

1 AN ACT

2 RELATING TO ADOPTIONS; MODIFYING THE DEFINITION OF "ADOPTION
3 SERVICE"; REQUIRING AN ACCOUNTING OF DISBURSEMENTS PRIOR TO A
4 RELINQUISHMENT OF PARENTAL RIGHTS; LIMITING WHO MAY MAKE
5 PAYMENTS ON BEHALF OF A PROSPECTIVE ADOPTIVE PARENT;
6 PROHIBITING UNAUTHORIZED ADOPTION SERVICES; PROVIDING
7 REQUIREMENTS FOR CERTAIN ADVERTISEMENTS FOR ADOPTION
8 SERVICES; PROVIDING PENALTIES AND PRIVATE REMEDIES; DECLARING
9 AN EMERGENCY.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

12 SECTION 1. Section 32A-5-3 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 130, as amended) is amended to read:

14 "32A-5-3. DEFINITIONS.--As used in the Adoption Act:

15 A. "accrediting entity" means an entity that has
16 entered into an agreement with the United States secretary of
17 state pursuant to the federal Intercountry Adoption Act of
18 2000 and regulations adopted by the United States secretary
19 of state pursuant to that act, to accredit agencies and
20 approve persons who provide adoption services related to
21 convention adoptions;

22 B. "adoptee" means a person who is the subject of
23 an adoption petition;

24 C. "adoption service" means:

25 (1) identifying a child for adoption and

1 arranging the adoption of the child;

2 (2) arranging or assisting in the process of
3 connecting or matching parents who may place a child for
4 adoption with prospective adoptive parents;

5 (3) providing counseling, advice or guidance
6 related to a potential adoption;

7 (4) receiving or disbursing funds or
8 anything of value on behalf of a prospective adoptive parent
9 or to a parent who may place or has placed a child for
10 adoption;

11 (5) securing termination of parental rights
12 to a child or consent to adoption of the child;

13 (6) performing a background study on a child
14 and reporting on the study;

15 (7) performing a home study on a prospective
16 adoptive parent and reporting on the study;

17 (8) making determinations regarding the best
18 interests of a child and the appropriateness of an adoptive
19 placement for the child;

20 (9) performing post-placement monitoring of
21 a child until an adoption is final; or

22 (10) when there is a disruption before an
23 adoption of a child is final, assuming custody of the child
24 and providing or facilitating the provision of child care or
25 other social services for the child pending an alternative

1 placement of the child;

2 D. "agency" means a person certified, licensed or
3 otherwise specially empowered by law to place a child in a
4 home in this or any other state for the purpose of adoption;

5 E. "agency adoption" means an adoption when the
6 adoptee is in the custody of an agency prior to placement;

7 F. "acknowledged father" means a father who:

8 (1) acknowledges paternity of the adoptee
9 pursuant to the putative father registry, as provided for in
10 Section 32A-5-20 NMSA 1978;

11 (2) is named, with his consent, as the
12 adoptee's father on the adoptee's birth certificate;

13 (3) is obligated to support the adoptee
14 under a written voluntary promise or pursuant to a court
15 order; or

16 (4) has openly held out the adoptee as his
17 own child by establishing a custodial, personal or financial
18 relationship with the adoptee as follows:

19 (a) for an adoptee under six months old
20 at the time of placement: 1) has initiated an action to
21 establish paternity; 2) is living with the adoptee at the
22 time the adoption petition is filed; 3) has lived with the
23 mother a minimum of ninety days during the two-hundred-
24 eighty-day period prior to the birth or placement of the
25 adoptee; 4) has lived with the adoptee within the ninety days

1 immediately preceding the adoptive placement; 5) has provided
2 reasonable and fair financial support to the mother during
3 the pregnancy and in connection with the adoptee's birth in
4 accordance with his means and when not prevented from doing
5 so by the person or authorized agency having lawful custody
6 of the adoptee or the adoptee's mother; 6) has continuously
7 paid child support to the mother since the adoptee's birth in
8 an amount at least equal to the amount provided in Section
9 40-4-11.1 NMSA 1978, or has brought current any delinquent
10 child support payments; or 7) any other factor the court
11 deems necessary to establish a custodial, personal or
12 financial relationship with the adoptee; or

13 (b) for an adoptee over six months old
14 at the time of placement: 1) has initiated an action to
15 establish paternity; 2) has lived with the adoptee within the
16 ninety days immediately preceding the adoptive placement;
17 3) has continuously paid child support to the mother since
18 the adoptee's birth in an amount at least equal to the amount
19 provided in Section 40-4-11.1 NMSA 1978, or is making
20 reasonable efforts to bring delinquent child support payments
21 current; 4) has contact with the adoptee on a monthly basis
22 when physically and financially able and when not prevented
23 by the person or authorized agency having lawful custody of
24 the adoptee; or 5) has regular communication with the
25 adoptee, or with the person or agency having the care or

