

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 242

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO DOMESTIC AFFAIRS; CLARIFYING THE PROCESS OF
SOLEMNIZATION, LICENSURE AND CONTRACTS FOR MARRIAGE; PROVIDING
DEFINITIONS; ALLOWING APPEARANCE BY REMOTE COMMUNICATION
TECHNOLOGY FOR THE ISSUANCE OF A MARRIAGE LICENSE FOR UNIFORMED
SERVICES MEMBERS WHO ARE DEPLOYED OR ON ACTIVE DUTY; PROVIDING
FORMS; ENACTING THE DOMESTIC PARTNER RIGHTS AND
RESPONSIBILITIES ACT; PROVIDING FOR DOMESTIC PARTNERSHIPS;
PROVIDING THAT A DISTRICT COURT SHALL HAVE JURISDICTION OVER
DOMESTIC PARTNERSHIP PROCEEDINGS; PROVIDING A PROCESS FOR
CERTIFYING DOMESTIC PARTNERSHIPS AND RESTRICTIONS ON DOMESTIC
PARTNERSHIPS; PROVIDING FOR DISSOLUTION OF MARRIAGE ON GROUNDS
OF THE MARRIAGE BEING VOID, VOIDABLE OR INVALID; AMENDING FEES;
PRESCRIBING MARRIAGE AND DOMESTIC PARTNERSHIP RECORDING AND
INDEXING GUIDELINES; AMENDING AND PRESCRIBING PENALTIES;
CREATING CRIMINAL OFFENSES; REVISING TERMS THAT DESCRIBE

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underscoring material = new
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1 PARTIES TO A MARRIAGE; CLARIFYING PROPERTY RIGHTS; AMENDING,
2 REPEALING AND ENACTING SECTIONS OF CHAPTER 40 NMSA 1978.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 SECTION 1. A new Section 40-1-1.1 NMSA 1978 is enacted to
6 read:

7 "40-1-1.1. [NEW MATERIAL] DEFINITIONS.--As used in
8 Chapter 40, Article 1 NMSA 1978:

9 A. "Indian nation, tribe or pueblo" means an
10 indigenous nation, tribe, pueblo or other band, organized group
11 or community of Indians, including an Alaskan Native tribe,
12 that is federally recognized by the bureau of Indian affairs of
13 the United States department of the interior;

14 B. "judicial officer" means a person who is:

15 (1) a justice or judge of any of the courts
16 established by the constitution or laws of New Mexico;

17 (2) a justice or judge of any of the courts
18 established by the constitution or laws of the United States;

19 or

20 (3) designated as a judicial officer by the
21 laws or customs of an Indian nation, tribe or pueblo, if the
22 nation, tribe or pueblo designates judicial officers;

23 C. "religious ceremony" means a ceremony conducted
24 pursuant to any exercise of religion, whether or not compelled
25 by or central to a system of religious belief, construed in

1 favor of a broad protection of religious exercise to the
2 maximum extent pursuant to the state and federal constitutions;

3 D. "religious officer" means a person who is:

- 4 (1) ordained as clergy by a religious society;
5 (2) authorized to solemnize a marriage by the
6 written and approved rites or rules of a religious society; or
7 (3) designated by the laws or customs of an
8 Indian nation, tribe or pueblo as a religious officer, if the
9 nation, tribe or pueblo designates religious officers;

10 E. "religious society" means a religious
11 organization, including a church, mosque, synagogue, temple,
12 denominational ministry, nondenominational ministry,
13 interdenominational or ecumenical organization, mission
14 organization, faith-based social agency, religious educational
15 institution or any other nonprofit entity whose principal
16 purpose is the study, practice or advancement of religion;

17 F. "solemnize" means to join in marriage before
18 witnesses by means of a ceremony;

19 G. "uniformed services" means:

- 20 (1) the active or reserve components of the
21 United States army, navy, air force, marine corps, space force,
22 coast guard or merchant marine;
23 (2) the commissioned corps of the United
24 States public health service, the national oceanic and
25 atmospheric administration or the astronaut program of the

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1 national aeronautics and space administration; and

2 (3) the army national guard division and the
3 air national guard division of the department of military
4 affairs; and

5 H. "witnesses" means two individuals at least
6 eighteen years of age chosen by a couple to witness a ceremony
7 and, if needed, to testify to the time and place where the
8 ceremony took place."

9 SECTION 2. Section 40-1-2 NMSA 1978 (being Laws 1859-
10 1860, p. 120, as amended) is amended to read:

11 "40-1-2. MARRIAGES SOLEMNIZED--~~[ORDAINED CLERGY OR CIVIL~~
12 ~~MAGISTRATES]~~ WHO MAY SOLEMNIZE.--

13 A. The civil contract of marriage is entered into
14 when solemnized as provided in Chapter 40, Article 1
15 NMSA 1978. ~~[As used in Chapter 40, Article 1 NMSA 1978,~~
16 ~~"solemnize" means to join in marriage before witnesses by means~~
17 ~~of a ceremony.~~

18 ~~B. A person who is an ordained member of the clergy~~
19 ~~or who is an authorized representative of a federally~~
20 ~~recognized Indian nation, tribe or pueblo may solemnize the~~
21 ~~contract of marriage without regard to sect or rites and~~
22 ~~customs the person may practice.]~~

23 B. The civil contract of marriage may be solemnized
24 by a ceremony officiated by:

25 (1) a judicial officer;

1 (2) a religious officer; or
 2 (3) such other person over the age of twenty-
 3 one selected by the parties to the marriage to officiate at the
 4 ceremony.

5 C. ~~[Active or retired judges, justices and~~
 6 ~~magistrates of any of the courts established by the~~
 7 ~~constitution of New Mexico, United States constitution, laws of~~
 8 ~~the state or laws of the United States are civil magistrates~~
 9 ~~having authority to solemnize contracts of marriage. Civil~~
 10 ~~magistrates solemnizing contracts of marriage]~~ A judicial
 11 officer shall charge no fee [therefor] to solemnize the civil
 12 contract of marriage."

