PREFATORY NOTE

The materials contained herein represent the opinions and content of the authors and editors and should not be construed to be those of either the American Bar Association or the Section of Family Law. This proposed Model Act is the work of the American Bar Association Section of Family Law’s Committee on Assisted Reproductive Technologies. It has not yet been approved by the Family Law Section Council.

Assisted Reproductive Technologies (ART) is the intersection of various professions. There are aspects that are addressed by psychologists, physicians, and attorneys. Each of these professions is guided and regulated to some extent by the substantive and ethical rules of their various professional organizations and their licensing requirements.

Third party ART (gamete and embryo donation and surrogacy) is also impacted by the services provided by certain recruiting and matching agencies that receive and manage prospective intended parents’ funds for the purpose of matching them with desirable donors/surrogates and administering various aspects of their ongoing fertility program. Such agencies can be owned and operated by anyone without professional training or affiliation. There have been documented cases in which the owners of such agencies have misappropriated and absconded with client funds and otherwise inadequately or negligently administered their programs to the detriment of their clients and their donors/surrogates. Regarding such agencies there is a significant gap in the licensing and regulation that governs most other aspects of the ART process, and the authors and editors, members of the American Bar Association Family Law Section Assisted Reproductive Technology Committee, believe that such licensing and regulation should be proposed and adopted. That is the purpose of the following Model Act Governing Assisted Reproductive Technology Agencies.
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ARTICLE 1. DEFINITIONS
SECTION 101. SHORT TITLE

This Act is entitled a Model Act Governing ART Agencies.

SECTION 102. DEFINITIONS

1. “Assisted Reproductive Technology” or “ART” means a variety of clinical treatments and laboratory procedures which include the handling of human oocytes, sperm, or Embryos, with the intent of establishing a pregnancy. This includes, but is not limited to, in vitro fertilization (IVF), Gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), Embryo biopsy, preimplantation genetic diagnosis (PGD), Embryo cryopreservation, oocyte or Embryo donation,
and gestational surrogacy. This definition, for purposes of this Act, does not include artificial insemination, the process by which a man's fresh or frozen sperm sample is introduced into a woman's vagina, other than by sexual intercourse.

2. “Assisted Reproductive Technology Agency” or “ART Agency” means any Person that facilitates Collaborative Reproduction by:

   (a) Planning or arranging the details of agency services with the Intended Parent(s);
   (b) Setting the timeline for the services; establishing the type of services to be rendered; acquiring or coordinating the services of third party licensed professionals;
   (c) Recruiting and/or obtaining personal information regarding Donors, Gametes or Surrogates;
   (d) Making, negotiating, or completing the financial arrangements;
   (e) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, the matching process between the Intended Parent(s) and Donors, Gametes or Surrogates;
   (f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, the services to be provided by another licensed Person;
   (g) Using in connection with one's name or employment the words or terms "Agency," "agency owner," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which used would imply that such Person is engaged in the practice of agency ownership or that such Person is holding herself or himself out to the public as being engaged in the practice of providing services related to matching egg Donors or Surrogates; provided, however, that nothing in this paragraph shall prevent using the name of any Owner, department, or corporate director of an agency, who is not a licensee, in connection with the name of the agency with which such individual is affiliated, so long as such individual's affiliation is properly specified; or
   (h) Managing or supervising the operation of an agency, except for administrative matters such as budgeting, accounting and personnel, maintenance of buildings, equipment and grounds, and routine clerical and recordkeeping functions.
   (i) A Person who performs a function in Collaborative Reproduction shall not be considered an ART Agency under this Act, so long as that Person is not also performing actions detailed above in (a)-(h).

3. “Client” means Intended Parent(s) working with an ART Agency.

4. “Collaborative Reproduction” involves any assisted reproduction in which an individual other than the Intended Parent(s) provides genetic material or agrees to act as a Surrogate. It can include, but is not limited to: (1) attempts by Intended Parent(s) to create a child through means of a Surrogacy agreement, with or without the involvement of Donors; and (2) assisted reproduction involving Donors where a Surrogate is not used.

5. “Cycle” means an attempt to establish pregnancy through the use of medical techniques or therapies including but not limited to ART through IVF or artificial insemination.
6. “Department” means [insert agency name].

