

LFC Requester:

Marty Daly

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original Amendment
Correction Substitute X

Date Prepared: 2/09/2024

Bill No: HB242

Sponsor: Doreen Y. Gallegos, Daniel A. Ivey-Soto

Short Title: Marriage and Divorce Changes

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

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with 4 columns: Appropriation (FY24, FY25), Recurring or Nonrecurring, Fund Affected.

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Table with 5 columns: Estimated Revenue (FY24, FY25, FY26), Recurring or Nonrecurring, Fund Affected.

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

Substitute bill Synopsis: The substitute bill: (1) changes the wording for Native American tribes from all federal recognized tribes to all Native American tribes; (2) increases the marriage license fees that county clerks can charge; (3) adjusts requirements for a person under 18 to marry; and (4) allows a spouse who married before being 18 the ability to void the marriage before they turn 18.

Original Synopsis: One aim of this bill is to revise the statutes related to marriage to prevent the requirements set forth in Chapter 40, Article 1 NMSA 1978 from encroaching on religious and faith based marital traditions. The largest change is referring to all marriage as a civil contract. HB242 also replaces the current nouns with gender-neutral words. In addition, HB242 allows members of the military to appear virtually for the issuance of a marriage license if they are deployed or on active duty. The bill would also change how the death of a spouse during a divorce affects the outcome and clarifies when community property law applies.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Substitute bill: No change.

Original Bill: None.

SIGNIFICANT ISSUES

Substitute bill: The change to the bill makes very clear that it allows any religion to qualify along with any Native American tribe regardless of federal recognition. A big change here is that any Native American tribes are qualified whereas the original bill only included federal recognized tribes. The bill changes marriage under the age of 18 and requirements for a person

under 18 to marry. The substitute bill allows people under 18 (have to be at least 16 to marry) so long as they have parental consent and or judicial approval and the other spouse is no more than 4 years older than the underage spouse. This change to marriage under 18 also fixes the issues with taxes and the good faith clauses to remain more consistent. The bill also updates the marriage license fees that a county clerk collects.

Original Bill: The bill removes the ability of people under 18 to obtain a marriage license, even with parental consent, which is contrary to the norm in most other states. It is unclear if this means New Mexico would also not recognize marriage licenses obtained by people under 18 from other states and what the legal implications could be for tax purposes.

PERFORMANCE IMPLICATIONS

Substitute bill: The revised bill will allow County Clerks to collect a larger fee for marriage licenses otherwise there are no real changes to how a marriage license is recorded by a county clerk.

Original Bill: None.

ADMINISTRATIVE IMPLICATIONS

Substitute bill: The revised bill changes some minor wording regarding administrative changes as the bill seeks to clarify some wording about how a county clerk records a marriage. Most of these changes are intended to make the bill if adopted as statute easier to understand.

Original Bill: None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Substitute bill: No change

Original Bill: Relationship: SB3 – Paid Family Medical Leave Act. The bill would make the written statutes in line with *Griego v. Oliver*, 2014-NMSC-003, 316 P.3d 865.

TECHNICAL ISSUES

Substitute bill: No change.

Original Bill: None

OTHER SUBSTANTIVE ISSUES

Substitute bill: Section 45 in the substitute bill resolves concerns about seeking custody orders from other states. The substitute bill does not resolve other previously noted substantive issues. The fundamental changes address underage marriage and would correct possible problems with the full faith and credit the state grants to other states and countries. To resolve previous concerns, the substitute bill allows anyone married under the age of 18 the ability to void the marriage before that spouse turns 18. This would even apply if another state or country allows the marriage of a spouse before being 18 years old.

Original Bill: The changes to the definition of marriage and licensing brings the wording in statutes more in line with the New Mexico Supreme Court *case Griego v. Oliver*, 2014-NMSC-003, 316 P.3d 865 regarding same sex marriage. The Bill removes abuse as grounds for divorce. Divorce is allowed for any incompatibility. Section 34 changes conflicting custody orders and awards immediate custody to party with a valid custody order. An issue might arise if a parent seeks an emergency custody order from an out of state court alleging abuse. This can happen even when there is a pending custody case in New Mexico.

ALTERNATIVES

Substitute bill: No change.

Original Bill: None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Substitute bill:

Status Quo

AMENDMENTS

Substitute bill: No change.

Original Bill: None