13 SECTION 3. Section 40-1-3 NMSA 1978 (being Laws 1862-
 14 1863, p. 66, as amended) is amended to read:

15 "40-1-3. CEREMONY BY RELIGIOUS SOCIETY OR INDIAN NATION,
 16 TRIBE OR PUEBLO.--~~[It is lawful for]~~

17 A. Any religious society or ~~[federally recognized]~~
 18 Indian nation, tribe or pueblo ~~[tø]~~ may lawfully solemnize a
 19 marriage conformably with its rites and customs, and the
 20 religious officer, secretary of the society or the person
 21 authorized by the society or ~~[federally recognized]~~ Indian
 22 nation, tribe or pueblo shall make and transmit a transcript to
 23 the county clerk certifying to the marriages solemnized.

24 B. Nothing in Chapter 40, Article 1 NMSA 1978 shall
 25 be construed in any manner to interfere with any form of

1 religious ceremony, traditional indigenous ceremony, additional
2 regulation or requirement prescribed by any religious society
3 or Indian nation, tribe or pueblo nor with any records kept by
4 them."

5 SECTION 4. Section 40-1-4 NMSA 1978 (being Laws 1862-
6 1863, p. 64, as amended) is amended to read:

7 "40-1-4. FOREIGN MARRIAGES RECOGNIZED.--~~[Sec. 5.]~~

8 A. All marriages celebrated beyond the limits of
9 this state ~~[which]~~ that are valid according to the laws of the
10 country ~~[wherein]~~ or state in which they were celebrated or
11 contracted shall be ~~[likewise]~~ valid in this state and shall
12 have the same force as if they had been celebrated in
13 accordance with the laws in force in this state.

14 B. A marriage that is polygamous or plural is
15 contrary to Section 1 of the Compact with the United States,
16 notwithstanding the laws of the state or country wherein that
17 marriage or polygamous or plural additions to that marriage
18 were celebrated or contracted."

19 SECTION 5. Section 40-1-6 NMSA 1978 (being Laws 2013,
20 Chapter 144, Section 4) is amended to read:

21 "40-1-6. RESTRICTIONS ON MARRIAGE OF MINORS--
22 VOIDABLE.--~~[A.]~~ The county clerk shall not issue a marriage
23 license to an unemancipated person sixteen or seventeen years
24 of age, and no person authorized by the laws of this state to
25 solemnize marriages shall knowingly unite in marriage any

1 person sixteen or seventeen years of age, unless the minor
 2 first receives the written consent of each of the minor's
 3 living parents as shown on the minor's certificate of birth, or
 4 the district court has authorized the marriage of such person
 5 upon request of a parent or legal guardian of the person for
 6 good cause shown, and a certified copy of the judicial
 7 authorization is filed with the county clerk; provided that the
 8 other person to whom the marriage license is issued is within
 9 four years of the age of the sixteen- or seventeen-year-old who
 10 is authorized to be issued a marriage license pursuant to this
 11 section.

12 ~~[B. The county clerk shall not issue a marriage~~
 13 ~~license to any person under sixteen years of age, and no person~~
 14 ~~authorized by the laws of this state to solemnize marriages~~
 15 ~~shall knowingly unite in marriage any person under sixteen~~
 16 ~~years of age, unless the children's or family court division of~~
 17 ~~the district court has first authorized the marriage of the~~
 18 ~~person upon request of a parent or legal guardian of the person~~
 19 ~~in settlement of proceedings to compel support and establish~~
 20 ~~parentage, or where an applicant for the marriage license is~~
 21 ~~pregnant, and a certified copy of the judicial authorization is~~
 22 ~~filed with the county clerk.]"~~

23 SECTION 6. Section 40-1-7 NMSA 1978 (being Laws 1876,
 24 Chapter 31, Section 1, as amended) is amended to read:

25 "40-1-7. INCESTUOUS MARRIAGES--VOID.--~~[All]~~ The following

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1 incestuous marriages between relations [~~and children,~~
2 ~~including~~] are prohibited in this state:

3 A. grandparents [~~and~~] with grandchildren, [~~of all~~
4 ~~degrees; between~~] including great-grandparents with great-
5 grandchildren;

6 B. parents with their children;

7 C. siblings, being brothers [~~and~~] or sisters; [~~of~~
8 ~~full blood or of half blood; between~~]

9 D. cousins within the first degree of
10 consanguinity; and

11 E. aunts or uncles, [~~and~~] with nieces [~~and between~~
12 ~~aunts and~~] or nephews [~~are declared incestuous and absolutely~~
13 ~~void~~]."

14 SECTION 7. Section 40-1-9 NMSA 1978 (being Laws 1876,
15 Chapter 32, Section 1, as amended) is repealed and a new
16 Section 40-1-9 NMSA 1978 is enacted to read:

17 "40-1-9. [NEW MATERIAL] POLYGAMOUS OR PLURAL MARRIAGES--
18 INVALID.--Pursuant to Section 1 of the Compact with the United
19 States, polygamous or plural marriages are prohibited in this
20 state."

21 SECTION 8. Section 40-1-10 NMSA 1978 (being Laws 1905,
22 Chapter 65, Section 1, as amended) is amended to read:

23 "40-1-10. LICENSE REQUIRED--COUNTY CLERK.--

24 A. Each couple desiring to marry pursuant to the
25 laws of New Mexico shall first obtain a license from a county

1 clerk of this state and, following a ceremony conducted in this
2 state, file the license for recording in the county issuing the
3 license.

4 B. To obtain a marriage license, the couple shall
5 personally appear at the office of the county clerk or before
6 the county clerk or an authorized deputy county clerk issuing
7 the license, and each person shall provide government-issued
8 identification with a photograph that resembles the person
9 seeking to marry or other sufficient identification to satisfy
10 the county clerk or authorized deputy county clerk as to each
11 person's identity and qualification to receive a marriage
12 license pursuant to Chapter 40, Article 1 NMSA 1978. On
13 application to a judge of the district court, the court, for
14 good cause, may authorize a person unable to appear personally
15 to obtain a license from the county clerk, and a certified copy
16 of the judicial authorization shall be filed with the county
17 clerk.

