



2020 South Dakota Legislature

House Bill 1096

HOUSE ENGROSSED

Introduced by: **Representative Hansen**

1 **An Act to prohibit commercial surrogacy contracts, provide a penalty for facilitating**
 2 **a commercial surrogacy, and establish an interim committee to evaluate**
 3 **surrogacy in the state.**

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 **Section 1.** That a NEW SECTION be added:

6 **25-11-1. Definitions.**

7 Terms used in this chapter mean:

- 8 (1) "Broker," a person, agency, association, corporation, partnership, institution,
 9 society, or organization, that knowingly seeks to introduce or to match a mother
 10 with a commercial surrogacy recipient, for the purpose of initiating, assisting or
 11 facilitating a commercial surrogacy;
- 12 (2) "Mother," the woman who carries a child or children in her womb and gives birth
 13 to the child or children, whether or not the woman is genetically related to the
 14 child;
- 15 (3) "Commercial surrogacy recipient," a person, whether or not genetically related to
 16 the child, born as a result of a commercial surrogacy, who intends to obtain custody
 17 of the child pursuant to the commercial surrogacy following the child's birth;
- 18 (4) "Commercial surrogacy," a contract, whether written or oral:
 19 (a) Pursuant to which any person offers, gives, or receives any money or other
 20 consideration or thing of value;
 21 (b) That is entered into by two or more persons, including the mother or a
 22 commercial surrogacy recipient, who agree, prior to insemination, or in the
 23 case of an implanted embryo or embryos, prior to embryo transfer or
 24 implantation, to cause the gestation of a child; and
 25 (c) With the intent that the commercial surrogacy recipient or a person other
 26 than the mother will obtain custody of the child.

1 **Section 2.** That a NEW SECTION be added:

2 **25-11-2. Facilitating a Surrogacy--Prohibition--Violation as misdemeanor.**

3 Any broker who knowingly engages in, advertise services for, offers payment of
4 money or other consideration for, profits from, solicits a woman for, or otherwise assists
5 or participates in commercial surrogacy is guilty of a Class 1 misdemeanor. The provisions
6 of this section do not apply to the mother; a health care provider, as defined in § 34-12D-
7 1, that provides health care to a mother or child after conception; or to any person who
8 pays the health care expenses of a mother or child. The provisions in this section do not
9 apply to any broker activity stemming from a commercial surrogacy entered into before
10 July 1, 2020.

11 **Section 3.** That a NEW SECTION be added:

12 **25-11-3. Surrogacy Contracts--Unenforceable.**

13 A commercial surrogacy, whether entered into in this state or in any other state,
14 after July 1, 2020, is unenforceable and void in this state.

15 **Section 4.** There is established an interim legislative committee to study and evaluate
16 surrogacy in South Dakota. The study must be under the supervision of the Executive Board
17 of the Legislative Research Council and staffed and funded as an interim legislative committee.