

AN ACT

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RELATING TO ADOPTIONS; ESTABLISHING PROCEDURES FOR ADOPTIONS
ENTERED INTO PURSUANT TO THE FEDERAL INTERCOUNTRY ADOPTION ACT;
PROVIDING FOR BACKGROUND CHECKS ON PERSONS WHO PETITION TO ADOPT
A CHILD; PROVIDING A PENALTY; AMENDING AND ENACTING SECTIONS OF THE
ADOPTION ACT.

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

Section 1. Section 32A-5-1 NMSA 1978 (being Laws 1993, Chapter 77,
Section 128) is amended to read:

"32A-5-1. SHORT TITLE.--Chapter 32A, Article 5 NMSA 1978 may be cited as
the "Adoption Act"."

Section 2. Section 32A-5-3 NMSA 1978 (being Laws 1993, Chapter 77,
Section 130, as amended) is amended to read:

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

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

B. "adoptivee" means a person who is the subject of an adoption
petition;

C. "adoption service" means:

(1) identifying a child for adoption and arranging the adoption

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| of the child; | H B |
| (2) securing termination of parental rights to a child or consent to adoption of the child; | 7 3 6 |
| (3) performing a background study on a child and reporting on the study; | P a g e |
| (4) performing a home study on a prospective adoptive parent and reporting on the study; | 2 |
| (5) making determinations regarding the best interests of a child and the appropriateness of an adoptive placement for the child; | |
| (6) performing post-placement monitoring of a child until an adoption is final; and | |
| (7) when there is a disruption before an adoption of a child is final, assuming custody of the child and providing or facilitating the provision of child care or other social services for the child pending an alternative placement of the child; | |
| D. "agency" means a person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption; | |
| E. "agency adoption" means an adoption when the adoptee is in the custody of an agency prior to placement; | |
| F. "acknowledged father" means a father who: | |
| (1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978; | |
| (2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate; | |

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

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

(a) for an adoptee under six months old at the time of placement: 1) has initiated an action to establish paternity; 2) is living with the adoptee at the time the adoption petition is filed; 3) has lived with the mother a minimum of ninety days during the two-hundred-eighty-day-period prior to the birth or placement of the adoptee; 4) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 5) has provided reasonable and fair financial support to the mother during the pregnancy and in connection with the adoptee's birth in accordance with his means and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee or the adoptee's mother; 6) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or has brought current any delinquent child support payments; or 7) any other factor the court deems necessary to establish a custodial, personal or financial relationship with the adoptee; or

(b) for an adoptee over six months old at the time of placement: 1) has initiated an action to establish paternity; 2) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 3) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or is making reasonable efforts to bring delinquent child support payments current; 4) has contact

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with the adoptee on a monthly basis when physically and financially able and when not prevented by the person or authorized agency having lawful custody of the adoptee; or 5) has regular communication with the adoptee, or with the person or agency having the care or custody of the adoptee, when physically and financially unable to visit the adoptee and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee;

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

H. "consent" means a document:

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

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

I. "convention adoption" means:

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

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

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

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

L. "former parent" means a parent whose parental rights have been terminated or relinquished;

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

- (1) health history;
- (2) psychological history;
- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical descriptions;
- (8) social history;
- (9) placement history; and
- (10) education;

N. "independent adoption" means an adoption when the child is not in the custody of the department or an agency;

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

P. "office" means a place for the regular transaction of business or performance of particular services;

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

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

S. "post-placement report" means a written evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

T. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

U. "presumed father" means:

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

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

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

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

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

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

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

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

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

Section 3. Section 32A-5-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 133, as amended) is amended to read:

"32A-5-6. AUTHORITY OF THE DEPARTMENT.--

A. The department may adopt and promulgate necessary rules and

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forms for the administration of the Adoption Act, including rules for the assessment of fees. The rules shall not conflict with the provisions of the Adoption Act.

B. The department has the authority to provide or request additional information from an investigator or an attorney representing any person involved in any action filed pursuant to the provisions of the Adoption Act.

C. The department has the authority to intervene in any action filed pursuant to the provisions of the Adoption Act. The intervention shall be effected when legal counsel for the department files a motion for an entry of appearance and an appropriate response.

D. The department shall be served by mail by the attorney for the petitioner with copies of all pleadings filed in any action pursuant to the provisions of the Adoption Act, except for copies of the petition for adoption, the request for placement and the decree of adoption, which shall be served as provided in Section 32A-5-7 NMSA 1978.

