

1 AN ACT relating to commercial surrogacy.

2 WHEREAS, the Commonwealth of Kentucky has a compelling interest in  
3 protecting the dignity, health, and safety of women and children and preventing the  
4 commodification of human life; and

5 WHEREAS, commercial surrogacy treats children and the reproductive capacity of  
6 women as objects of contractual exchange, reducing pregnancy and birth to market  
7 transactions; and

8 WHEREAS, commercial surrogacy has been linked nationally and internationally  
9 to the exploitation of economically vulnerable women and practices consistent with  
10 human trafficking, coercion, and undue inducement; and

11 WHEREAS, the United States lacks comprehensive federal regulation governing  
12 commercial surrogacy, resulting in inconsistent state laws and minimal protections for  
13 women and children; and

14 WHEREAS, numerous nations prohibit commercial surrogacy, recognizing that  
15 financial inducement for pregnancy creates inherent risks of exploitation and abuse; and

16 WHEREAS, Kentucky has an obligation to prevent out-of-state and international  
17 surrogacy industries from targeting Kentucky women and families through advertising,  
18 recruitment, or contractual arrangements; and

19 WHEREAS, the General Assembly finds that prohibiting commercial surrogacy  
20 while recognizing strictly defined altruistic surrogacy advances the best interests of  
21 women, children, and families;

22 NOW, THEREFORE,

23 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

24 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO  
25 READ AS FOLLOWS:

26 ***As used in Sections 1 to 3 of this Act:***

27 ***(1) "Altruistic surrogacy" means any contract, agreement, or other arrangement in***

1 which a woman agrees to become pregnant or carry and deliver a child for  
2 another person or persons without compensation;

3 (2) "Commercial surrogacy" means any contract, agreement, or other arrangement  
4 in which a woman agrees to become pregnant or carry and deliver a child for  
5 another person or persons in exchange for compensation;

6 (3) "Compensation":

7 (a) Means a payment of money, objects, services, or anything else having  
8 monetary value; and

9 (b) Does not include reimbursement or payment of actual expenses incurred  
10 that are directly related to the pregnancy including reasonable charges and  
11 fees for:

12 1. Hospital or medical services for the birth of the child;

13 2. Medical care, including prenatal care, and other reasonable birth-  
14 related expenses for the mother or child; or

15 3. Payment of a judicially sanctioned settlement or judgment rendered in  
16 favor of the woman or her heirs as a result of her death, loss of  
17 reproductive organs or capability, or any other health complications  
18 caused by in utero embryo transfer, pregnancy, or resulting childbirth,  
19 miscarriage, or termination of pregnancy; and

20 (4) "In utero embryo transfer" means the medical procedure in which an embryo is  
21 transferred into the uterus of a woman.

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO  
23 READ AS FOLLOWS:

24 (1) It shall be unlawful for any person, corporation, association, agency, institution,  
25 intermediary, or organization to:

26 (a) Operate, facilitate, advertise, broker, or arrange commercial surrogacy  
27 services, or enter into a commercial surrogacy agreement within this

- 1                    *Commonwealth or with a resident of this Commonwealth;*
- 2                    *(b) Solicit, recruit, or induce a resident of this Commonwealth to participate in*
- 3                    *commercial surrogacy or enter into a commercial surrogacy agreement;*
- 4                    *(c) Attempt to enforce a commercial surrogacy agreement to which a resident*
- 5                    *of this Commonwealth is a party; or*
- 6                    *(d) Conduct business in this Commonwealth, electronically or otherwise, for*
- 7                    *the purpose of facilitating commercial surrogacy in this Commonwealth.*

8                    *(2) This section shall not apply to:*

- 9                    *(a) An altruistic surrogacy;*
- 10                   *(b) A woman acting as a surrogate; or*
- 11                   *(c) A child born as a result of a prohibited commercial surrogacy arrangement.*

12                   ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO  
13 READ AS FOLLOWS:

14                   *Any commercial surrogacy contract, agreement, or other arrangement entered into by*  
15                   *a resident of this Commonwealth shall be void and unenforceable as against public*  
16                   *policy whether executed in this Commonwealth or any other state or territory of the*  
17                   *United States.*

18                   ➔Section 4. KRS 199.590 is amended to read as follows:

- 19                   (1) *(a)* A person, corporation, or association shall not advertise in any manner that it  
20                   will receive children for the purpose of adoption.
- 21                   *(b)* A newspaper published in the Commonwealth of Kentucky or any other  
22                   publication which is prepared, sold, or distributed in the Commonwealth of  
23                   Kentucky shall not contain an advertisement ~~*that*~~<sup>*which*</sup> solicits children for  
24                   adoption or solicits the custody of children.
- 25                   (2) *(a)* A person, agency, institution, or intermediary shall not sell<sub>2</sub>~~<sub>1</sub>~~ or purchase<sub>2</sub> or  
26                   procure for sale or purchase<sub>2</sub> any child for the purpose of adoption or any  
27                   other purpose, including termination of parental rights.

