

2020 South Dakota Legislature
House Bill 1096

AMENDMENT 1096H FOR THE HOUSE JUDICIARY 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 cause the gestation of a child; and
24 (c) With the intent that the commercial surrogacy recipient or a person other
25 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.** That a NEW SECTION be added:

16 **Interim study.**

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

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