**Legislative Note**: States should determine the department under the state’s own organizational scheme that is best suited to oversee ART Agencies.

7. “Donor” means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include: (a) an Intended Parent who provides Gametes, to be used for assisted reproduction; (b) a woman who gives birth to a child by means of assisted reproduction; or (c) an Intended Parent. An embryo Donor means an individual or individuals with dispositional control of an Embryo who provide(s) it to another for gestation and relinquish(es) all present and future parental and inheritance rights and obligations to a resulting individual or individuals.

8. “Embryo” means a cell or group of cells containing a diploid complement of chromosomes or group of such cells (not a Gamete or Gametes) that has the potential to develop into a live born human being if transferred into the body of a woman under conditions in which gestation may be reasonably expected to occur.

9. “Escrow Account” means an independent, insured, bonded escrow depository maintained by a licensed, independent, bonded escrow company; or an insured and bonded trust account maintained by an attorney.

   (a) For purposes of this section, a non-attorney ART Agency may not have a financial interest in any escrow company holding client funds. A non-attorney ART Agency and any of its directors or employees shall not be an agent of any escrow company holding client funds; and
   (b) Client funds may only be disbursed by the attorney or Escrow Agent as set forth in the assisted reproduction agreement and the fund management agreement between the Intended Parent(s) and the Escrow Account holder.

10. “Escrow Agent” means the trustee for an Escrow Account.

11. “Gamete” means a cell containing a haploid complement of DNA that has the potential to form an Embryo when combined with another Gamete. Sperm and eggs are Gametes. A Gamete may consist of nuclear DNA from one human being combined with the cytoplasm, including cytoplasmic DNA, of another human being.

12. “Intended Parent” means an individual, married or unmarried, who manifests the intent as provided in this Act to be legally bound as the parent of a child resulting from assisted or Collaborative Reproduction.

13. “Medical Errors” mean any and all medical errors that have any potential for adverse effects for patients, even if the mistakes are seemingly minor. Any use of the wrong Gametes or Embryos is a medical error. Errors affecting the number or quality of Gametes or Embryos available are Medical Errors.
14. “Owner” means any and all Persons who, directly or indirectly, or acting by or through one or more Persons, owns an interest in an ART Agency.

15. “Participant” means any Intended Parent, Donor or Surrogate, whether or not a written contractual relationship exists with the ART Agency.

16. “Person” means any and all persons, associations, businesses, corporations, partnerships, institutions, agencies, medical centers, and other organizations.

17. “Record” means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

18. “Service Agreement” means an agreement between an ART Agency and Intended Parent(s) describing the services to be performed.

19. “Surrogate” means an adult woman, not an Intended Parent, who enters into a surrogacy agreement to bear a child, whether or not she has any genetic relationship to the resulting child. Both a traditional surrogate (a woman who undergoes insemination and fertilization of her own eggs in vivo) and a gestational surrogate (a woman into whom an Embryo formed using eggs other than her own is transferred) are surrogates.

20. “Surrogacy” means an arrangement between Intended Parent(s) and a Surrogate.

ARTICLE 2. LICENSING

SECTION 201. APPLICATION FOR LICENSE

1. Every Applicant for a license as an ART Agency must submit a written application for a license to the Department, in such form as prescribed by the Department.

2. The Department’s application, shall, at a minimum, require the following information, to be provided in a sworn statement:

   (a) The business name, each business address, tax ID number, and date of incorporation if applicable, or the true full legal name of the primary agent for the business, date of birth, driver's license number, social security number, and each place of business address;

   (b) The true name, date of birth, driver's license number, social security number, and home address of all Owners;

   (c) Degrees and certifications and licenses or other professional designation of primary agent for the business and for all Owners;
(d) Each business or occupation engaged in by all Owners during the five (5) years immediately preceding the date of the application, including place of employment and the location thereof;

(e) The previous experience of all Owners as it relates to the field of assisted reproduction;

(f) A description of formal and informal education in the field of ART completed in the two years immediately preceding the application date by all Owners;

(g) Proof of applicable professional liability insurance, if available;

(h) The applicant’s Conflict of Interest Policy (disclosure procedure/waiver procedure);