18 C. A member of the uniformed services who is
19 deployed or activated to a duty assignment or station outside
20 of this state may be issued a marriage license without
21 appearing personally in the office of the county clerk and
22 without a judicial authorization as provided for in Subsection
23 B of this section if:

24 (1) the other party to the marriage appears
25 personally in the office of the county clerk or before the

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1 county clerk or an authorized deputy county clerk;

2 (2) at least one party to the marriage is a
3 permanent or temporary resident of the county of the county
4 clerk's office issuing the license;

5 (3) the deployed person fills out the
6 declaration provided by the county clerk for this purpose;

7 (4) a copy of the order deploying or
8 activating the person and indicating the place of the duty
9 assignment or station is attached to the declaration;

10 (5) the declaration and copy of the deployment
11 or activation order is filed with the county clerk; and

12 (6) the civil contract of marriage is
13 solemnized by means of a ceremony conducted in this state in
14 which the deployed member appears by remote communication
15 technology, while the other party to the marriage, the person
16 solemnizing the marriage and the witnesses are physically
17 located in this state.

18 D. A marriage license issued pursuant to this
19 section expires and shall not be used for a ceremony to
20 solemnize the civil contract of marriage if:

21 (1) one year passes from the issuance of the
22 marriage license without a ceremony taking place within this
23 state; or

24 (2) a later marriage license is issued to
25 either party on a marriage license listing a different person

1 as the second party to a marriage.

2 [~~G.~~] E. The county clerk shall:

3 (1) [~~shall~~] collect the social security number
4 of [~~an applicant~~] the applicants for a marriage license who
5 have been assigned a social security number only as provided
6 for in Section 27-1-10 NMSA 1978;

7 (2) [~~shall~~] not make available a social
8 security number to another person except as provided for in
9 Section 27-1-10 NMSA 1978; and

10 (3) [~~may, thirty days after the commencement~~
11 ~~of each fiscal year~~] during the month of August, dispose of, in
12 a secure manner, those social security numbers collected in the
13 previous fiscal year that have not been requested as provided
14 for in Section 27-1-10 NMSA 1978."

15 SECTION 9. Section 40-1-11 NMSA 1978 (being Laws 1957,
16 Chapter 33, Section 1, as amended) is amended to read:

17 "40-1-11. FEES--DISPOSITION.--

18 A. The county clerk shall receive a fee of [~~twenty-~~
19 ~~five dollars (\$25.00)~~] forty dollars (\$40.00) for each of the
20 following instruments, except as otherwise provided in this
21 section:

22 (1) issuing, acknowledging and recording a
23 marriage license and marriage certificate [~~fifteen dollars~~
24 ~~(\$15.00)~~ of each fee shall be remitted by the county treasurer
25 to the state treasurer, within fifteen days of the last day of

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1 ~~each month, for credit to the children's trust fund];~~

2 (2) recording a declaration submitted by a
3 member of the uniformed services who is deployed or activated
4 to a duty assignment or station outside this state; or

5 (3) issuing a certificate of correction or
6 correcting or reissuing an application for a marriage license,
7 a marriage license or a certificate of marriage upon an order
8 of the district court.

9 B. In those counties where the county clerk has
10 posted on the county website and in the county clerk's office,
11 the county clerk shall receive a fee of eighty dollars (\$80.00)
12 for issuing, acknowledging and recording a marriage license and
13 marriage certificate where neither party to the marriage has an
14 address in this state.

15 C. Fees collected pursuant to this section shall be
16 deposited in the county clerk recording and filing fund;
17 provided that for each fee received by the county clerk for
18 issuing, acknowledging and recording a marriage license and
19 marriage certificate pursuant to Subsections A and B of this
20 section, within fifteen days of the last day of each month, the
21 county treasurer shall remit:

22 (1) ten dollars (\$10.00) to the county general
23 fund; and

24 (2) fifteen dollars (\$15.00) to the state
25 treasurer for credit to the children's trust fund."

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1 SECTION 10. Section 40-1-14 NMSA 1978 (being Laws 1905,
2 Chapter 65, Section 3, as amended) is amended to read:

3 "40-1-14. PRODUCTION OF LICENSE AND PROOF OF LEGAL
4 QUALIFICATIONS.-- [~~Prior to a ceremony~~]

5 A. All persons authorized to solemnize the civil
6 contract of marriage shall first require the parties
7 contemplating marriage to produce a license signed and sealed
8 by the county clerk issuing the license.

9 B. Nothing in Chapter 40, Article 1 NMSA 1978 shall
10 excuse any person authorized by the laws of this state to
11 solemnize the civil contract of marriage from being satisfied
12 as to the legal qualifications of any parties desiring to be
13 married, in addition to the authority conferred by the
14 license."

15 SECTION 11. Section 40-1-15 NMSA 1978 (being Laws 1905,
16 Chapter 65, Section 4, as amended) is amended to read:

17 "40-1-15. CERTIFICATION OF MARRIAGE--RECORDING AND
18 INDEXING.--

19 A. It is the duty of all persons solemnizing the
20 contract of marriage in this state to certify the marriage to
21 the county clerk within ninety days from the date of the
22 marriage ceremony. Upon ensuring the information on the
23 certificate is complete and legible, the county clerk shall
24 immediately upon receipt of the certificate cause it to be
25 properly recorded and indexed in a permanent record as a part

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1 of the county records in a separate physical or electronic book
2 kept for that purpose. The failure to return the certificate
3 of marriage to the county clerk who issued the license does not
4 by itself void the marriage created by the ceremony conducted
5 pursuant to Chapter 40, Article 1 NMSA 1978.

6 B. The county clerk:

7 (1) may issue a certificate of correction or
8 correct or reissue an application for a marriage license, a
9 marriage license or a certificate of marriage as a result of a
10 typographical or data entry error by the office of the county
11 clerk [~~The county clerk~~]; and

12 (2) shall issue a certificate of correction or
13 correct or reissue an application for a marriage license, a
14 marriage license or a certificate of marriage to correct an
15 error on the document upon order of the district court."

