

HOUSE BILL 125

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Al Park

AN ACT

RELATING TO ADOPTIONS; MODIFYING THE DEFINITION OF "ADOPTION SERVICE"; REQUIRING AN ACCOUNTING OF DISBURSEMENTS PRIOR TO A RELINQUISHMENT OF PARENTAL RIGHTS; LIMITING WHO MAY MAKE PAYMENTS ON BEHALF OF A PROSPECTIVE ADOPTIVE PARENT; PROHIBITING UNAUTHORIZED ADOPTION SERVICES; PROVIDING PENALTIES AND PRIVATE REMEDIES.

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

SECTION 1. 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 of 2000 and regulations adopted by the United States secretary of state

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1 pursuant to that act, to accredit agencies and approve persons
2 who provide adoption services related to convention adoptions;

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

5 C. "adoption service" means:

6 (1) identifying a child for adoption and
7 arranging the adoption of the child;

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

11 (3) providing counseling, advice or guidance
12 related to a potential adoption;

13 (4) receiving or disbursing funds or anything
14 of value on behalf of a prospective adoptive parent or to a
15 parent who may place or has placed a child for adoption;

16 [~~2~~] (5) securing termination of parental
17 rights to a child or consent to adoption of the child;

18 [~~3~~] (6) performing a background study on a
19 child and reporting on the study;

20 [~~4~~] (7) performing a home study on a
21 prospective adoptive parent and reporting on the study;

22 [~~5~~] (8) making determinations regarding the
23 best interests of a child and the appropriateness of an
24 adoptive placement for the child;

25 [~~6~~] (9) performing post-placement monitoring

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1 of a child until an adoption is final; [~~and~~] or

2 [~~(7)~~] (10) when there is a disruption before
3 an adoption of a child is final, assuming custody of the child
4 and providing or facilitating the provision of child care or
5 other social services for the child pending an alternative
6 placement of the child;

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

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

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

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

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

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

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

23 (a) for an adoptee under six months old
24 at the time of placement: 1) has initiated an action to
25 establish paternity; 2) is living with the adoptee at the time

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

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

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1 when physically and financially able and when not prevented by
2 the person or authorized agency having lawful custody of the
3 adoptee; or 5) has regular communication with the adoptee, or
4 with the person or agency having the care or custody of the
5 adoptee, when physically and financially unable to visit the
6 adoptee and when not prevented from doing so by the person or
7 authorized agency having lawful custody of the adoptee;

8 G. "alleged father" means an individual whom the
9 biological mother has identified as the biological father, but
10 the individual has not acknowledged paternity or registered
11 with the putative father registry as provided for in Section
12 32A-5-20 NMSA 1978;

13 H. "consent" means a document:

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

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

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

21 I. "convention adoption" means:

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

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

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

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

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

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

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

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

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1 (8) social history;

2 (9) placement history; and

3 (10) education;

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

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

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

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

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

4 V. "presumed father" means:

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

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

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

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

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

24 W. "record" means any petition, affidavit, consent
25 or relinquishment form, transcript or notes of testimony,

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1 deposition, power of attorney, report, decree, order, judgment,
2 correspondence, document, photograph, invoice, receipt,
3 certificate or other printed, written, videotaped or tape-
4 recorded material pertaining to an adoption proceeding;

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

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

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

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

20 "32A-5-23. PERSONS WHO MAY TAKE CONSENTS OR
21 RELINQUISHMENTS--ACCOUNTING OF DISBURSEMENTS.--

22 A. A consent to adoption or relinquishment of
23 parental rights shall be signed before and approved on the
24 record by a judge who has jurisdiction over adoption
25 proceedings, within or without this state, and who is in the

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1 jurisdiction in which the child is present or in which the
2 parent resides at the time it is signed.

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

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

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

24 (1) all disbursements, as well as anticipated
25 or promised disbursements, of anything of value provided by or

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1 on behalf of:

2 (a) the prospective adoptive parents; or

3 (b) any person who may profit or be

4 compensated as a result of an adoption associated with the

5 consent or relinquishment;

6 (2) all disbursements of anything of value to

7 the parents of the child or the child; and

8 (3) all expenses paid on behalf of the parents

9 of the child or the child.

10 E. The accounting required in Subsection D of this

11 section is not applicable to stepparent adoptions or to

12 adoptions pursuant to the provisions of the Abuse and Neglect

13 Act, unless ordered by the court."

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

16 "32A-5-34. FEES AND CHARGES--DAMAGES.--

17 A. Prior to the final hearing on [~~the~~] a petition,
18 the petitioner shall file a full accounting of all
19 disbursements of anything of value made or agreed to be made by
20 or on behalf of the petitioner in connection with [~~the~~] an
21 adoption. The accounting report shall be signed under penalty
22 of perjury. The accounting report shall be itemized in detail
23 and shall show the services reasonably relating to the adoption
24 or to the placement of the child for adoption that were
25 received by the parents of the child, by the child or by or on

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1 behalf of the petitioner. The report shall also include the
2 dates of each payment and the names and addresses of each
3 attorney, physician, hospital, licensed adoption agency or
4 other person or organization who received any funds or any
5 other thing of value from the petitioner in connection with the
6 adoption or the placement of the child with ~~[him]~~ the
7 petitioner or who participated in any way in the handling of
8 the funds, either directly or indirectly.

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

17 (1) the services of an agency in connection
18 with an adoption;

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

23 (3) reasonable counseling services relating to
24 the adoption;

25 (4) living expenses of a mother and her

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1 dependent children, including the adoptee, for a reasonable
2 time before the birth or placement of the adoptee and for no
3 more than six weeks after the birth or placement of the
4 adoptee;

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

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

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

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

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

22 D. Any person who threatens or coerces a parent to
23 complete the relinquishment of parental rights or to complete
24 the consent to an adoption, by demanding repayment of expenses
25 or by any other threat or coercion, shall be liable to the

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1 parent for compensatory and punitive damages.

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

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

8 SECTION 4. A new section of the Adoption Act is enacted
9 to read:

10 "[NEW MATERIAL] UNAUTHORIZED ADOPTION FACILITATION--
11 PENALTIES.--

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

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

21 C. This section does not apply to the following
22 persons:

23 (1) the department, a person authorized to act
24 on behalf of the department or a similar agency in another
25 state;

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- 1 (2) an investigator or counselor;
- 2 (3) an agency licensed pursuant to the laws of
3 this state or another state that is providing an adoption
4 service within that state to a parent, prospective adoptive
5 parent or a specific and identified adoptee who resides in that
6 state;
- 7 (4) an attorney licensed to practice law in
8 this state or in another state who is providing a legal service
9 within and pursuant to the laws of that state to a parent,
10 prospective adoptive parent or a specific and identified
11 adoptee who resides in that state;
- 12 (5) an agency facilitating the adoption of a
13 foreign-born child;
- 14 (6) an agency facilitating a new placement of
15 a child following a disruption or termination of an adoption;
16 or
- 17 (7) a prospective adoptive parent or
18 biological parent acting alone on their own behalf."