1       **(b)** This section shall not:

2           **1.** Prohibit a child-placing agency from charging a fee for adoption  
3           services; ~~**or**. This section shall not~~

4           **2.** Be construed to prohibit in vitro fertilization.

5       **(c)** ~~**As used in**~~ ~~For purposes of~~ this section, "in vitro fertilization" means the  
6           process by which an egg is removed from a woman, and fertilized in a  
7           receptacle by the sperm of the husband of the woman in whose womb the  
8           fertilized egg will ~~thereafter~~ be implanted.

9       (3) **(a)** ~~A~~ ~~no~~ person, association, or organization, other than the cabinet or a child-  
10           placing institution or agency, shall ***not*** place a child or act as intermediary in  
11           the placement of a child for adoption or otherwise, except in the home of a  
12           stepparent, grandparent, sister, brother, aunt, or uncle, or upon written  
13           approval of the secretary.

14       **(b)** This subsection shall not be construed to:

15           **1.** Limit the cabinet ~~for Health and Family Services~~ in carrying out its  
16           public assistance under Title IV-A of the Federal Social Security Act  
17           program in accordance with KRS Chapter 205; ~~**or**. This section shall~~  
18           ~~not be construed to~~

19           **2.** Prohibit private independent adoption or the right to seek legal services  
20           relating to a private independent adoption.

21       (4) **(a)** A person, agency, institution, or intermediary shall not:

22           **1.** Be a party to a contract or agreement which would compensate a woman  
23           for her artificial insemination and subsequent termination of parental  
24           rights to a child born as a result of that artificial insemination ***for the***  
25           ***purpose of adoption***; ~~**or**. A person, agency, institution, or intermediary~~  
26           ~~shall not~~

27           **2.** Receive compensation for the facilitation of contracts or agreements as

1                    proscribed by this subsection.

2            **(b)** Contracts or agreements entered into in violation of this subsection shall be  
3            void.

4    (5) **(a)** A person, organization, group, agency, or any legal entity, except a child-  
5            placing agency, shall not accept any fee for bringing the adoptive parents  
6            together with the child to be adopted or the biological parents of the child to  
7            be adopted.

8            **(b)** This section shall not interfere with the legitimate practice of law by an  
9            attorney.

10    (6) **(a)** In every adoption proceeding, the expenses paid, including but not limited to  
11            any fees for legal services, placement services, and expenses of the biological  
12            parent or parents, by the prospective adoptive parents for any purpose related  
13            to the adoption shall be submitted to the court **and** supported by an  
14            affidavit, setting forth in detail a listing of expenses for the court's approval or  
15            modification.

16            **(b)** In the event the court modifies the expense request as it relates to legal fees  
17            and legal expenses only, the attorney for the adoptive parents shall not have  
18            any claim against the adoptive parents for the amount not approved.

19            ➔Section 5. KRS 199.990 is amended to read as follows:

20    (1) **(a)** Any person who violates any of the provisions of KRS 199.430, 199.470,  
21            199.473, 199.570, 199.572,~~and~~ 199.590 except **subsections**~~subsection~~ (2)  
22            **and (4)**, or 199.640 to 199.670, or any~~rule or~~ regulation under **those**~~such~~  
23            sections, the violation of which is made unlawful, shall be fined not less than  
24            five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) or  
25            imprisoned for not more than six (6) months, or both; **and**

26            **(b)** Each day **the**~~such~~ violation continues shall constitute a separate offense.

27    (2) Any person who willfully violates any other **provision**~~of the provisions~~ of KRS

1 199.420 to 199.670, or any ~~rule or~~ regulation under those sections~~thereunder~~,  
2 the violation of which is made unlawful under the terms of those sections, and for  
3 which no other penalty is prescribed in those sections~~;~~ or in any other applicable  
4 statute, shall be fined not less than one hundred dollars (\$100) nor more than two  
5 hundred dollars (\$200) or imprisoned for not more than thirty (30) days, or both.