E. The department is authorized to act as an accrediting entity on behalf of the state.

F. The department may assess fees for the cost of accrediting an agency or approving a person in matters related to convention adoptions. The department shall establish the amount of the fees by rule and the fees shall be subject to approval by the United States secretary of state. The amount of the fees shall not exceed the cost of similar services provided by the department."

Section 4. Section 32A-5-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 153, as amended) is amended to read:

"32A-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and

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verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee, if known;

C. the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived, unless the adoptee is in the custody of an agency or the department, in which case the petitioner shall state the name and address of the agency or the department's county office from which the child was placed;

D. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name; provided that in the case of an agency adoption, if the petitioner and the biological parents have not agreed to the release of the adoptee's identity to the other person, the birth name and any other names by which the adoptee has been known shall be filed with the court as separate documents at the time the petition is filed;

E. where the adoptee is residing at the time of the filing of the petition and, if the adoptee is not living with the petitioner, when the adoptee will commence living with the petitioner;

F. that the petitioner desires to establish a parent and child relationship with the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. the existence of any court orders, including placement orders, that are known to the petitioner and that regulate custody, visitation or access to the

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adoptee, copies of which shall accompany and be attached to the petition as exhibits; H
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H. the relationship, if any, of the petitioner to the adoptee; 7

I. the name and address of the placing agency, if any; 3
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J. the names and addresses of all persons from whom consents or P
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relinquishments are required, attaching copies of those obtained and alleging the facts 1
that excuse or imply the consents or relinquishments of the others; provided that if the 0
petitioner has not agreed to the release of his identity to the parent or if the parent has
not agreed to the release of his identity to the petitioner, the names and addresses of
all persons from whom consents or relinquishments are required shall be filed with the
court as separate documents at the time the petition for adoption is filed;

K. whether the adoption will be an open adoption, pursuant to the
provisions of Section 32A-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the
results of a search of the putative father registry;

M. whether the adoptee is an Indian child and, if so, the petition shall
allege:

(1) the tribal affiliation of the adoptee's parents;

(2) what specific actions have been taken and by whom to
notify the parents' tribe and the results of the contact, including the names, addresses,
titles and telephone numbers of the persons contacted. Copies of any
correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(3) what specific efforts were made to comply with the
placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the
placement preferences of the appropriate Indian tribe;

N. whether the adoption is subject to the Interstate Compact on the Placement of Children and, if so, a copy of the interstate compact form indicating approval shall be attached as an exhibit to the petition;

O. whether the adoptee is foreign-born and, if so, copies of the child's passport and United States visa and of all documents demonstrating that the adoptee is legally free for adoption, including a certificate from the United States secretary of state that certifies that the adoption is a convention adoption;

P. whether the adoption is a convention adoption and, if so, the petition shall allege:

(1) that the country in which the child has been residing is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

(2) that the agency or person who is providing the adoption service has been approved as an accrediting entity; and

(3) that the certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court; and

Q. the name, address and telephone number of the agency or individual who has agreed to conduct the post-placement report in accordance with Section 32A-5-31 NMSA 1978, if different than the agency or individual who prepared the pre-placement study in accordance with Section 32A-5-13 NMSA 1978."

Section 5. Section 32A-5-36 NMSA 1978 (being Laws 1993, Chapter 77, Section 163, as amended) is amended to read:

"32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

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A. The court shall conduct hearings on the petition for adoption so as to determine the rights of the parties in a manner that protects confidentiality. The petitioner and the adoptee shall attend the hearing unless the court for good cause waives a party's appearance. Good cause may include burdensome travel requirements.

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B. The petitioner shall file all documents required pursuant to the Adoption Act and serve the department with copies of the documents simultaneously with the request for hearing on the petition for adoption.

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C. If any person who claims to be the biological father of the adoptee has appeared before the court and filed a written petition or response seeking custody and assuming financial responsibility of the adoptee, the court shall hear evidence as to the merits of the petition. If the court determines by a preponderance of the evidence that the person is not the biological father of the adoptee or that the child was conceived through an act of rape or incest, the petition shall be dismissed and the person shall no longer be a party to the adoption. If the court determines that the person is the biological father of the adoptee, the court shall further determine whether the person qualifies as a presumed or acknowledged father whose consent is necessary for adoption, pursuant to Section 32A-5-17 NMSA 1978. If the court determines that the person is the biological father, but does not qualify as a presumed or acknowledged father, the court shall adjudicate the person's rights pursuant to the provisions of the Adoption Act.