(i) Statement of whether the applicant or any Owner has been convicted or found guilty of a felony. If so, provide an explanation of the nature of the crime and a certified copy of the relevant court records;

(j) Whether the applicant or any Owner, regardless of adjudication, has been convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to a felony and, if so, the nature of the felony;

(k) Whether the applicant or any Owner, regardless of adjudication, has previously been convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property;

(l) Whether there has ever been a judicial or administrative finding that the applicant has previously been convicted of acting as an agency without a license, or whether such a license has previously been refused, revoked, or suspended in any jurisdiction;

(m) Whether the applicant or any Owner has worked for, or been affiliated with, a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice;

(n) Whether the applicant or any Owner has had entered against him/her/it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice;

(o) Whether the applicant or any Owner has had any convictions for child abuse or neglect or sexual misconduct;
(p) A statement from each Owner specifying that he/she is not currently using any illegal drugs, and is able to fulfill the duties of his/her job description;

(q) A statement of affirmative duties as further described under this Act;

(r) A statement of intent to comply with Department’s audit and review policy;

(s) Whether there have been any judicial or administrative findings that applicant or any Owner has been previously denied a license in the area of providing medical, adoption, child-care, assisted reproductive services or counseling services;

(t) Any material change in business following date of initial or renewal of licensure (as specified below);

(u) Whether Applicant or any Owner has previously been convicted of acting as an agency without a license, or whether ANY such a license has previously been refused, revoked, or suspended in any jurisdiction. If so, provide a detailed explanation;

(v) Whether the Applicant or any Owner has worked for, or been affiliated with, a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice. If so, provide detailed explanation; and

(w) Whether the Applicant or any Owner has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice. If so, provide detailed explanation.

3. The Department shall implement procedures to obtain the following information regarding each Owner:

   (a) State and federal criminal records;

   (b) Child abuse and neglect check for all states of residency from the age of eighteen (18); and

   (c) Sex offender registry check for all states of residency from the age of eighteen (18) as well as the federal database.

4. Upon the filing of an application for a license and payment of all applicable fees, unless the application is to renew or reactivate an existing license, the, Department shall:
(a) Review applicant’s policy for client file structure and management;

(b) Review applicant’s written Service Agreement for clients to ensure compliance with this Act;

(c) Review applicant’s accounting process;

(d) Review the applicant’s system for protection of Participant funds in accordance with this Act; and

(e) Review applicant’s Record retention policy.

5. The Department shall issue the license unless the application is incomplete, or grounds for denial of the license exist.

6. The Department may implement any application fees or other fees necessary or convenient to carry out the provisions of this section.

7. The Department may permit applicants to operate on an interim basis while license applications are pending.

8. Each licensee shall report, on a form prescribed by the Department, any change to the information contained in any initial application form or any amendment to such application not later than thirty (30) days after the change is effective.

9. Each licensee shall report any changes in the Owners, partners, departments, members, joint venturers, directors, or venturers, or directors of any licensee of any licensee, or changes in the form of business organization, by written amendment in such form and at such time as the Department specifies by rule.

   (a) When such change causes a new Person to acquire a controlling interest as the term is defined above, such Person must submit an initial application for licensure before such purchase or acquisition at such time and in such form as the Department prescribes.

10. Licenses are not transferable or assignable. A licensee may invalidate any license by delivering it to the Department with a written notice of the delivery, but such delivery does not affect any civil or criminal liability or the authority to enforce this chapter for acts committed in violation thereof.

11. A licensee who is the subject of a voluntary or involuntary bankruptcy filing must report such filing to the Department within seven (7) business days after the filing date.

12. A licensee that has been convicted or found guilty of a felony or has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading
representation or the use of any unfair, unlawful, or deceptive trade practice must immediately report such filing to the Department, together with a full explanation.

13. The Department shall implement procedures for the renewal of licenses.

14. Streamlined License Procedure

(a) Any Owner who is a professional subject to regulation under other departments may opt for streamlined licensure requirements under this Act.

(b) The Department shall determine categories of professionals that qualify for streamlined licensure. Such professionals shall include, but not be limited to, physicians, attorneys, registered nurses, licensed psychologists and licensed social workers.

