly or through reimbursement or other means, by the~~
32 ~~intended parent or parents on behalf of the person acting as surrogate~~
33 ~~pursuant to the surrogacy agreement, except that a person acting as~~
34 ~~surrogate who is receiving no compensation may waive the right to have~~
35 ~~the intended parent or parents pay for the life insurance policy]~~

36 (11) the person acting as surrogate has registered with the central
37 assisted reproduction registry; and

38 [~~(9)~~] (12) the person acting as surrogate meets all other requirements
39 deemed appropriate by the commissioner of health regarding the health of
40 the prospective surrogate.

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

45 (1) at least one intended parent must provide their gametes to create
46 the embryo that will be transferred to the person acting as surrogate,
47 unless the intended parent or parents are unable to provide their
48 gametes for medical reasons;

49 (2) the intended parent or parents have met and have certified that
50 they will continue to meet the residency requirements, including:

51 (i) at least one intended parent is a United States citizen or a
52 lawful permanent resident; and [~~was a resident~~]

53 (ii) the intended parent or parents have been residents of New York
54 state for at least six months at the time the surrogacy agreement was
55 executed; and

1 (iii) the intended parent or parents will maintain New York state
2 residency for the duration of the surrogate pregnancy and for at least
3 one month following the birth of any children;

4 (3) the intended parent or parents have given informed medical and
5 legal consent to enter into the surrogacy agreement after completing the
6 informed medical and legal consent procedures pursuant to part ten of
7 this article;

8 [~~(2)~~](4) the intended parent or parents [~~has~~] have been represented
9 [~~throughout~~] from the initiation of and throughout the contractual proc-
10 ess and the duration of the [~~contract and its execution~~] surrogacy
11 agreement until all of the acts contemplated by the surrogacy agreement
12 have been fulfilled by separate, independent legal counsel of his, her
13 or their own choosing who is licensed to practice law in the state of
14 New York; [~~and~~

15 ~~(3) he or she is~~] (5) they are an adult person who is not in a spousal
16 relationship, or [~~adult~~] any adults who are spouses together, or any two
17 adults who are intimate partners together, except an adult in a spousal
18 relationship is eligible to enter into an enforceable surrogacy agree-
19 ment without [~~his or her~~] their spouse if:

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

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

26 (6) the intended parent or parents were not parties to another surro-
27 gacy agreement at the time the surrogacy agreement pursuant to part four
28 of this article was executed and they will not enter into another surro-
29 gacy agreement until after all of the acts contemplated by the current
30 surrogacy agreement have been fulfilled; and

31 (7) the intended parent or parents have registered with the central
32 assisted reproduction registry.

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

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

39 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement
40 shall be deemed to have satisfied the requirements of this article and
41 be enforceable if it meets the following requirements:

42 (a) it shall be in a [~~signed~~] record [~~verified or executed before~~]
43 with each signature either notarized or witnessed by two [~~non-party~~
44 ~~witnesses~~] non-parties, whose names, phone numbers, email addresses, and
45 mailing addresses shall be recorded, 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~~] and after the person acting
4 as surrogate [~~shall have~~] has provided informed medical and legal
5 consent pursuant to part ten of this article to [~~undergo such medical~~
6 ~~treatment or medical procedures prior to executing the~~] enter into the
7 surrogacy agreement;

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

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

16 (e) the person acting as surrogate and the spouse of the person acting
17 as surrogate, if applicable, and the intended parent or parents shall
18 have been represented from the initiation of and throughout the contrac-
19 tual process and the surrogacy agreement stipulates that they will
20 continue to be represented throughout the duration of the [~~contract and~~
21 ~~its execution~~] surrogacy agreement until all of the acts contemplated by
22 the surrogacy agreement have been fulfilled by separate, independent
23 legal counsel of their own choosing, who is licensed to practice law in
24 the state of New York, to be paid for by the intended parent or parents;

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

34 (g) the person acting as surrogate has or the surrogacy agreement
35 stipulates that the person acting as surrogate has or will obtain a
36 comprehensive health insurance policy or shall obtain such policy once
37 the surrogacy agreement is executed pursuant to section fourteen hundred
38 nine of the general business law, which shall take effect prior to
39 taking any medication or commencing treatment to further embryo transfer
40 that covers preconception care, prenatal care, major medical treatments,
41 hospitalization, and behavioral health care, and the comprehensive poli-
42 cy has a term that extends throughout the duration of the expected preg-
43 nancy and for twelve months after the birth of the child, a stillbirth,
44 a miscarriage resulting in termination of pregnancy, or termination of
45 the pregnancy; the policy shall be paid for, whether directly or through
46 reimbursement or other means, by the intended parent or parents on
47 behalf of the person acting as surrogate pursuant to the surrogacy
48 agreement, except that a person acting as surrogate who is receiving no
49 compensation may waive the right to have the intended parent or parents
50 pay for the health insurance policy. The intended parent or parents
51 shall also pay for or reimburse the person acting as surrogate for all
52 co-payments, deductibles and any other out-of-pocket medical costs asso-
53 ciated with preconception, pregnancy, childbirth, or postnatal care,
54 that accrue through twelve months after the birth of the child, a still-
55 birth, a miscarriage, or termination of the pregnancy. A person acting
56 as surrogate who is receiving no compensation may waive the right to

1 have the intended parent or parents make such payments or reimburse-
2 ments;

3 (h) the surrogacy agreement must include information disclosing how
4 the intended parent or parents will cover the medical expenses of the
5 person acting as surrogate and the child. [~~If comprehensive health care~~
6 ~~coverage is used to cover the medical expenses, the~~] The disclosure
7 shall include a review and summary of the comprehensive health care
8 policy provisions related to coverage and exclusions for the person
9 acting as surrogate's pregnancy and if an intended parent's or parents'
10 health insurance coverage of in vitro fertilization shall be used to
11 cover medical costs of assisted reproduction services rendered to the
12 person acting as surrogate pursuant to section three thousand two
13 hundred twenty-one or four thousand three hundred three of the insurance
14 law; and

15 [~~(h)~~] (i) it shall include the following information:

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

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

20 (3) prior to the effective date of section fourteen hundred five of
21 the general business law, the first and last names of and contact infor-
22 mation for the persons from which the gametes originated, if [~~known~~]
23 identified, or the gamete donor reference number if the donation was
24 nonidentified. After the effective date of section fourteen hundred five
25 of the general business law the first and last name and contact informa-
26 tion for any gamete donor must be included. The agreement shall specify
27 whether the gametes provided were eggs, sperm, or embryos;

28 (4) the name of and contact information for the licensed and regis-
29 tered surrogacy program handling the surrogacy agreement, the independ-
30 ent escrow agent, and the fertility clinic; and

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

35 [~~(i)~~] (j) the surrogacy agreement must comply with all of the follow-
36 ing terms:

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

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

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

45 (iii) the surrogacy agreement shall include the name of and contact
46 information for the attorney representing the person acting as surrogate
47 and, if applicable, the spouse of the person acting as surrogate;

48 (iv) the surrogacy agreement must include an acknowledgement by the
49 person acting as surrogate and the spouse of the person acting as surro-
50 gate, if applicable, that they have received a copy of the Surrogate's
51 Bill of Rights and the bill of rights of donor-conceived and surrogate-
52 born individuals from their legal counsel including an explanation of
53 each right and how to implement their rights pursuant to part ten of
54 this article;

55 (v) the surrogacy agreement must permit the person acting as surrogate
56 to make all health [~~and~~], welfare, and behavioral decisions regarding

1 themselves and their pregnancy [~~including~~]. Health and welfare decisions
2 include but are not limited to, whether to get vaccinated against the
3 Coronavirus and other illnesses, to consent to a cesarean section or
4 multiple embryo transfer, and notwithstanding any other provisions in
5 this chapter, provisions in the agreement to the contrary are void and
6 unenforceable. This article does not diminish the right of the person
7 acting as surrogate to terminate or continue a pregnancy. The surrogacy
8 agreement may not include clauses or terms that impose restrictions on
9 the behavior of the person acting as surrogate. Any such clause or term
10 is void and unenforceable;

11 (vi) the surrogacy agreement shall require the person acting as surro-
12 gate to receive surrogate screening, assisted reproduction, maternity
13 health care and delivery, and behavioral health care services from
14 health care providers licensed under title eight of the education law;

15 (vii) the surrogacy agreement shall permit the person acting as a
16 surrogate to utilize the services of a health care practitioner licensed
17 under title eight of the education law of the person's choosing;

18 [~~(vii)~~] (viii) the surrogacy agreement shall not limit the right of
19 the person acting as surrogate to terminate or continue the pregnancy or
20 reduce or retain the number of fetuses or embryos the person is carry-
21 ing;

22 [~~(viii)~~] (ix) the surrogacy agreement shall provide for [~~the right of~~]
23 the person acting as surrogate [~~, upon request,~~] to obtain a comprehen-
24 sive health insurance policy that covers behavioral health care and will
25 cover the cost of psychological counseling to address issues resulting
26 from the person's participation in the surrogacy agreement, including,
27 but not limited to, counseling following delivery[~~,. The cost of that~~
28 ~~counseling~~], and such policy shall be paid for by the intended parent or
29 parents;

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

35 ~~(x)~~] (xi) the surrogacy agreement must provide that the intended
36 parent or parents shall procure and pay for a life insurance policy for
37 the person acting as surrogate that takes effect prior to taking any
38 medication or the commencement of medical and surgical procedures to
39 further embryo transfer, provides a minimum benefit of seven hundred
40 fifty thousand dollars or the maximum amount the person acting as surro-
41 gate qualifies for if less than seven hundred fifty thousand dollars,
42 and has a term that extends throughout the duration of the expected
43 pregnancy and for twelve months after the birth of the child, a still-
44 birth, a miscarriage resulting in termination of pregnancy, or termi-
45 nation of the pregnancy, with a beneficiary or beneficiaries of their
46 choosing. The policy shall be paid for, whether directly or through
47 reimbursement or other means, by the intended parent or parents on
48 behalf of the person acting as surrogate pursuant to the surrogacy
49 agreement, except that a person acting as surrogate who is receiving no
50 compensation may waive the right to have the intended parent or parents
51 pay for the life insurance policy;

52 (xii) the surrogacy agreement shall provide that[~~, upon the person~~
53 ~~acting as surrogate's request,~~] the intended parent or parents [~~have or~~
54 ~~will procure and~~] shall procure and pay for a disability insurance poli-
55 cy for the person acting as surrogate[~~, the person acting as surrogate~~
56 ~~may designate the beneficiary of the person's choosing~~] before the

1 person acting as surrogate starts taking medication or commences medical
2 and surgical procedures to further embryo transfer; and

3 (xiii) the surrogacy agreement may not include a nondisclosure clause
4 that prohibits the person acting as surrogate from talking about the
5 surrogacy agreement, the surrogate pregnancy, or their experience acting
6 as a surrogate. Any such clause shall be void and unenforceable.

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

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

14 (ii) the intended parent or parents agree to assume responsibility for
15 the support of all resulting children immediately upon birth; and

16 (iii) the surrogacy agreement shall include the name of and contact
17 information for the attorney representing the intended parent or
18 parents; and

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

22 (v) the intended parent or parents agree to execute a will, prior to
23 the embryo transfer, designating a guardian for all resulting children
24 and authorizing their executor to perform the intended parent's or
25 parents' obligations pursuant to the surrogacy agreement.

26 § 11. Section 581-408 of the family court act, as added by section 1
27 of part L of chapter 56 of the laws of 2020, is amended to read as
28 follows:

29 § 581-408. Absence of surrogacy agreement. Where there is no surrogacy
30 agreement, the parentage of the child will be determined based on other
31 laws of this state, taking into account the best interests of the child.

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

35 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is
36 related to a surrogacy agreement other than disputes as to parentage,
37 shall be resolved by the supreme court, which shall determine the
38 respective rights and obligations of the parties[~~7-in~~]. In any proceed-
39 ing initiated pursuant to this section, the court may, at its
40 discretion, authorize the use of conferencing or mediation at any point
41 in the proceedings.

42 (b) Any disputes as to parentage shall be resolved taking into account
43 the best interests of the child.

44 (c) Except as expressly provided in the surrogacy agreement, the
45 intended parent or parents and the person acting as surrogate shall be
46 entitled to all remedies available at law or equity in any dispute
47 related to the surrogacy agreement.

48 [~~e~~] (d) There shall be no specific performance remedy available for
49 a breach.

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

1 § 13. Subdivision (c) of section 581-502 of the family court act, as
2 added by section 1 of part L of chapter 56 of the laws of 2020, is
3 amended to read as follows:

4 (c) Compensation may not be conditioned upon the number of oocytes
5 retrieved, purported quality or genome-related traits of the gametes or
6 embryos.

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

10 § 581-601. Applicability. The rights enumerated in this part shall
11 apply to any person acting as surrogate [~~in this state~~] under part four
12 of this article, notwithstanding any surrogacy agreement, judgment of
13 parentage, memorandum of understanding, verbal agreement or contract to
14 the contrary. Except as otherwise provided by law, any written or verbal
15 agreement purporting to waive or limit any of the rights in this part is
16 void as against public policy. The rights enumerated in this part are
17 not exclusive, and are in addition to any other rights provided by law,
18 regulation, or a surrogacy agreement that meets the requirements of this
19 article.

20 § 15. Section 581-602 of the family court act, as added by section 1
21 of part L of chapter 56 of the laws of 2020, is amended to read as
22 follows:

23 § 581-602. Health [~~and~~], welfare, and behavioral decisions. A person
24 acting as surrogate has the same right to make all health [~~and~~],
25 welfare, and behavioral decisions regarding [~~them-self~~] themselves and
26 their pregnancy, including but not limited to whether to get vaccinated
27 against the Coronavirus and other illnesses, to consent to a cesarean
28 section or multiple embryo transfer, to utilize the services of a health
29 care practitioner licensed under title eight of the education law of
30 their choosing, whether to terminate or continue the pregnancy, and
31 whether to reduce or retain the number of fetuses or embryos they are
32 carrying. A person acting as surrogate has the same right to make all
33 behavioral decisions regarding themselves and their pregnancy as other
34 pregnant people in New York state. Any provisions that restrict the
35 behavior of a person acting as surrogate in a surrogacy agreement under
36 part four of this article are void and unenforceable.

37 § 16. Section 581-603 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 § 581-603. Independent legal counsel. A person acting as surrogate,
41 has the right to be represented from the initiation of and throughout
42 the contractual process and the duration of the surrogacy agreement [~~and~~
43 ~~its execution~~], until all of the acts contemplated by the surrogacy
44 agreement have been fulfilled by separate, independent legal counsel of
45 their own choosing who is licensed to practice law in the state of New
46 York, to be paid for by the intended parent or parents.

