

# STATE OF NEW YORK

4921--A

2023-2024 Regular Sessions

## IN ASSEMBLY

February 27, 2023

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the family court act, the domestic relations law and the general business law, in relation to surrogacy programs and agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 581-102 of the family court act, as added by  
2 section 1 of part L of chapter 56 of the laws of 2020, is amended to  
3 read as follows:  
4 § 581-102. Definitions. (a) "Assisted reproduction" means a method of  
5 causing pregnancy other than sexual intercourse and includes but is not  
6 limited to:  
7 1. intrauterine or vaginal insemination;  
8 2. donation of gametes;  
9 3. donation of embryos;  
10 4. in vitro fertilization and transfer of embryos; and  
11 5. intracytoplasmic sperm injection.  
12 (b) "Child" means a born individual of any age whose parentage may be  
13 determined under this act or other law.  
14 (c) "Compensation" means payment of any valuable consideration in  
15 excess of reasonable medical and ancillary costs.  
16 (d) "Donor" means an individual who does not intend to be a parent who  
17 produces gametes and provides them to another person, other than the  
18 individual's spouse, for use in assisted reproduction. The term does not  
19 include a person who is a parent under part three of this article. Donor  
20 also includes an individual who had dispositional control of an embryo  
21 or gametes who then transfers dispositional control and releases all  
22 present and future parental and inheritance rights and obligations to a  
23 resulting child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(o) "Participant" is an individual who either: provides a gamete that is used in assisted reproduction, is an intended parent, is a person acting as surrogate, or is the spouse of an intended parent or person acting as surrogate.~~

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

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

~~(r)~~ (q) "Spouse" means an individual married to another, or who has a legal relationship entered into under the laws of the United States or of any state, local or foreign jurisdiction, which is substantially equivalent to a marriage, including a civil union or domestic partnership.

~~(s)~~ (r) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

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

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

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

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

(2) if ~~the~~ neither an intended parent ~~and~~ nor the child ~~do not~~ reside in New York state, up to ninety days after the birth of the child in the county where the child was born.

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

(c) Where ~~a petition includes the following truthful~~ the court finds the following statements in the petition to be true, the court shall adjudicate the intended parent or parents to be the parent or parents of the child without the need for additional proceedings or documentation:

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

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

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

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

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

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

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

9 (i) a statement or documentation from the gamete or embryo storage  
10 facility or health care practitioner stating or demonstrating that such  
11 gametes or embryos [~~were anonymously donated or~~] had previously been  
12 released; [~~or~~]

13 (ii) a record from the gamete or embryo donor or donors evidencing  
14 intent to release the gametes or embryos; or

15 (iii) clear and convincing evidence that the gamete or embryo donor  
16 [~~intended to donate gametes or embryos anonymously or intended to~~  
17 ~~release such gametes or embryos to a gamete or embryo storage facility~~  
18 ~~or health care practitioner,~~] or donors confirmed, prior to donation,  
19 that the donor or donors would have no parental or proprietary interest  
20 in the gametes or embryos;

21 (2) [~~in the case of a donation from a known donor, either: a.~~] where  
22 the gametes or embryos were not released to a gamete or embryo storage  
23 facility or donated in the presence of a health care practitioner,  
24 either:

25 (i) a record from the gamete or embryo donor acknowledging the  
26 donation and confirming that the donor [~~has~~] or donors shall have no  
27 parental or proprietary interest in the gametes or embryos. The record  
28 shall be signed by the [~~gestating~~] intended parent or parents and the  
29 gamete or embryo donor[~~. The record may be, but is not required to be,~~  
30 ~~signed~~] or donors:

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

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

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

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

38 (3) Except for those agreements executed in compliance with section  
39 581-306 of this article, this subdivision shall not apply where the  
40 person providing the gametes or embryos is the spouse of the intended  
41 parent.

