

1 SENATE BILL 40

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Michael Padilla and Harold Pope

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9  
10 AN ACT

11 RELATING TO DOMESTIC AFFAIRS; AMENDING AND ENACTING SECTIONS OF  
12 CHAPTER 40, ARTICLE 1 NMSA 1978 TO PROVIDE FOR REMOTE  
13 SOLEMNIZATION AND MARRIAGE LICENSURE BY AFFIDAVIT FOR A PARTY  
14 WHO IS UNAVAILABLE AS A RESULT OF ACTIVE DUTY AS A MEMBER OF  
15 THE ARMED FORCES.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of Chapter 40, Article 1 NMSA  
19 1978 is enacted to read:

20 "[NEW MATERIAL] REMOTE SOLEMNIZATION FOR MEMBERS OF THE  
21 ARMED FORCES ON ACTIVE DUTY--AFFIDAVIT REQUIREMENTS--  
22 SOLEMNIZATION--DISTRICT COURT PETITION UPON REFUSAL.--

23 A. If a party to a marriage is unable to be present  
24 at the solemnization, the unavailable party may marry remotely  
25 if that party provides a notarized affidavit to a person

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1 authorized to solemnize a marriage pursuant to Section 40-1-2  
2 NMSA 1978. The affidavit shall include:

3 (1) the unavailable party's full name,  
4 including the maiden surname of a female applicant; address;  
5 date of birth; place of birth, including city, county and  
6 state; citizenship; and social security number, if any;

7 (2) a declaration that the unavailable party  
8 is not presently married;

9 (3) a declaration that the party to the  
10 marriage who is available is not presently married and is not  
11 related to the unavailable party as:

12 (a) an ancestor or descendant, by blood  
13 or adoption;

14 (b) a brother or sister, of the whole or  
15 half blood or by adoption;

16 (c) a parent's brother or sister, of the  
17 whole or half blood or by adoption;

18 (d) a son or daughter of a brother or  
19 sister, of the whole or half blood or by adoption;

20 (e) a current or former stepchild or  
21 stepparent; or

22 (f) a son or daughter of a parent's  
23 brother or sister, of the whole or half blood or by adoption;

24 (4) a declaration that the unavailable party  
25 desires to marry and the name, age and address of the person to

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1 whom the unavailable party desires to be married;

2 (5) the approximate date on which the marriage  
3 is to occur;

4 (6) the reason the unavailable party is unable  
5 to appear personally before the county clerk for the issuance  
6 of the license; and

7 (7) the appointment of any adult, other than  
8 the other party to the marriage, to act as proxy for the  
9 purpose of participating in the ceremony, if the unavailable  
10 party is:

11 (a) a member of the armed forces of the  
12 United States on active duty; and

13 (b) unable to attend the ceremony.

14 B. If a person authorized to solemnize a marriage  
15 pursuant to Section 40-1-2 NMSA 1978 has received an affidavit  
16 from the unavailable party pursuant to Subsection A of this  
17 section, the person may solemnize the marriage.

18 C. Pursuant to this section, a party to the  
19 marriage and the unavailable party, through affidavit or proxy  
20 stated within the affidavit, may petition the district court  
21 for an order permitting the marriage to be solemnized if the  
22 solemnization is refused."

23 SECTION 2. Section 40-1-10 NMSA 1978 (being Laws 1905,  
24 Chapter 65, Section 1, as amended) is amended to read:

25 "40-1-10. LICENSE REQUIRED--PERSONAL APPEARANCE

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1 REQUIREMENTS--AFFIDAVIT REQUIREMENTS FOR MEMBERS OF THE ARMED  
2 FORCES ON ACTIVE DUTY--COUNTY CLERK.--

3 A. Each couple desiring to marry pursuant to the  
4 laws of New Mexico shall first obtain a license from a county  
5 clerk of this state and, following a ceremony conducted in this  
6 state, file the license for recording in the county issuing the  
7 license.

8 B. To obtain a marriage license, the couple shall  
9 personally appear at the office of the county clerk issuing the  
10 license ~~[and]~~ unless an unavailable party provides a notarized  
11 affidavit pursuant to Subsection C of this section. A couple  
12 appearing personally at the office of the county clerk shall  
13 provide sufficient identification to satisfy the county clerk  
14 as to each person's identity and qualification to receive a  
15 marriage license pursuant to Chapter 40, Article 1 NMSA 1978.  
16 ~~[On application to a judge of the district court, the court,~~  
17 ~~for good cause, may authorize a person unable to appear~~  
18 ~~personally to obtain a license from the county clerk, and a~~  
19 ~~certified copy of the judicial authorization shall be filed~~  
20 ~~with the county clerk.]~~

21 C. If a party to a marriage is unable to be present  
22 at the office of the county clerk to obtain a marriage license,  
23 the unavailable party may proceed remotely if that party  
24 provides a notarized affidavit to the county clerk. The  
25 affidavit shall include:

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1                   (1) the unavailable party's full name,  
2 including the maiden surname of a female applicant; address;  
3 date of birth; place of birth, including city, county and  
4 state; citizenship; and social security number, if any;

5                   (2) a declaration that the unavailable party  
6 is not presently married;

7                   (3) a declaration that the party to the  
8 marriage who is available is not presently married and is not  
9 related to the unavailable party as:

10                   (a) an ancestor or descendant, by blood  
11 or adoption;

12                   (b) a brother or sister, of the whole or  
13 half blood or by adoption;

14                   (c) a parent's brother or sister, of the  
15 whole or half blood or by adoption;

16                   (d) a son or daughter of a brother or  
17 sister, of the whole or half blood or by adoption;

18                   (e) a current or former stepchild or  
19 stepparent; or

20                   (f) a son or daughter of a parent's  
21 brother or sister, of the whole or half blood or by adoption;

22                   (4) a declaration that the unavailable party  
23 desires to marry and the name, age and address of the person to  
24 whom the unavailable party desires to be married;

25                   (5) the approximate date on which the marriage

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1 is to occur;

2 (6) the reason the unavailable party is unable  
3 to appear personally before the county clerk for the issuance  
4 of the license; and

5 (7) the appointment of any adult, other than  
6 the other party to the marriage, to act as proxy for the  
7 purpose of participating in the ceremony, if the unavailable  
8 party is:

9 (a) a member of the armed forces of the  
10 United States on active duty; and

11 (b) unable to attend the ceremony.

12 [~~E~~] D. The county clerk:

13 (1) shall collect the social security number  
14 of an applicant for a marriage license only as provided for in  
15 Section 27-1-10 NMSA 1978;

16 (2) shall not make available a social security  
17 number to another person except as provided for in Section  
18 27-1-10 NMSA 1978; and

19 (3) may, thirty days after the commencement of  
20 each fiscal year, dispose of, in a secure manner, those social  
21 security numbers collected in the previous fiscal year that  
22 have not been requested as provided for in Section 27-1-10 NMSA  
23 1978."