STATE OF NEW YORK

819

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

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

AN ACT to amend the family court act and the general business law, in relation to surrogacy agreements; and to amend a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C

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

Section 1. Subdivisions (j), (k) and (s) of section 581-102 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, are amended to read as follows:

(j) "In vitro fertilization" means the formation of a human embryo outside the human body **for purposes of assisted reproduction**.

(k) "Intended parent" is an individual who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a surrogacy agreement, provided [~~he or she~~] **the individual** meets the requirements of this article.

(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 **parent or** parents.

§ 2. Subdivision (d) of section 581-203 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to

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

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surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

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

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

(2) declaring, that upon the birth of the child born during the term of the surrogacy agreement, the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, is not a legal parent of the child;

(3) declaring that upon the birth of the child born during the term of the surrogacy agreement, any donor, if applicable, is not a parent of the child;

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

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

(6) ordering that:

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

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

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

(7) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner or petitioners, within [~~seven~~] **fourteen** days of such birth, to provide the court with notification thereof, together with such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts. The court shall thereafter issue an amended judgment

of parentage that includes the child's name as it appears on the child's birth certificate and the child's date of birth.

§ 3. Paragraphs 7 and 8 of subdivision (a) of section 581-402 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

(7) the person acting as surrogate has or the surrogacy agreement stipulates that the person acting as surrogate will obtain **a** comprehensive health insurance [~~coverage~~] **policy** that takes effect [~~after the person acting as surrogate has been deemed medically eligible but~~] prior to taking any medication or commencing treatment to further embryo transfer that covers[~~:~~

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

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

~~(iii) uncompensated surrogacy agreements. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make the payments set forth in this section~~] **preconception care, prenatal care, major medical treatments, hospitalization, and behavioral health care, and the comprehensive policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the preg-**

nancy; the policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the health insurance policy. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements;

(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 [~~such coverage shall extend~~] has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of [~~the person acting as surrogate's~~] their choosing. The policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the life insurance[~~, contractual liability or accidental death insurance~~] policy [~~but not the requirement to have such a policy~~]; and

§ 4. Subdivision (g) of section 581-403 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

(g) the surrogacy agreement must include information disclosing how the intended parent or parents will cover the medical expenses of the person acting as surrogate and the child. [~~The surrogacy agreement shall specify the amount that the intended parent or parents shall place in escrow to cover such reasonable anticipated costs including preconception medical care and extending throughout the duration of the expected surrogacy agreement. If it is anticipated that comprehensive health care coverage will be used to cover the medical expenses for the person acting as surrogate, the~~] If comprehensive health care coverage is used to cover the medical expenses, the disclosure shall include a review and summary of the health care policy provisions related to coverage and exclusions for the person acting as [~~surrogate shall be reviewed and summarized in relation to the anticipated pregnancy prior to such policy being used to cover any of the person acting as surrogate's medical expenses incurred pursuant to the surrogacy agreement~~] surrogate's pregnancy; and

§ 5. Subparagraph (x) of paragraph 1 of subdivision (i) of section 581-403 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

(x) the surrogacy agreement shall provide that, upon the person acting as surrogate's request, the intended parent or parents [~~shall~~] have or will procure and pay for a disability insurance policy [~~or other insurance policy to cover any lost wages incurred by~~] for the person acting as surrogate [~~in connection with their participation in the surrogacy agreement after taking any medication or commencing treatment to further embryo transfer excluding medical procedures required to determine the medical eligibility to become a person acting as surrogate. In the event that such insurance coverage is not available, the intended parent or parents shall reimburse the person acting as surrogate for any lost wages the person acting as surrogate incurs in connection with their participation in the surrogacy agreement~~]; the person acting as surrogate may designate the beneficiary of the person's choosing.

§ 6. Section 581-405 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

§ 581-405. Termination of surrogacy agreement. After the execution of a surrogacy agreement but before the [~~embryo transfer occurs or after an unsuccessful embryo transfer~~] person acting as surrogate becomes pregnant by means of assisted reproduction, the person acting as surrogate, the spouse of the person acting as surrogate, if applicable, or any intended parent may terminate the surrogacy agreement by giving notice of termination in a record to all other parties. Upon proper termination of the surrogacy agreement the parties are released from all obligations recited in the surrogacy agreement except that the intended parent or parents [~~shall~~] remain responsible for all [~~lost wages and other financial obligations which have accrued~~] expenses that are reimbursable under the agreement which have been incurred by the person acting as surrogate through the date of termination. If the intended parent or parents terminate the surrogacy agreement pursuant to this section after the person acting as surrogate has taken any medication or commenced treatment to further embryo transfer, such intended parent or parents shall be responsible for paying for or reimbursing the person acting as surrogate for all co-payments, deductibles, any other out-of-pocket medical costs, and any other economic losses incurred within twelve months [~~after~~] of the termination of the agreement [~~which, as documented by a health care practitioner, are~~] and associated with taking such medication or undertaking such treatment. Unless the agreement provides otherwise, the person acting as surrogate is entitled to keep all payments received and obtain all payments to which the person is entitled up until the date of termination of the agreement. Neither a person acting as surrogate nor the spouse of the person acting as surrogate, if [~~applicable~~] any, is liable to the intended parent or parents for terminating a surrogacy agreement as provided in this section.

§ 7. Section 581-604 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy

programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

§ 581-604. Health insurance and medical costs. A person acting as surrogate has the right to have a comprehensive health insurance [~~coverage~~] policy that covers preconception [~~medical expenses and medical expenses associated with the pregnancy~~] care, prenatal care, major medical treatments, hospitalization and behavioral care for a [~~period~~] term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, to be paid for by the intended parent or parents. [~~In addition, a person acting as a surrogate shall have the right to have the intended parent or parents pay for all of their medical expenses incurred in connection with the surrogacy agreement, continuing through the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in the termination of pregnancy, or the termination of the pregnancy.~~] 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, or the termination of the pregnancy. A person acting as a surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements.

§ 8. Section 581-605 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

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

§ 9. Section 581-606 of the family court act, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

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

§ 10. Section 581-705 of the family court act, as added by a chapter of the laws of 2024 amending the family court act, the domestic

relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

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

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

(c) This article shall apply retroactively to uncompensated surrogacy agreements entered into prior to February fifteenth, two thousand [~~twenty-two~~] twenty-one, with regard to a court adjudication the parentage of a child.

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

§ 11. Subdivision (c) of section 1400 of the general business law, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

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

§ 12. Subdivision 1 of section 1404 of the general business law, as amended by a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

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

(a) Require surrogacy programs to monitor compliance with eligibility criteria for the intended parents and persons acting as surrogates pursuant to section 581-402 of the family court act; and

(b) Require the assisted reproduction service providers to administer informed consent procedures that comply with regulations promulgated by

the department of health under section twenty-five hundred ninety-nine-cc of the public health law.

§ 13. Section 27 of a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, is amended to read as follows:

§ 27. This act shall take effect immediately**; provided, however, that the amendments to subparagraph (i) of paragraph 4 and paragraph 5 of subdivision (g) of section 581-202 of the family court act made by section two of this act, and to subparagraph (i) of paragraph 6 and paragraph 7 of subdivision (d) of section 581-203 of the family court act made by section three of this act shall take effect three years after it shall have become a law**.

§ 14. This act shall take effect immediately; provided, however, that sections one through twelve of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2024 amending the family court act, the domestic relations law and the general business law relating to surrogacy programs and agreements, as proposed in legislative bills numbers S. 5107-C and A. 4921-C, takes effect.