An Act to prohibit commercial surrogacy contracts and provide a penalty for facilitating a commercial surrogacy.

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

Section 1. That a NEW SECTION be added:

25-11-1. Definitions.

Terms used in this chapter mean:

(1) "Broker," a person, agency, association, corporation, partnership, institution, society, or organization, that knowingly seeks to introduce or to match a mother with a commercial surrogacy recipient, for the purpose of initiating, assisting or facilitating a commercial surrogacy;

(2) "Mother," the woman who carries a child or children in her womb and gives birth to the child or children, whether or not the woman is genetically related to the child;

(3) "Commercial surrogacy recipient," a person, whether or not genetically related to the child, born as a result of a commercial surrogacy, who intends to obtain custody of the child pursuant to the commercial surrogacy following the child's birth;

(4) "Commercial surrogacy," a contract, whether written or oral:

(a) Pursuant to which any person offers, gives, or receives any money or other consideration or thing of value;

(b) That is entered into by two or more persons, including the mother or a commercial surrogacy recipient, who agree, prior to insemination, or in the case of an implanted embryo or embryos, prior to embryo transfer or implantation, to participate in the creation of a child; and

(c) With the intent that the commercial surrogacy recipient or a person other than the mother will obtain custody of the child.

Section 2. That a NEW SECTION be added:

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

Section 3. That a NEW SECTION be added:


A commercial surrogacy, whether entered into in this state, or in any other state, is unenforceable and void in this state.