6 (3) (a) 1. Any violation of the regulations, standards, or requirements of the  
7 cabinet under ~~the provisions of~~ KRS 199.896 that poses an immediate  
8 threat to the health, safety, or welfare of any child served by the child-  
9 care center shall be subject to a civil penalty of not~~no~~ more than one  
10 thousand dollars (\$1,000) for each occurrence; and~~;~~

11 2. Treble penalties shall be assessed for two (2) or more violations within  
12 twelve (12) months.

13 (b) 1. All money collected as a result of civil penalties assessed under ~~the~~  
14 ~~provisions of~~ KRS 199.896 shall be paid into the State Treasury and  
15 credited to a special fund for the purpose of the Early Childhood  
16 Scholarship Program created in accordance with KRS 164.518; and~~;~~

17 2. The balance of the fund shall not lapse to the general fund at the end of  
18 each biennium.

19 (4) A person who commits a violation of the regulations, standards, or requirements of  
20 the cabinet under ~~the provisions of~~ KRS 199.896 shall be fined not less than one  
21 thousand dollars (\$1,000) or imprisoned for not more than twelve (12) months, or  
22 be fined and imprisoned~~;~~ at the discretion of the court.

23 (5) Any person who violates ~~any of the provisions of~~ KRS 199.590(2) or (4) shall be  
24 guilty of a Class D felony.

25 (6) Any person who knowingly or intentionally registers false information under KRS  
26 199.503(4) shall be fined not more than one thousand dollars (\$1,000) or  
27 imprisoned for not more than twelve (12) months, or be fined and imprisoned~~;~~ at

1 the discretion of the court.

2 (7) Any person who knowingly or intentionally releases or requests confidential  
3 information in violation of KRS 199.503(8) or (9) or in violation of KRS 199.505  
4 shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not  
5 more than twelve (12) months, or be fined and imprisoned~~[,]~~ at the discretion of the  
6 court. It is a defense under this subsection if the cabinet releases confidential  
7 information while acting in good faith and with reasonable diligence.

8 (8) (a) Any person who intentionally registers false information under KRS 199.881  
9 to 199.888 with the cabinet in pursuit of the benefits of this program shall be  
10 subject to a civil penalty of ~~not~~~~[no]~~ more than five hundred dollars (\$500) per  
11 violation; ~~and~~~~[,]~~

12 (b) All money collected as a result of penalties assessed under KRS 199.881 to  
13 199.888 shall be paid into the State Treasury and credited to the Employee  
14 Child Care Assistance Partnership fund.

15 (9) (a) Any person, corporation, association, agency, institution, intermediary, or  
16 organization who violates subsection (1) of Section 2 of this Act shall be  
17 guilty of a Class D felony for the first offense and a Class C felony for the  
18 second and each subsequent offense.

19 (b) In addition to any criminal penalty imposed under paragraph (a) of this  
20 subsection, any person, corporation, association, agency, institution,  
21 intermediary, or organization who violates subsection (1) of Section 2 of  
22 this Act shall be subject to a civil penalty not to exceed the sum of ten  
23 thousand dollars (\$10,000) for each violation. When the violation is of a  
24 continuing nature, each day upon which a violation occurs shall be deemed  
25 a separate offense.

26 (c) A conviction of a corporation, association, agency, institution, intermediary,  
27 or organization of violating subsection (1) of Section 2 of this Act shall

- 1           operate to forfeit its charter or right to do business in this Commonwealth.
- 2           (d) The Attorney General may initiate proceedings in any Circuit Court in this
- 3           Commonwealth to enforce the provisions of paragraph (b) of this subsection
- 4           and to enjoin further violations. It shall not be required that actual damages
- 5           be alleged or proved to recover injunctive relief or attorney's fees and costs.
- 6           (e) This subsection shall not be construed to limit or restrict the powers, duties,
- 7           remedies, or penalties available to the Attorney General, the
- 8           Commonwealth, or any other person under any other statutory authority or
- 9           common law.

10           ➔Section 6. If any provision of this Act or the application thereof to any person

11 or circumstance is held invalid, the invalidity shall not affect other provisions or

12 applications of the Act that can be given effect without the invalid provision or

13 application, and to this end the provisions of this Act are severable.

14           ➔Section 7. The penalties under Section 5 of this Act shall apply to all contracts

15 or agreements entered into on or after the effective date of this Act.