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

50 § 581-604. Health insurance and medical costs. A person acting as
51 surrogate has the right to have a comprehensive health insurance policy
52 that covers preconception care, prenatal care, major medical treatments,
53 hospitalization and behavioral health care for a term [~~that extends~~]
54 beginning before the person acting as surrogate takes any medication or
55 commences medical procedures to further embryo transfer and extending
56 throughout the duration of the expected pregnancy and for twelve months

1 after the birth of the child, a stillbirth, a miscarriage resulting in
2 termination of pregnancy, or termination of the pregnancy, to be paid
3 for by the intended parent or parents. The intended parent or parents
4 shall also pay for or reimburse the person acting as surrogate for all
5 co-payments, deductibles and any other out-of-pocket medical costs asso-
6 ciated with pregnancy, childbirth, or postnatal care that accrue through
7 twelve months after the birth of the child, a stillbirth, a miscarriage,
8 or the termination of the pregnancy. A person acting as a surrogate who
9 is receiving no compensation may waive the right to have the intended
10 parent or parents make such payments or reimbursements.

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

14 § 581-605. Counseling. A person acting as surrogate has the right to
15 ~~obtain~~ have a comprehensive health insurance policy that covers behav-
16 ioral health care and will cover the cost of psychological counseling to
17 address issues resulting from their participation in a surrogacy agree-
18 ment and such policy shall be paid for by the intended parent or
19 parents.

20 § 19. Section 581-607 of the family court act is renumbered section
21 581-608 and a new section 581-607 is added to read as follows:

22 § 581-607. Disability insurance policy. A person acting as surrogate
23 has the right to be provided a disability insurance policy prior to
24 taking any medication or commencement of medical and surgical procedures
25 to further embryo transfer, which shall be paid for by the intended
26 parent or parents.

27 § 20. Article 5-C of the family court act is amended by adding four
28 new parts 8, 9, 10 and 11 to read as follows:

29 PART 8

30 GAMETE DONATION MATCHED AGREEMENT AND

31 GAMETE DONATION AGENCY AGREEMENT

32 Section 581-801. Applicability.

33 581-802. Gamete donation matched agreement or gamete donation
34 agency agreement authorized.

35 581-803. Eligibility to enter into a gamete donation matched
36 agreement or a gamete donation agency agreement.

37 581-804. Requirements of a gamete donation matched agreement or
38 a gamete donation agency agreement.

39 581-805. Gamete donation matched agreement or gamete donation
40 agency agreement; effect of subsequent spousal
41 relationship.

42 581-806. Termination of a gamete donation matched agreement or a
43 gamete donation agency agreement.

44 581-807. Parentage under a compliant gamete donation matched
45 agreement or a compliant gamete donation agency
46 agreement.

47 581-808. Dispute as to a gamete donation matched agreement or a
48 gamete donation agency agreement.

49 § 581-801. Applicability. The provisions enumerated in this part shall
50 apply to:

51 (a) a gamete donation matched agreement between a gamete donor and an
52 intended parent or parents. The gamete donor and/or the intended parent
53 or parents is located in or is a resident of New York state; and

54 (b) a gamete donation agency agreement between:

55 (1) a gamete donor located in, or who is a resident of New York state;

56 or

1 (2) an intended parent or parents located in, or who are residents of
2 New York state that receive fresh or frozen gametes; and

3 (3) an agent, gamete agency, gamete broker, surrogacy program, fertil-
4 ity clinic, or health care provider, hereinafter referred to in this
5 part as an "entity".

6 § 581-802. Gamete donation matched agreement or gamete donation agency
7 agreement authorized. If eligible under this article to enter into a
8 gamete donation matched agreement or a gamete donation agency agreement:

9 (a) a gamete donor and an intended parent or parents may enter into a
10 gamete donation matched agreement which will be enforceable provided the
11 gamete donation matched agreement meets the requirements of this arti-
12 cle;

13 (b) a gamete donor or an intended parent or parents may enter into a
14 gamete donation agency agreement with an entity which will be enforcea-
15 ble provided the gamete donation agency agreement meets the requirements
16 of this article.

17 § 581-803. Eligibility to enter into a gamete donation matched agree-
18 ment or a gamete donation agency agreement. (a) An egg donor shall be
19 eligible to enter into an enforceable gamete donation matched agreement
20 or a gamete donation agency agreement under this article if the egg
21 donor has met all of the following requirements at the time the agree-
22 ment is executed:

23 (1) the egg donor must be at least twenty-one years of age and no more
24 than thirty years of age, unless the entity requires a maximum age that
25 is less than thirty;

26 (2) the egg donor may only enter into a gamete donation matched agree-
27 ment or a gamete donation agency agreement where the entity that
28 collects the donor's gametes and provides matching services, if applica-
29 ble, is licensed and registered by New York state;

30 (3) fewer than ten donor-conceived individuals that were conceived
31 using the donor gametes of the egg donor have been born in New York
32 state, provided that this number shall not include the egg donor's own
33 biological children;

34 (4) the egg donor has given informed medical and legal consent to
35 enter into the gamete donation matched agreement or the gamete donation
36 agency agreement after completing the informed medical and legal consent
37 procedures pursuant to part ten of this article;

38 (5) the egg donor has obtained written medical clearance to undergo
39 ovarian stimulation and oocyte retrieval after completing a medical
40 evaluation and psychological screening with independent health care
41 practitioners licensed under title eight of the education law relating
42 to the anticipated gamete donation. The department shall maintain a list
43 of independent health care providers;

44 (6) the egg donor shall not obtain written medical clearance to under-
45 go ovarian stimulation and oocyte retrieval if they have any medical
46 conditions indicated by the American college of obstetricians and gyne-
47 cologists (ACOG) that place individuals at risk of ovarian hyperstimula-
48 tion, if they have any relevant communicable disease agents and diseases
49 specified by the U.S. food and drug administration, or if they are not
50 eligible to donate gametes pursuant to regulations of the department of
51 health as set forth in 10 NYCRR 52-8.5 and 52-3.4;

52 (7) the egg donor is not eligible to enter into a gamete donation
53 matched agreement or a gamete donation agency agreement if the egg donor
54 has previously undergone ovarian stimulation six times or more, includ-
55 ing for purposes of egg freezing, or if the egg donor has experienced

1 ovarian hyperstimulation syndrome (OHSS), polycystic ovarian syndrome
2 (PCOS), or endometriosis;

3 (8) if an egg donor is entering into a gamete donation matched agree-
4 ment or a gamete donation agency agreement prior to the effective date
5 of section fourteen hundred five of the general business law, the egg
6 donor was counseled on their options regarding identity disclosure under
7 section fourteen hundred seven of the general business law and has
8 certified in a signed record whether they agree to donate gametes as an
9 identified or nonidentified gamete donor after completing the informed
10 medical and legal consent procedures pursuant to part ten of this arti-
11 cle. If an egg donor is entering into a gamete donation matched agree-
12 ment or a gamete donation agency agreement after the effective date of
13 section fourteen hundred five of the general business law, the egg donor
14 was counseled on their options regarding identity disclosure under
15 section fourteen hundred seven of the general business law and has
16 certified in a signed record that they agree to donate gametes as an
17 identified gamete donor after completing the informed medical and legal
18 consent procedures pursuant to part ten of this article; and

19 (9) the egg donor has registered with the central assisted reprod-
20 uction registry.

21 (b) A sperm donor shall be eligible to enter into an enforceable
22 gamete donation matched agreement or a gamete donation agency agreement
23 under this article if the sperm donor has met all of the following
24 requirements at the time the agreement is executed:

25 (1) a sperm donor must be at least twenty-one years of age, and no
26 more than forty years of age, unless the entity requires a maximum age
27 that is less than forty years of age;

28 (2) a sperm donor may only enter into a gamete donation matched agree-
29 ment or a gamete donation agency agreement where the entity that
30 collects the donor's gametes and provides matching services, if applica-
31 ble, is licensed and registered by New York state;

32 (3) fewer than ten donor-conceived individuals that were conceived
33 using the donor gametes of the sperm donor have been born in New York
34 state, provided that this number shall not include a sperm donor's own
35 biological children;

36 (4) a sperm donor provided informed medical and legal consent to enter
37 into the gamete donation matched agreement or the gamete donation agency
38 agreement after completing the informed medical and legal consent proce-
39 dures pursuant to part ten of this article;

40 (5) a sperm donor has obtained written medical clearance to produce
41 their gametes for use in assisted reproduction after completing a
42 medical evaluation and a psychological screening with independent health
43 care practitioners licensed under title eight of the education law
44 relating to the anticipated gamete donation. The department shall main-
45 tain a list of independent health care providers;

46 (6) a sperm donor shall not obtain written medical clearance if the
47 sperm donor has any relevant communicable disease agents and diseases
48 specified by the U.S. food and drug administration, or if they are not
49 eligible pursuant to regulations of the department of health as set
50 forth in 10 NYCRR 52-8.5 and 52-3.4;

51 (7) if a sperm donor is entering into a gamete donation matched agree-
52 ment or a gamete donation agency agreement prior to the effective date
53 of section fourteen hundred five of the general business law, the sperm
54 donor was counseled on their options regarding identity disclosure under
55 section fourteen hundred seven of the general business law and has
56 certified in a signed record whether they agree to donate gametes as an

1 identified or nonidentified gamete donor after completing the informed
2 medical and legal consent procedures pursuant to part ten of this arti-
3 cle. If a sperm donor is entering into a gamete donation matched agree-
4 ment or a gamete donation agency agreement after the effective date of
5 section fourteen hundred five of the general business law, the sperm
6 donor was counseled on their options regarding identity disclosure under
7 section fourteen hundred seven of the general business law and has
8 certified in a signed record that they agree to donate gametes as an
9 identified gamete donor after completing the informed medical and legal
10 consent procedures pursuant to part ten of this article; and

11 (8) the sperm donor registered with the central assisted reproduction
12 registry.

13 (c) An intended parent or parents shall be eligible to enter into an
14 enforceable gamete donation matched agreement or gamete donation agency
15 agreement if the intended parent or parents have met all of the follow-
16 ing requirements at the time the agreement is executed:

17 (1) the intended parent or parents have given informed medical and
18 legal consent to enter into the gamete donation matched agreement or the
19 gamete donation agency agreement after completing the informed medical
20 and legal consent procedures pursuant to part ten of this article;

21 (2) an intended parent or parents may only enter into a gamete
22 donation matched agreement or a gamete donation agency agreement where
23 the entity that collects the donor's gametes and provides matching
24 services, if applicable, is licensed and registered by New York state;

25 (3) if an intended parent or parents are entering into a gamete
26 donation matched agreement or a gamete donation agency agreement prior
27 to the effective date of section fourteen hundred five of the general
28 business law, the intended parent or parents were counseled on the
29 options regarding identity disclosure of gamete donors and information
30 that a donor-conceived person, or the parent or legal guardian, has the
31 right to obtain upon request under section fourteen hundred seven of the
32 general business law. If an intended parent or parents are entering into
33 a gamete donation matched agreement or a gamete donation agency agree-
34 ment after the the effective date of section fourteen hundred five of
35 the general business law, the intended parent or parents were counseled
36 that nonidentified donation is not permitted and on the information that
37 donor-conceived individuals, or the parent or legal guardian, has the
38 right to obtain upon request under section fourteen hundred seven of the
39 general business law.

40 § 581-804. Requirements of a gamete donation matched agreement or a
41 gamete donation agency agreement. A gamete donation matched agreement or
42 a gamete donation agency agreement shall be deemed to have satisfied the
43 requirements of this article and be enforceable if it meets all of the
44 following requirements:

45 (a) It shall be in a record signed by the gamete donor and each
46 intended parent, if applicable:

47 (1) before a notary public; or

48 (2) before two witnesses who are not parties to the agreement;
49 provided that if the record is signed before two witnesses who are not
50 the intended parents, the name, phone number, email address, and mailing
51 address of each witness must be recorded.

52 (b) It shall be executed by a gamete donor who met the eligibility
53 requirements of subdivision (a) or (b) of section 581-803 of this part;

54 (c) It shall be executed by an intended parent or parents, if applica-
55 ble, who met the eligibility requirements of subdivision (c) of section
56 581-803 of this part.

1 (d) The gamete donor was provided the option to consult with an inde-
2 pendent legal counsel of their own choosing who is licensed to practice
3 in the state of New York, to be paid for by the entity. If the gamete
4 donor opted to consult with legal counsel, they have had the consulta-
5 tion prior to executing the gamete donation matched agreement or the
6 gamete donation agency agreement.

7 (e) If an egg donor is entering into a gamete donation matched agree-
8 ment or a gamete donation agency agreement, the agreement shall be
9 executed prior to the egg donor taking any medication or commencement of
10 medical procedures in the furtherance of ovarian stimulation and oocyte
11 retrieval.

12 (f) It shall include the following information:

13 (1) the date, city, and state where the gamete donation matched agree-
14 ment or the gamete donation agency agreement was executed;

15 (2) the first and last name of and contact information for the gamete
16 donor, and whether the gametes provided are eggs, sperm, or embryos;

17 (3) the first and last name of and contact information for the
18 intended parent or parents if applicable;

19 (4) the name of and contact information for the entity that provided
20 matching services, if applicable, and collected the donor gametes; and

21 (5) the amount of compensation that the gamete donor shall receive for
22 their time and effort to produce eggs or sperm.