42 (e) [~~1.~~] In the absence of evidence pursuant to subparagraphs (i) and  
43 (ii) of paragraph one and subparagraph (i) of paragraph two of [~~this~~]  
44 subdivision (d) of this section, notice shall be given to the donor at  
45 least twenty days prior to the date set for the proceeding to determine  
46 the existence of donative intent by delivery of a copy of the petition  
47 and notice pursuant to section three hundred eight of the civil practice  
48 law and rules. If an intended parent or an intended parent's spouse is  
49 not a petitioner, such notice shall also be given to such person who  
50 shall be a necessary party unless the intended parent proceeded without  
51 the participation of their spouse in compliance with subdivision (b) of  
52 section 581-305 or section 581-306 of this article. Upon a showing to  
53 the court, by affidavit or otherwise, on or before the date of the  
54 proceeding or within such further time as the court may allow, that  
55 personal service cannot be effected at the [~~donor's~~] last known address  
56 or addresses of the donor or donors, and/or the non-petitioning intended

1 parent, if any, with reasonable effort, notice may be given, without  
2 prior court order therefore, at least twenty days prior to the proceed-  
3 ing by registered or certified mail directed to [~~the donor's~~] such last  
4 known address or addresses. Notice by publication shall not be required  
5 to be given to [~~a donor~~] anyone entitled to notice pursuant to the  
6 provisions of this section.

7 (2) Notwithstanding the above, where there is evidence that sperm is  
8 provided under the supervision of a health care practitioner to someone  
9 other than the sperm provider's intimate partner or spouse without a  
10 record of the sperm provider's intent to parent notice is not required.

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

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

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

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

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

27 (4) ordering that:

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

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

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

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

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

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

9 § 581-203. Proceeding for judgment of parentage of a child conceived  
10 pursuant to a surrogacy agreement. (a) The proceeding may be commenced  
11 (1) in any county where an intended parent resided any time after the  
12 surrogacy agreement was executed; or (2) in the county where the child  
13 was born or resides or in the county where the birth is intended to  
14 occur; or (3) in the county where the surrogate resided any time after  
15 the surrogacy agreement was executed.

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

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

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

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

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

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

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

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

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

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

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

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

1 (6) ordering that:

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

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

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

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

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

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

47 § 581-205. Inspection of records. Court records relating to  
48 proceedings under this article shall be sealed, provided, however, that  
49 the office of temporary and disability assistance, a child support unit  
50 of a social services district or a child support agency of another state  
51 providing child support services pursuant to title IV-d of the federal  
52 social security act, when a party to a related support proceeding and to  
53 the extent necessary to provide child support services or for the admin-  
54 istration of the program pursuant to title IV-d of the federal social  
55 security act, may obtain a copy of a judgment of parentage. The parties  
56 to the proceeding and the child shall have the right to inspect and make

1 copies of the entire court record, including, but not limited to, the  
2 name of the person acting as surrogate and any known ~~[donors]~~ donor.  
3 Notwithstanding any other provision of law, the county clerk or the  
4 clerk of the supreme, surrogate's or family court shall not display the  
5 surname of the child or parties in any document, index, minutes or other  
6 record available to the public.

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

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

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

14 § 581-207. Certified copy of judgment of parentage. Upon issuing a  
15 judgment of parentage pursuant to section 581-202 or 581-203 of this  
16 part, the issuing court shall provide a certified copy of such judgment  
17 to the intended parent or parents.

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

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

25 § 8. Paragraph 3 of subdivision (a) and subdivision (d) of section  
26 581-306 of the family court act, as added by section 1 of part L of  
27 chapter 56 of the laws of 2020, are amended to read as follows:

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

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

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

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

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

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

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

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

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

14 (6) the person acting as surrogate, and the spouse of the person  
15 acting as surrogate, if applicable, have been represented [~~throughout~~  
16 from the initiation of the contractual process and throughout the dura-  
17 tion of the [~~contract and its execution~~] surrogacy agreement by inde-  
18 pendent legal counsel of their own choosing who is licensed to practice  
19 law in the state of New York which shall be paid for by the intended  
20 parent or parents, except that a person acting as surrogate who is  
21 receiving no compensation may waive the right to have the intended  
22 parent or parents pay the fee for such legal counsel. Where the  
23 [~~intended parent or parents are paying for the~~] independent legal coun-  
24 sel of the person acting as surrogate, and the spouse of the person  
25 acting as surrogate, if applicable, is paid by the intended parent or  
26 parents, a separate retainer agreement shall be prepared clearly stating  
27 that such legal counsel will only represent the person acting as surro-  
28 gate and the spouse of the person acting as surrogate, if applicable, in  
29 all matters pertaining to the surrogacy agreement, that such legal coun-  
30 sel will not offer legal advice to any other parties to the surrogacy  
31 agreement, and that the attorney-client relationship lies with the  
32 person acting as surrogate and the spouse of the person acting as surro-  
33 gate, if applicable;

