

# STATE OF NEW YORK

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5107

2023-2024 Regular Sessions

## IN SENATE

February 22, 2023

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Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, the general business law and the domestic relations 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.

LBD05288-04-3

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~~] relinquished to a gamete or embryo  
8 storage facility or were donated in the presence of a health care prac-  
9 titioner, either:

10 (i) a statement or documentation from the gamete or embryo storage  
11 facility or health care practitioner stating or demonstrating that the  
12 donor or donors of such gametes or embryos [~~were anonymously donated or~~  
13 ~~had previously been released~~] relinquished all parental or proprietary  
14 interest to them; [ex]

15 (ii) a record from the gamete or embryo donor or donors evidencing  
16 intent to relinquish all parental or proprietary interest in the gametes  
17 or embryos; or

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

24 (2) [~~in the case of a donation from a known donor, either: a.~~] where  
25 the gametes or embryos were not relinquished to a gamete or embryo stor-  
26 age facility or donated in the presence of a health care practitioner,  
27 either:

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

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

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

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

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

41 (3) Except for those agreements executed in compliance with section  
42 581-306 of this article, this subdivision shall not apply where the  
43 person providing the gametes or embryos is the spouse of the intended  
44 parent.

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

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

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

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

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

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

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

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

30 (4) ordering that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (6) ordering that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (2) the person acting as surrogate: (i) is a United States citizen or  
56 a lawful permanent resident, and [~~, where at least one intended parent is~~



1 ~~not~~ (ii) has been a resident of New York state for at least six  
2 months~~[, was]~~ if neither intended parent has been a resident of New York  
3 state for at least six months;

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

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

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

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

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

~~parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements]:~~

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

(ii) medical expenses associated with pregnancy. The person acting as surrogate has, or the surrogacy agreement shall stipulate that the person acting as surrogate will obtain, comprehensive health insurance coverage, via one or more insurance policies, prior to or immediately upon confirmation of pregnancy that covers prenatal care, childbirth and postnatal care, and that such comprehensive coverage must be in place throughout the duration of the pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of the pregnancy, or termination of the pregnancy. The policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate to the extent that there is an additional cost to the person acting as surrogate for such health insurance coverage. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of the pregnancy, or termination of the pregnancy; and

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

(8) the surrogacy agreement must provide that the intended parent or parents shall [~~procure and~~] pay for a life insurance, contractual liability or accidental death insurance policy for the person acting as surrogate that takes effect prior to taking any medication or the commencement of medical procedures to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars or the maximum amount the person acting as surrogate qualifies for if it is less than seven hundred fifty thousand dollars, and [~~has a term that extends~~] such coverage shall extend throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of [~~their~~] the person

1 acting as surrogate's choosing. The policy shall be paid for, whether  
2 directly or through reimbursement or other means, by the intended parent  
3 or parents on behalf of the person acting as surrogate pursuant to the  
4 surrogacy agreement, except that a person acting as surrogate who is  
5 receiving no compensation may waive the right to have the intended  
6 parent or parents pay for the life insurance, contractual liability or  
7 accidental death insurance policy; and

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

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

15 (1) at least one intended parent is:

16 (i) a United States citizen or a lawful permanent resident; and  
17 ~~[was]~~ (ii) has been a resident of New York state for at least six  
18 months if the person acting as surrogate has not been a resident of the  
19 state of New York for at least six months;

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

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

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

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

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

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

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

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

48 (1) each intended parent, and

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

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

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

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

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

13 (d) it shall be executed by 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 [~~throughout~~] from the initiation of the contractu-  
19 al process and the surrogacy agreement states that they shall be repres-  
20 ented throughout the duration of the [~~contract and its execution~~] surro-  
21 gacy agreement by separate, independent legal counsel of their own  
22 choosing, who is licensed to practice law in the state of New York;

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

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

47 (h) [~~is~~] the surrogacy agreement shall include the following informa-  
48 tion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (ix) the surrogacy agreement must include a notice that any compen-  
45 sation received pursuant to the agreement may affect the eligibility of  
46 the person acting as [~~surrogate's ability~~ surrogate and the person  
47 acting as surrogate's spouse, if applicable, for public benefits or the  
48 amount of such benefits; and

49 (x) the surrogacy agreement shall provide that, upon the person acting  
50 as surrogate's request, the intended parent or parents [~~have or will~~  
51 ~~procure and~~ shall pay for a disability insurance policy [~~for~~ or other  
52 insurance policy to cover any lost wages incurred by the person acting  
53 as surrogate [~~; the person acting as surrogate may designate the benefi-~~  
54 ~~ciary of the person's choosing~~ in connection with their participation  
55 in the surrogacy agreement after taking any medication or commencing  
56 treatment to further embryo transfer excluding medical procedures

1 required to determine the medical eligibility to become a person acting  
2 as surrogate. In the event that such insurance coverage is not avail-  
3 able, the intended parent or parents shall reimburse the person acting  
4 as surrogate for any lost wages the person acting as surrogate incurs in  
5 connection with their participation in the surrogacy agreement.