23 (g) The gamete donation matched agreement or the gamete donation agen-
24 cy agreement must comply with all of the following terms:

25 (1) As to the egg donor, if applicable:

26 (i) the gamete donation matched agreement or the gamete donation agen-
27 cy agreement must include signed certification by the egg donor that
28 they have completed the informed medical and legal consent procedures
29 pursuant to part ten of this article and have provided informed medical
30 and legal consent to enter into the gamete donation matched agreement or
31 gamete donation agency agreement;

32 (ii) the gamete donation matched agreement or the gamete donation
33 agency agreement must include signed certification indicating whether
34 the egg donor authorizes use of the eggs they are donating, or embryos
35 created from the donated eggs, for research at any time;

36 (iii) the gamete donation matched agreement or gamete donation agency
37 agreement must include signed certification indicating whether the egg
38 donor authorizes distribution of the eggs they are donating, or embryos
39 created from the donated eggs, to multiple intended parents in different
40 households;

41 (iv) the egg donor agrees to undergo ovarian stimulation and oocyte
42 retrieval and attempt to produce eggs for use in assisted reproduction,
43 subject to their right to cancel an egg retrieval cycle or terminate the
44 gamete donation matched agreement or gamete donation agency agreement at
45 any time;

46 (v) the egg donor has certified that they have no parental or proprie-
47 tary interest in the eggs provided under the gamete donation matched
48 agreement or gamete donation agency agreement;

49 (vi) the gamete donation matched agreement or gamete donation agency
50 agreement must provide for the right of the egg donor to exercise sole
51 discretion over decisions regarding their behavior, other than behaviors
52 that would harm their health, and to make all decisions regarding their
53 health and welfare, including the amount of time that transpires between
54 egg retrieval cycles and gamete donation matched agreements or gamete
55 donation agency agreements and whether to cancel an egg retrieval cycle

1 or terminate a gamete donation matched agreement or gamete donation
2 agency agreement at any time;

3 (vii) the gamete donation matched agreement or gamete donation agency
4 agreement must provide that the entity or the intended parent or
5 parents, if applicable, shall pay for a health insurance policy that
6 covers major medical treatment, hospitalization, and behavioral health
7 care for the egg donor, and the health insurance policy has a term that
8 begins before the egg donor starts taking any medication or commencement
9 of medical and surgical procedures in furtherance of ovarian stimulation
10 and oocyte retrieval and extends for twelve months after oocyte
11 retrieval is completed. If the egg donor does not have such a health
12 insurance policy, one may be purchased pursuant to section three hundred
13 sixty-five-p of the social services law once the gamete donation matched
14 agreement or the gamete donation agency agreement has been executed. The
15 entity or the intended parent or parents shall also pay for or reimburse
16 the egg donor for all co-payments, deductibles and any other out-of-
17 pocket medical costs associated with ovarian stimulation, oocyte
18 retrieval, and medical or psychological complications that accrue
19 through twelve months after oocyte retrieval is completed;

20 (viii) the gamete donation matched agreement or gamete donation agency
21 agreement shall provide for the egg donor to obtain a health insurance
22 policy that covers major medical treatment, hospitalization, and behav-
23 ioral health care and will cover the cost of psychological counseling to
24 address issues resulting from the donor's participation in the gamete
25 donation matched agreement or gamete donation agency agreement, includ-
26 ing, but not limited to, counseling following the gamete donation. The
27 policy shall be paid for by the entity or the intended parent or
28 parents, if applicable;

29 (ix) the gamete donation matched agreement or gamete donation agency
30 agreement may not include more than one cycle of oocyte retrieval, and
31 may not require the egg donor to sign another gamete donation matched
32 agreement or gamete donation agency agreement until a minimum of three
33 months has passed following fulfillment of the current agreement;

34 (x) the egg donor has been shown the entity's compensation list for
35 gamete donation that is made available to the general public;

36 (xi) if an egg donor is entering into a gamete donation matched agree-
37 ment or a gamete donation agency agreement prior to the effective date
38 of section fourteen hundred five of the general business law, the agree-
39 ment must include the egg donor's signed certification that they agree
40 to provide donor gametes on an identified or nonidentified basis. If an
41 egg donor is entering into a gamete donation matched agreement or gamete
42 donation agency agreement after the effective date of section fourteen
43 hundred five of the general business law, the agreement must include the
44 egg donor's signed certification that they agree to identified donation;
45 and

46 (xii) donor screening, ovarian stimulation, oocyte retrieval, and
47 other medical services that are received pursuant to the gamete donor
48 matched agreement or the gamete donor agency agreement must be provided
49 by health care providers licensed under title eight of the education
50 law.

51 (2) As to the sperm donor, if applicable:

52 (i) the gamete donation matched agreement or gamete donation agency
53 agreement must include signed certification by the sperm donor that they
54 have completed the informed medical and legal consent procedures pursu-
55 ant to part ten of this article and have provided informed medical and

1 legal consent to enter into the gamete donation matched agreement or
2 gamete donation agency agreement;

3 (ii) the sperm donor agrees to attempt to produce sperm for use in
4 assisted reproduction, subject to their right to stop donating sperm and
5 to terminate the gamete donation matched agreement or gamete donation
6 agency agreement at any time;

7 (iii) the sperm donor has certified that they have no parental or
8 proprietary interest in the sperm provided under the gamete donation
9 matched agreement or gamete donation agency agreement;

10 (iv) the gamete donation matched agreement or gamete donation agency
11 agreement must permit the sperm donor to make all health and welfare
12 decisions regarding themselves, including whether to stop donating sperm
13 and to terminate a gamete donation matched agreement or a gamete
14 donation agency agreement at any time;

15 (v) the sperm donor has been shown the entity's compensation list for
16 gamete donation that is made available to the general public;

17 (vi) the gamete donation matched agreement or the gamete donation
18 agency agreement must include signed certification indicating whether
19 the sperm donor authorizes use of the sperm they are donating, or embr-
20 yos created from the donated sperm, for research at any time;

21 (vii) if a sperm donor is entering into a gamete donation matched
22 agreement or a gamete donation agency agreement prior to the effective
23 date of section fourteen hundred five of the general business law, the
24 agreement must include the sperm donor's signed certification that they
25 agree to provide donor gametes on an identified or nonidentified basis.
26 If a sperm donor is entering into a gamete donation matched agreement or
27 gamete donation agency agreement after the effective date of section
28 fourteen hundred five of the general business law, the agreement must
29 include the sperm donor's signed certification that they agree to iden-
30 tified donation; and

31 (viii) donor screening and other medical services that are required
32 under the gamete donor matched agreement or the gamete donor agency
33 agreement must be provided by health care providers licensed under title
34 eight of the education law.

35 (3) As to the intended parent or parents, if applicable:

36 (i) the gamete donation matched agreement or the gamete donation agen-
37 cy agreement must include certification by each intended parent that
38 they have completed the informed medical and legal consent procedures
39 pursuant to part ten of this article and have provided informed medical
40 and legal consent to enter into the gamete donation matched agreement or
41 the gamete donation agency agreement; and

42 (ii) the intended parent or parents agree to accept parental rights
43 and responsibility of all resulting donor-conceived children, regardless
44 of number, gender, or mental or physical condition without diminishing
45 the rights, if any, of anyone claiming to have a superior parental
46 interest in the child.

47 § 581-805. Gamete donation matched agreement or gamete donation agency
48 agreement; effect of subsequent spousal relationship. After the
49 execution of a gamete donation matched agreement or a gamete donation
50 agency agreement under this article, the subsequent separation or
51 divorce of the intended parents does not affect the rights, duties and
52 responsibilities of the intended parents as outlined in the gamete
53 donation matched agreement or gamete donation agency agreement.

54 § 581-806. Termination of a gamete donation matched agreement or a
55 gamete donation agency agreement. (a) Right to terminate. A gamete
56 donor has the right to terminate a gamete donation matched agreement or

1 a gamete donation agency agreement at any time, and an egg donor has the
2 right to cancel an egg retrieval cycle at any time.

3 (b) Termination of a gamete donation matched agreement. (1) An egg
4 donor or the intended parent or parents may terminate a gamete donation
5 matched agreement without penalty and without being required to reim-
6 burse donor screening costs after the agreement has been executed and
7 before the egg donor has started taking medication or commenced medical
8 procedures to further ovarian stimulation and oocyte retrieval.

9 (2) An egg donor may terminate the gamete donation matched agreement
10 at any time without penalty and without being required to reimburse
11 donor screening, medication, or medical procedure costs due to changing
12 their mind about donating their gametes, provided that if the egg donor
13 terminates the gamete donation matched agreement after they have started
14 taking medication or commenced medical procedures to further ovarian
15 stimulation and oocyte retrieval, the egg donor is required to return
16 any financial compensation received. The egg donor shall retain the
17 health insurance policy obtained under the terms of the agreement.

18 (3) An egg donor may terminate the gamete donation matched agreement
19 at any time without penalty and without being required to reimburse
20 donor screening, medication, or medical procedure costs due to experi-
21 encing medical complications verified by an independent health care
22 provider licensed under title eight of the education law of the egg
23 donor's choosing, provided that if the egg donor terminates the gamete
24 donation matched agreement after they have started taking medication or
25 commenced medical procedures to further ovarian stimulation and oocyte
26 retrieval, the egg donor shall receive prorated compensation for their
27 time and effort and shall retain the health insurance policy obtained
28 under the terms of the agreement.

29 (4) If the physician cancels the egg retrieval cycle or terminates the
30 gamete donation matched agreement after the egg donor has started taking
31 medication or commenced medical procedures to further ovarian stimu-
32 lation and oocyte retrieval, the egg donor shall receive prorated
33 compensation for their time and effort, which shall be paid for by the
34 entity, and the egg donor shall retain the health insurance policy
35 obtained under the terms of the agreement.

36 (5) If the intended parent or parents cancel the egg retrieval cycle
37 or terminate the gamete donation matched agreement after the egg donor
38 has started taking medication or commenced medical procedures to further
39 ovarian stimulation and oocyte retrieval, the egg donor shall receive
40 prorated compensation for their time and effort, which shall be paid for
41 by the intended parent or parents, and shall retain the health insurance
42 policy obtained under the terms of the agreement.

43 (6) A sperm donor may stop donating sperm and may terminate a gamete
44 donation matched agreement at any time without penalty and without being
45 required to reimburse donor screening costs.

46 (c) Termination of a gamete donation agency agreement between a gamete
47 donor and an entity. (1) An egg donor may terminate a gamete donation
48 agency agreement without penalty and without being required to reimburse
49 donor screening costs after the agreement has been executed and before
50 the egg donor has started taking medication or commenced medical proce-
51 dures to further ovarian stimulation and oocyte retrieval.

52 (2) An egg donor may terminate the gamete donation agency agreement at
53 any time without penalty and without being required to reimburse donor
54 screening, medication, or medical procedure costs due to changing their
55 mind about donating their gametes, provided that if the egg donor termi-
56 nates the gamete donation agency agreement after they have started

1 taking medication or commenced medical procedures to further ovarian
2 stimulation and oocyte retrieval, the egg donor is required to return
3 any financial compensation received. The egg donor shall retain the
4 health insurance policy obtained under the terms of the agreement.

5 (3) An egg donor may terminate the gamete donation agency agreement at
6 any time without penalty and without being required to reimburse donor
7 screening, medication, or medical procedure costs due to experiencing
8 medical complications verified by an independent health care provider
9 licensed under title eight of the education law of the egg donor's
10 choosing, provided that if the egg donor terminates the gamete donation
11 agency agreement after they have started taking medication or commenced
12 medical procedures to further ovarian stimulation and oocyte retrieval,
13 the egg donor shall receive a prorated compensation for their time and
14 effort, and the egg donor shall retain the health insurance policy
15 obtained under the terms of the agreement.

16 (4) If the physician cancels the egg retrieval cycle or terminates the
17 gamete donation agency agreement after the egg donor has started taking
18 medication or commenced medical procedures to further ovarian stimu-
19 lation and oocyte retrieval, the egg donor shall receive prorated
20 compensation for their time and effort, which shall be paid for by the
21 entity, and the egg donor shall retain the health insurance policy
22 obtained under the terms of the agreement.

23 (5) A sperm donor may stop donating sperm and may terminate a gamete
24 donation agency agreement at any time without penalty and without being
25 required to reimburse donor screening costs.

26 (d) Termination of a gamete donation agency agreement between an
27 intended parent or parents and an entity, where the intended parent or
28 parents are receiving fresh donor gametes. (1) If receiving fresh donor
29 eggs, the intended parent or parents may terminate a gamete donation
30 agency agreement without penalty and without being required to reimburse
31 donor screening costs after the agreement has been executed and before
32 the egg donor has started taking medication or commenced medical proce-
33 dures to further ovarian stimulation and oocyte retrieval.

34 (2) If receiving fresh donor eggs and the physician cancels the egg
35 retrieval cycle or terminates the gamete donation agency agreement, the
36 intended parent or parents may not be required to reimburse donor
37 screening costs or compensate the egg donor for time and effort.

38 (3) If receiving fresh donor eggs and the intended parent or parents
39 terminate the gamete donation agency agreement after the egg donor has
40 started taking medication or commenced medical procedures to further
41 ovarian stimulation and oocyte retrieval, the intended parent or parents
42 may not be required to reimburse donor screening costs. The egg donor
43 shall receive prorated compensation for their time and effort, which
44 shall be paid by the intended parent or parents; and

45 (4) If receiving fresh donor sperm, the intended parent or parents may
46 terminate a gamete donation agency agreement without penalty and without
47 being required to reimburse donor screening costs; and

48 (e) The amount of prorated compensation that an egg donor shall
49 receive for their time and effort under subdivisions (b), (c), and (d)
50 of this section shall be stipulated in regulations that shall be promul-
51 gated by the commissioner.

52 § 581-807. Parentage under a compliant gamete donation matched agree-
53 ment or a compliant gamete donation agency agreement. Upon the birth of
54 a child conceived by assisted reproduction under a gamete donation
55 matched agreement or a gamete donation agency agreement that complies
56 with this part, each intended parent is, by operation of law, a parent

1 of the child and the gamete donor or donors are not a parent of the
2 child.

3 § 581-808. Dispute as to a gamete donation matched agreement or a
4 gamete donation agency agreement. (a) Any dispute which is related to a
5 gamete donation matched agreement or a gamete donation agency agreement
6 shall be resolved by the supreme court of the state of New York, which
7 shall determine the respective rights and obligations of the parties.

8 (b) Except as expressly provided in the gamete donation matched agree-
9 ment, the intended parent or parents and the gamete donor shall be enti-
10 tled to all remedies available at law or equity in any dispute related
11 to the gamete donation matched agreement.

12 (c) There shall be no specific performance remedy available for a
13 breach by the gamete donor of any gamete donation matched agreement or
14 of any gamete donation agency agreement term.

15 PART 9

16 GAMETE DONOR'S BILL OF RIGHTS

17 Section 581-901. Applicability.

18 581-902. Medical records.

19 581-903. Health and welfare decisions.

20 581-904. Independent legal counsel.

21 581-905. Health insurance and medical costs.

22 581-906. Counseling.

23 581-907. Termination of a gamete donation matched agreement or a
24 gamete donation agency agreement.

25 § 581-901. Applicability. The rights enumerated in this part shall
26 apply to any gamete donor located in, or who is a resident of New York
27 state, receives compensation for time and effort to produce eggs or
28 sperm collected by a New York state licensed gamete agency, gamete bank,
29 or fertility clinic for use in assisted reproduction by an intended
30 parent or parents who are unknown to the donor of the gametes at the
31 time of donation, notwithstanding any gamete donation agreement, judg-
32 ment of parentage, memorandum of understanding, verbal agreement or
33 contract to the contrary. Except as otherwise provided by law, any writ-
34 ten or verbal agreement purporting to waive or limit any of the rights
35 in this part is void as against public policy. The rights enumerated in
36 this part are not exclusive, and are in addition to any other rights
37 provided by law, regulation, or a gamete donation matched agreement or
38 gamete donation agency agreement that meets the requirements of this
39 article.

40 § 581-902. Medical records. (a) A gamete donor has the right to choose
41 which medical records and health information they shall share with an
42 intended parent or parents or with an agent, gamete agency, surrogacy
43 program, gamete bank, fertility clinic, or health care provider that is
44 providing matching services or collecting their gametes, other than the
45 medical records and information they are required to share pursuant to
46 10 NYCRR Part 52.

47 (b) An egg donor has the right to obtain a copy of their medical and
48 clinical records related to donor screening and to each egg retrieval
49 cycle including:

50 (1) all test records including all laboratory and genetic test
51 results;

52 (2) all X-ray or imaging procedure results including sonogram images
53 and analysis;

54 (3) reports on egg and embryo quality; and

1 (4) the names of medications the egg donor has been prescribed and
2 corresponding dosages.