1 custody of the adoptee, when physically and financially
2 unable to visit the adoptee and when not prevented from doing
3 so by the person or authorized agency having lawful custody
4 of the adoptee;

5 G. "alleged father" means an individual whom the
6 biological mother has identified as the biological father,
7 but the individual has not acknowledged paternity or
8 registered with the putative father registry as provided for
9 in Section 32A-5-20 NMSA 1978;

10 H. "consent" means a document:

11 (1) signed by a biological parent whereby
12 the parent grants consent to the adoption of the parent's
13 child by another;

14 (2) whereby the department or an agency
15 grants its consent to the adoption of a child in its custody;
16 or

17 (3) signed by the adoptee if the child is
18 fourteen years of age or older;

19 I. "convention adoption" means:

20 (1) an adoption by a United States resident
21 of a child who is a resident of a foreign country that is a
22 party to the Hague Convention on Protection of Children and
23 Co-operation in Respect of Intercountry Adoption; or

24 (2) an adoption by a resident of a foreign
25 country that is a party to the Hague Convention on Protection

1 of Children and Co-operation in Respect of Intercountry
2 Adoption of a child who is a resident of the United States;

3 J. "counselor" means a person certified by the
4 department to conduct adoption counseling in independent
5 adoptions;

6 K. "department adoption" means an adoption when
7 the child is in the custody of the department;

8 L. "foreign born child" means any child not born
9 in the United States who is not a citizen of the United
10 States;

11 M. "former parent" means a parent whose parental
12 rights have been terminated or relinquished;

13 N. "full disclosure" means mandatory and
14 continuous disclosure by the investigator, agency, department
15 or petitioner throughout the adoption proceeding and after
16 finalization of the adoption of all known, nonidentifying
17 information regarding the adoptee, including:

- 18 (1) health history;
- 19 (2) psychological history;
- 20 (3) mental history;
- 21 (4) hospital history;
- 22 (5) medication history;
- 23 (6) genetic history;
- 24 (7) physical descriptions;
- 25 (8) social history;

1 (9) placement history; and

2 (10) education;

3 O. "independent adoption" means an adoption when
4 the child is not in the custody of the department or an
5 agency;

6 P. "investigator" means an individual certified by
7 the department to conduct pre-placement studies and
8 post-placement reports;

9 Q. "office" means a place for the regular
10 transaction of business or performance of particular
11 services;

12 R. "parental rights" means all rights of a parent
13 with reference to a child, including parental right to
14 control, to withhold consent to an adoption or to receive
15 notice of a hearing on a petition for adoption;

16 S. "placement" means the selection of a family for
17 an adoptee or matching of a family with an adoptee and
18 physical transfer of the adoptee to the family in all
19 adoption proceedings, except in adoptions filed pursuant to
20 Paragraphs (1) and (2) of Subsection C of Section 32A-5-12
21 NMSA 1978, in which case placement occurs when the parents
22 consent to the adoption, parental rights are terminated or
23 parental consent is implied;

24 T. "post-placement report" means a written
25 evaluation of the adoptive family and the adoptee after the

1 adoptee is placed for adoption;

2 U. "pre-placement study" means a written
3 evaluation of the adoptive family, the adoptee's biological
4 family and the adoptee;

5 V. "presumed father" means:

6 (1) the husband of the biological mother at
7 the time the adoptee was born;

8 (2) an individual who was married to the
9 mother and either the adoptee was born during the term of the
10 marriage or the adoptee was born within three hundred days
11 after the marriage was terminated by death, annulment,
12 declaration of invalidity or divorce; or

13 (3) before the adoptee's birth, an
14 individual who attempted to marry the adoptee's biological
15 mother by a marriage solemnized in apparent compliance with
16 law, although the attempted marriage is or could be declared
17 invalid and if the attempted marriage:

18 (a) could be declared invalid only by a
19 court, the adoptee was born during the attempted marriage or
20 within three hundred days after its termination by death,
21 annulment, declaration of invalidity or divorce; or

22 (b) is invalid without a court order,
23 the adoptee was born within three hundred days after the
24 termination of cohabitation;

25 W. "record" means any petition, affidavit, consent SB 27
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1 or relinquishment form, transcript or notes of testimony,
2 deposition, power of attorney, report, decree, order,
3 judgment, correspondence, document, photograph, invoice,
4 receipt, certificate or other printed, written, videotaped or
5 tape-recorded material pertaining to an adoption proceeding;

6 X. "relinquishment" means the document by which a
7 parent relinquishes parental rights to the department or an
8 agency to enable placement of the parent's child for
9 adoption;

10 Y. "resident" means a person who, prior to filing
11 an adoption petition, has lived in the state for at least six
12 months immediately preceding filing of the petition for
13 adoption or a person who has become domiciled in the state by
14 establishing legal residence with the intention of
15 maintaining the residency indefinitely; and

16 Z. "stepparent adoption" means an adoption of the
17 adoptee by the adoptee's stepparent when the adoptee has
18 lived with the stepparent for at least one year following the
19 marriage of the stepparent to the custodial parent."