34 (7) the person acting as surrogate has or the surrogacy agreement  
35 stipulates that the person acting as surrogate will obtain [~~a~~] compre-  
36 hensive health insurance [~~policy~~] coverage that takes effect after the  
37 person acting as surrogate has been deemed medically eligible but prior  
38 to taking any medication or commencing treatment to further embryo  
39 transfer that covers [~~preconception care, prenatal care, major medical~~  
40 ~~treatments, hospitalization, and behavioral health care, and the compre-~~  
41 ~~hensive policy has a term that extends throughout the duration of the~~  
42 ~~expected pregnancy and for twelve months after the birth of the child, a~~  
43 ~~stillbirth, a miscarriage resulting in termination of pregnancy, or~~  
44 ~~termination of the pregnancy; the policy shall be paid for, whether~~  
45 ~~directly or through reimbursement or other means, by the intended parent~~  
46 ~~or parents on behalf of the person acting as surrogate pursuant to the~~  
47 ~~surrogacy agreement, except that a person acting as surrogate who is~~  
48 ~~receiving no compensation may waive the right to have the intended~~  
49 ~~parent or parents pay for the health insurance policy. The intended~~  
50 ~~parent or parents shall also pay for or reimburse the person acting as~~  
51 ~~surrogate for all co-payments, deductibles and any other out-of-pocket~~  
52 ~~medical costs associated with preconception, pregnancy, childbirth, or~~  
53 ~~postnatal care, that accrue through twelve months after the birth of the~~  
54 ~~child, a stillbirth, a miscarriage, or termination of the pregnancy. A~~  
55 ~~person acting as surrogate who is receiving no compensation may waive~~

1 ~~the right to have the intended parent or parents make such payments or~~  
2 ~~reimbursements~~]:

3 (i) preconception care. The surrogacy agreement shall state that the  
4 intended parent or parents will be responsible for all medical costs of  
5 the person acting as surrogate associated with their preconception care  
6 including but not limited to medical and psychological screenings, medi-  
7 cations, embryo transfer procedure, monitoring prior and subsequent to  
8 the embryo transfer procedure and any complications associated with the  
9 foregoing. The intended parent or parents shall be responsible for the  
10 costs of any such complications either through insurance or by placing  
11 and maintaining sufficient funds in escrow to cover such expenses. If  
12 the surrogacy agreement is terminated after the person acting as surro-  
13 gate has taken any medication or commenced treatment to further embryo  
14 transfer but before pregnancy is achieved, such funds shall remain in  
15 escrow for a minimum period of six months from the date the surrogacy  
16 agreement is terminated;

17 (ii) medical expenses associated with pregnancy. The person acting as  
18 surrogate has, or the surrogacy agreement shall stipulate that the  
19 person acting as surrogate will obtain, comprehensive health insurance  
20 coverage, via one or more insurance policies, prior to or immediately  
21 upon confirmation of pregnancy that covers prenatal care, major medical  
22 treatments, hospitalization, behavioral health care, childbirth and  
23 postnatal care, and that such comprehensive coverage must be in place  
24 throughout the duration of the pregnancy and for twelve months after the  
25 birth of the child, a stillbirth, a miscarriage resulting in termination  
26 of the pregnancy, or termination of the pregnancy. The policy shall be  
27 paid for, whether directly or through reimbursement or other means, by  
28 the intended parent or parents on behalf of the person acting as surro-  
29 gate to the extent that there is an additional cost to the person acting  
30 as surrogate for such health insurance coverage. The intended parent or  
31 parents shall also pay for or reimburse the person acting as surrogate  
32 for all co-payments, deductibles and any other out-of-pocket medical  
33 costs associated with pregnancy, childbirth, or postnatal care, that  
34 accrue through twelve months after the birth of the child, a stillbirth,  
35 a miscarriage resulting in termination of the pregnancy, or termination  
36 of the pregnancy; and

37 (iii) uncompensated surrogacy agreements. A person acting as surrogate  
38 who is receiving no compensation may waive the right to have the  
39 intended parent or parents make the payments set forth in this section;

40 (8) the surrogacy agreement must provide that the intended parent or  
41 parents shall [~~procure and~~] pay for a life insurance, contractual  
42 liability or accidental death insurance policy for the person acting as  
43 surrogate that takes effect prior to taking any medication or the  
44 commencement of medical procedures to further embryo transfer, provides  
45 a minimum benefit of seven hundred fifty thousand dollars or the maximum  
46 amount the person acting as surrogate qualifies for if it is less than  
47 seven hundred fifty thousand dollars, and [~~has a term that extends~~] such  
48 coverage shall extend throughout the duration of the expected pregnancy  
49 and for twelve months after the birth of the child, a stillbirth, a  
50 miscarriage resulting in termination of pregnancy, or termination of the  
51 pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person  
52 acting as surrogate's choosing. The policy shall be paid for, whether  
53 directly or through reimbursement or other means, by the intended parent  
54 or parents on behalf of the person acting as surrogate pursuant to the  
55 surrogacy agreement, except that a person acting as surrogate who is  
56 receiving no compensation may waive the right to have the intended