16 SECTION 12. Section 40-1-17 NMSA 1978 (being Laws 1905,
17 Chapter 65, Section 7, as amended) is amended to read:

18 "40-1-17. UNIFORM [~~USE FORM~~] SYSTEM OF RECORDS.--

19 A. To ensure a uniform system of records of all
20 marriages contracted and the better preservation of the records
21 for future reference, the form of application, license and
22 certificate shall be [~~substantially as provided in Section~~
23 ~~40-1-18 NMSA 1978, each blank to be~~] numbered consecutively
24 [~~corresponding with the page number of the record book in the~~
25 ~~clerk's office; provided that the medical evaluation language~~

1 ~~shall not be printed on the application until such time as the~~
2 ~~secretary of health deems such evaluation necessary through the~~
3 ~~issuance of rules].~~

4 B. The county clerk shall also record in the same
5 uniform system of records all other forms recorded, filed or
6 appended pursuant to Chapter 40, Article 1 NMSA 1978. The
7 uniform system of records shall be segregated from other
8 records recorded or filed in the county clerk's office."

9 SECTION 13. Section 40-1-18 NMSA 1978 (being Laws 1961,
10 Chapter 99, Section 1) is amended to read:

11 "40-1-18. FORM OF APPLICATION, LICENSE AND CERTIFICATE.--

12 "APPLICATION FOR MARRIAGE LICENSE

13 No. _____ STATEMENTS
14 RECEIVED AND FILED
15 IN COUNTY CLERK'S OFFICE
16 at _____ o'clock _____ m.
17 _____ [19] 20 _____

18 [~~DATE OF PREMARITAL PHYSICAL EXAMINATION~~

19 Bride _____

20 Groom _____

21 COUNTY CLERK _____ COUNTY

22 By _____ Deputy]

23 To the County Clerk: We the undersigned hereby make
24 application to be united in marriage and certify under penalty
25 of perjury that we are not related within the degree prohibited

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1 by the laws of this state; that neither is bound by marriage to
2 another; that any marriage license previously issued to either
3 party to the marriage where a ceremony has not taken place is
4 expired by the issuance of this marriage license; that there
5 exists no legal impediment to this marriage; and that the
6 information contained herein is true and correct.

7 [~~Male~~] Applicant

[~~Female~~] Applicant

8 _____

9 Date of Birth

Date of Birth

10 _____

11 Place of Birth

Place of Birth

12 _____

13 Present Address _____

Present Address _____

14 _____

15 Signature

Signature

16 Subscribed and sworn to before me this _____ day

17 of _____ [~~A.D. 19~~] 20_____.

18 (seal)

19 _____ By _____ Deputy

20 Signature County Clerk

21 CONSENT OF PARENT OR GUARDIAN (where either party is
22 under age)

23 I, the parent (guardian) of _____,
24 hereby consent to the granting of a license to marry, waiving
25 the question of minority.

underscored material = new
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Signature Parent (Guardian)

I, the parent (guardian) of _____,
hereby consent to the granting of a license to marry, waiving
the question of minority.

Signature Parent (Guardian)

MARRIAGE LICENSE

State of New Mexico,)
County of _____) ss.

To any Person Authorized by Law to Perform the Marriage
Ceremony:

Greeting:

You are hereby authorized to join in marriage _____
[~~of~~ _____] and _____
[~~of~~ _____] within one year from the date
this license was issued and of this license you will make due
return to my office within [~~the time prescribed by law~~] ninety
days of the ceremony conducted within the state of New Mexico.

Witness my hand and the seal [~~of said court~~] at
_____ this _____ day of
_____, [19] 20____.

County Clerk

Recorded _____, [19] 20____, at

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1 _____ m.

2 In marriage record book no. _____ page _____

3 _____

4 County Clerk

5 MARRIAGE CERTIFICATE

6 State of New Mexico,)

7 County of _____) ss.

8 I hereby certify that on the _____ day of _____,

9 [~~A.D., 19~~] 20_____, at _____ in [~~said~~

10 ~~county and~~] the state of New Mexico, I, the undersigned, a

11 _____, did [~~join in the Holy Bonds of~~

12 ~~Matrimony~~] solemnize the civil contract of marriage in

13 accordance with the laws of the state of New Mexico and the

14 authorization of the foregoing license _____ [~~of~~

15 _____] and _____ [~~of~~

16 _____].

17 Witness my hand [~~and seal~~] on the day and year last above

18 written.

19 _____

20 (Name of person solemnizing marriage)

21 _____

22 (~~Official~~) Title of person solemnizing marriage)

23 WITNESSES:

24 Signed _____

25 Signed _____

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1 APPLICANTS:

2 Signed _____ [~~Groom.~~]

3 Signed _____ [~~Bride.~~]

4 Recorded this _____ day of _____,

5 [~~A.D., 19~~] 20_____, at _____ m.

6 Marriage Record [~~Book~~] No. _____ [~~Page No.~~ _____]

7 _____

8 County Clerk."."

9 SECTION 14. A new Section 40-1-18.1 NMSA 1978 is enacted
10 to read:

11 "40-1-18.1. [NEW MATERIAL] DECLARATION BY DEPLOYED OR
12 ACTIVATED MEMBER OF THE UNIFORMED SERVICES.--

13 "Declaration by a deployed or activated member of the uniformed
14 services of intent to solemnize the civil contract of marriage

15 (Print Clearly or Type)

16 Let it be Known to All:

17 I attest under penalty of perjury that:

18 1) My name is: _____, and my date of
19 birth is: _____.

20 2) I am a member of the uniformed services deployed or
21 activated to a duty assignment or station outside the state of
22 New Mexico as shown on the attached order.

23 3) I desire to marry: _____, whose
24 date of birth is: _____.

25 4) I am at least eighteen (18) years of age, not related

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1 within the prohibited degrees to the person I desire to marry,
2 and not currently married to another person.