20 SECTION 2. Section 32A-5-23 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 150, as amended) is amended to read:

22 "32A-5-23. PERSONS WHO MAY TAKE CONSENTS OR
23 RELINQUISHMENTS--ACCOUNTING OF DISBURSEMENTS.--

24 A. A consent to adoption or relinquishment of
25 parental rights shall be signed before and approved on the

1 record by a judge who has jurisdiction over adoption
2 proceedings, within or without this state, and who is in the
3 jurisdiction in which the child is present or in which the
4 parent resides at the time it is signed.

5 B. No parent may relinquish parental rights to the
6 department or an agency without the department's or the
7 agency's consent.

8 C. The consent or relinquishment shall be filed
9 with the court in which the petition for adoption has been
10 filed before adjudication of the petition.

11 D. Prior to the approval of a consent to adoption
12 or relinquishment of parental rights, a full and specific
13 accounting signed under penalty of perjury shall be filed by
14 the prospective adoptive parents or their representative in
15 the same court where the associated consent or relinquishment
16 may later be heard. The accounting shall be filed no later
17 than seventy-two hours prior to the anticipated hearing on
18 the proposed consent or relinquishment. The disbursements
19 and expenses itemized in the accounting must be approved by
20 the court prior to approval of a consent to adoption or
21 relinquishment or consent to adoption by a parent for the
22 parent's child. The accounting shall itemize in detail,
23 including the dates and purpose of each disbursement or
24 expense payment and the name and address of each person who
25 received or will receive any disbursement or payment:

1 (1) all disbursements, as well as
2 anticipated or promised disbursements, of anything of value
3 provided by or on behalf of:

4 (a) the prospective adoptive parents;
5 or

6 (b) any person who may profit or be
7 compensated as a result of an adoption associated with the
8 consent or relinquishment;

9 (2) all disbursements of anything of value
10 to the parents of the child or the child; and

11 (3) all expenses paid on behalf of the
12 parents of the child or the child.

13 E. The accounting required in Subsection D of this
14 section is not applicable to stepparent adoptions or to
15 adoptions pursuant to the provisions of the Abuse and Neglect
16 Act, unless ordered by the court."

17 SECTION 3. Section 32A-5-34 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 161, as amended) is amended to read:

19 "32A-5-34. FEES AND CHARGES--DAMAGES.--

20 A. Prior to the final hearing on a petition, the
21 petitioner shall file a full accounting of all disbursements
22 of anything of value made or agreed to be made by or on
23 behalf of the petitioner in connection with an adoption. The
24 accounting report shall be signed under penalty of perjury.

25 The accounting report shall be itemized in detail and shall

1 show the services reasonably relating to the adoption or to
2 the placement of the child for adoption that were received by
3 the parents of the child, by the child or by or on behalf of
4 the petitioner. The report shall also include the dates of
5 each payment and the names and addresses of each attorney,
6 physician, hospital, licensed adoption agency or other person
7 or organization who received any funds or any other thing of
8 value from the petitioner in connection with the adoption or
9 the placement of the child with the petitioner or who
10 participated in any way in the handling of the funds, either
11 directly or indirectly.

12 B. Only a prospective adoptive parent, acting
13 alone, through an agency or through an attorney who is
14 licensed in this state, shall make payments for services
15 relating to the adoption or to the placement of the adoptee
16 for adoption for allowed expenses only to third-party
17 vendors, as reasonably practical. These payments shall
18 consist of reasonable and actual fees or charges for:

19 (1) the services of an agency in connection
20 with an adoption;

21 (2) medical, hospital, nursing,
22 pharmaceutical, traveling or other similar expenses incurred
23 by a mother or the adoptee in connection with the birth or
24 any illness of an adoptee;

25 (3) reasonable counseling services relating

1 to the adoption;

2 (4) living expenses of a mother and her
3 dependent children, including the adoptee, for a reasonable
4 time before the birth or placement of the adoptee and for no
5 more than six weeks after the birth or placement of the
6 adoptee;

7 (5) expenses incurred for the purposes of
8 full disclosure;

9 (6) legal services, court costs and
10 traveling or other administrative expenses connected with an
11 adoption, including any legal service performed for a parent
12 who consents to the adoption of a child or relinquishes the
13 child to an agency;

14 (7) preparation of a pre-placement study and
15 of a post-placement report during the pendency of the
16 adoption proceeding; or

17 (8) any other service or expense the court
18 finds is reasonably necessary for services relating to the
19 adoption or to the placement of the adoptee for adoption.

