

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

385T0713

HOUSE BILL NO. 1255

Introduced by: Representatives Hunt, Brunner, Hansen (Jon), and Van Gerpen and Senator Kraus

1 FOR AN ACT ENTITLED, An Act to prohibit the enforcement of surrogacy arrangements.

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

3 Section 1. The Legislature finds that the practice of surrogacy contracting, or the creation
4 of surrogacy arrangements, conflicts with existing statutes pertaining to the termination of
5 parental rights and the placement of a child for adoption and declares that it is against the public
6 policy of this state.

7 Section 2. Terms used in this Act mean:

8 (1) "Broker," any person, agency, association, corporation, partnership, institution,
9 society, or organization which, knowingly seeks to introduce or to match a
10 prospective birth mother with a prospective biological father or other person intended
11 to parent the child, for the purpose of initiating, assisting, or facilitating a commercial
12 surrogacy agreement;

13 (2) "Commercial surrogacy," a surrogacy arrangement involving the payment, or
14 agreement to pay, money or any valuable consideration to a broker or intermediary;
15 or the payment, or agreement to pay, money or any valuable consideration, other than



1 payment or reimbursement of medical and hospital expenses to birth mother or
2 prospective birth mother permissible under the adoption statutes of the State of South
3 Dakota;

4 (3) "Surrogacy," an arrangement, whether or not embodied in a formal written contract,
5 entered into by two or more persons, including the birth mother or surrogate, and any
6 intended rearing parent, who agrees prior to insemination, or in the case of an
7 implanted embryo, prior to implantation, to participate in the creation of a child, with
8 the intention that the child be reared as the child of one or more of the intended
9 rearing parents, who is not the birth mother;

10 (4) "Surrogate," or "birth mother," any woman who bears a child, whether or not that
11 woman is a genetic parent of the child.

12 Section 3. The surrogate or birth mother is the legal mother of the child to whom she gives
13 birth and her parental rights cannot be terminated except in a legal action for adoption or
14 otherwise in compliance with existing law, subject to the provisions of this Act.

15 Section 4. A commercial surrogacy agreement is illegal, void, and unenforceable as against
16 public policy. No surrogacy agreement is enforceable.

17 Section 5. Any person other than the surrogate or any intended rearing parent who enters
18 into induces, arranges, procures, or otherwise assists in the formation of a commercial surrogacy
19 arrangement and in connection therewith pays, gives, or agrees to give any money or any
20 valuable consideration, or assume or discharge any financial obligation, or takes, receives,
21 accepts, or agrees to accept any money or any valuable consideration is guilty of a Class 2
22 misdemeanor. Any second offense constitutes a Class 1 misdemeanor, and any third or
23 subsequent offense constitutes a Class 4 felony. However, any broker or a licensed professional
24 who violates the provision of this section is guilty of a Class 1 misdemeanor for a first offense

1 and a Class 4 felony for any subsequent offense.

2 Section 6. If a matter involving a licensed professional is referred to a licensing board, there
3 is a rebuttable presumption that any conduct which violates section 5 of this Act constitutes
4 unprofessional conduct.

5 Section 7. The provisions of section 5 of this Act do not apply to the fees or services of any
6 approved agency in connection with a placement for adoption, nor do such provisions apply to
7 the payment or reimbursement of medical, hospital, or other similar expenses incurred in
8 connection with the birth or any illness of the child, or to the acceptance of such reimbursement
9 by a parent of the child.

10 Section 8. Any birth mother who determines that she does not wish to relinquish her parental
11 rights pursuant to the terms of a surrogacy arrangement shall execute a signed writing of her
12 decision and shall deliver the writing to the intended parents within six months of giving birth.
13 In any dispute between the parties concerning custody of a child born pursuant to a surrogacy
14 arrangement, the birth mother is entitled to physical custody of the child until the court
15 determines final custody, unless the court determines by clear and convincing evidence that the
16 birth mother is unfit.

17 Section 9. In determining final custody of a child born pursuant to a surrogacy arrangement,
18 there is a rebuttable presumption that it is in the best interest of the child for custody to be
19 awarded to the birth mother unless she is unwilling or unable to assume custody. The rebuttable
20 presumption created by this section may be overcome by clear and convincing evidence that it
21 is not in the best interest of the child for an award of custody to be made to the birth mother.

22 Section 10. An award of custody does not affect the obligation of the noncustodial parent
23 in a surrogacy arrangement to provide child support. A noncustodial parent is entitled to
24 visitation with any child born pursuant to a surrogacy parent agreement to which the

1 noncustodial parent was a party. If neither of the intended rearing parents or the birth mother
2 are willing or able to assume custody of the child, the child shall be placed for adoption.

3 Section 11. If a disputed surrogacy arrangement is within the jurisdiction of the South
4 Dakota courts and involves citizens of or contracts with the State of South Dakota and one or
5 more other states, South Dakota law applies.

6 Section 12. If any provision of this Act is found to be unconstitutional or its enforcement
7 temporarily or permanently restrained or enjoined by judicial order, the provision is severable.