

LFC Requester:	Daly, Marty
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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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 2/9/24
Bill No: HB 242sub

Sponsor: Rep. Doreen Y. Gallegos
Short Title: Marriage & Divorce Changes

Agency Name and Code AOC 218
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The House Judiciary Committee (HJC) Substitute for HB 242 amends and repeals various sections of Chapter 40 NMSA 1978, governing domestic affairs. It removes gendered language such as “husband” and “wife” from Chapter 40, replacing it with gender neutral language such as “spouse” and “parties to the marriage”.

Section 1 provides definitions used in Chapter 40, Article 1, including “judicial officer,” who is prohibited from charging a fee to solemnize a marriage.

Section 2 expands the officiants permitted to perform a marriage ceremony to include a person over the age of twenty-one who is selected by the parties to the marriage to conduct the ceremony.

Section 3 provides that an Indian nation, tribe, or pueblo does not need to be federally recognized to solemnize marriages. Section 3 also provides that Chapter 40, Article 1, shall not be read to interfere with any form of religious ceremony, traditional indigenous ceremony, or any additional regulations or records required by a religious society, Indian nation, tribe or pueblo.

Section 4 specifically prohibits polygamous or plural marriages even if they are considered legally valid in the foreign country or state.

Section 5 requires that the other person to whom a marriage license is issued by within four years of the age of the 16- or 17-year-old who is authorized to be issued a marriage license pursuant to this section.

Section 6 modifies the list of those marriage that are considered incestuous from an opposite-sex-based list, such as “uncles and nieces” to a gender-neutral list of family members such as “aunts or uncles with nieces or nephews”. Section 6 also adds first cousins to the list of incestuous marriages.

Section 7 prohibits polygamous or plural marriages.

Section 8 allows a member of the uniformed services who is deployed or activated to a duty assignment outside of New Mexico to obtain a marriage license without appearing in person

in the office of the county clerk and without obtaining permission from a judicial officer. The marriage ceremony may also occur in New Mexico with the deployed member appearing via remote communication technology while the other party to the marriage, the officiant, and the witnesses are all physically located in New Mexico.

Section 8 also provides that a marriage license will expire if the parties are not married within a year of its issuance or if a subsequent marriage license is issued to one of the parties to the marriage license with a different person listed as the second party to the marriage.

Section 9 modifies the fees collected by a county clerk, increasing most of the fees from \$25.00 to \$40.00 and providing that a fee of \$80.00 for issuing, acknowledging, and recording a marriage license and marriage certificate for marriages wherein neither party to the marriage has an address in New Mexico.

Section 13 modifies the form for an application of marriage license to remove the language requiring the date of the premarital physical examination and to include language that any previous marriage license issued to either party where a ceremony has not taken place, is now expired due to the issuance of the new license.

Section 15 clarifies that the misdemeanor penalty is for each ceremony conducted or for each marriage certified to the county clerk. Subsection C provides that the criminal penalty is not exclusive of other charges or penalties that may be applicable.

Section 16 enacts the “Domestic Partner Rights and Responsibilities Act” (DPRRA).

Section 17 defines “certificate of domestic partnership,” “domestic partner,” “domestic partnership” and “record of domestic partnership.”

Section 18 provides that domestic partners are “entitled to the same legal obligations, responsibilities, protections and benefits as are afforded or recognized... by the laws of the state to spouses, former spouses, widows or widowers, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law.” Section 18 also provides that “Earned income shall not be treated as community property for state income tax purposes...”

Section 18 further provides that it is unlawful to discriminate against a domestic partner or domestic partnership on the grounds that the partner is not a spouse, former spouse, widow or widower or is not in a marriage, and that any person who suffers any loss as a result of a violation may bring an action to recover actual damages. Additionally, Section 18 provides for injunctive relief for a person who is otherwise damaged or is likely to be damaged by a violation of this section, and provides that, if the complaining party prevails, the court has discretion to allow actual damages and reasonable attorney fees.

Section 19 directs that the district court has jurisdiction to dissolve a domestic partnership, including granting an annulment and legal separation. It also provides that, if there is no other forum available, the district court may be a forum for such an action even if neither party is a resident or maintains domicile in New Mexico.

Section 20 lists restrictions on who may enter into a domestic partnership.

Section 21 requires couples to obtain a certificate of domestic partnership from the county clerk.

Section 23 permits a ceremony of domestic partnership to be officiated by any person 21 or older.

Section 26 provides the following penalties:

- For failure to perform the county clerk's responsibilities pursuant to the DPRRA, a county clerk is responsible on the county clerk's official bond for damages suffered by the injured party.
- Misdemeanor penalty for a person who certifies a domestic partnership who fails to comply with the provisions of the DPRRA and who willfully violates the law by deceiving or attempting to deceive or mislead any officer of person in order to obtain a certificate of domestic partnership contrary to law.

The criminal penalty is not exclusive of other charges or penalties that may be applicable.

Section 36 removes language regarding a married woman's ability to own property and otherwise removes gendered language. Section 25 provides a shortened and clear definition of community property.

Section 37 provides that the only grounds for divorce are incompatibility or that the marriage is void, voidable, or invalid.

Section 38 provides that incompatibility is proven by a party to a divorce by alleging that the parties are incompatible.

