

## 2020 South Dakota Legislature

**House Bill 1096****AMENDMENT 1096N FOR THE HOUSE BILL**

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 financial consideration—~~or thing of value, except any money or other~~  
21 consideration or thing of value offered, given, or received pursuant to § 25-  
22 6-4.2;
- 23 (b) That is entered into by two or more persons, including the mother or a  
24 commercial surrogacy recipient, who agree, prior to insemination, or in the  
25 case of an implanted embryo or embryos, prior to embryo transfer or  
26 implantation, to cause the gestation of a child; and

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

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

4           **25-11-2. Facilitating a Surrogacy--Prohibition--Violation as misdemeanor.**

5           Any broker who knowingly engages in, advertise services for, offers payment of  
6           money or other consideration for, profits from, solicits a woman for, or otherwise assists  
7           or participates in commercial surrogacy is guilty of a Class 1 misdemeanor. The provisions  
8           of this section do not apply to the mother; a health care provider, as defined in § 34-12D-  
9           1, that provides health care to a mother or child after conception; or to any person who  
10          pays the health care expenses of a mother or child. The provisions in this section do not  
11          apply to any broker activity stemming from a commercial surrogacy entered into before  
12          July 1, 2020. Nothing in this section shall be construed to prohibit any surrogacy conducted  
13          in compliance with SDCL 25-6.

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

15          **25-11-3. Surrogacy Contracts--Unenforceable.**

16          A commercial surrogacy, whether entered into in this state or in any other state,  
17          after July 1, 2020, is unenforceable and void in this state. Nothing in this section shall be  
18          construed to prohibit any surrogacy conducted in compliance with SDCL 25-6.

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