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## FISCAL IMPACT REPORT

**SPONSOR** Ryan **ORIGINAL DATE** 01/25/12 **LAST UPDATED** 02/02/12 **HB** \_\_\_\_\_

**SHORT TITLE** Child Adoption Changes **SB** 27/aSJC

**ANALYST** Aledo-Sandoval

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY12          | FY13 |                              |                  |
|               | NFI  |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Children, Youth and Families Department (CYFD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 27 strikes the word “within” on page 4, line 16 and inserts “with a person in” in lieu thereof. The amendment does not change the fiscal impact or the intent of the bill.

#### Synopsis of Original Bill

Senate Bill 27 amends several sections of the Adoption Act by expanding the definition of adoption service to include arranging or assisting connecting or matching birth parents with prospective adoptive parents; providing counseling, advice or guidance related to a potential adoption; and receiving or disbursing funds or anything of value on behalf of a prospective adoptive parent or to a birth parent. The bill adds an “accounting of disbursements” requirement to the Act and requires that before the Court may approve consent to adoption or a relinquishment of parental rights, the prospective adoptive parents must file a “full and specific” accounting of each disbursement and expense.

SB27 also adds two new sections to the Adoption Act. The first new section addresses unauthorized adoption facilitation and makes it an unfair or deceptive trade practice for

unauthorized persons to engage in adoption services for compensation within New Mexico. The second section prohibits unauthorized adoption service providers from advertising their adoption services unless the advertisement includes a specific disclaimer. The disclaimer must state that the provider is “not accredited, certified, or licensed to provide adoption services within New Mexico.” Any person violating the provisions of this bill is guilty of a misdemeanor and subject to imprisonment in the county jail for a term of less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000), or both, the penalties to be in the discretion of the judge, for each occurrence. Violation of the provisions of the bill also constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act.

SB27 contains an emergency clause.

### **FISCAL IMPLICATIONS**

According to the Administrative Office of the District Attorneys (AODA), the fiscal implications are minimal. The AODA asserts it is doubtful that very many people will be charged and convicted under this act. The number of cases prosecuted under this act should be few enough that they will not impact on the ability of the current staffs of DA offices, public defender offices and the courts to handle without the need of increased staff.

### **SIGNIFICANT ISSUES**

According to the Children, Youth and Families Department, New Mexico residents may be drawn in by expensive and misleading adoption advertising placed by entities that are not licensed or permitted to provide adoption services in New Mexico. The CYFD stated that SB27 protects prospective adoptive parents, persons placing a child for adoption, and children placed for adoption from predatory adoption practices.

### **OTHER SUBSTANTIVE ISSUES**

The AODA notes the violation of either of the two new sections proposed by this bill will be considered a violation of the Unfair Practices Act, Section 57-12-1, et al. Violations under this act are handled by the Attorney General’s Office, pursuant to Section 57-12-8; but could be delegated to DA Offices, pursuant to Section 57-12-15. The penalties for violating the Unfair Practices Act are civil; not criminal. The two new sections of this bill, however, state that the violation of either section is a misdemeanor and shall be sentenced pursuant to Section 32A-5-42.

### **ADMINISTRATIVE IMPLICATIONS**

The AODA expressed a need for clarification regarding enforcement. As previously stated the Attorney General’s Office is the primary enforcer of in a violation of the Unfair Practices Act. Violation of any of the current sections of the Adoptions Act is a criminal offense and would be investigated by the police and probably prosecuted by the DA’s Office.

### **AMENDMENTS**

The AODA suggests removing the classification of the two new sections as violations of the Unfair Practices Act.