Section 39 provides that:

- A. A marriage is void if the marriage is incestuous, as provided in Section 40-1-7 NMSA 1978.
- B. A marriage is voidable if at least one party to the marriage was under 18 at the time the marriage was solemnized and that party has not yet reached 22.
- C. A marriage is invalid if it is polygamous or plural; provided that a marriage that was initially valid that later became polygamous or plural is not invalid as to the initial, valid marriage, but any polygamous or plural additions to the valid marriage are invalid.

Section 41 provides that when a verified petition for dissolution of marriage alleges that the marriage is void, voidable or invalid, if the underlying allegations that would make the marriage void, voidable or invalid is:

- (1) Not contested, the court may accept the uncontested representation that a factual basis exists for a finding to be entered that the marriage is void, voidable or invalid; or
- (2) Contested, the district court shall hold a hearing to determine if a factual basis exists for a finding to be entered that the marriage is void, voidable or invalid.

The HJC Substitute for HB 242 requires the court, after entering an order of dissolution of a marriage on the grounds of the marriage being void, voidable or invalid, and sitting as a court of equity, to apply the laws of this state regarding community property, child support and spousal support in the same manner as if the marriage had been entering into lawfully.

Section 41 also provides direction to the courts in the following circumstances:

- In a cause of action for dissolution of marriage instituted by a person who alleges that at the time of the marriage the parties to the marriage were relatives within the prohibited degrees based on the laws in effect at the time that the marriage was entered into, and regardless of whether the void marriage was entered into in this state, upon a finding that a factual basis exists, the district court shall enter a decree that such incestuous marriage is void and enter a decree dissolving the marriage.
- In a cause of action for dissolution of marriage instituted by a person, next friend or a parent or guardian of the person, who alleges that at the time of the marriage the person was a minor and had not yet attained the age of 22, and regardless of whether the voidable marriage was entered into in this state, upon a finding that a factual basis exists, the district court shall enter a decree that such marriage is voidable and enter a decree dissolving the marriage. The court may, in its discretion, grant spousal support until the minor emancipates, remarries or reaches 22. If the parties remain married until each of the parties to the marriage is 22, the marriage shall no longer be considered voidable.
- In a cause of action for dissolution of marriage instituted by a person who alleges that the marriage is polygamous or plural, upon a finding that a factual basis exists, the district court is required to enter a decree that such marriage or portion of such marriage is invalid and enter a decree dissolving the marriage in its entirety or dissolving the marriage as it applies to the petitioner. The court may determine whether a marriage that was initially between two parties but that later became polygamous or plural is invalid as to all parts of the marriage or if only the polygamous or plural additions to the to the initial marriage are invalid. If the court determines a party to a polygamous or plural marriage was unaware of the polygamous or plural nature of the marriage, that party's community property rights shall not be abrogated. A polygamous or plural marriage is contrary to the Compact with the United States.

Under the substitute for HB 242, when a court enters an order for dissolution of a marriage pursuant to this section, the court shall send a copy of the decree to the District Attorney.

Section 46 provides that the following statutes are repealed:

- Section 40-1-6 NMSA 1978 (governing restrictions on marriage of minors); and
- Section 40-1-20 NMSA 1978 (governing marriages without license in 1905 validated).

The HJC Substitute for HB 242 has an effective date of July 1, 2024.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any increase in the number of causes of action for the dissolution of void and voidable marriages, actions for violations of the DPRRA, and the issuance of other related orders and decrees. Conversely, limiting the grounds for a non-void or voidable divorce to incompatibility will likely result in shorter times to disposition, reducing the need for judicial resources related to dissolution. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) The definitions of community and separate property in Chapter 40 are not amended to include domestic partnerships. Therefore, it is not clear if the district court is to find that the domestic partnerships follow the same laws regarding how property is held by parties to a domestic partnership. The only reference to community property in the Domestic Partner Rights and Responsibilities Act states that, for tax purposes, the parties do not own community property.
- 2) Although the HJC Substitute for HB 242 directs that that domestic partners are “entitled to the same legal obligations, responsibilities, protections and benefits as are afforded or recognized... by the laws of the state to spouses, former spouses, widows or widowers, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law”, there is no language in the DPRRA regarding emancipated minors under 18 and their ability to enter into a domestic partnership, including in the application for domestic partnership, as there is in the application for marriage, requiring consent of a parent or guardian.
- 3) The HJC Substitute for HB 242, Section 26 provides the following civil and criminal penalties:
 - For failure to perform the county clerk’s responsibilities pursuant to the DPRRA, a county clerk is responsible on the county clerk’s official bond for damages suffered by the injured party.
 - Misdemeanor penalty for a person who certifies a domestic partnership who fails to comply with the provisions of the DPRRA and who willfully violates the law by deceiving or attempting to deceive or mislead any officer of person in order to obtain a certificate of domestic partnership contrary to law.The criminal penalty is not exclusive of other charges or penalties that may be applicable.
- 4) The substitute bill raises from 19 to 22, the age at which a marriage is voidable if at least one party to the marriage was under the age of 18 at the time the marriage was solemnized. (Section 39) Additionally, the substitute bill raises from 19 to 22, the age until a person who was married as a minor may receive spousal support, and the age which each of the parties must attain for a marriage of a minor to no longer be considered voidable. (Section 41)

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

- 1) If the intent is to have domestic partners hold property pursuant to the same laws as a married couple, Sections 35 and 36 of the HJC Substitute for HB 242 should be amended to include domestic partners in the classes of property, §40-3-8, and presumption of community property, §40-3-12.