1 parent or parents pay for the life insurance, contractual liability or  
2 accidental death insurance policy; and

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

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

10 (1) at least one intended parent is:

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

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

15 (2) [~~the intended parent or parents has~~] they have been represented  
16 [~~throughout~~] from the initiation of the contractual process and through-  
17 out the duration of the [~~contract and its execution~~] surrogacy agreement  
18 by independent legal counsel of his, her or their own choosing who is  
19 licensed to practice law in the state of New York; and

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

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

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

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

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

37 § 581-403. Requirements of surrogacy agreement. A surrogacy agreement  
38 shall be deemed to have satisfied the requirements of this article and  
39 be enforceable if it meets the following requirements:

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

43 (1) each intended parent, and

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

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

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

53 (b) it shall be executed prior to the person acting as surrogate  
54 taking any medication or the commencement of medical procedures in the  
55 furtherance of embryo transfer, provided the person acting as surrogate

1 shall have provided informed consent to undergo such medical treatment  
2 or medical procedures prior to executing the agreement;

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

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

11 (e) the person acting as surrogate and the spouse of the person acting  
12 as surrogate, if applicable, and the intended parent or parents shall  
13 have been represented [~~throughout~~] from the initiation of the contractu-  
14 al process and the surrogacy agreement states that they shall be repres-  
15 ented throughout the duration of the [~~contract and its execution~~] surro-  
16 gacy agreement by separate, independent legal counsel of their own  
17 choosing, who is licensed to practice law in the state of New York;

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

27 (g) the surrogacy agreement must include information disclosing how  
28 the intended parent or parents will cover the medical expenses of the  
29 person acting as surrogate and the child. The surrogacy agreement shall  
30 specify the amount that the intended parent or parents shall place in  
31 escrow to cover such reasonable anticipated costs including precon-  
32 ception medical care and extending throughout the duration of the  
33 expected surrogacy agreement. If it is anticipated that comprehensive  
34 health care coverage [~~is~~] will be used to cover the medical expenses for  
35 the person acting as surrogate, the [~~disclosure shall include a review~~  
36 ~~and summary of the~~] health care policy provisions related to coverage  
37 and exclusions for the person acting as [~~surrogate's~~] surrogate shall be  
38 reviewed and summarized in relation to the anticipated pregnancy prior  
39 to such policy being used to cover any of the person acting as surro-  
40 gate's medical expenses incurred pursuant to the surrogacy agreement;  
41 and

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

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

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

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

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

54 (5) the name of and contact information for the attorney representing  
55 the person acting as surrogate, and the spouse of the person acting as

1 surrogate, if applicable, and the attorney representing the intended  
2 parent or parents; and

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

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

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

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

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

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

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

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

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

33 (viii) the surrogacy agreement shall provide for the right of the  
34 person acting as surrogate, upon request, to obtain counseling to  
35 address issues resulting from the person's participation in the surroga-  
36 cy agreement, including, but not limited to, counseling following deliv-  
37 ery. The cost of that counseling shall be paid by the intended parent  
38 or parents;

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

44 (x) the surrogacy agreement shall provide that, upon the person acting  
45 as surrogate's request, the intended parent or parents [~~have or will~~  
46 ~~procure and~~] shall pay for a disability insurance policy [~~for~~] or other  
47 insurance policy to cover any lost wages incurred by the person acting  
48 as surrogate [~~; the person acting as surrogate may designate the benefi-~~  
49 ~~ciary of the person's choosing~~] in connection with their participation  
50 in the surrogacy agreement after taking any medication or commencing  
51 treatment to further embryo transfer excluding medical procedures  
52 required to determine the medical eligibility to become a person acting  
53 as surrogate. In the event that such insurance coverage is not avail-  
54 able, the intended parent or parents shall reimburse the person acting  
55 as surrogate for any lost wages the person acting as surrogate incurs in  
56 connection with their participation in the surrogacy agreement.