3 (c) A sperm donor has the right to obtain a copy of their medical and
4 clinical records related to donor screening and to each sperm donation
5 including:

6 (1) all test records including all laboratory and genetic test
7 results; and

8 (2) reports on sperm count and quality of all sperm samples.

9 § 581-903. Health and welfare decisions. (a) An egg donor has the
10 right to exercise sole discretion over decisions regarding their behav-
11 ior, other than behaviors that would harm their health, and to make all
12 health and welfare decisions regarding themselves, including but not
13 limited to, the amount of time that transpires between commencing egg
14 retrieval cycles, entering into gamete donation matched agreements or
15 gamete donation agency agreements, and whether to cancel an egg
16 retrieval cycle or terminate a gamete donation matched agreement or a
17 gamete donation agency agreement at any time.

18 (b) A sperm donor has the right to exercise sole discretion over deci-
19 sions regarding their behavior, other than behaviors that would harm
20 their health, and to make all health and welfare decisions regarding
21 themselves, including the right to terminate the gamete donation matched
22 agreement or the gamete donation agency agreement at any time.

23 (c) This article does not diminish the responsibility of health care
24 providers to ensure adherence to standards of medical practice.

25 § 581-904. Independent legal counsel. Prior to executing a gamete
26 donation matched agreement or a gamete donation agency agreement, a
27 gamete donor has the right to consult with independent legal counsel of
28 their own choosing who is licensed to practice law in the state of New
29 York, to be paid for by the agent, gamete agency, surrogacy program,
30 gamete bank, fertility clinic, or health care provider. The department
31 shall maintain a list of independent legal counselors.

32 § 581-905. Health insurance and medical costs. An egg donor has the
33 right to have a health insurance policy that covers major medical treat-
34 ments, hospitalizations, and behavioral health care for a term that
35 takes effect prior to the egg donor taking any medication and commencing
36 medical procedures in furtherance of ovarian stimulation and oocyte
37 retrieval and that extends for twelve months after oocyte retrieval is
38 completed. Such policy shall be paid for by the agent, gamete agency,
39 surrogacy program, gamete bank, fertility clinic, health care provider,
40 or the intended parent or parents, if applicable, which shall also pay
41 for or reimburse the egg donor for all co-payments, deductibles and any
42 other out-of-pocket medical costs associated with ovarian stimulation,
43 oocyte retrieval, and medical or psychological complications pursuant to
44 the gamete donation matched agreement or the gamete donation agency
45 agreement.

46 § 581-906. Counseling. An egg donor has the right to have a health
47 insurance policy that covers behavioral health care and will cover the
48 cost of psychological counseling to address issues resulting from
49 participation in the gamete donation matched agreement or the gamete
50 donation agency agreement, including, but not limited to counseling
51 following the gamete donation. Such policy shall be paid for by the
52 agent, gamete agency, surrogacy program, gamete bank, fertility clinic,
53 health care provider, or the intended parent or parents, if applicable.

54 § 581-907. Termination of a gamete donation matched agreement or a
55 gamete donation agency agreement. (a) An egg donor has the right to

1 terminate a gamete donation matched agreement or a gamete donation agen-
2 cy agreement at any time.

3 (b) A sperm donor has the right to stop donating gametes and to termi-
4 nate a gamete donation matched agreement or a gamete donation agency
5 agreement at any time. An egg donor has the right to cancel an egg
6 retrieval cycle at any time.

7 PART 10
8 INFORMED CONSENT

9 Section 581-1001. Applicability.

10 581-1002. Uniform protocols for informed medical and legal
11 consent.

12 581-1003. Informed medical and legal consent procedures for a
13 potential egg donor.

14 581-1004. Informed medical and legal consent procedures for a
15 potential sperm donor.

16 581-1005. Informed medical and legal consent procedures for a
17 potential person acting as surrogate.

18 581-1006. Informed medical and legal consent procedures for an
19 intended parent or parents.

20 § 581-1001. Applicability. (a) The informed medical and legal consent
21 procedures and requirements in this section shall be administered to:

22 (1) a potential gamete donor who intends to enter into a gamete
23 donation matched agreement or gamete donation agency agreement under
24 part eight of this article to receive compensation for time and effort
25 to provide gametes for use in assisted reproduction by an intended
26 parent who is unknown to the donor of the gametes at the time of
27 donation;

28 (2) a potential person acting as surrogate who intends to enter into a
29 surrogacy agreement under part four of this article; and

30 (3) an intended parent who intends to enter into a gamete donation
31 matched agreement or a gamete donation agency agreement under part eight
32 of this article or a surrogacy agreement under part four of this arti-
33 cle.

34 (b) The informed medical and legal consent processes shall be adminis-
35 tered and documented prior to the execution of a gamete donation matched
36 agreement, or a surrogacy agreement.

37 § 581-1002. Uniform protocols for informed medical and legal consent.
38 Uniform protocols to administer informed medical and legal consent
39 procedures are established, and shall be updated, to reflect research
40 findings and current evidence-based best practices, to ensure that each
41 potential gamete donor, potential person acting as surrogate, and
42 intended parent is fully informed and able to voluntarily consent to
43 agreement provisions without being coerced or incentivized.

44 (a) The department of health, in consultation with the task force on
45 life and the law, shall develop video tutorials that provide information
46 about how gamete donation and surrogacy work in New York state, which
47 shall address applicable regulations, an overview of the informed
48 medical and legal consent processes, required medical screenings, and an
49 overview of the rights afforded to gamete donors, persons acting as
50 surrogates, intended parents, and donor-conceived and surrogate-born
51 individuals. The department shall make video tutorials available online
52 and in DVD format. Video tutorials shall be updated as necessary to
53 reflect current law, regulations, and medical best practices.

1 (b) The department of health, in consultation with the task force on
2 life and the law, shall develop and maintain a checklist of information
3 that must be reviewed with potential egg donors and requirements the
4 potential egg donor must comply with before they provide informed
5 medical and legal consent to enter into a gamete donation matched agree-
6 ment or a gamete donation agency agreement, including:

7 (1) The potential egg donor shall be informed of the following medical
8 information, which shall be provided in writing to the potential egg
9 donor and reviewed verbally with the potential egg donor:

10 (i) the results of the potential egg donor's medical and psychological
11 screenings and whether they have any health conditions that disqualify
12 them from donating gametes or that would put them at greater risk of
13 adverse health outcomes from undergoing ovarian stimulation and oocyte
14 retrieval;

15 (ii) the medications and medical and surgical procedures associated
16 with ovarian stimulation and oocyte retrieval and their potential risks
17 or side effects; and

18 (iii) the known health risks to egg donors and donor-conceived
19 persons, including disclosure that all health risks are not known due to
20 lack of data.

21 (2) The potential egg donor shall attend a counseling session regard-
22 ing issues related to gamete donation, including:

23 (i) potential psychological and emotional impacts on the potential egg
24 donor, the egg donor's current or future children and partner, if appli-
25 cable, and on any donor-conceived persons; and

26 (ii) best practices for talking with children and other family members
27 about gamete donation.

28 (3) The potential egg donor shall be informed of the following legal
29 information which shall be provided in writing to the potential egg
30 donor and reviewed verbally with the potential egg donor:

31 (i) the rights an egg donor is afforded in the gamete donor's bill of
32 rights pursuant to part nine of this article and how to implement each
33 right, and rights that are afforded donor-conceived individuals in the
34 bill of rights of donor-conceived and surrogate-born individuals pursu-
35 ant to part eleven of this article;

36 (ii) that donated eggs, or embryos created from donated eggs, could be
37 used for research at any time unless the egg donor does not authorize
38 such use of their donor gametes. The egg donor must provide signed
39 certification that indicates whether they authorize use of their donor
40 gametes for research at any time;

41 (iii) that donated eggs, or embryos created from donated eggs, could
42 be provided to intended parents from multiple households for use in
43 assisted reproduction, unless the gamete donor does not authorize such
44 distribution. The egg donor must provide signed certification that indi-
45 cates whether they authorize such distribution of their gametes;

46 (iv) the list of gamete donation compensation for providing donor
47 gametes pursuant to a gamete donation matched agreement or a gamete
48 donation agency agreement;

49 (v) the maximum number of donor-conceived persons that may be born in
50 New York state after the effective date of section fourteen hundred four
51 of the general business law using the donor gametes provided by the
52 potential egg donor, and the possibility that the gametes provided by
53 the egg donor will be used for assisted reproduction to conceive a child
54 that will be born outside of New York state, which cannot be tracked or
55 regulated by New York state;

1 (vi) that compensation received pursuant to a gamete donation matched
2 agreement or a gamete donation agency agreement is taxable and may
3 affect the eligibility of the egg donor for public benefits or the
4 amount of such benefits, including social security benefits;

5 (vii) the potential egg donor's options regarding identity disclosure
6 under section fourteen hundred seven of the general business law;

7 (viii) information about the central assisted reproduction registry,
8 including:

9 (A) the purpose of the registry;

10 (B) what personal and clinical data that is collected and how it is
11 used;

12 (C) how collected personal information is secured and kept confiden-
13 tial;

14 (D) that a gamete donor is required to register before executing a
15 gamete donation matched agreement or a gamete donation agency agreement;

16 (E) how the egg donor can voluntarily provide health information
17 updates confidentially to the registry in the future; and

18 (F) the terms of the gamete donation matched agreement or the gamete
19 donation agency agreement.

20 (c) The department of health, in consultation with the task force on
21 life and the law, shall develop and maintain a checklist of information
22 that must be reviewed with potential sperm donors and requirements the
23 potential sperm donor must comply with before they provide informed
24 medical and legal consent to enter into a gamete donation matched agree-
25 ment or a gamete donation agency agreement, including:

26 (1) The potential sperm donor must be informed of the following
27 medical information, which shall be provided in writing to the potential
28 sperm donor and reviewed verbally with the potential sperm donor:

29 (i) the results of the potential sperm donor's medical and psycholog-
30 ical screenings and whether they have any health conditions that
31 disqualify them from donating gametes; and

32 (ii) the known health risks to donor-conceived persons, including
33 disclosure that all health risks are not known due to lack of data.

34 (2) The potential sperm donor shall be provided written materials on
35 counseling topics regarding issues related to gamete donation, includ-
36 ing:

37 (i) the potential psychological and emotional impacts on the potential
38 sperm donor, the sperm donor's current or future children and partner,
39 if applicable, and any donor-conceived children; and

40 (ii) the best practices for talking with children and other family
41 members about gamete donation.

42 (3) The potential sperm donor must be informed of the following legal
43 information, which shall be provided in writing to the potential sperm
44 donor and reviewed verbally with the potential sperm donor:

45 (i) the rights a sperm donor is afforded in the gamete donor's bill of
46 rights pursuant to part nine of this article and how to implement each
47 right, and rights that are afforded donor-conceived individuals pursuant
48 to part eleven of this article;

49 (ii) the maximum number of donor-conceived persons that may be born in
50 New York state using the donor gametes provided by the potential sperm
51 donor after the effective date of section fourteen hundred eight of the
52 general business law, and the possibility that the gametes provided by
53 the sperm donor will be used for assisted reproduction to conceive a
54 child that will be born outside of New York state, which cannot be
55 tracked or regulated by New York state;

1 (iii) that donated sperm, or embryos created from donated sperm, could
2 be used for research at any time unless the sperm donor does not author-
3 ize such use of their donor gametes. The sperm donor must provide signed
4 certification that indicates whether they authorize use of their donor
5 gametes for research at any time;

6 (iv) the list of gamete donation compensation schedule for providing
7 donor gametes pursuant to a gamete donation matched agreement or a
8 gamete donation agency agreement;

9 (v) that compensation received pursuant to a gamete donation matched
10 agreement or a gamete donation agency agreement is taxable and may
11 affect the eligibility of the sperm donor for public benefits or amount
12 of such benefits, including social security benefits;

13 (vi) the potential sperm donor's options regarding identity disclosure
14 under section fourteen hundred seven of the general business law;

15 (vii) information about the central assisted reproduction registry,
16 including:

17 (A) the purpose of the registry;

18 (B) what personal and clinical data that is collected and how it is
19 used;

20 (C) how collected personal information is secured and kept confiden-
21 tial;

22 (D) that donors are required to register before executing a gamete
23 donation matched agreement or a gamete donation agency agreement; and

24 (E) how the sperm donor can voluntarily provide health information
25 updates confidentially to the registry in the future; and

26 (viii) the terms of the gamete donation matched agreement or the
27 gamete donation agency agreement.

28 (d) The department of health, in consultation with the task force on
29 life and the law, shall develop and maintain a checklist of information
30 that must be reviewed with a potential person acting as surrogate and
31 requirements the potential sperm donor must comply with before they
32 provide informed medical and legal consent to enter into a surrogacy
33 agreement, including:

34 (1) The potential person acting as surrogate must be informed of the
35 following medical information, which shall be provided in writing to the
36 potential person acting as surrogate and reviewed verbally with the
37 potential person acting as surrogate:

38 (i) the results of the potential person acting as surrogate's medical
39 and psychological screenings and whether they have any health conditions
40 that disqualify them from undergoing a surrogate pregnancy or that would
41 put them at greater risk of adverse health outcomes during a surrogate
42 pregnancy;

43 (ii) the medications and medical and surgical procedures associated
44 with surrogate pregnancy and their potential risks or side effects;

45 (iii) that in vitro fertilization procedures and prenatal and obstet-
46 ric care will be administered according to the best practices described
47 by the American College of Obstetricians and Gynecologists;

48 (iv) the medical risks of surrogate pregnancy, including:

49 (A) the possibility and risk of multiple births and preterm births,
50 which also increases the chance of a medically-necessary cesarean
51 section;

52 (B) the risks of multiple embryo transfer and disclosure that multiple
53 embryo transfer contradicts the guidelines of the American college of
54 obstetrics and gynecology;

55 (C) the risk of pregnancy complications, including preeclampsia;

1 (D) the risks of delivery by cesarean section and disclosure that
2 elective cesarean section contradicts the guidelines of the American
3 college of obstetrics and gynecology; and

4 (E) the known health risks to persons acting as surrogates and surro-
5 gate-born persons, including disclosure that all health risks are not
6 known due to lack of data.

7 (2) The potential person acting as surrogate shall attend a counseling
8 session regarding issues related to surrogacy, including:

9 (i) the potential psychological, emotional, and psychosocial risks to
10 the person acting as surrogate, their current and future children and
11 partner, and any surrogate-born persons;

12 (ii) best practices for talking to a person acting as surrogate's
13 children and other family members about surrogacy; and

14 (iii) impacts on their personal lives.

