

**LFC Requester:**

**Rachel Mercer-Garcia**

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 02/18/2025

*Check all that apply:*

**Bill Number:** SB 417

Original  Correction   
Amendment  Substitute

**Sponsor:** Sen. Mimi Stewart

**Agency Name and Code Number:** 305 – New Mexico Department of Justice

**Person Writing**

**Analysis:** Jane A. Bernstein

**Short Title:** Confirmatory Adoptions

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### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

SB 417 proposes to amend and enact new sections of New Mexico’s Adoption Act (NMAA) (NMSA 1978, §§ 32A-5-1 to -45) and Uniform Parentage Act (UPA) (NMSA 1978, §§ 40-11A-101 to -903) to provide for confirmatory adoptions, which proposed Section 32A-5-3(I) would define as “action[s] in which a parent or parents of a child born through assisted reproduction seek to confirm parentage of the child and obtain a judgment of adoption.”

According to <https://familyequality.org/resources/confirmatory-adoption/>, the following states currently offer confirmatory adoption: California, Colorado, Maine, Maryland, New Hampshire, New Jersey, Rhode Island, and Virginia. By enacting proposed SB 417, New Mexico would join these states in further protecting the parent-child relationship and streamlining the adoption process of children born from assisted reproduction.

To that end, in addition to introducing and defining the term “confirmatory adoption,” **Section 1** would modify existing Section 32A-5-3 to (a) include as an “acknowledged father” a father who has established a parent-child relationship as defined in Article 2 of the UPA; and (b) redefine who is and who is not an “alleged father.” Section 1 also would (a) add, define, and provide examples of the term “assisted reproduction”; (b) add the term “donor” and provide examples of persons considered and not considered donors; (c) define “parent” as “a person who has established a parent-child relationship”; and (d) add the term “parent-child relationship” and set forth ways by which such a relationship may be established.

SB 417 proposes to add new Section 32A-5-3.1, which would, as practicable, make provisions of the NMAA as they currently apply to the father-child relationship equally applicable to the mother-child relationship and parent-child relationship, and provisions that apply to the mother-child relationship equally applicable to the father-child relationship or parent-child relationship. (**Section 2**).

SB 417 also proposes to amend existing Section 32A-5-14 (pre-placement study), Section 32A-5-27 (notice of adoption petition and service), and Section 32A-5-34 (fees, charges, damages) to state explicitly that the requirements of these sections “shall not apply to confirmatory adoptions” (**Sections 3, 4, and 5**).

Finally, pursuant to **Section 6**, there would be a new section of the NMAA appearing as Section 32A-5-46 and titled “Confirmatory Adoption.” Section 32A-5-46 would, among other things: (a)

set forth the process by which a prospective non-birth parent of a child born of assisted reproduction files an adoption petition; (b) specify the documents to be included with the petition (*i.e.*, child’s birth certificate and parents’ marriage certificate, if applicable); (c) enumerate what, absent good cause, a court may *not* require of the petitioner; and (d) fix a 30-day period for the court to make the required findings and grant the petition.

With respect to the UPA, SB 417 proposes to amend existing Section 40-11A-704(A) by (a) relaxing the time frame in which intended parents memorialize, either in writing or orally, their consent to assisted reproduction; and (b) eliminating the donor from the consent process. The proposed amendment to Section 40-11A-704(B) similarly would make it less burdensome to prove parentage in the absence of evidence of the consent required under subsection (A) (**Section 7**).

**Section 8** provides that the provisions of “this act” apply to actions commenced on or after the effective date of “this act.”

### **FISCAL IMPLICATIONS**

None to this office.

### **SIGNIFICANT ISSUES**

Proposed SB 417 would remove many existing hurdles to “second-parent adoptions” in New Mexico by creating “confirmatory adoptions,” and systematizing the process by which such adoptions are effectuated. One purpose of confirmatory adoptions is to protect children born from assisted reproduction—and often into so-called non-traditional families—from discrimination these children might encounter were they to move from New Mexico to a state that is hostile to such family units. Ideally, the resulting judgments of adoption entered by New Mexico courts are, under the United States Constitution, entitled to full faith and credit in other states. Yet there exists the possibility that a receiving state would attempt to invoke the public policy exception to the Full Faith and Credit Clause for the purpose of refusing to enforce a New Mexico judgment of adoption.

However, there is authority that indicates that the opposite might be the more likely outcome. *See, e.g., Ledoux-Nottingham v. Downs*, 210 So.3d 1217, 1221 (concluding that a Colorado child-custody judgment providing for grandparent visitation was entitled to full faith and credit in Florida, notwithstanding that enforcement might violate mother’s right to privacy under Florida Constitution, since, *inter alia*, “that state right is subordinate to the directives of the Federal Constitution under the Supremacy Clause, and the United States Supreme Court has made it clear that there is no public policy exception to the full faith and credit due final judgments of a sister state”). Further, a Westlaw search returned no cases where one state denied full faith and credit to a confirmatory adoption judgment entered in another state.

Section 6 provides that a court shall grant a petition for confirmatory adoption within 30 days upon certain findings and shall not deny such a petition upon certain findings or the existence of certain facts. However, the bill does not provide for any enforcement mechanism—either with regard to the time frame or with regard to the merit determination—or indicate anything with regard to a right of appeal.

### **PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None at this time.

**TECHNICAL ISSUES**

There appear to be some inconsistencies in terminology that could lead to confusion or interpretation issues. For example, proposed Section 32A-5-3(N) uses “gamete” or “gametes” when speaking of a “donor” while existing Section 40-11A-702 refers to “[d]onors of eggs, sperm[.]”

Section 8 provides that the provisions of “this act” apply to actions commenced on or after the effective date of “this act,” but two acts are impacted by this bill – the NMAA and the UPA.

**OTHER SUBSTANTIVE ISSUES**

None noted

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

N/A