20 C. Any person who makes payments that are not
21 permitted pursuant to the provisions of this section is in
22 violation of the Adoption Act and subject to the penalties
23 set forth in Section 32A-5-42 NMSA 1978.

24 D. Any person who threatens or coerces a parent to
25 complete the relinquishment of parental rights or to complete

1 the consent to an adoption, by demanding repayment of
2 expenses or by any other threat or coercion, shall be liable
3 to the parent for compensatory and punitive damages.

4 E. The accounting required in Subsection A of this
5 section is not applicable to stepparent adoptions or to
6 adoptions under the provisions of the Abuse and Neglect Act,
7 unless ordered by the court.

8 F. Nothing in this section shall be construed to
9 permit payment to a woman for conceiving and carrying a
10 child."

11 SECTION 4. A new section of the Adoption Act is enacted
12 to read:

13 "UNAUTHORIZED ADOPTION FACILITATION--PENALTIES.--

14 A. A person, other than a person described in
15 Subsection C of this section, who knowingly or intentionally
16 engages in adoption services with a person in this state for
17 compensation is guilty of a misdemeanor and shall be
18 sentenced in accordance with the provisions of Section
19 32A-5-42 NMSA 1978.

20 B. A violation of this section constitutes an
21 unfair or deceptive trade practice pursuant to the Unfair
22 Practices Act.

23 C. This section does not apply to the following
24 persons:

25 (1) the department, a person authorized to

1 act on behalf of the department or a similar agency in
2 another state;

3 (2) an investigator or counselor;

4 (3) an agency licensed pursuant to the laws
5 of this state or another state that is providing an adoption
6 service within that state to a parent, prospective adoptive
7 parent or a specific and identified adoptee who resides in
8 that state;

9 (4) an attorney licensed to practice law in
10 this state or in another state who is providing a legal
11 service within and pursuant to the laws of that state to a
12 parent, prospective adoptive parent or a specific and
13 identified adoptee who resides in that state;

14 (5) an agency facilitating the adoption of a
15 foreign born child;

16 (6) an agency facilitating a new placement
17 of a child following a disruption or termination of an
18 adoption; or

19 (7) a prospective adoptive parent or
20 biological parent acting alone on the parent's own behalf."

21 SECTION 5. A new section of the Adoption Act is enacted
22 to read:

23 "ADVERTISING ADOPTION SERVICES--REQUIREMENTS--
24 PENALTIES.--

25 A. A person, other than a person described in

1 Subsection E of this section, shall not advertise adoption
2 services unless the advertisement includes the following
3 statement: "WARNING: (INSERT NAME OF PERSON ADVERTISED) IS
4 NOT ACCREDITED, CERTIFIED OR LICENSED TO PROVIDE ADOPTION
5 SERVICES WITHIN NEW MEXICO.". If the advertisement is in
6 print, the required statement shall be entirely in uppercase
7 letters and in a print size no smaller than that generally
8 used in the advertisement. If the advertisement is spoken,
9 the required statement shall be spoken at the same pace and
10 volume as that generally used in the advertisement.

11 B. A person who violates this section is guilty of
12 a misdemeanor and shall be sentenced in accordance with the
13 provisions of Section 32A-5-42 NMSA 1978.

14 C. A violation of this section constitutes an
15 unfair or deceptive trade practice pursuant to the Unfair
16 Practices Act.

17 D. For purposes of this section, "advertise" means
18 to communicate, market, promote, induce or solicit by public
19 media originating or distributed in New Mexico, including
20 newspapers, periodicals, telephone book listings, outdoor
21 advertising, radio, television or other electronic media.

22 E. This section does not apply to:

23 (1) the department or a person authorized to
24 act on behalf of the department;

25 (2) an agency licensed by the department;

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- (3) an investigator or counselor;
- (4) an attorney licensed in the state who advertises legal services relating to adoption; or
- (5) a prospective adoptive parent who is acting alone on the prospective adoptive parent's own behalf and who has a current, approved pre-placement study as required by the department.

F. An advertising, marketing or promotional medium that accepts and publishes or otherwise distributes in good faith an advertisement that does not meet the requirements of this section is not subject to civil or criminal penalties pursuant to this section."

SECTION 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
