

2020 South Dakota Legislature  
**House Bill 1096**

**AMENDMENT 1096C FOR THE INTRODUCED BILL**

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

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

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

5 **25-11-1. Definitions.**

6 Terms used in this chapter mean:

- 7 (1) "Broker," a person, agency, association, corporation, partnership, institution,  
8 society, or organization, that knowingly seeks to introduce or to match a mother  
9 with a commercial surrogacy recipient, for the purpose of initiating, assisting or  
10 facilitating a commercial surrogacy;
- 11 (2) "Mother," the woman who carries a child or children in her womb and gives birth  
12 to the child or children, whether or not the woman is genetically related to the  
13 child;
- 14 (3) "Commercial surrogacy recipient," a person, whether or not genetically related to  
15 the child, born as a result of a commercial surrogacy, who intends to obtain custody  
16 of the child pursuant to the commercial surrogacy following the child's birth;
- 17 (4) "Commercial surrogacy," a contract, whether written or oral:  
18 (a) Pursuant to which any person offers, gives, or receives any money or other  
19 consideration or thing of value;  
20 (b) That is entered into by two or more persons, including the mother or a  
21 commercial surrogacy recipient, who agree, prior to insemination, or in the  
22 case of an implanted embryo or embryos, prior to embryo transfer or  
23 implantation, to ~~participate in the creation-cause the gestation~~ of a child;  
24 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  
6 provisions of this section do not apply to the mother; a health care provider, as defined  
7 in § 34-12D-1, that provides health care to a mother or child after conception; or to any  
8 person who pays the health care expenses of a mother or child.

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

10 **25-11-3. Surrogacy Contracts--Unenforceable.**

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