(c) An inactive, suspended or otherwise not active professional license shall not qualify for the streamlined licensure requirements.

(d) The streamlined licensure procedure shall be determined by the Department.

15. This Chapter does not prevent a licensee from providing services to residents of any part of this state or any other state or country.

SECTION 202. DISCIPLINARY ACTION

1. The following acts are violations of this chapter and constitute grounds for disciplinary action.

(a) A material misstatement of fact in an application for a license.

(b) Failure to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(c) The violation, either knowingly or without the exercise of due care, of any provision of this chapter, any rule or order adopted under this Act, or any written agreement entered into with the Department.

(d) Any act of fraud, misrepresentation, non-waived conflict of interest, or deceit, regardless of reliance by or damage to a client, or any illegal activity, where such acts are in connection with providing agency services under this chapter. Such acts include, but are not limited to:

(i) Willful imposition of charges in violation of this Act, or previously undisclosed charges, or charges in excess of 10% over the amount originally disclosed in the Service Agreement without reasonable cause;

(ii) Misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a third Person;
(iii) The use of false, deceptive, or misleading advertising; and

(iv) Failure to disclose material information in its possession to Participants.

(e) Failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this Act, by any rule or order adopted under this Act, or by any agreement entered into with the Department.

(f) Refusal to permit inspection of books and Records in an investigation or examination by the Department or refusal to comply with a validly issued subpoena issued by the Department.

(g) Pleading nolo contendere to, or having been convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication is withheld.

(h) Allowing any Person other than the licensee to use the licensee's business name, address, or telephone number in an advertisement in an attempt to mislead another.

(i) Failure to pay any fee, charge, or fine imposed or assessed pursuant to this chapter or any rule adopted under this chapter.

(j) Using the name or logo of another institution when marketing or soliciting existing or prospective customers if such marketing materials are used without the consent of that institution and in a manner that would lead a reasonable individual to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of that institution or its affiliates or subsidiaries.

(k) Payment to the Department for a license or permit with a check or electronic transmission of funds that is dishonored by the applicant's or licensee's financial institution.

(l) Failure to maintain continuing education as otherwise set out in this Statute. [Legislative Note: Optional, depending on adoption of continuing education requirements]

(m) Failure to meet and/or maintain minimum standards as set forth above constitute grounds for denial of an application.

2. Under this section, a licensee is responsible for acts of its Owners, members of the partnership, any department or director of the corporation or association, or any Person with power to direct the management or policies of the partnership, corporation, or association.

3. Under this section, a licensee is responsible for the acts of its employee or agents if, with knowledge or reckless disregard of such acts, the licensee retained profits, benefits, or advantages accruing from such acts or ratified the conduct of the employee or agent as a matter of law or fact.

4. Disciplinary action that may be imposed under this section includes:

   (a) Denial of the issuance of a license or renewal of a license;
(b) Issuance of a probationary or conditional license;
(c) Fines up to $25,000 per violation;
(d) Suspension of a license;
(e) Revocation of a license; and
(f) Ordering restitution to aggrieved Participant(s) to the full extent of their financial damages. Restitution includes, but is not limited to, all amounts paid by the aggrieved Participant(s) to the ART Agency as well as consequential and incidental losses incurred by the aggrieved Participant(s) as a result of the ART Agency’s and/or Owner’s misconduct.

5. The Department shall follow the state’s administrative procedures act when exercising its duties under this Section, and all remedies available under the administrative procedures act shall be available to the Department and licensee or applicant.

6. In the event that the Department takes action under this Section, it shall arrange for the provision of ongoing services to the active Participants.

SECTION 203. FAILURE TO COMPLY

1. The Failure of any ART Agency or any other Person to comply with any provision(s) of this Act shall not affect the validity and enforceability of any lawful direct agreement(s) among the Participants.

2. Action taken by the Department against any licensee shall not impair the obligation of any lawful agreement(s) between the licensee and Participant(s).