15 (3) The potential person acting as surrogate must be informed of the
16 following legal information, which shall be provided in writing to the
17 potential person acting as surrogate and reviewed verbally with the
18 potential person acting as surrogate:

19 (i) the rights a person acting as surrogate is afforded in the surro-
20 gate's bill of rights pursuant to part six of this article and how to
21 implement each right, and rights that surrogate-born individuals are
22 afforded in the bill of rights of donor-conceived and surrogate-born
23 individuals pursuant to part eleven of this article;

24 (ii) compensation received pursuant to a surrogacy agreement is taxa-
25 ble and may affect the eligibility of the person acting as surrogate and
26 the person acting as surrogate's spouse, if applicable, for public bene-
27 fits or the amount of such benefits, including social security benefits;

28 (iii) a person acting as surrogate is required by New York state law
29 to transfer parental rights immediately upon the birth of any child born
30 pursuant to a surrogacy agreement under part four of this article and
31 pursuant to section 581-203 of this article. The requirement is irrev-
32 ocable, even if the intended parent or parents are found to have been
33 convicted of criminal behavior, domestic violence, or child abuse;

34 (iv) information about the central assisted reproduction registry,
35 including:

36 (A) the purpose of the registry;

37 (B) what personal and clinical data that is collected and how it is
38 used;

39 (C) how collected personal information is secured and kept confiden-
40 tial;

41 (D) that a person acting as surrogate is required to register before
42 executing a surrogacy agreement; and

43 (E) how the person acting as surrogate can voluntarily provide health
44 information updates confidentially to the registry in the future; and

45 (v) the terms of the surrogacy agreement.

46 (e) The department of health, in consultation with the task force on
47 life and the law, shall develop and maintain a checklist of information
48 that must be reviewed with the intended parent or parents before they
49 provide informed medical and legal consent to enter into a gamete
50 donation matched agreement or a gamete donation agency agreement,
51 including:

52 (1) The intended parent or parents must be informed of the following
53 medical information, which shall be provided in writing to the intended
54 parent or parents and reviewed verbally with the intended parent or
55 parents:

1 (i) if the intended parent or parents are using donor eggs, the medi-
2 cations and medical and surgical procedures associated with ovarian
3 stimulation and oocyte retrieval and their potential risks or side
4 effects under subparagraph (ii) of paragraph one of subdivision (b) of
5 this section;

6 (ii) if the intended parent or parents are using donor eggs, known
7 health risks to egg donors and donor-conceived persons, including
8 disclosure that all health risks are not known due to lack of data under
9 subparagraph (iii) of paragraph one of subdivision (b) of this section;
10 and

11 (iii) if the intended parent or parents are using donor sperm, known
12 health risks to donor-conceived children, including disclosure that all
13 health risks are not known due to lack of data, under subparagraph (ii)
14 of paragraph one of subdivision (c) of this section.

15 (2) The intended parent or parents shall attend a counseling session
16 regarding issues related to using donor gametes to help build their
17 family, including:

18 (i) the potential psychological and emotional impacts of conceiving a
19 child using donor gametes on the intended parent or parents and any
20 current children;

21 (ii) the potential psychological and emotional impacts on donor-con-
22 ceived children and risks to the mental health of donor-conceived chil-
23 dren who are not told about being donor-conceived; and

24 (iii) the best practices for telling children they are donor-con-
25 ceived.

26 (3) The intended parent or parents must be informed of the following
27 legal information, which shall be provided in writing to the intended
28 parent or parents and reviewed verbally with the intended parent or
29 parents:

30 (i) the rights gamete donors are afforded in the gamete donor's bill
31 of rights pursuant to part nine of this article;

32 (ii) the rights donor-conceived individuals are afforded in the
33 donor-conceived and surrogate-born individual's bill of rights pursuant
34 to part eleven of this article;

35 (iii) the maximum number of donor-conceived individuals that may be
36 born in New York state that were conceived using assisted reproduction
37 and the donor gametes provided by a single gamete donor, and the possi-
38 bility that donor-conceived individuals who are conceived using gametes
39 from the same donor may be born outside of New York state, which cannot
40 be tracked or regulated by New York state;

41 (iv) if donor gametes are being used, the gamete donor's options
42 regarding identity disclosure under section fourteen hundred seven of
43 the general business law;

44 (v) information about the central assisted reproduction registry,
45 including:

46 (A) the purpose of the registry;

47 (B) what personal and clinical data that is collected and how it is
48 used;

49 (C) how collected personal information is secured and kept confiden-
50 tial; and

51 (D) how an intended parent can voluntarily provide health information
52 updates confidentially for their donor-conceived child to the registry
53 in the future; and

54 (vi) the terms of the gamete donation matched agreement or the gamete
55 donation agency agreement.

1 (f) The department of health, in consultation with the task force on
2 life and the law, shall develop and maintain a checklist of information
3 that must be reviewed with the intended parent or parents before they
4 provide informed medical and legal consent to enter into a surrogacy
5 agreement, including:

6 (1) The intended parent or parents must be informed of the following
7 medical information, which shall be provided in writing to the intended
8 parent or parents and reviewed verbally with the intended parent or
9 parents:

10 (i) if the intended parent or parents are using donor eggs, the
11 medical information under subparagraphs (i), (ii) and (iii) of paragraph
12 one of subdivision (e) of this section and if they are using donor
13 sperm, the medical information under subparagraph (iii) of paragraph one
14 of subdivision (e) of this section;

15 (ii) the medications and medical and surgical procedures associated
16 with surrogate pregnancy and their potential risks or side effects under
17 subparagraph (ii) of paragraph one of subdivision (d) of this section;

18 (iii) the medical risks of surrogate pregnancy listed under subpara-
19 graph (iv) of paragraph one of subdivision (d) of this section; and

20 (iv) the known health risks to persons acting as surrogates and surro-
21 gate-born persons, including disclosure that all health risks are not
22 known due to lack of data, under clause (E) of subparagraph (iv) of
23 paragraph one of subdivision (d) of this section.

24 (2) The intended parent or parents shall attend a counseling session
25 regarding issues related to, if applicable, using donor gametes surroga-
26 cy to help build their family, including:

27 (i) the potential psychological and emotional impacts of conceiving a
28 child using donor gametes, if applicable, and of engaging a person
29 acting as surrogate on the intended parent or parents and any current
30 children;

31 (ii) the potential psychological and emotional impacts on donor-con-
32 ceived, if applicable, and surrogate-born children and risks to the
33 mental health of children who are not told about being donor-conceived,
34 if applicable, and surrogate-born; and

35 (iii) the best practices for telling children they are donor-con-
36 ceived, if applicable, and surrogate-born.

37 (3) The intended parent or parents must be informed of the following
38 legal information, which shall be provided in writing to the intended
39 parent or parents and reviewed verbally with the intended parent or
40 parents:

41 (i) if the intended parent or parents are using donor gametes to
42 conceive the child that shall be born pursuant to a surrogacy agreement
43 under part four of this article, the legal information required under
44 paragraph three of subdivision (e) of this section;

45 (ii) the rights that a person acting as surrogate is afforded in the
46 surrogate's bills of rights pursuant to part six of this article;

47 (iii) the rights that surrogate-born individuals are afforded in the
48 bill of rights of donor-conceived and surrogate-born individuals pursu-
49 ant to part eleven of this article;

50 (iv) that the person acting as surrogate has the same right to make
51 decisions about their behavior during the surrogate pregnancy as other
52 pregnant people have in New York state. Any provisions in a surrogacy
53 agreement that restrict a surrogate's behavior are void and unenforcea-
54 ble;

55 (v) information about the central assisted reproduction registry,
56 including:

1 (A) the purpose of the registry;

2 (B) what personal and clinical data that is collected and how it is
3 used;

4 (C) how collected personal information is secured and kept confiden-
5 tial;

6 (D) that the intended parent or parents are required to register
7 before executing a surrogacy agreement; and

8 (E) how an intended parent can voluntarily provide health information
9 updates confidentially for their donor-conceived, if applicable, and
10 surrogate-born child to the registry in the future; and

11 (vii) the terms of the surrogacy agreement.

12 § 581-1003. Informed medical and legal consent procedures for a poten-
13 tial egg donor. Before a potential egg donor executes a gamete donation
14 matched agreement or a gamete donation agency agreement, all of the
15 following procedures must be completed and documented in order to
16 provide informed medical and legal consent to enter into the agreement:

17 (a) The potential egg donor shall watch the video tutorial under
18 subdivision (a) of section 581-1002 of this part and have an opportunity
19 to speak with a representative to review the information and ask ques-
20 tions about the video and the procedure.

21 (b) An independent health care provider licensed under title eight of
22 the education law shall provide the medical information required under
23 paragraph one of subdivision (b) of section 581-1002 of this part in
24 writing to the potential egg donor, and review the information with the
25 potential egg donor, and answer questions the potential egg donor may
26 have.

27 (c) The potential egg donor shall attend a counseling session with an
28 independent mental health practitioner licensed under title eight of the
29 education law who shall review the information required under paragraph
30 two of subdivision (b) of section 581-1002 of this part. The cost of the
31 counseling session shall be paid for by the agent, gamete agency, gamete
32 bank, fertility clinic, surrogacy program, or health care provider, as
33 applicable.

34 (d) A representative shall provide the legal information required
35 under paragraph three of subdivision (b) of section 581-1002 of this
36 part in writing, including a copy of the gamete donor's bill of rights
37 and the bill of rights of donor-conceived and surrogate-born individ-
38 uals, and review the information. The potential egg donor shall be
39 provided an opportunity to consult with independent legal counsel
40 licensed to practice in New York state, to be paid for by the agent,
41 gamete agency, gamete bank, fertility clinic, surrogacy program, or
42 health care provider, as applicable.

43 (e) The potential egg donor shall verify in a signed record that
44 informed medical and legal consent procedures have been completed, they
45 had an opportunity to ask questions, and they fully understand the
46 information.

47 § 581-1004. Informed medical and legal consent procedures for a poten-
48 tial sperm donor. Before a potential sperm donor executes a gamete
49 donation matched agreement or a gamete donation agency agreement, all of
50 the following procedures must be completed and documented in order to
51 provide informed medical and legal consent to enter into the agreement:

52 (a) The potential sperm donor shall watch the video tutorial under
53 subdivision (a) of section 581-1002 of this part and have an opportunity
54 to speak with a representative to review the information and ask ques-
55 tions about the video and the procedure.

1 (b) An independent health care provider licensed under title eight of
2 the education law shall provide the medical information required under
3 paragraph one of subdivision (c) of section 581-1002 of this part in
4 writing to the potential sperm donor, review the information with the
5 potential sperm donor, and answer questions the potential sperm donor
6 may have.

7 (c) The potential sperm donor shall receive the information required
8 under paragraph two of subdivision (c) of section 581-1002 of this part
9 in writing from an independent mental health practitioner licensed under
10 title eight of the education law.

11 (d) A representative shall provide the legal information required
12 under paragraph three of subdivision (c) of section 581-1002 of this
13 part in writing, including a copy of the gamete donor's bill of rights
14 and the bill of rights of donor-conceived and surrogate-born individ-
15 uals. The potential sperm donor shall be provided an opportunity to
16 consult with independent legal counsel licensed to practice in New York
17 state, to be paid for by the agent, gamete agency, gamete bank, fertili-
18 ty clinic, surrogacy program, or health care provider, as applicable.

19 (e) The potential sperm donor shall verify in a signed record that
20 informed medical and legal consent procedures have been completed, they
21 had an opportunity to ask questions, and they fully understand the
22 information.

23 § 581-1005. Informed medical and legal consent procedures for a poten-
24 tial person acting as surrogate. Before a potential person acting as
25 surrogate executes a surrogacy agreement, all of the following proce-
26 dures must be completed and documented in order to provide informed
27 medical and legal consent to enter into the surrogacy agreement:

28 (a) The potential person acting as surrogate shall watch the video
29 tutorial required under subdivision (a) of section 581-1002 of this part
30 and have an opportunity to speak with a representative to review the
31 information and ask questions about the video and surrogacy;

32 (b) An independent health care provider licensed under title eight of
33 the education law shall provide the medical information required under
34 paragraph one of subdivision (d) of section 581-1002 of this part in
35 writing to the potential person acting as surrogate, review the informa-
36 tion with the potential person acting as surrogate, and answer questions
37 the potential person acting as surrogate may have;

38 (c) The potential person acting as surrogate shall have a counseling
39 session with an independent mental health practitioner licensed under
40 title eight of the education law, who shall review the information
41 required under paragraph two of subdivision (d) of section 581-1002 of
42 this part. The cost of the counseling session shall be paid for by the
43 surrogacy program, fertility clinic, or the intended parent or parents,
44 as applicable;

45 (d) The independent legal counsel licensed to practice in New York
46 state who represents the person acting as surrogate shall provide the
47 legal information required under paragraph three of subdivision (d) of
48 section 581-1002 of this part in writing, including the surrogate's bill
49 of rights and the bill of rights of donor-conceived and surrogate-born
50 people, and review the information;

51 (e) The potential person acting as surrogate shall verify in a signed
52 record that informed medical and legal consent procedures have been
53 completed, they had an opportunity to ask questions, and they fully
54 understand the information.

55 § 581-1006. Informed medical and legal consent procedures for an
56 intended parent or parents. Before an intended parent or parents execute

1 a gamete donation matched agreement, a gamete donation agency agreement,
2 or a surrogacy agreement, the following procedures must be completed and
3 documented in order to provide informed medical and legal consent to
4 enter into the agreement:

5 (a) The intended parent or parents shall watch the video tutorial or
6 tutorials required under subdivision (a) of section 581-1002 of this
7 part and have an opportunity to speak with a representative to review
8 the information and ask questions.

9 (b) If the intended parent or parents are entering into a gamete
10 donation matched agreement or a gamete donation agency agreement, an
11 independent health care provider licensed under title eight of the
12 education law shall provide the medical information required under para-
13 graph one of subdivision (e) of section 581-1002 of this part in writing
14 to the intended parent or parents, review the information with the
15 intended parent or parents, and answer questions the intended parent or
16 parents may have. If the intended parent or parents are entering into a
17 surrogacy agreement, an independent health care provider licensed under
18 title eight of the education law shall provide the medical information
19 required under paragraph one of subdivision (f) of section 581-1002 of
20 this part in writing to the intended parent or parents, review the
21 information with the intended parent or parents, and answer questions
22 the intended parent or parents may have.

23 (c) If the intended parent or parents are entering into a gamete
24 donation matched agreement or a gamete donation agency agreement, they
25 shall attend a counseling session with an independent mental health
26 practitioner licensed under title eight of the education law, who shall
27 review the information required under paragraph (2) of subdivision (e)
28 of section 581-1002 of this part with the intended parent or parents. If
29 the intended parent or parents are entering into a surrogacy agreement,
30 they shall attend a counseling session with an independent mental health
31 practitioner licensed under title eight of the education law, who shall
32 review the information required under paragraph two of subdivision (f)
33 of section 581-1002 of this part.

34 (d) If the intended parent or parents are entering into a gamete
35 donation matched agreement or a gamete donation agency agreement, a
36 representative shall provide the legal information required under para-
37 graph three of subdivision (e) of section 581-1002 of this part in writ-
38 ing to the intended parent or parents, including the gamete donor's bill
39 of rights and the bill of rights of donor-conceived and surrogate-born
40 people, and review the information. If the intended parent or parents
41 are entering into a surrogacy agreement, the independent legal counsel
42 licensed to practice in New York state who represents them shall provide
43 the legal information required under paragraph three of subdivision (f)
44 of section 581-1002 of this part in writing to the intended parent or
45 parents, including a copy of the surrogate's bill of rights and the bill
46 of rights of donor-conceived and surrogate-born people, and review the
47 information.