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

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

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

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

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

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

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

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

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

37 § 581-405. Termination of surrogacy agreement. After the execution of  
38 a surrogacy agreement but before the [~~person acting as surrogate becomes~~  
39 ~~pregnant by means of assisted reproduction,~~] embryo transfer occurs or  
40 after an unsuccessful embryo transfer, the person acting as surrogate,  
41 the spouse of the person acting as surrogate, if applicable, or any  
42 intended parent may terminate the surrogacy agreement by giving notice  
43 of termination in a record to all other parties. Upon proper termination  
44 of the surrogacy agreement the parties are released from all obligations  
45 recited in the surrogacy agreement except that the intended parent or  
46 parents [~~remains~~] shall remain responsible for all [~~expenses that are~~  
47 ~~reimbursable~~] lost wages and other financial obligations which have  
48 accrued under the agreement [~~which have been incurred by the person~~  
49 ~~acting as surrogate~~] through the date of termination. If the intended  
50 parent or parents terminate the surrogacy agreement pursuant to this  
51 section after the person acting as surrogate has taken any medication or  
52 commenced treatment to further embryo transfer, such intended parent or  
53 parents shall be responsible for paying [~~for or reimbursing the person~~  
54 ~~acting as surrogate for all co-payments, deductibles,~~] any other out-of-  
55 pocket medical costs[, ~~and any other economic losses~~] incurred within  
56 twelve months [~~of~~] after the termination of the agreement [~~and~~] which,

1 as documented by a health care practitioner, are associated with taking  
2 such medication or undertaking such treatment. Unless the agreement  
3 provides otherwise, the person acting as surrogate is entitled to keep  
4 all payments received and obtain all payments to which the person is  
5 entitled up until the date of termination of the agreement. Neither a  
6 person acting as surrogate nor the spouse of the person acting as surro-  
7 gate, if [~~any~~] applicable, is liable to the intended parent or parents  
8 for terminating a surrogacy agreement as provided in this section.

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

12 § 581-406. Parentage under compliant surrogacy agreement. Upon the  
13 birth of a child conceived by assisted reproduction under a surrogacy  
14 agreement that complies with this part, each intended parent is, by  
15 operation of law, a parent of the child and neither the person acting as  
16 [~~a~~] surrogate nor the person's spouse, if [~~any~~] applicable, is a parent  
17 of the child.

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

21 § 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is  
22 related to a surrogacy agreement other than disputes as to parentage,  
23 which are not resolved through alternative dispute resolution methods,  
24 shall be resolved by the supreme court, which shall determine the  
25 respective rights and obligations of the parties[~~, in~~]. In any proceed-  
26 ing initiated pursuant to this section, the court may, at its  
27 discretion, authorize the use of conferencing or mediation at any point  
28 in the proceedings.

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

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

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

44 (d) If any intended parent is adjudicated to be the parent of the  
45 child, specific performance is a remedy available for: (1) breach of the  
46 surrogacy agreement by a person acting as surrogate which prevents the  
47 intended parent or parents from exercising the full rights of parentage  
48 immediately upon the birth of the child; or (2) breach by the intended  
49 parent or parents by failure to accept the duties of parentage imme-  
50 diately upon the birth of the child.

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

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

4 § 581-502. Compensation. (a) Compensation may be paid to a donor or  
5 person acting as surrogate based on medical risks, physical discomfort,  
6 inconvenience and the responsibilities they are undertaking in  
7 connection with their participation in the assisted reproduction. Under  
8 no circumstances may compensation be paid to purchase gametes or embryos  
9 or for the release of a parental interest in a child.

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

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

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

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

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

32 § 581-601. Applicability. The rights enumerated in this part shall  
33 apply to any person acting as surrogate ~~[in this state]~~ under the laws  
34 of the state of New York, notwithstanding any surrogacy agreement, judg-  
35 ment of parentage, memorandum of understanding, verbal agreement or  
36 contract to the contrary. Except as otherwise provided by law, any writ-  
37 ten or verbal agreement purporting to waive or limit any of the rights  
38 in this part is void as against public policy. The rights enumerated in  
39 this part are not exclusive, and are in addition to any other rights  
40 provided by law, regulation, or a surrogacy agreement that meets the  
41 requirements of this article.

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

45 § 581-603. Independent legal counsel. A person acting as surrogate,  
46 and the spouse of the person acting as surrogate, if applicable, has the  
47 right to be represented ~~[throughout]~~ from the initiation of the contrac-  
48 tual process and throughout the duration of the surrogacy agreement ~~[and~~  
49 ~~its execution]~~ by independent legal counsel of their own choosing who is  
50 licensed to practice law in the state of New York, to be paid for by the  
51 intended parent or parents.