ARTICLE 3. RESPONSIBILITIES OF ART AGENCIES

SECTION 301. LICENSING REQUIRED

1. ART Agencies must be licensed under this Act to operate in this state.

SECTION 302. AFFIRMATIVE DUTIES AND OBLIGATIONS

1. Provide services to its Participants in a non-discriminatory manner. Nothing herein shall inhibit the ART Agency’s ability to accept or decline prospective Participants based on its own policies and screening procedures.

2. Respect the autonomy of Participants by not engaging in coercion, fraud, misrepresentation, or unethical behavior.

3. An ART Agency shall not provide legal, medical, psychological or other advice that it is not licensed or otherwise qualified to give.
4. Medical Errors committed by or known to an ART Agency or Operator shall be immediately reported to the affected Participant(s) in the assisted reproduction arrangement to enable them to decide on a course of action.

5. An ART Agency shall not present a Surrogate or Donor for matching to Intended Parent(s), that they reasonably know or should know is not qualified or is unavailable.

SECTION 303. SERVICE AGREEMENTS

1. Prior to entering into a Service Agreement, an ART Agency shall provide the following:

   (a) A detailed description of the services to be provided by the ART Agency;

   (b) The estimated costs of the services to be provided by the ART Agency;

   (c) An explanation of refund and cancellation policies; and

   (d) The estimated timing for the services to be provided by the ART Agency, as well as a statement that the projected time frame may be subject to variables outside of the control of the ART Agency.

2. All Service Agreements must be in writing and include the following provisions:

   (a) The information required by Article 3, Section 303 of this Act;

   (b) The name and address, phone number and email of Agency, the corporate identity if any, the main contact person of the agency, and the license number, if one has been provided by the Department;

   (c) The full legal names, addresses, phone numbers and emails for the Intended Parent(s);

   (d) A detailed description of the services to be provided by the ART Agency;

   (e) A detailed description of the estimated costs of the services to be provided by the ART Agency;

   (f) A description of other known fees and expenses that may be incurred, including, but not limited to, legal fees and medical costs;

   (g) A timetable for the payment of known costs, fees and expenses;

   (h) The name and address, phone number and email of the Escrow Agent;

   (i) The estimated time for completion of the services to be provided, as well as a statement that the projected time frame may be subject to variables outside of the control of the ART Agency;
(j) Notification of the right, and an opportunity, to have the Service Agreement reviewed by independent legal counsel, and right to separate counsel for applicable agreements with third parties for each Participant involved;

(k) An explanation of recordkeeping procedures for Records required to be kept under Section 305 of this Act;

(l) An explanation of the ART Agency’s policies regarding future contact between the Participants following the completion of the direct agreement between the Participants or a statement that the ART Agency does not provide such services;

(m) Disclosure of any and all relationships, activities, financial or other interests of the Owners of the ART Agency that may constitute an actual or potential conflict of interest and waiver of the same;

(n) The name of the ART Agency’s professional liability insurance carrier(s) or a statement that the ART Agency does not carry professional liability insurance where none is applicable; and

(o) A litigation or alternative dispute resolution clause which provides attorney's fees and costs be paid by the unsuccessful litigant.

SECTION 304. PREREQUISITES FOR CYCLE COMMENCEMENT

1. No ART Agency shall permit, encourage or facilitate an egg Donor or Surrogate to begin a Cycle until the following tasks have been completed:

   (a) A Service Agreement has been signed by the Intended Parent(s);

   (b) All Participants have each had an opportunity to consult with a licensed attorney of their own choosing;

   (c) A direct agreement between the Participants has been executed;

   (d) The Intended Parent(s) have made the deposit to the Escrow Account, in accordance with the direct agreement(s) between the Participants.

   (e) The Participants are informed to seek advice regarding their life insurance and health insurance/benefits policies and the respective coverage of the fertility treatment, complications, and obstetric costs and fees;

   (f) The Participants are informed to seek advice from medical, psychological, legal, and any other relevant third party professionals to discuss the potential risks and outcomes of the process; and
(g) The Participants are informed to seek advice regarding their guardianship and estate planning options.

SECTION 305. RECORDKEEPING

1. The ART Agency shall create and maintain reasonable and ordinary business Records.

2. The ART Agency shall maintain copies of direct agreements between Participants, unless the Participants decline to share their direct agreement with the ART Agency.