48 (e) Each intended parent shall verify in writing that informed medical
49 and legal consent procedures have been completed, they had an opportu-
50 nity to ask questions, and they fully understand the information that
51 was provided.

52 PART 11

53 BILL OF RIGHTS OF DONOR-CONCEIVED AND
54 SURROGATE-BORN INDIVIDUALS

1 Section 581-1101. Applicability.

2 581-1102. Original birth certificate.

3 581-1103. Access to nonidentifying information.

4 581-1104. Access to identifying information.

5 § 581-1101. Applicability. The rights enumerated in this part shall
6 apply to any donor-conceived or surrogate-born individual who was
7 conceived by assisted reproduction pursuant to part four or part eight
8 of this article to ensure that all individuals have access to the iden-
9 tifying and medical information permitted by New York state law of
10 everyone involved in their creation.

11 § 581-1102. Original birth certificate. (a) For the purposes of this
12 section, "original birth certificate" means the unamended birth certifi-
13 cate that contains the information required under section forty-one
14 hundred thirty-two of the public health law, including the name of the
15 person who acted as surrogate who gave birth to the child, and the name
16 of any identified gamete donor or the donor reference number of any
17 nonidentified gamete donor whose gametes were used in assisted repro-
18 duction to conceive the child.

19 (b) An individual who is donor-conceived or surrogate-born pursuant to
20 part four or part eight of this article has the right to obtain upon
21 request a certified copy of their original birth certificate pursuant to
22 section forty-one hundred thirty-eight-e of the public health law, once
23 they turn eighteen years of age.

24 § 581-1103. Access to nonidentifying information. An individual who is
25 donor-conceived pursuant to part four or part eight of this article has
26 the right to obtain upon request nonidentifying medical and psycholog-
27 ical health information of any nonidentified gamete donor or once the
28 individual turns eighteen years of age, or a parent or legal guardian
29 may request the information if the donor-conceived person is under the
30 age of eighteen.

31 § 581-1104. Access to identifying information. (a) An individual who
32 is donor-conceived pursuant to part four or part eight of this article
33 has the right to obtain upon request identifying and medical and psycho-
34 logical health information of any identified gamete donor who provided
35 the donor gametes that were used for conception of the individual once
36 the donor-conceived individual turns eighteen years of age, or a parent
37 or legal guardian may request the information if the donor-conceived
38 person is under the age of eighteen.

39 (b) An individual who is conceived pursuant to part four of this arti-
40 cle has the right to obtain upon request identifying and medical and
41 psychological health information of the person who acted as surrogate
42 and gave birth to them once the surrogate-born individual turns eighteen
43 years of age, or a parent or legal guardian may request the information
44 if the surrogate-born person is under the age of eighteen.

45 § 21. Subdivision 1 of section 2599-cc of the public health law, as
46 added by section 12 of part L of chapter 56 of the laws of 2020, is
47 amended to read as follows:

48 1. The commissioner shall promulgate regulations on the practice of
49 gestational surrogacy. Such regulations shall include, but not be limit-
50 ed to:

51 (a) guidelines and procedures for obtaining fully informed consent
52 from potential persons acting as surrogates, and from intended parents
53 to enter into a surrogacy agreement under part four of article five-C of
54 the family court act, including but not limited to [~~a full disclosure of~~
55 ~~any known or potential health risks and mental health impacts associated~~

1 ~~with acting as a surrogate~~ the procedure and requirements under part
2 ten of article five-C of the family court act;

3 (b) the development and distribution, in printed form and on the
4 department's website, of informational material relating to gestational
5 surrogacy, including but not limited to the scope of information
6 provided on the website of the Human Fertilisation & Embryology Authori-
7 ty of the United Kingdom;

8 (c) the establishment of [~~a voluntary~~] the central [~~tracking~~] assisted
9 reproduction registry of required information related to persons acting
10 as surrogates and surrogacy, as reported by surrogacy programs, ferti-
11 ty clinics, and other designated entities licensed by the department
12 pursuant to article forty-four of the general business law [~~upon the~~
13 ~~affirmative consent of a person acting as surrogate~~]. Such registry
14 shall provide a means for gathering and maintaining accurate information
15 on the:

16 (i) identifying information of and contact information for persons
17 who act as surrogates;

18 (ii) number of times a person has acted as a surrogate;

19 [~~(ii)~~] (iii) medical history and optional self-reported health infor-
20 mation [~~of~~] updates provided by the person acting as surrogate; [~~and~~]

21 (iv) medical information and outcomes of the surrogate pregnancy and
22 birth;

23 (v) health information of children born pursuant to a surrogacy agree-
24 ment; and

25 [~~(iii)~~] (vi) other information deemed appropriate by the commissioner;

26 (d) the development of guidelines, procedures or protocols, in consul-
27 tation with the American college of obstetricians and gynecologists [~~and~~
28 ~~the American society for reproductive medicine,~~] to assist physicians in
29 screening potential surrogates for their ability to serve as a surrogate
30 as required under [~~subdivision~~] paragraph four of subdivision (a) of
31 section 581-402 of the family court act including taking into consider-
32 ation the potential surrogates family medical history and complications
33 from prior pregnancies and known health conditions that may pose a risk
34 to the potential surrogate during pregnancy [~~and~~], including, but not
35 limited to the following criteria that would disqualify a potential
36 person acting as surrogate from entering into a surrogacy agreement
37 under part four of article five-C of the family court act: whether the
38 potential person acting as surrogate meets any of the American college
39 of obstetricians and gynecologists (ACOG) medical and mental health
40 criteria for high-risk pregnancy;

41 (e) the development of best medical practices to protect the health of
42 persons acting as surrogates and surrogate-born children, including
43 requiring that health care providers licensed under title eight of the
44 education law shall counsel persons acting as surrogates about immuniza-
45 tions in accordance with best medical practice. Immunizations shall be
46 administered only upon the request of the person acting as surrogate;

47 (f) the development of guidance to reduce conflicts of interest among
48 physicians providing health care services to the surrogate[~~+~~]; and

49 (g) procedures for a surrogacy program, assisted reproduction service
50 provider, or other entity to determine the eligibility of a potential
51 person acting as surrogate to enter into a surrogacy agreement, pursuant
52 to part four of article five-C of the family court act.

53 § 22. The public health law is amended by adding four new sections
54 2599-dd, 2599-ee, 2599-ff and 2599-gg to read as follows:

55 § 2599-dd. Gamete donation. The commissioner, in consultation with the
56 transplant council or the task force on life and the law, shall promul-

1 gate regulations on gamete donation. Such regulations shall include, but
2 not be limited to:

3 1. Guidelines and procedures for obtaining fully informed medical and
4 legal consent, including but not limited to the procedures and require-
5 ments under part ten of article five-C of the family court act, from:

6 (a) a potential gamete donor and an intended parent or parents to
7 enter into a gamete donation matched agreement; and

8 (b) a potential gamete donor or an intended parent or parents to enter
9 into a gamete donation agency agreement.

10 2. The development and distribution, in printed form and on the
11 department website, of informational material relating to gamete
12 donation, including but not limited to the scope of information provided
13 on the website of the Human Fertilisation & Embryology Authority of the
14 United Kingdom.

15 3. The establishment of the central assisted reproduction registry of
16 required information related to ova and sperm donors and gamete
17 donation, as reported by agents, gamete agencies, gamete banks, surroga-
18 cy programs, fertility clinics, and health care providers licensed by
19 the department pursuant to article forty-four of the general business
20 law. Such registry shall provide a means for gathering and maintaining
21 accurate information on:

22 (a) identifying information of and contact information for gamete
23 donors, provided that a nonidentified gamete donor upon request may be
24 listed by a reference number;

25 (b) the number of times an egg donor has undergone ovarian stimu-
26 lation, including for purposes of egg freezing;

27 (c) medical history and optional self-reported health information
28 updates provided by the gamete donor;

29 (d) health information of donor-conceived persons;

30 (e) number of donor-conceived persons born in New York state using the
31 gametes of each egg and sperm donor; and

32 (f) other information deemed appropriate by the commissioner.

33 4. The development of guidelines, procedures or protocols, in consul-
34 tation with the transplant council or the task force on life and the
35 law, to assist physicians licensed under title eight of the education
36 law when screening potential gamete donors for their ability to produce
37 gametes for use in assisted reproduction pursuant to a gamete donation
38 matched agreement or a gamete donation agency agreement pursuant to part
39 eight of article five-C of the family court act, including taking into
40 consideration the potential gamete donor's family medical history and
41 medical complications from prior cycles of ovarian stimulation and
42 oocyte retrieval and known health conditions that may pose a risk to the
43 potential gamete donor or any donor-conceived persons, including, but
44 not limited to the following criteria that would disqualify a potential
45 gamete donor from entering into a gamete donation matched agreement or a
46 gamete donation agency agreement under part eight of the family court
47 act:

48 (a) a potential egg donor has any medical conditions indicated by the
49 American college of obstetricians and gynecologists (ACOG) that place
50 individuals at risk of ovarian hyperstimulation;

51 (b) a potential egg donor has previously undergone ovarian stimulation
52 more than six times, including for purposes of egg freezing; or

53 (c) a potential egg donor has previously experienced ovarian hypersti-
54 mulation syndrome (OHSS), polycystic ovarian syndrome (PCOS), or endome-
55 triosis.

1 5. The development of best medical practices to protect the health of
2 egg donors and donor-conceived persons, including but not limited to:

3 (a) conservative low stimulation medication protocols aiming to
4 produce no more than twenty to twenty-five eggs in a single cycle in
5 compliance with best medical practice;

6 (b) an egg retrieval cycle shall be canceled, if necessary, in accord-
7 ance with best medical practice to avoid ovarian hyperstimulation
8 syndrome; and

9 (c) there shall be a minimum of three months after an egg donor under-
10 goes oocyte retrieval before the egg donor enters into a gamete donation
11 matched agreement or a gamete donation agency agreement.

12 6. Procedures for an agent, gamete agency, gamete bank, surrogacy
13 program, fertility clinic, or health care provider to determine if a
14 potential egg donor is eligible to enter into a gamete donation matched
15 agreement or a gamete donation agency agreement, under subdivision (a)
16 of section 581-803 of the family court act, including procedures to
17 verify the approximate number of donor-conceived children that have
18 already been born in New York state using assisted reproduction and the
19 gametes of the potential egg or sperm donor.

20 § 2599-ee. New York state ART, gamete donation, and gestational surro-
21 gacy program. 1. There is hereby established within the department the
22 New York state ART, gamete donation, and gestational surrogacy program,
23 hereinafter referred to as "the program".

24 2. The program shall be responsible for the following duties:

25 (a) administer the central assisted reproduction registry and process
26 requests from authorized individuals for nonidentifying medical informa-
27 tion of nonidentified gamete donors and identifying and medical informa-
28 tion of identified gamete donors and persons acting as surrogates;

29 (b) maintain copies of gamete donation matched agreements, gamete
30 donation agency agreements, and surrogacy agreements along with all
31 required records and documents in a manner that protects confidentiality
32 and privacy of information;

33 (c) develop print and electronic materials with educational informa-
34 tion, current best practices, and research findings on topics related to
35 assisted reproductive technology, gamete donation, and surrogacy; and

36 (d) develop the content and maintain a website with information and
37 resources on assisted reproduction, gamete donation, and surrogacy under
38 subdivision two of section twenty-five hundred ninety-nine-cc and subdi-
39 vision two of section twenty-five hundred ninety-nine-dd of this arti-
40 cle.

41 3. (a) The program shall perform such acts, prescribe such forms and
42 propose such rules, regulations and orders as it may deem necessary or
43 proper to fully effectuate the provisions of this article.

44 (b) The program shall have the power to promulgate any and all neces-
45 sary rules and regulations governing assisted reproduction, gamete
46 donation, and surrogacy, practices in this state.

47 4. The task force on life and the law shall act as advisory board for
48 the program. The advisory board shall consider all matters submitted to
49 it by the program, including rulemaking, advising the office and legis-
50 lature on assisted reproduction, gamete donation, and surrogacy, prac-
51 tices and issues.

52 5. The action, proceedings, authority, and orders of the office in
53 enforcing the provisions of this article and applying them to specific
54 cases shall at all times be regarded as in their nature judicial and
55 shall be treated as prima facie just and legal.

1 § 2599-ff. Central assisted reproduction registry. 1. The ova and
2 sperm donor registry and the surrogate registry shall be known collec-
3 tively as the central assisted reproduction registry.

4 2. The program shall administer the central assisted reproduction
5 registry.

6 3. The following individuals, surrogacy programs, assisted reprod-
7 uction service providers, and other entities are required to register:

8 (a) a potential person acting as surrogate who is entering into a
9 surrogacy agreement pursuant to part four of article five-C of the fami-
10 ly court act;

11 (b) a potential gamete donor entering into a gamete donation matched
12 agreement or a gamete donation agency agreement pursuant to part eight
13 of article five-C of the family court act;

14 (c) an intended parent or parents entering into a surrogacy agreement
15 pursuant to part four of article five-C of the family court act; and

16 (d) a licensed agent, gamete agency, surrogacy program, gamete bank,
17 fertility clinic, or a health care provider that provides matching or
18 recruitment services or services contemplated by a gamete donation
19 matched agreement, a gamete donation agency agreement, or a surrogacy
20 agreement;

21 4. The commissioner shall promulgate regulations on the following:

22 (a) registration procedures for the individuals, surrogacy programs,
23 assisted reproduction service providers and other entities that are
24 required to register with the central assisted reproduction registry
25 pursuant to subdivision three of this section;

26 (b) procedures for a gamete donor, a person who acted as surrogate,
27 and a donor-conceived or surrogate-born individual, or a parent or legal
28 guardian if the donor-conceived or surrogate-born person is under the
29 age of eighteen to provide optional self-reported health information
30 updates to the central assisted reproduction registry;

31 (c) procedures for a donor-conceived or a surrogate-born individual to
32 request upon attaining eighteen years of age nonidentifying medical
33 information of a nonidentified gamete donor who provided donor eggs or
34 sperm that were used for assisted reproduction for their conception
35 pursuant to part four or part eight of article five-C of the family
36 court act, or for a parent or legal guardian to request the information
37 if the donor-conceived or surrogate-born person is under the age of
38 eighteen;

39 (d) procedures for a donor-conceived or a surrogate-born individual to
40 request upon attaining eighteen years of age identifying and medical
41 information of an identified gamete donor who provided donor eggs or
42 sperm that were used for assisted reproduction for their conception
43 pursuant to part four or part eight of article five-C of the family
44 court act, or for a parent or legal guardian to request the information
45 if the donor-conceived or surrogate-born person is under the age of
46 eighteen;

47 (e) procedures for a surrogate-born individual upon attaining eighteen
48 years of age to request identifying and medical information of the
49 person who acted as surrogate and gave birth to them pursuant to part
50 four of article five-C of the family court act, or for a parent or legal
51 guardian to request the information if the surrogate-born person is
52 under the age of eighteen; and

53 (f) procedures to request nonidentifying health information from the
54 central assisted reproduction registry for purposes of public health
55 research.

