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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Little/Dixon</u>	<b>LAST UPDATED</b> <u>3/7/23</u>	<b>ORIGINAL DATE</b> <u>2/13/23</u>
<b>SHORT TITLE</b> <u>Uniform Cohabitants' Econ Remedies Act</u>	<b>BILL NUMBER</b> <u>273/aHJC</u>	<b>ANALYST</b> <u>Torres, J</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parenttheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

Responses Received From (Prior to amendment\*)

Mortgage Finance Administration (MFA)  
Administrative Office of the Courts (AOC)

\*Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

## SUMMARY

### Synopsis of HJC Amendment to House Bill 273

The HJC amendment to House Bill 273 clarifies that an equitable lien will not result from the contractual or equitable claim between cohabitants covered by the bill. This important amendment is necessary to better define the legal relationship between cohabitants. The applicable section and amendment language are provided below:

SECTION 3. The Uniform Cohabitants' Economic Remedies Act applies only to a contractual claim or an equitable claim between cohabitants concerning an interest, promise or obligation arising from contributions to the relationship. The Uniform Cohabitants' Economic Remedies Act does not create an equitable lien.<sup>1</sup> The rights and remedies of cohabitants under the Uniform Cohabitants' Economic Remedies Act are not exclusive.

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<sup>1</sup> HJC amendment is underlined.

## Synopsis of Original House Bill 273

New Mexico is the only state that is currently proposing this bill.

An informative description of the proposed act is provided by the Uniform Law Commission's Legislative Counsel as follows:

The rate of nonmarital cohabitation within the U.S. is increasing rapidly. Today, states have no consistent approach for addressing whether and how cohabitants can enforce contract and equitable claims against each other when the relationship ends. The Uniform Cohabitants' Economic Remedies Act does not create any special status for cohabitants. In most instances, the act defers to other state law governing contracts and claims between individuals. The act enables cohabitants to exercise the usual rights of individual citizens of a state to contract and to successfully maintain contract and equitable claims against others in appropriate circumstances. The act affirms the capacity of each cohabitant to contract with the other and to maintain claims with respect to "contributions to the relationship" without regard to any intimate relationship that exists between them and without subjecting them to hurdles that would not be imposed on litigants of similar claims. The act ensures that the nature of the relationship of the parties is not a bar to a successful claim.

<https://www.uniformlaws.org/committees/community-home?CommunityKey=c5b72926-53d2-49f4-907c-a1cba9cc56f5>

AOC states:

HB273 proposes to enact a "Uniform Cohabitants' Economic Remedies Act that:

1. Provides a right of action to cohabitants for contractual and equitable claims arising out of the contributions to the relationships of cohabitants;
2. Establishes requirements of a cohabitants' agreement; and
3. Provides a right to third parties to enforce judgments against cohabitants and providing remedies.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

There are no fiscal implications to MFA.

AOC states:

There will be an administrative cost for statewide update, distribution and documentation of statutory changes in HB273. This cost will include revisions to existing forms and rules needed to implement changes proposed in HB273. In addition, the judiciary will need to provide training to all judges on the new act. The judiciary anticipates a potential rise in caseload if HB273 is enacted, due to disputes with cohabitants' agreements.

Additionally, AOC states:

If HB273 passes, there may be an increase in litigation, and due to its nature, much of that litigation may involve unwritten, entirely equitable actions. There are already remedies available in civil law for breach of contract, implied contract, and equitable relief. This would shift those cases to the family court and likely increase the caseload.

## SIGNIFICANT ISSUES

MFA states:

Although cohabitating has become a prevalent living situation, the rights and responsibilities of cohabitants are usually not documented in a cohabitation agreement. There can be economic implications and legal issues that arise for individuals and households in the event of dissolution of the cohabitation or death of one of the parties which are not addressed under current laws.

AOC states:

The Act may be intended for romantic couples, but roommates may still be able to sue each other. A couple is not defined in the Act and could include roommates. However, a flexible definition of “couple” may be beneficial. *See Uniform Law Commission summary.* “If individuals living together are “mere roommates, including them within the act does no harm; their claims and remedies will generally be identical whether under this act or other state law. On the other hand, had the act included an elaborate definition litigants would spend considerable time and money attempting to establish that they were (or were not) cohabitants within the definition. The point of the act is to ensure that the nature of the parties’ relationship is not a bar to their ability to bring claims against one another.”