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

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

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

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

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

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

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

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

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

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

1 commenced treatment to further embryo transfer, such intended parent or  
2 parents shall be responsible for paying [~~for or reimbursing the person~~  
3 ~~acting as surrogate for all co-payments, deductibles,~~] any other out-of-  
4 pocket medical costs[~~, and any other economic losses~~] incurred within  
5 twelve months [~~of~~] after the termination of the agreement [~~and~~] which,  
6 as documented by a health care practitioner, are associated with taking  
7 such medication or undertaking such treatment. Unless the agreement  
8 provides otherwise, the person acting as surrogate is entitled to keep  
9 all payments received and obtain all payments to which the person is  
10 entitled up until the date of termination of the agreement. Neither a  
11 person acting as surrogate nor the spouse of the person acting as surro-  
12 gate, if [~~any~~] applicable, is liable to the intended parent or parents  
13 for terminating a surrogacy agreement as provided in this section.

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

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

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

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

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

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

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

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

1 (e) In any proceeding initiated pursuant to this section, where the  
2 supreme court determines that the dispute involves both contractual and  
3 parentage issues, the court may order that the portion of the  
4 proceedings raising parentage issues may be transferred to the family or  
5 surrogate's court.

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

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

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

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

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

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

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

47 § 17. Section 581-603 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 § 581-603. Independent legal counsel. A person acting as surrogate,  
51 and the spouse of the person acting as surrogate, if applicable, has the  
52 right to be represented ~~[throughout]~~ from the initiation of the contrac-  
53 tual process and throughout the duration of the surrogacy agreement ~~[and~~  
54 ~~its execution]~~ by independent legal counsel of their own choosing who is  
55 licensed to practice law in the state of New York, to be paid for by the  
56 intended parent or parents. The intended parent or parents shall not be



1 required to pay the legal fees for the person acting as surrogate, and  
2 the spouse of the person acting as surrogate, if applicable, in  
3 connection with a litigated dispute between the parties unless otherwise  
4 ordered by an arbiter or court of competent jurisdiction.

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

8 § 581-604. Health insurance and medical costs. A person acting as  
9 surrogate has the right to have [a] comprehensive health insurance  
10 [~~policy~~] coverage that covers preconception [~~care, prenatal care, major~~  
11 ~~medical treatments, hospitalization and behavioral health care~~] medical  
12 expenses and medical expenses associated with the pregnancy for a [~~term~~]  
13 period that extends throughout the duration of the expected pregnancy  
14 and for twelve months after the birth of the child, a stillbirth, a  
15 miscarriage resulting in termination of pregnancy, or termination of the  
16 pregnancy, to be paid for by the intended parent or parents. [~~The~~  
17 ~~intended parent or parents shall also pay for or reimburse the person~~  
18 ~~acting as surrogate for all co-payments, deductibles and any other out-~~  
19 ~~of-pocket medical costs associated with pregnancy, childbirth, or post-~~  
20 ~~natal care that accrue through~~] In addition, a person acting as a  
21 surrogate shall have the right to have the intended parent or parents  
22 pay for all of their medical expenses incurred in connection with the  
23 surrogacy agreement, continuing through the duration of the expected  
24 pregnancy and for twelve months after the birth of the child, a still-  
25 birth, a miscarriage resulting in the termination of pregnancy, or the  
26 termination of the pregnancy. A person acting as a surrogate who is  
27 receiving no compensation may waive the right to have the intended  
28 parent or parents make such payments or reimbursements.

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

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

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

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

1 § 581-705. Adjudication. (a) A court adjudicating the parentage of a  
2 child conceived through assisted reproduction or adjudicating the  
3 enforceability of an embryo disposition agreement may apply section  
4 581-202 and part three of this article retroactively.

5 (b) The participants in a surrogacy agreement that involved the  
6 payment of compensation prior to February fifteenth, two thousand twen-  
7 ty-two shall not be eligible to receive a judgment of parentage pursuant  
8 to section 581-203 or section 581-406 of this article, but shall be  
9 entitled to seek a judgment of parentage pursuant to section 581-407 of  
10 this article.

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

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

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

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

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

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

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

45 § 1401. Surrogacy programs regulated under this article. The  
46 provisions of this article apply to surrogacy programs arranging or  
47 facilitating transactions contemplated by a surrogacy agreement, regard-  
48 less of whether such agreement ultimately comports with the requirements  
49 under part four of article five-C of the family court act if:

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

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

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

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

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

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

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

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

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

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

28 § 27. This act shall take effect immediately.