1 5. The central assisted reproduction registry shall be operated by
2 employees of the department specifically designated by the commissioner.
3 Access to all records and information in the registry shall be limited
4 to such designated employees and such records and information shall be
5 kept strictly confidential except as specifically authorized by law. The
6 commissioner shall establish rules and procedures designed to keep such
7 records and information separate and apart from other records of the
8 department and kept in a manner where access to such records and infor-
9 mation is strictly limited to such designated employees and shall
10 promulgate regulations designed to effectuate the purposes of this
11 section. Notwithstanding any inconsistent provision of this chapter or
12 any other law to the contrary, the commissioner shall have access to the
13 information authorized to be released pursuant to this section contained
14 in surrogacy agreements, gamete donation agreements, and clinical data
15 maintained by the New York State ART, gamete donation, and gestational
16 surrogacy program and any agency, court or department having appropriate
17 records which will enable the commissioner to effectuate the purposes of
18 this section and may require the cooperation of such agency, court or
19 department in providing the information authorized to be released pursu-
20 ant to this section, provided, however, that the commissioner shall not
21 have access to the actual records of any agency, court or department
22 maintaining such records.

23 § 2599-gg. Gamete donation, assisted reproduction, and surrogacy
24 reporting requirements. The commissioner shall promulgate regulations on
25 gamete donation, assisted reproduction, and surrogacy reporting proce-
26 dures and requirements. Such regulations shall include, but not be
27 limited to:

28 1. Reporting requirements for surrogacy programs, assisted reprod-
29 uction service providers, health care providers, other entities that
30 provide services contemplated under part four or part eight of article
31 five-C of the family court act, and state or local departments of health
32 information and outcomes related to gamete donation, assisted reprod-
33 uction, and surrogacy to the central assisted reproduction registry,
34 including the following:

35 (a) Gamete donation data, including:

36 (i) the name, contact information, age, and sex or gender of the
37 gamete donor;

38 (ii) the donor screening results;

39 (iii) the name of any agent, gamete agency, gamete bank, surrogacy
40 program, fertility clinic, and health care practitioner that provided
41 matching services, if applicable, and that collected the donor gametes;

42 (iv) medication and oocyte retrieval protocols;

43 (v) egg retrieval cycle or sperm donation outcomes, including any
44 adverse reactions or health complications experienced by the egg donor,
45 the number and quality of oocytes retrieved, the quality of sperm
46 produced, insemination and embryo incubation protocols, and the number
47 and quality of embryos, as applicable; and

48 (vi) any resulting clinical pregnancy and donor-conceived person born.

49 (b) Surrogacy data:

50 (i) name, contact information, and age of the person acting as surro-
51 gate, and name and contact information of the intended parent or
52 parents;

53 (ii) the screening results of the person acting as surrogate;

54 (iii) the name of any surrogacy program, and fertility clinic, health
55 care provider, and other entity that provided matching services or
56 assisted reproduction services contemplated by the surrogacy agreement;

1 (iv) medication and embryo transfer protocols;
2 (v) embryo transfer cycle outcomes, including any adverse reactions or
3 health complications experienced by the person acting as surrogate, the
4 number of embryos transferred, and if clinical pregnancy was achieved;
5 (vi) the number of fetuses carried, and any health complications
6 during the surrogate pregnancy and delivery, as applicable; and
7 (vii) the number of any resulting children born and any health compli-
8 cations.

9 2. Reporting procedures and protocol to ensure confidentiality of
10 health information.

11 3. Penalties for agents, gamete agencies, surrogacy programs, gamete
12 banks, and fertility clinics, and health care practitioners licensed by
13 the department for violating reporting requirements, to include finan-
14 cial penalties and loss of licensure.

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

18 (c) "Surrogacy program" does not include any party to a surrogacy
19 agreement or any person licensed to practice law and representing a
20 party to the surrogacy agreement, but does include and is not limited to
21 any agency, agent, business, or individual engaged in, arranging, or
22 facilitating transactions contemplated by a surrogacy agreement, regard-
23 less of whether such agreement ultimately comports with the requirements
24 of part four of article five-C of the family court act.

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

28 § 1401. Surrogacy programs regulated under this article. The
29 provisions of this article apply to New York state licensed and regis-
30 tered surrogacy programs arranging or facilitating transactions contem-
31 plated by a surrogacy agreement under part four of article five-C of the
32 family court act if:

33 (a) The surrogacy program does business in New York state;
34 (b) A person acting as surrogate who is party to a surrogacy agreement
35 resides in New York state during the term of the surrogacy agreement; or
36 (c) Any medical procedures under the surrogacy agreement are performed
37 in New York state.

38 § 25. Section 1402 of the general business law, as added by section 11
39 of part L of chapter 56 of the laws of 2020, is amended to read as
40 follows:

41 § 1402. Assisted reproduction service providers regulated under this
42 article. The provisions of this article apply to agents, gamete agen-
43 cies, gamete banks, fertility clinics, health care providers and other
44 entities if:

45 1. The agent, gamete agency, gamete bank, fertility clinic, health
46 care provider, or other entity does business in this state, including:

47 (a) recruiting or matching gamete donors who are located in or resi-
48 dents of New York state, or matching gamete donors with intended parents
49 who are located in or residents of New York state; or

50 (b) collecting gametes from gamete donors who are located in or resi-
51 dents of New York state; or

52 (c) distributing donor gametes to intended parents who are located in
53 or residents of New York state; or

54 2. Any health care services performed, provided or otherwise arranged
55 by the entity are performed in this state, including diagnostic,
56 medical, or surgical services associated with screening potential gamete

1 donors or in furtherance of collecting donor gametes under part four or
2 part eight of article five-C of the family court act.

3 § 26. Section 1403 of the general business law is renumbered section
4 1409 and subdivision (g), as added by section 11 of part L of chapter 56
5 of the laws of 2020, is amended to read as follows:

6 (g) Shall ensure that all potential parties to a surrogacy agreement,
7 at the time of consultation with such surrogacy program, are provided
8 with written notice of the surrogates' bill of rights enumerated in part
9 six, the gamete donor's bill of rights enumerated in part nine and the
10 bill of rights of donor-conceived and surrogate-born individuals enumer-
11 ated in part eleven of article five-C of the family court act.

12 § 27. Section 1404 of the general business law is renumbered section
13 1410 and subdivision 1, as added by section 11 of part L of chapter 56
14 of the laws of 2020, is amended to read as follows:

15 1. The department of health, in consultation with the department of
16 financial services, shall promulgate rules and regulations to implement
17 the requirements of this article regarding surrogacy programs and
18 assisted reproduction service providers in a manner that ensures the
19 safety and health of gamete ~~providers and~~, donors, persons serving as
20 surrogates, donor-conceived individuals, and surrogate-born individuals.
21 Such regulations shall:

22 (a) Require agents, gamete agencies, surrogacy programs ~~[to monitor~~
23 ~~compliance with surrogacy agreements eligibility and requirements in~~
24 ~~state law]~~, gamete banks, fertility clinics, health care practitioners
25 and other entities that recruit or match gamete donors, or that collect
26 donor gametes to make publicly available a compensation list for gamete
27 donation that is accessible to gamete donors and the general public on
28 the entity's website and in print; [and]

29 (b) Require ~~[the surrogacy programs and assisted reproduction service~~
30 ~~providers to administer informed consent procedures that comply with~~
31 ~~regulations promulgated by the department of health under section twen-~~
32 ~~ty five hundred ninety nine cc of the public health law.]~~ agents, gamete
33 agencies, surrogacy programs, gamete banks, fertility clinics, health
34 care practitioners, and other entities, to advertise and make represen-
35 tations of gamete donation pursuant to section fourteen hundred eight of
36 this part;

37 (c) Require agents, gamete agencies, surrogacy programs, gamete banks,
38 fertility clinics, health care practitioners, and other entities to
39 cover the cost of medical and psychological screening of potential
40 gamete donors. Gamete donors and intended parents may not be required to
41 cover or reimburse such screening costs;

42 (d) Require agents, gamete agencies, surrogacy programs, gamete banks,
43 fertility clinics, health care practitioners and other entities that
44 distribute donor gametes to an intended parent or parents located in or
45 who are residents of New York state for use in assisted reproduction to
46 track and report the number of donor-conceived persons born in New York
47 state using the gametes of each donor who entered into a gamete donation
48 matched agreement or a gamete donation agency agreement under part eight
49 of article five-C of the family court act to the central assisted
50 reproduction registry;

51 (e) Require surrogacy programs to monitor compliance with surrogacy
52 agreements eligibility and requirements in state law;

53 (f) Require surrogacy programs and assisted reproduction service
54 providers to administer informed medical and legal consent procedures
55 that comply with part ten of article five-C of the family court act and

1 with regulations promulgated by the department of health under section
2 twenty-five hundred ninety-nine-cc of the public health law;

3 (g) Require surrogacy programs, fertility clinics, health care practi-
4 tioners, and other entities that recruit persons acting as surrogates to
5 track and report the number of children delivered pursuant to a surroga-
6 cy agreement by each person acting as surrogate to the central assisted
7 reproduction registry; and

8 (h) Require surrogacy programs, agents, gamete agencies, gamete banks,
9 fertility clinics, health care practitioners, and other entities that
10 provide services contemplated by gamete donation matched agreements,
11 gamete donation agency agreements, and surrogacy agreements to pay an
12 annual fee which shall be determined by the commissioner of the depart-
13 ment of health that shall be used to pay for maintenance costs of the
14 central assisted reproduction registry.

15 § 28. The general business law is amended by adding six new sections
16 1403, 1404, 1405, 1406, 1407 and 1408 to read as follows:

17 § 1403. Matching service providers regulated under this article. The
18 provisions of this article shall apply to an agent, gamete agency,
19 surrogacy program, gamete bank, fertility clinic, health care practi-
20 tioner, or other assisted reproduction service providers that provides
21 matching services to potential gamete donors or intended parents located
22 in or who are residents of New York state.

23 § 1404. Limits on number of donor-conceived persons born in New York
24 state using gametes donated by each egg and sperm donor. Effective Janu-
25 ary first, two thousand twenty-six, a maximum of ten donor-conceived
26 individuals who are conceived using a single egg or sperm donor's
27 gametes may be born in New York state. This number does not include a
28 gamete donor's own biological children.

29 1. When determining the eligibility of a potential gamete donor to
30 enter into a gamete donation matched agreement or a gamete donation
31 agency agreement, an agent, gamete agency, surrogacy program, gamete
32 bank, health care practitioner, or fertility clinic, hereinafter
33 referred to as an "entity", shall follow regulations issued pursuant to
34 subdivision six of section twenty-five hundred ninety-nine-dd of the
35 public health law to determine how many donor-conceived individuals who
36 were conceived using the donor gametes of a potential egg or sperm donor
37 have been born in New York state.

38 2. If the entity determines that at least ten donor-conceived individ-
39 uals have been born in New York state, the entity shall not match the
40 potential gamete donor, collect their gametes, or distribute the donor's
41 gametes that were already collected on or after the effective date of
42 this section to an intended parent or parents located in or who are
43 residents of New York state. The potential gamete donor shall not be
44 eligible to enter into a gamete donation matched agreement or a gamete
45 donation agency agreement.

46 § 1405. Nonidentified gamete donation prohibited. Effective January
47 first, two thousand twenty-six, nonidentified gamete donation will no
48 longer be permissible in New York state. Once this section takes effect:

49 1. An individual located in or who is a resident of New York state who
50 intends to receive compensation for time and effort to produce gametes
51 for use in assisted reproduction will be required to sign a certified
52 statement that they agree to identified donation;

53 2. An agent, gamete agency, gamete bank, surrogacy program, fertility
54 clinic, or health care practitioner, hereinafter referred to as an
55 "entity", that distributes donor gametes to an intended parent or
56 parents located in or who are residents of New York state must only

1 distribute the gametes of donors who have signed a certified statement
2 agreeing to identified donation;

3 3. The entity shall inform the potential gamete donor that any donor-
4 conceived individuals will be able to obtain upon request identifying
5 and medical information of the gamete donor upon attaining eighteen
6 years of age, or the legal parent or guardian will be able to request
7 the information if the donor-conceived individual is under the age of
8 eighteen; and

9 4. If a potential gamete donor does not agree to identified donation,
10 an entity shall not match or collect gametes from the potential gamete
11 donor.

12 § 1406. Collection of identifying information and medical history and
13 determination of gamete donor eligibility. 1. For the purposes of this
14 section, the following terms shall mean:

15 (a) "identifying information" means:

16 (i) the gamete donor's full name;

17 (ii) the gamete donor's date of birth; and

18 (iii) the gamete donor's permanent address, current address, and other
19 contact information at the time of the donation. Other contact informa-
20 tion includes the gamete donor's phone number and email address; and

21 (b) "medical history" means information regarding any:

22 (i) present physical and psychological illness of the donor;

23 (ii) past physical and psychological illness of the donor; and

24 (iii) social, genetic, and family medical history pertaining to the
25 donor's health.

26 2. An agent, gamete agency, surrogacy program, gamete bank, fertility
27 clinic, or health care practitioner, hereinafter referred to as an
28 "entity", that shall collect gametes from a potential gamete donor or
29 shall match a potential gamete donor with an intended parent or parents
30 shall collect the potential donor's identifying information and medical
31 history:

32 (a) The entity shall verify the following information about each
33 potential gamete donor to determine their eligibility to enter into a
34 gamete donation matched agreement or a gamete donation agency agreement,
35 under part eight of article five-C of the family court act:

36 (i) the age of the potential gamete donor;

37 (ii) the number of times a potential egg donor has previously under-
38 gone ovarian stimulation, including to freeze their eggs;

39 (iii) following procedures promulgated pursuant to subdivision six of
40 section twenty-five hundred ninety-nine-dd of the public health law, the
41 approximate number of donor-conceived persons that were conceived pursu-
42 ant to part eight of article five-C of the family court act using the
43 donor gametes of the potential donor and have been born in New York
44 state;

45 (b) At least once every three years, the entity shall request updates
46 from the donor. The entity shall report required information and updated
47 donor information as received pursuant to section twenty-five hundred
48 ninety-nine-gg of the public health law to the central assisted reproduc-
49 tion registry.

50 3. An entity that receives gametes from another entity that collected
51 the gametes shall record the name of and contact information for the
52 entity from which it received the gametes at the time of receipt and:

53 (a) The entity that collected the gametes shall provide a certified
54 statement that was signed by the gamete donor of the individual's dona-
55 tive intent. Should the entity that collected the gametes not provide
56 such certification, the entity shall certify that the gametes were

1 donated and the gamete donor does not have parental or proprietary
2 interest in the gametes; and

3 (b) The entity that collected the gametes shall provide copies of all
4 identifying information and medical and screening records of the gamete
5 donor;

6 (c) If an entity that collects donor gametes after the effective date
7 of this section of this article shall transfer the donor gametes to
8 another entity, the entity that collected the gametes shall provide a
9 certified statement that was signed by the gamete donor declaring their
10 agreement to identified gamete donation. If the entity that collected
11 the gametes does not possess such certification, it may not transfer the
12 donor gametes to another entity licensed by New York state.