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

55 § 581-604. Health insurance and medical costs. A person acting as  
56 surrogate has the right to have ~~[a]~~ comprehensive health insurance

1 [~~policy~~] coverage that covers preconception [~~care, prenatal care, major~~  
 2 ~~medical treatments, hospitalization and behavioral health care~~] medical  
 3 expenses and medical expenses associated with the pregnancy for a [~~term~~]  
 4 period that extends throughout the duration of the expected pregnancy  
 5 and for twelve months after the birth of the child, a stillbirth, a  
 6 miscarriage resulting in termination of pregnancy, or termination of the  
 7 pregnancy, to be paid for by the intended parent or parents. [~~The~~  
 8 ~~intended parent or parents shall also pay for or reimburse the person~~  
 9 ~~acting as surrogate for all co-payments, deductibles and any other out-~~  
 10 ~~of-pocket medical costs associated with pregnancy, childbirth, or post-~~  
 11 ~~natal care that accrue through~~] In addition, a person acting as a  
 12 surrogate shall have the right to have the intended parent or parents  
 13 pay for all of their medical expenses incurred in connection with the  
 14 surrogacy agreement, continuing through the duration of the expected  
 15 pregnancy and for twelve months after the birth of the child, a still-  
 16 birth, a miscarriage resulting in the termination of pregnancy, or the  
 17 termination of the pregnancy. A person acting as a 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 § 19. Section 581-605 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 § 581-605. Counseling. A person acting as surrogate has the right to  
 24 [~~obtain a comprehensive health insurance policy that covers behavioral~~  
 25 ~~health care and will cover the cost of psychological~~] mental health  
 26 counseling to address issues resulting from their participation in [~~a~~]  
 27 the surrogacy [~~and such policy~~] agreement, which shall be paid for by an  
 28 insurance policy or by the intended parent or parents.

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

32 § 581-606. Life insurance, contractual liability, or accidental death  
 33 insurance policy. A person acting as surrogate has the right to be  
 34 provided a life insurance, contractual liability or accidental death  
 35 insurance policy that takes effect prior to taking any medication or  
 36 commencement of treatment to further embryo transfer, provides a minimum  
 37 benefit of seven hundred fifty thousand dollars, or the maximum amount  
 38 the person acting as surrogate [~~qualifying~~] qualifies for [~~it~~] if less  
 39 than seven hundred fifty thousand dollars, and [~~has a term that extends~~]  
 40 such coverage shall extend throughout the duration of the expected preg-  
 41 nancy and for twelve months after the birth of the child, a stillbirth,  
 42 a miscarriage resulting in termination of pregnancy, or termination of  
 43 the pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person  
 44 acting as surrogate's choosing, to be paid for by the intended parent or  
 45 parents.

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

48 § 581-705. Adjudication. (a) A court adjudicating the parentage of a  
 49 child conceived through assisted reproduction or adjudicating the  
 50 enforceability of an embryo disposition agreement may apply section  
 51 581-202 and part three of this article retroactively.

52 (b) The participants in a surrogacy agreement that involved the  
 53 payment of compensation prior to February fifteenth, two thousand twen-  
 54 ty-two shall not be eligible to receive a judgment of parentage pursuant  
 55 to section 581-203 or section 581-406 of this article, but shall be

1 entitled to seek a judgment of parentage pursuant to section 581-407 of  
2 this article.

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

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

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

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

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

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

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

37 § 1401. Surrogacy programs regulated under this article. The  
38 provisions of this article apply to surrogacy programs arranging or  
39 facilitating transactions contemplated by a surrogacy agreement, regard-  
40 less of whether such agreement ultimately comports with the requirements  
41 under part four of article five-C of the family court act if:

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

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

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

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

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

54 (f) Shall be licensed to operate in New York state pursuant to regu-  
55 lations promulgated by the department of health in consultation with the

1 department of financial services [~~7 once such regulations are promulgated~~  
2 ~~and become effective~~]; and

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

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

12 (a) Require surrogacy programs to monitor compliance with [~~surrogacy~~  
13 ~~agreements~~] eligibility [~~and requirements in state law~~] criteria for the  
14 intended parents and persons acting as surrogates pursuant to section  
15 581-402 of the family court act; and

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

20 § 27. This act shall take effect immediately.