3. All Records required to be kept under this section shall be maintained for a minimum of eighteen (18) years following the completion of the Service Agreement.

4. The ART Agency shall have and follow a written policy that covers the following:

   (a) The protocol for creating, storing, backing up, accessing, transferring and disposing Records under the ART Agency’s control; and

   (b) The policy for transfer of such Records in the event that the ART Agency ceases to exist or is otherwise unable to continue to maintain the Records for the required time period.

5. Such Records shall be held in strict confidence by the ART Agency and only released upon the written permission of the Participant(s) whose information is stored in such Records. This provision applies even when the information is identified and used in a database, for archival research, educational purposes, advertising, or for any other purpose.

6. Such Records shall be confidential and the Records and their contents shall not be disclosed nor shall disclosure be compelled except as follows:

   (a) For the ART Agency Owner to carry out any and all duties under a Service Agreement;

   (b) With the consent of the Participant(s) whose information is contained in the Record to be disclosed; or

   (c) Pursuant to a valid court order or subpoena.

SECTION 306. CONTINUING EDUCATION

Legislative Note: States can choose to implement alternative educational requirements in lieu of yearly continuing education

1. Owners of ART Agencies must complete _____ hours of continuing education each calendar year.
2. Such continuing education may consist of such topics as ethics, communicable diseases, FDA screening, financial responsibility, psycho-social aspects of assisted reproduction, reproductive medicine/biology and reproductive law or other relevant topics. To the extent that the subject matter is identical, licensees that hold other professional licenses may satisfy these requirements through continuing education approved by their respective licensing authority.

SECTION 307. MANAGEMENT AND DISBURSEMENT OF FUNDS

1. All unearned or undisbursed funds of Intended Parent(s) must be held in an Escrow Account pursuant to this Act.

2. An ART Agency must provide proof of insurance and bonding as required pursuant to this Act, as may be required by the Department.

SECTION 308. PROFESSIONAL LIABILITY INSURANCE

1. An ART Agency must carry professional liability insurance coverage, if available.

ARTICLE 4. MISCONDUCT

Legislative Note: States should customize this article to comport with the state’s criminal code.

SECTION 401. UNLICENSED OPERATION

1. No ART Agency shall operate without a license in accordance with this Act. Violation of this paragraph shall be punishable by a civil penalty.

2. No Person shall knowingly operate or permit the operation in this state of an ART Agency that is not licensed in accordance with this Act. Violation of this paragraph shall be punishable by a civil penalty.

Legislative Note: States should incorporate the existing statutory scheme for civil penalties for unlicensed activities.

SECTION 402. AUTHORIZATION OF CIVIL ACTION

1. In the event of negligent conduct or misappropriation of funds by an ART Agency or Owner, the aggrieved Person may bring an action against the ART Agency.

2. In the event of knowing or purposeful misconduct, an award of punitive damages is authorized.

SECTION 403. FUNDS HELD IN ESCROW

1. No ART Agency or Owner shall permit unearned client funds to be held in an account other
than an Escrow Account.

SECTION 404. FALSE OR MISLEADING INFORMATION PROVIDED TO COURT

1. No ART Agency or Operator shall provide, attempt to provide, or solicit another to provide false, misleading or incomplete information to another with the purpose to influence a court order relating to parentage of a child born, or expected to be born, as a result of assisted reproduction. Violation of this section shall be a felony and punishable accordingly.

SECTION 405. PAYMENT FOR GAMETES

1. No ART Agency or Owner shall compensate or permit a Donor to be compensated based on the number or quality of Gametes or Embryos donated. Violation of this section shall be a misdemeanor and punishable accordingly.

SECTION 406. REMEDIES NOT EXCLUSIVE

1. This Article is not intended to limit the rights of any Person or government entity to bring an action against the ART Agency or Owner under any other provision of law or equity.

ARTICLE 5. MISCELLANEOUS PROVISIONS

SECTION 501. AUDITS

1. The Department may audit the ART Agency to ensure compliance with any and all provisions of this Act and the ART Agency shall fully cooperate in any such audit.

SECTION 502. RULEMAKING

1. The Department shall, adopt rules to implement the Department’s responsibilities under this Act, in accordance with the State administrative procedures act, if any.