3 5) I understand that I will appear by remote
4 communication technology at a ceremony conducted in the state
5 of New Mexico in which the person I desire to marry, the person
6 solemnizing the marriage and the witnesses appear in person at
7 the ceremony.

8 6) By means of this declaration, I apply for a marriage
9 license so that I may enter into the civil contract of marriage
10 pursuant to the laws of the state of New Mexico.

11 _____

12 (Signed)

13 Signed (or attested to) before me on _____ by _____.

14 Date Name of individual

15 _____

16 Signature of notarial officer

17 Stamp

18 _____

19 Title of officer

20 Recorded this _____ day of _____, 20 ____, at ____ m.

21 Marriage Record No. ____.

22 _____

23 County Clerk."."

24 SECTION 15. Section 40-1-19 NMSA 1978 (being Laws 1905,
25 Chapter 65, Section 9, as amended) is amended to read:

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[bracketed material] = delete

1 "40-1-19. OFFENSES--PENALTIES.--

2 A. For failure to perform the county clerk's
3 responsibilities and duties pursuant to Chapter 40, Article 1
4 NMSA 1978, a county clerk is responsible on the county clerk's
5 official bond for damages suffered by the injured party.

6 B. A person who performs the marriage ceremony or
7 certifies a marriage to the county clerk, who neglects or fails
8 to comply with the provisions of Chapter 40, Article 1 NMSA
9 1978 and any person who willfully violates the law by deceiving
10 or attempting to deceive or mislead any officer or person in
11 order to obtain a marriage license or to be married contrary to
12 law is upon conviction guilty of a misdemeanor for each
13 ceremony conducted or for each marriage certified to the county
14 clerk and shall be sentenced pursuant to the provisions of
15 Section 31-19-1 NMSA 1978.

16 C. The criminal penalty provided for in this
17 section is not exclusive of other charges or penalties that may
18 be applicable."

19 SECTION 16. A new Section 40-1A-1 NMSA 1978 is enacted to
20 read:

21 "40-1A-1. [NEW MATERIAL] SHORT TITLE.--Chapter 40,
22 Article 1A NMSA 1978 may be cited as the "Domestic Partner
23 Rights and Responsibilities Act"."

24 SECTION 17. A new Section 40-1A-2 NMSA 1978 is enacted to
25 read:

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[bracketed material] = delete

1 "40-1A-2. [NEW MATERIAL] DEFINITIONS.--As used in the
2 Domestic Partner Rights and Responsibilities Act:

3 A. "certificate of domestic partnership" means a
4 certificate issued by the county clerk on behalf of the state
5 certifying that the domestic partnership has been registered;

6 B. "domestic partner" means an adult who has chosen
7 to share in another adult's life in a relationship of mutual
8 caring and support and who has established a domestic
9 partnership;

10 C. "domestic partnership" means a legal
11 relationship that is not marriage that two domestic partners
12 establish with each other according to the provisions and
13 requirements of the Domestic Partner Rights and
14 Responsibilities Act; and

15 D. "record of domestic partnership" means a
16 permanent record book kept by the county clerk of each county
17 for the purpose of properly recording and indexing certificates
18 of domestic partnerships and ensuring that the certificates of
19 domestic partnerships are kept as county records."

20 SECTION 18. A new Section 40-1A-3 NMSA 1978 is enacted to
21 read:

22 "40-1A-3. [NEW MATERIAL] PROTECTIONS, OBLIGATIONS,
23 BENEFITS AND RESPONSIBILITIES--EXCEPTIONS.--

24 A. Domestic partners shall be entitled to the same
25 legal obligations, responsibilities, protections and benefits

1 as are afforded or recognized, now or in the future, by the
2 laws of the state to spouses, former spouses, widows or
3 widowers, whether they derive from statute, administrative or
4 court rule, policy, common law or any other source of civil
5 law. The Domestic Partner Rights and Responsibilities Act is
6 not intended to repeal or adversely affect any other manner in
7 which relationships between adults may be recognized or given
8 effect in New Mexico or the legal consequences of those
9 relationships.

10 B. It is unlawful to discriminate against a
11 domestic partner or domestic partnership on the grounds that
12 the partner is not a spouse, former spouse, widow or widower or
13 is not in a marriage. Any person who suffers any loss of money
14 or property, real or personal, as a result of a violation of
15 this section may bring an action to recover actual damages.
16 Any person who is otherwise damaged or is likely to be damaged
17 by a violation of this section, either by being prevented from
18 forming a domestic partnership or by being deprived of the
19 rights provided for under the Domestic Partner Rights and
20 Responsibilities Act, may be granted an injunction against the
21 person or entity violating that act under the principles of
22 equity and on terms that the court considers reasonable. In
23 any action or proceeding under this section, if the complaining
24 party prevails, the court in its discretion may allow actual
25 damages and reasonable attorney fees. Proof of actual damages

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1 is not required to recover attorney fees.

2 C. Notwithstanding the provisions of this section,
3 taxable status shall be governed as follows:

4 (1) in filing a state income tax return, a
5 domestic partner shall use the same filing status as is used on
6 a federal income tax return filed in the same tax year, or
7 would have been used if a federal income tax return had been
8 filed in the same year. Earned income shall not be treated as
9 community property for state income tax purposes; and

10 (2) nothing in this section requires or
11 permits the extension of any tax benefit if the extension of
12 the tax benefit would conflict with the federal tax qualified
13 plan requirements of the Internal Revenue Code of 1986 or
14 implementing regulations."

15 SECTION 19. A new Section 40-1A-4 NMSA 1978 is enacted to
16 read:

17 "40-1A-4. [NEW MATERIAL] JURISDICTION.--

18 A. The district court shall have jurisdiction over
19 any proceeding relating to a domestic partnership, including
20 dissolution, annulment and legal separation, and shall follow
21 the same procedures as are used for spouses in a marriage.

22 B. In accordance with the consent acknowledged by
23 the domestic partners in the affidavit of domestic partnership,
24 if no other forum is available with comparable remedies to
25 address distribution of assets, debts, support upon

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1 dissolution, annulment or legal separation as well as any other
2 issues related to a domestic partnership registered in this
3 state, the district court shall have jurisdiction even if
4 neither party is a resident of, or maintains a domicile in, the
5 state at the time the proceedings are filed.