13 § 1407. Gamete donor identity disclosure. 1. An agent, gamete agency,
14 gamete bank, surrogacy program, fertility clinic, health care provider,
15 or other entity that recruits or matches a potential gamete donor shall
16 counsel them on their identity disclosure options and provide the
17 following information:

18 (a) A potential donor who shall enter into a gamete donation matched
19 agreement or a gamete donation agency agreement under part eight of
20 article five-C of the family court act prior to the effective date of
21 section fourteen hundred five of this article may agree to donate
22 gametes as an identified or nonidentified gamete donor. A donor who
23 shall enter into a gamete donation matched agreement or a gamete
24 donation agency agreement under part eight of article five-C of the
25 family court act after the effective date of section fourteen hundred
26 five of this article must agree to donate gametes as an identified
27 gamete donor. The gamete donor shall certify in a written record that
28 they agree to nonidentified or identified gamete donation; and

29 (b) nonidentified gamete donors are unlikely to remain anonymous to
30 any donor-conceived persons due to DNA testing, the possibility of data
31 breaches, and unforeseen technological developments; and

32 (c) any donor-conceived person who was conceived pursuant to part four
33 or part eight of article five-C of the family court act may obtain upon
34 request nonidentifying medical information of a nonidentified gamete
35 donor or identifying and medical information of an identified gamete
36 donor upon attaining eighteen years of age, or a legal parent or guardi-
37 an may request the information if the donor-conceived person is under
38 the age of eighteen; and

39 2. If a potential gamete donor does not agree to donate their gametes
40 as an identified gamete donor after the effective date of section four-
41 teen hundred five of this article, the agent, gamete agency, surrogacy
42 program, gamete bank, fertility clinic, or health care provider shall
43 not provide matching services, enter into a gamete donation agency
44 agreement with the potential donor, or collect the potential donor's
45 gametes.

46 § 1408. Gamete donation advertising and representation. 1. Print,
47 electronic and online advertisements that promote recruitment or match-
48 ing of gamete donors who are residents of or located in New York state,
49 or matching of gamete donors with intended parents who are residents of
50 or located in New York state may not include any compensation amounts
51 other than those specified on the compensation list of the agent, gamete
52 agency, gamete bank, surrogacy program, fertility clinic, or health care
53 provider that shall be made available to the public and is posted on the
54 entity's website.

55 2. An agent, gamete bank, gamete agency, surrogacy program, fertility
56 clinic, or health care provider that provides information to an intended

1 parent or parents who are considering entering into a gamete donation
2 matched agreement or a gamete donation agency agreement shall make accu-
3 rate representations of how many donor eggs an intended parent or
4 parents might receive from one egg retrieval cycle. An entity shall
5 communicate that it is not possible to know how many donor eggs will be
6 received, and may not communicate that the number of donor eggs will be
7 more than thirty.

8 § 29. Subdivision 1 of section 4132 of the public health law, as added
9 by chapter 104 of the laws of 1971, is amended to read as follows:

10 1. The certificate of birth shall contain such information, including
11 the social security numbers of the parents, and identifying information
12 of any gamete donor and person who acted as surrogate, if a parentage
13 order was issued pursuant to section 581-202 or 581-203 of the family
14 court act, and be in such form as the commissioner may prescribe.

15 (a) If a parentage order was issued pursuant to section 581-203 of the
16 family court act, the first and last name of the person acting as surro-
17 gate who was a party to the judgment of parentage proceeding shall be
18 included on the original certificate of birth as the birth mother; and

19 (b) If a parentage order was issued pursuant to section 581-202 of the
20 family court act:

21 (i) the first and last name of any identified gamete donor shall be
22 included on the original certificate of birth as a gamete donor; and

23 (ii) a reference number for any nonidentified gamete donor shall be
24 included on the original certificate of birth as a gamete donor,
25 provided that the donor gametes were collected prior to the effective
26 date of section fourteen hundred five of the general business law; and

27 (c) If a parentage order was issued pursuant to section 581-203 of the
28 family court act and the surrogate-born person was also donor-conceived,
29 the information in paragraphs (a) and (b) of this subdivision shall be
30 included on the original certificate of birth; and

31 (d) If a parentage order is issued pursuant to section 581-202 or
32 581-203 of the family court act, an asterisk shall be placed on the
33 amended birth certificate.

34 § 30. The section heading, subdivision 1 and paragraph (a) of subdivi-
35 sion 2 of section 4138-e of the public health law, as added by chapter
36 491 of the laws of 2019, are amended to read as follows:

37 [~~Adoptee's~~] The right of adoptees, donor-conceived individuals and
38 surrogate-born individuals to a certified copy of [~~his or her~~] their
39 birth certificate. 1. The legislature hereby states its intention to
40 acknowledge, support and encourage the life-long health and well-being
41 needs of persons who have been and will be adopted, donor-conceived, and
42 surrogate-born in this state. The legislature further recognizes that
43 the denial of access to accurate and complete medical and self-identifying
44 data of any adopted person, donor-conceived, and surrogate-born
45 person, known and wilfully withheld by others, may result in such person
46 succumbing to preventable disease, premature death or otherwise
47 unhealthy life, is a violation of that person's human rights and is
48 contrary to the tenets of government. As such, the provisions of this
49 section seek to establish considerations under the law for adopted
50 donor-conceived, and surrogate-born persons equal to such considerations
51 permitted by law to all non-adopted non-donor conceived, and non-surro-
52 gate born persons; this section does so while providing for the privacy
53 of an adopted donor-conceived, and surrogate-born person and [~~his or~~
54 ~~her~~] their birth.

55 (a) Notwithstanding any other provision of law, the commissioner or a
56 local registrar or any person authorized by the commissioner or a local

1 registrar, upon application, proof of identity and payment of a nominal
2 fee, shall issue certified copies of original long form line by line,
3 vault copy birth certificates, including any change attached to that
4 certificate by a birth parent or parents, and any information provided
5 to the commissioner or a local registrar pursuant to subdivision one of
6 section one hundred fourteen of the domestic relations law, to (i) an
7 adopted donor-conceived or surrogate-born person, if eighteen years of
8 age or more, or (ii) if the adopted donor-conceived or surrogate-born
9 person is deceased, the adopted person's direct line descendants, or
10 (iii) the lawful representatives of such adopted person, or lawful
11 representatives of such deceased adopted person's direct line descend-
12 ants, as the case may be.

13 § 31. Items (v) and (vii) of subparagraph (C) of paragraph 6 of
14 subsection (k) of section 3221 of the insurance law, as amended by
15 section 1 of part L of chapter 57 of the laws of 2019, are amended to
16 read as follows:

17 (v)(I) For the purposes of this paragraph, "infertility" means a
18 disease or condition characterized by the incapacity to impregnate
19 another person or to conceive, defined by (a) the failure to establish a
20 clinical pregnancy after twelve months of regular, unprotected sexual
21 intercourse or therapeutic donor insemination, or after six months of
22 regular, unprotected sexual intercourse or therapeutic donor insemina-
23 tion for a female thirty-five years of age or older; or (b) a person's
24 inability to reproduce either as a single individual or with their part-
25 ner without medical intervention; or (c) a licensed physician's or
26 osteopathic physician's findings based on a patient's medical, sexual,
27 or reproductive history, age, physical findings, or diagnostic testing.
28 Earlier evaluation and treatment may be warranted based on an individ-
29 ual's medical, sexual, or reproductive history [~~ex~~], age, physical find-
30 ings, or diagnostic testing.

31 (II) For purposes of this paragraph, "iatrogenic infertility" means an
32 impairment of fertility by surgery, radiation, chemotherapy or other
33 medical treatment affecting reproductive organs or processes.

34 (vii) Every large group policy delivered or issued for delivery in
35 this state that provides medical, major medical or similar comprehen-
36 sive-type coverage shall provide coverage for three [~~cycles of~~]
37 completed oocyte retrievals and in-vitro fertilization [~~used in the~~
38 ~~treatment of infertility~~] with unlimited embryo transfers from fresh or
39 frozen oocytes or embryos from a covered retrieval, in accordance with
40 the guidelines of the American College of Obstetricians and Gynecolo-
41 gists, using single embryo transfer (SET) when recommended and medically
42 appropriate for the treatment of infertility. Coverage may be subject to
43 annual deductibles and coinsurance, including copayments, as may be
44 deemed appropriate by the superintendent and as are consistent with
45 those established for other benefits within a given policy. [~~For~~
46 ~~purposes of this item, a "cycle" is defined as either all treatment that~~
47 ~~starts when: preparatory medications are administered for ovarian stimu-~~
48 ~~lation for oocyte retrieval with the intent of undergoing in vitro~~
49 ~~fertilization using a fresh embryo transfer, or medications are adminis-~~
50 ~~tered for endometrial preparation with the intent of undergoing in vitro~~
51 ~~fertilization using a frozen embryo transfer.~~]

52 § 32. Subparagraphs (E) and (G) of paragraph 3 of subsection (s) of
53 section 4303 of the insurance law, as amended by section 2 of part L of
54 chapter 57 of the laws of 2019, are amended to read as follows:

55 (E)(i) For the purposes of this subsection, "infertility" means a
56 disease or condition characterized by the incapacity to impregnate

1 another person or to conceive, defined by (a) the failure to establish a
2 clinical pregnancy after twelve months of regular, unprotected sexual
3 intercourse or therapeutic donor insemination, or after six months of
4 regular, unprotected sexual intercourse or therapeutic donor insemina-
5 tion for a female thirty-five years of age or older; (b) a person's
6 inability to reproduce either as a single individual or with their part-
7 ner without medical intervention; or (c) a licensed physician's or
8 osteopathic physician's findings based on a patient's medical, sexual,
9 or reproductive history, age, physical findings, or diagnostic testing.

10 Earlier evaluation and treatment may be warranted based on an individ-
11 ual's medical history or physical findings.

12 (ii) For purposes of this subsection, "iatrogenic infertility" means
13 an impairment of fertility by surgery, radiation, chemotherapy or other
14 medical treatment affecting reproductive organs or processes.

15 (G) Every large group contract that provides medical, major medical or
16 similar comprehensive-type coverage shall provide coverage for three
17 [~~cycles of~~] completed oocyte retrievals and in-vitro fertilization [~~used~~
18 ~~in the treatment of infertility~~] with unlimited embryo transfers from
19 fresh or frozen oocytes or embryos from a covered retrieval, in accord-
20 ance with the guidelines of the American College of Obstetricians and
21 Gynecologists, using single embryo transfer (SET) when recommended and
22 medically appropriate for the treatment of infertility. Coverage may be
23 subject to annual deductibles and coinsurance, including copayments, as
24 may be deemed appropriate by the superintendent and as are consistent
25 with those established for other benefits within a given contract. [~~For~~
26 ~~purposes of this subparagraph, a "cycle" is defined as either all treat-~~
27 ~~ment that starts when: preparatory medications are administered for~~
28 ~~ovarian stimulation for oocyte retrieval with the intent of undergoing~~
29 ~~in-vitro fertilization using a fresh embryo transfer; or medications are~~
30 ~~administered for endometrial preparation with the intent of undergoing~~
31 ~~in-vitro fertilization using a frozen embryo transfer.]~~

32 § 33. Item (vii) of subparagraph (C) of paragraph 6 of subsection (k)
33 of section 3221 of the insurance law, as amended by section 1 of part L
34 of chapter 57 of the laws of 2019, is amended to read as follows:

35 (vii) Every large group policy delivered or issued for delivery in
36 this state that provides medical, major medical or similar comprehen-
37 sive-type coverage shall provide coverage for three cycles of in-vitro
38 fertilization used in the treatment of infertility. Coverage may be
39 subject to annual deductibles and coinsurance, including copayments, as
40 may be deemed appropriate by the superintendent and as are consistent
41 with those established for other benefits within a given policy. For
42 purposes of this item, a "cycle" is defined as either all treatment that
43 starts when: preparatory medications are administered for ovarian stimu-
44 lation for oocyte retrieval with the intent of undergoing in-vitro
45 fertilization using a fresh embryo transfer; or medications are adminis-
46 tered for endometrial preparation with the intent of undergoing in-vitro
47 fertilization using a frozen embryo transfer. A policy may not impose
48 any exclusions, limitations, or other restrictions on coverage of treat-
49 ment of infertility based on a covered individual's participation in
50 fertility services provided by or to a third party.

51 § 34. Subparagraph (G) of paragraph 3 of subsection (s) of section
52 4303 of the insurance law, as amended by section 2 of part L of chapter
53 57 of the laws of 2019, is amended to read as follows:

54 (G) Every large group contract that provides medical, major medical or
55 similar comprehensive-type coverage shall provide coverage for three
56 cycles of in-vitro fertilization used in the treatment of infertility.

1 Coverage may be subject to annual deductibles and coinsurance, including
2 copayments, as may be deemed appropriate by the superintendent and as
3 are consistent with those established for other benefits within a given
4 contract. For purposes of this subparagraph, a "cycle" is defined as
5 either all treatment that starts when: preparatory medications are
6 administered for ovarian stimulation for oocyte retrieval with the
7 intent of undergoing in-vitro fertilization using a fresh embryo trans-
8 fer; or medications are administered for endometrial preparation with
9 the intent of undergoing in-vitro fertilization using a frozen embryo
10 transfer. A policy may not impose any exclusions, limitations, or other
11 restrictions on coverage of treatment of infertility based on a covered
12 individual's participation in fertility services provided by or to a
13 third party.

14 § 35. The social services law is amended by adding a new section 365-p
15 to read as follows:

16 § 365-p. Enrollment in the state health insurance exchange; surrogacy
17 and egg donation. In addition to any triggering event that provides
18 eligibility for a special enrollment period available to individuals for
19 enrollment in a qualified health plan in the state health insurance
20 exchange established pursuant to the federal Patient Protection and
21 Affordable Care Act (P.L.111-148), the state health insurance exchange
22 shall allow for:

23 1. the enrollment of a person acting as surrogate who is a party to a
24 surrogacy agreement under part four of article five-C of the family
25 court act at any time after the surrogacy agreement has been executed.
26 Upon such enrollment, any qualified health plan in the state health
27 insurance exchange shall ensure that coverage is effective on the date
28 of application; and

29 2. the enrollment of an egg donor who is a party to a gamete donation
30 matched agreement or a gamete donation agency agreement under part eight
31 of article five-C of the family court act at any time after the gamete
32 donation matched agreement or the gamete donation agency agreement has
33 been executed. Upon such enrollment, any qualified health plan in the
34 state health insurance exchange shall ensure that coverage is effective
35 on the date of application.

36 § 36. This act shall take effect immediately.