[https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/e4047e19-2bdc-2f7a-dd37-f27aa10c6d9d\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1675727596&Signature=4I2DjgR%2FducmGSw2iet7C4RyL4I%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/e4047e19-2bdc-2f7a-dd37-f27aa10c6d9d_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1675727596&Signature=4I2DjgR%2FducmGSw2iet7C4RyL4I%3D).

The *Nonmarital Cohabitant: The US Approach* was drafted in 2021 in response to growing discussions regarding the rights or lack of those rights for non-married cohabitants. “With more couples – of greater diversity- cohabiting outside of marriage, more cohabitant disputes inevitably show up in court .... Any legal regime that forces these varied forms of nonmarital couplehood into a single prototype might provide simplicity and clarity but at the same time risks standardizing non-standard relationships based on a set of norms that may not be applicable.” See [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3881259](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3881259).

1. The legislation does not make clear if a cohabitant can be married to someone else, and how Sec. 45-2-102 might impact this proposed act. <sup>2</sup>
2. The cohabitation status terminates upon the parties marrying each other, according to Section 2. (G)(3). However, Section 4 (A) (3) makes it clear that the prior claim (contractual or equitable) is not extinguished by the marriage of the cohabitants to each other. Section 4. (A) states: "A person who is or was a cohabitant may commence an action on a contractual or equitable claim that arises out of

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### <sup>2</sup> § 45-2-102. Share of the spouse.

The intestate share of the surviving spouse is determined as follows:

A. as to separate property:

- (1) if there is no surviving issue of the decedent, the entire intestate estate; or
- (2) if there is surviving issue of the decedent, one-fourth of the intestate estate; and

B. as to community property, the one-half of the community property as to which the decedent could have exercised the power of testamentary disposition passes to the surviving spouse.

- contributions to the relationship. The action is not (Section 3) extinguished by the marriage of the cohabitants to each other.
3. New Mexico is a community property state and during the marriage, each spouse is to act in the best interest of the community and owes a fiduciary duty to the spouse. Inviting one spouse to sue the other during the marriage for contributions prior to marriage may cause a breach of fiduciary duty to the community. This could also mean that the parties who marry later may bring a petition for both dissolution of marriage and a separate or joint action under this Act. That will likely lead to substantially more litigation and harder evidentiary problems.
  4. According to Section 2(B), a "cohabitants' agreement" can be entered into after the couple no longer lives together "or were cohabitants" and a "cohabitants' agreement" can be implied-in-fact. See Section 6(a), which states: "A cohabitants' agreement may be oral, in a record, express or implied-in-fact." Oral contracts especially and more so with implied-in-fact contracts will lead to an increase in the workload of the family court as evidence to support the 'agreement' will not be a marriage certificate.
  5. Currently, New Mexico does not permit the consummation of a New Mexico-based common law marriage (the rule of comity for other states does exist) but the formation of this legislation would create a de facto marriage. The addition to New Mexico's family court of this remedy couched on cohabitation will increase litigation and may circumvent the prohibition of common-law marriage.
  6. Unmarried couples can enter into contracts that address contributions and division of property and such agreements are enforceable under contract law and claim for unjust enrichment as well as other equity-based claims for relief. HB 273 may complicate an area of law that already provides for the relevant agreements.

## ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

## TECHNICAL ISSUES

AOC states:

1. Section 7(C) says, "An equitable claim based on contributions to the relationship accrues on termination of cohabitation and is subject to equitable defenses," so presumably the statute of limitation for an action under this act is the four-year general limitation for equitable actions and six for contractual actions. The legislation does not clearly articulate that the general statute of limitations would apply.
2. A complication of the act is built into claims of individuals who cohabit and then marry. The marriage does not terminate the prior cause of action, but it also does not clearly establish if the date of marriage is the triggering event for the calculation of the statute of limitations. HB273 could be interpreted to mean that the marriage is the triggering date, but the lack of clarity is problematic and could be cured with that addition.
3. A large complication is built into claims of individuals who cohabit and then marry as the marriage does not terminate the right to sue under this legislation but it also does not clearly establish if the date of marriage is the triggering event for the calculation of the statute of limitations. The legislation could be interpreted to mean that marriage is the triggering date, but clarifying the triggering date would improve HB273.