6 C. A petition for dissolution, annulment or legal
7 separation of a domestic partnership may be filed in the
8 district court of the county in which the petitioner or
9 respondent resides or last resided or in the county in which
10 the domestic partnership is registered.

11 D. Nothing in this section shall be construed as
12 granting jurisdiction in conflict with the Uniform Child-
13 Custody Jurisdiction and Enforcement Act or the Uniform
14 Interstate Family Support Act."

15 SECTION 20. A new Section 40-1A-5 NMSA 1978 is enacted to
16 read:

17 "40-1A-5. [NEW MATERIAL] RESTRICTIONS ON WHO MAY ENTER
18 INTO A DOMESTIC PARTNERSHIP.--

19 A. No person may enter into a domestic partnership
20 who is in another domestic partnership or who is married.

21 B. No person may enter into a domestic partnership
22 who would not qualify to enter into a marriage.

23 C. No person may enter into a domestic partnership
24 with a person who is under the age allowed to enter into a
25 marriage pursuant to Section 40-1-6 NMSA 1978, who is within

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1 the prohibited degrees of relations for a marriage pursuant to
2 Section 40-1-7 NMSA 1978 or who would be entering into plural
3 or polygamous cohabitation contrary to Section 1 of the Compact
4 with the United States."

5 SECTION 21. A new Section 40-1A-6 NMSA 1978 is enacted to
6 read:

7 "40-1A-6. [NEW MATERIAL] CERTIFICATE OF DOMESTIC
8 PARTNERSHIP REQUIRED--COUNTY CLERK.--

9 A. Each couple desiring to enter into a domestic
10 partnership pursuant to the laws of New Mexico shall first
11 obtain a certificate of domestic partnership from a county
12 clerk of this state and, following a ceremony conducted in this
13 state, shall file the certificate of domestic partnership for
14 recording in the county issuing the certificate.

15 B. To obtain a certificate of domestic partnership,
16 a couple shall personally appear at the office of the county
17 clerk or before the county clerk or an authorized deputy county
18 clerk issuing the certificate, and each person shall provide
19 government-issued identification with a photograph that
20 resembles the person seeking to enter into a domestic
21 partnership or other sufficient identification to satisfy the
22 county clerk or authorized deputy county clerk as to each
23 person's identity and qualification to receive a certificate of
24 domestic partnership pursuant to the Domestic Partner Rights
25 and Responsibilities Act. On application to a judge of the

1 district court, the court, for good cause, may authorize a
 2 person unable to appear personally to obtain a certificate of
 3 domestic partnership from the county clerk, and a certified
 4 copy of the judicial authorization shall be filed with the
 5 county clerk.

6 C. A certificate of domestic partnership issued
 7 pursuant to this section expires and shall not be used for a
 8 ceremony to enter into a domestic partnership if:

9 (1) one year passes from the issuance of the
 10 certificate of domestic partnership without a ceremony taking
 11 place within this state; or

12 (2) a later certificate of domestic
 13 partnership or a marriage license is issued to either party on
 14 a certificate of domestic partnership listing a different
 15 person as the second party to a domestic partnership or a
 16 marriage."

17 SECTION 22. A new Section 40-1A-7 NMSA 1978 is enacted to
 18 read:

19 "40-1A-7. [NEW MATERIAL] FEES--DISPOSITION.--

20 A. The county clerk shall receive a fee of forty
 21 dollars (\$40.00) for each of the following instruments, except
 22 as otherwise provided in this section:

23 (1) issuing, acknowledging and recording a
 24 domestic partnership certificate; and

25 (2) issuing a certificate of correction or

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1 correcting or reissuing an application for a certificate of
2 domestic partnership upon an order of the district court.

3 B. In those counties where the county clerk has
4 posted on the county website and in the county clerk's office,
5 the county clerk shall receive a fee of eighty dollars (\$80.00)
6 for issuing, acknowledging and recording a domestic partnership
7 certificate where neither party to the domestic partnership has
8 an address in this state.

9 C. Fees collected pursuant to this section shall be
10 deposited in the county clerk recording and filing fund."

11 SECTION 23. A new Section 40-1A-8 NMSA 1978 is enacted to
12 read:

13 "40-1A-8. [NEW MATERIAL] PRODUCTION OF CERTIFICATE AND
14 PROOF OF LEGAL QUALIFICATIONS.--

15 A. A ceremony of domestic partnership may be
16 officiated by any person twenty-one years of age or older
17 selected by the parties to the domestic partnership and
18 witnessed by two persons eighteen years of age or older chosen
19 by the couple to witness the ceremony and, if needed, to
20 testify to the time and place where the ceremony took place.

21 B. Prior to a ceremony, all persons selected to
22 officiate a domestic partnership ceremony shall require the
23 parties contemplating domestic partnership to produce a
24 certificate signed and sealed by the county clerk issuing the
25 certificate. Nothing in the Domestic Partner Rights and

1 Responsibilities Act shall excuse any person authorized by the
2 laws of this state to officiate at a domestic partnership
3 ceremony from being satisfied as to the legal qualifications of
4 any parties desiring to become domestic partners, in addition
5 to the authority conferred by the certificate."

6 SECTION 24. A new Section 40-1A-9 NMSA 1978 is enacted to
7 read:

8 "40-1A-9. [NEW MATERIAL] CERTIFICATION OF DOMESTIC
9 PARTNERSHIP--RECORDING AND INDEXING.--

10 A. It is the duty of all persons officiating a
11 domestic partnership ceremony in this state to certify the
12 partnership to the county clerk within ninety days from the
13 date of the ceremony. Upon ensuring that the information on
14 the certificate is complete and legible, the county clerk shall
15 immediately upon receipt of the certificate cause it to be
16 properly recorded and indexed in a permanent record as a part
17 of the county records.