D. If the mother or father of the adoptee has appeared before the court and filed a written petition that alleges the invalidity of the mother's or father's own consent or relinquishment for adoption previously filed in the adoption proceeding,

the court shall hear evidence as to the merits of the petition. If the court determines that the allegations have not been proved by a preponderance of the evidence, the petition shall be dismissed. If the court determines that the allegations of the petition are true, the consent or relinquishment for adoption shall be held invalid, and the court shall determine, in the best interests of the adoptee, the person who shall have custody of the child.

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E. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

F. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

- (1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;
- (2) the adoptee has been placed with the petitioner for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;
- (3) all necessary consents, relinquishments, terminations or waivers have been obtained;
- (4) the post-placement report required by Section 32A-5-31 NMSA 1978 has been filed with the court;
- (5) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

(6) at least ninety days have passed since the filing of the petition for adoption, except the court may shorten or waive this period of time in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to provisions of Section 32A-5-12 NMSA 1978;

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(7) the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

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(8) if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests;

(9) if the adoptee is foreign-born, the child is legally free for adoption and a certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court;

(10) the results of the criminal records check required pursuant to provisions of the Adoption Act have been received and considered;

(11) if the adoptee is an Indian child, the requirements set forth in the federal Indian Child Welfare Act of 1978 have been met;

(12) when the child is an Indian child, the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes have been followed or, if not followed, good cause for noncompliance has been clearly stated and supported, as required by the federal Indian Child Welfare Act of 1978 and provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered; and

(13) if the adoption involves the interstate placement of the

adoptive, the requirements of the Interstate Compact on the Placement of Children have been met.

G. In addition to the findings required by Subsection F of this section, the court in any decree of adoption shall make findings with respect to each allegation of the petition.

H. If the court determines that any of the requirements for a decree of adoption pursuant to provisions of Subsections E and F of this section have not been met or that the adoption is not in the best interests of the adoptee, the court shall deny the petition and determine, in the best interests of the adoptee, the person who shall have custody of the child.

I. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 32A-5-37 NMSA 1978.

J. A decree of adoption shall be entered within six months of the filing of the petition if the adoptee is under the age of one year at the time of placement or twelve months if the adoptee is one year of age or older at the time of placement, except that the time may be extended by the court upon request of any of the parties or upon the court's own motion for good cause shown.

K. A decree of adoption may not be attacked upon the expiration of one year from the entry of the decree; provided, however, that in any adoption involving an Indian child, the Indian child's parent or Indian custodian may petition the

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court pursuant to the provisions of the federal Indian Child Welfare Act of 1978 to
invalidate the adoption.

L. In any adoption involving an Indian child, the clerk of the court shall
provide the secretary of the interior with a copy of any decree of adoption or adoptive
placement order and other information as required by the federal Indian Child Welfare
Act of 1978."

Section 6. Section 32A-5-39 NMSA 1978 (being Laws 1993, Chapter 77,
Section 166) is amended to read:

"32A-5-39. RECOGNITION OF FOREIGN DECREES.--

A. Every judgment terminating the parent-child relationship or
establishing the relationship of parent and child by adoption issued pursuant to due
process of law by the tribunals of any other jurisdiction within or without the United
States shall be recognized in this state, so that the rights and obligations of the parties
as to matters within the jurisdiction of this state shall be determined as though the
judgment were issued by the courts of this state.

B. A convention adoption in a foreign country that is certified by the
United States secretary of state shall be recognized as a final adoption in this state."

Section 7. A new section of the Adoption Act is enacted to read:

"APPLICATION OF THE FEDERAL INTERCOUNTRY ADOPTION ACT.--The
protections and requirements set forth in the federal Intercountry Adoption Act apply to
all proceedings involving a convention adoption."

Section 8. A new section of the Adoption Act is enacted to read:

"CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. A nationwide criminal history records check shall be conducted on

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every person who files a petition to adopt a child. A person who files a petition to adopt a child shall provide the department with a set of fingerprints. The department is authorized to use the set of fingerprints to conduct a background check of the petitioner by submitting the fingerprints to the department of public safety and the federal bureau of investigation.

B. Criminal history records obtained by the department pursuant to the provisions of this section are confidential. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

C. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006