18 B. The county clerk shall also record in a uniform
19 system of records all forms recorded, filed or appended
20 pursuant to the Domestic Partner Rights and Responsibilities
21 Act. The uniform system of records shall be segregated from
22 other records recorded or filed in the county clerk's office.

23 C. The county clerk may issue a certificate of
24 correction or correct or reissue an application for a
25 certificate of domestic partnership as a result of a

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1 typographical or data entry error by the office of the county
2 clerk. The county clerk shall issue a certificate of
3 correction or correct or reissue an application for a
4 certificate of domestic partnership to correct an error on the
5 document upon order of the district court."

6 SECTION 25. A new Section 40-1A-10 NMSA 1978 is enacted
7 to read:

8 "40-1A-10. [NEW MATERIAL] FORMS--APPLICATION FOR DOMESTIC
9 PARTNERSHIP.--

10 "APPLICATION FOR DOMESTIC PARTNERSHIP

11 No. _____

12 STATEMENTS

13 RECEIVED AND FILED

14 IN COUNTY CLERK'S OFFICE

15 at _____ o'clock _____ m.

16 _____ 20 _____

17 To the County Clerk: We the undersigned, hereby make
18 application to be united in a domestic partnership and certify
19 that we are not related within the degree prohibited by the
20 laws of this state; that neither is bound by domestic
21 partnership or marriage to another; that any certificate of
22 domestic partnership or marriage license previously issued to
23 either party to the domestic partnership where a ceremony has
24 not taken place is expired by the issuance of this certificate
25 of domestic partnership; that there exists no legal impediment

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underscored material = new
[bracketed material] = delete

1 to this domestic partnership; and that the information
2 contained herein is correct.

3 Applicant name Applicant name
4 _____

5 Date of Birth Date of Birth
6 _____

7 Place of Birth Place of Birth
8 _____

9 Present Address Present Address
10 _____

11 _____
12 Signature Signature

13 Subscribed and sworn to before me this
14 _____ day of _____ A.D. 20 ____

15 (seal)
16 _____ by _____ Deputy

17 Signature County Clerk"."

18 "CERTIFICATE OF DOMESTIC PARTNERSHIP

19 State of New Mexico,)

20 County of _____) ss.

21 I hereby certify that on the _____ day of
22 _____, A.D., 20 ____, at _____ in said county
23 and state, I, the undersigned, did officiate at the ceremony of
24 domestic partnership in accordance with the laws of the state
25 of New Mexico and the authorization of the foregoing

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underscored material = new
[bracketed material] = delete

1 certificate between _____ and _____.

2 Witness my hand and seal the day and year last above written.

3 _____

4 (Official Title)

5 WITNESSES:

6 _____

7 _____

8 Signed _____.

9 Signed _____.

10 Recorded this _____ day of _____, A.D., 20 _____,

11 at _____ M.

12 Domestic Partnership Record Book No. _____, Page No. _____.

13 _____

14 County Clerk".

15 SECTION 26. A new Section 40-1A-11 NMSA 1978 is enacted
16 to read:

17 "40-1A-11. [NEW MATERIAL] OFFENSES--PENALTIES.--

18 A. For failure to perform the county clerk's
19 responsibilities and duties pursuant to the Domestic Partner
20 Rights and Responsibilities Act, a county clerk is responsible
21 on the county clerk's official bond for damages suffered by the
22 injured party.

23 B. A person who certifies a domestic partnership to
24 the county clerk who neglects or fails to comply with the
25 provisions of the Domestic Partner Rights and Responsibilities

underscoring material = new
[bracketed material] = delete

1 Act and who willfully violates the law by deceiving or
 2 attempting to deceive or mislead any officer or person in order
 3 to obtain a certificate of domestic partnership contrary to law
 4 is upon conviction guilty of a misdemeanor and shall be
 5 sentenced pursuant to the provisions of Section 31-19-1 NMSA
 6 1978.

7 C. The criminal penalty provided for in this
 8 section is not exclusive of other charges or penalties that may
 9 be applicable."

10 SECTION 27. Section 40-2-1 NMSA 1978 (being Laws 1907,
 11 Chapter 37, Section 1, as amended) is amended to read:

12 "40-2-1. MUTUAL OBLIGATION OF MARRIED PERSONS.--[~~Section~~
 13 ~~1. Husband and wife~~] The parties to a marriage contract toward
 14 each other obligations of mutual respect, fidelity and
 15 support."

16 SECTION 28. Section 40-2-2 NMSA 1978 (being Laws 1907,
 17 Chapter 37, Section 4, as amended) is amended to read:

18 "40-2-2. CONTRACT RIGHTS OF MARRIED PERSONS.--[~~Sec. 7.~~]
 19 Either [~~husband or wife~~] spouse may enter into any engagement
 20 or transaction with the other or with any other person
 21 [~~respecting~~] with respect to property [~~which~~] that either might
 22 enter into if unmarried; subject, in transactions between
 23 themselves, to the general rules of common law [~~which~~] that
 24 control the actions of persons occupying confidential relations
 25 with each other."

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1 SECTION 29. Section 40-2-3 NMSA 1978 (being Laws 1901,
2 Chapter 62, Section 20, as amended) is amended to read:

3 "40-2-3. POWER OF ATTORNEY--JOINDER OF SPOUSE
4 UNNECESSARY.--[~~Sec. 8.~~] It shall not be necessary in any case
5 for [~~the husband~~] a spouse to join with [~~the wife~~] a signing
6 spouse when [~~she executes~~] executing a power of attorney for
7 [~~herself; nor shall it be necessary for the wife to join with~~
8 ~~the husband when he executes a power of attorney for himself~~]
9 the signing spouse."

10 SECTION 30. Section 40-2-8 NMSA 1978 (being Laws 1907,
11 Chapter 37, Section 5, as amended) is amended to read:

12 "40-2-8. EXTENT OF MUTUAL ALTERATION OF LEGAL
13 RELATIONS.--[~~Sec. 39. A husband and wife~~] The parties to a
14 marriage cannot by any contract with each other alter their
15 legal relations, except [~~of~~] with respect to their property and
16 except that they may agree in writing to an immediate
17 separation and may make provisions for the support of either of
18 them and of their children during their separation."

19 SECTION 31. Section 40-3-1 NMSA 1978 (being Laws 1907,
20 Chapter 37, Section 21, as amended) is amended to read:

21 "40-3-1. PROPERTY RIGHTS.--[~~Sec. 29.~~] The property rights
22 of [~~husband and wife~~] a married couple are governed by [~~this~~]
23 Chapter 40 NMSA 1978 unless there is a marriage settlement
24 containing stipulations contrary thereto."

25 SECTION 32. Section 40-3-2 NMSA 1978 (being Laws 1907,

1 Chapter 37, Section 7, as amended) is amended to read:

2 "40-3-2. METHODS FOR HOLDING PROPERTY.--~~[Sec. 13. Husband~~
3 ~~and wife]~~ The parties to a marriage may hold property as joint
4 tenants or tenants in common or may hold property as community
5 property."

6 **SECTION 33.** Section 40-3-3 NMSA 1978 (being Laws 1907,
7 Chapter 37, Section 3, as amended) is amended to read:

8 "40-3-3. SEPARATION OF PROPERTY--ADMISSION TO DWELLING OF
9 SPOUSE.--~~[Sec. 6.]~~ Neither ~~[husband nor wife]~~ spouse has any
10 interest in the property of the other, but neither can be
11 excluded from the other's dwelling."

12 **SECTION 34.** Section 40-3-4 NMSA 1978 (being Laws 1965,
13 Chapter 74, Section 1) is amended to read:

14 "40-3-4. CONTRACTS OF INDEMNITY--NO OBLIGATION OF
15 COMMUNITY PROPERTY UNLESS SIGNED BY BOTH [HUSBAND AND WIFE]
16 SPOUSES.--It is against the public policy of this state to
17 allow one spouse to obligate community property by entering
18 into a contract of indemnity whereby ~~[he will indemnify]~~ the
19 spouse indemnifies a surety company in case of default of the
20 principal upon a bond or undertaking issued in consideration of
21 the contract of indemnity. No community property shall be
22 liable for any indebtedness incurred as a result of any
23 contract of indemnity made after the effective date of this
24 section unless both ~~[husband and wife]~~ spouses sign the
25 contract of indemnity."

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1 SECTION 35. Section 40-3-8 NMSA 1978 (being Laws 1973,
2 Chapter 320, Section 3, as amended) is amended to read:

3 "40-3-8. CLASSES OF PROPERTY.--

4 A. "Separate property" means:

5 (1) property acquired by either spouse before
6 marriage or after entry of a decree of dissolution of marriage;

7 (2) property acquired after entry of a decree
8 entered pursuant to Section 40-4-3 NMSA 1978, unless the decree
9 provides otherwise;

10 (3) property designated as separate property
11 by a judgment or decree of any court having jurisdiction;

12 (4) property acquired by either spouse by
13 gift, bequest, devise or descent; and

14 (5) property designated as separate property
15 by a written agreement between the spouses, including a deed or
16 other written agreement concerning property held by the spouses
17 as joint tenants or tenants in common in which the property is
18 designated as separate property.

19 B. Except as provided in Subsection C of this
20 section, "community property" means property acquired by either
21 or both spouses during marriage [~~which~~] that is not separate
22 property. Property acquired [~~by a husband and wife~~] during a
23 marriage by an instrument in writing whether as tenants in
24 common or as joint tenants or otherwise shall be presumed to be
25 held as community property unless such property is separate

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1 property within the meaning of Subsection A of this section.

2 C. "Quasi-community property" means all real or
3 personal property, except separate property as defined in
4 Subsection A of this section, wherever situated, heretofore or
5 hereafter acquired in any of the following ways:

6 (1) by either spouse while domiciled elsewhere
7 [~~which~~] that would have been community property if the spouse
8 who acquired the property had been domiciled in this state at
9 the time of its acquisition; or

10 (2) in exchange for real or personal property,
11 wherever situated, [~~which~~] that would have been community
12 property if the spouse who acquired the property so exchanged
13 had been domiciled in this state at the time of its
14 acquisition.

15 D. For purposes of division of property incident to
16 a dissolution of marriage or a legal separation under Section
17 40-4-3 NMSA 1978, quasi-community property shall be treated as
18 community property if both parties are domiciliaries of New
19 Mexico at the time of the dissolution or legal separation
20 proceeding.

21 E. "Property" includes the rents, issues and
22 profits thereof.

23 F. The right to hold property as joint tenants or
24 as tenants in common and the legal incidents of so holding,
25 including but not limited to the incident of the right of

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1 survivorship of joint tenancy, are not altered by the Community
2 Property Act of 1973, except as provided in Sections 40-3-10,
3 40-3-11 and 40-3-13 NMSA 1978.

4 ~~[G. The provisions of the 1984 amendments to this~~
5 ~~section shall not affect the right of any creditor, which right~~
6 ~~accrued prior to the effective date of those amendments.]"~~

7 SECTION 36. Section 40-3-12 NMSA 1978 (being Laws 1973,
8 Chapter 320, Section 7) is amended to read:

9 "40-3-12. PRESUMPTION OF COMMUNITY PROPERTY [~~PRESUMPTION~~
10 ~~OF SEPARATE PROPERTY WHERE PROPERTY ACQUIRED BY MARRIED WOMAN~~
11 ~~PRIOR TO JULY 1, 1973].--[A.] Property acquired during marriage~~
12 ~~by either [husband or wife] spouse, or both, is presumed to be~~
13 ~~community property.~~

14 ~~[B. Property or any interest therein acquired~~
15 ~~during marriage by a woman by an instrument in writing, in her~~
16 ~~name alone or in her name and the name of another person not~~
17 ~~her husband, is presumed to be the separate property of the~~
18 ~~married woman if the instrument in writing was delivered and~~
19 ~~accepted prior to July 1, 1973. The date of execution or, in~~
20 ~~the absence of a date of execution, the date of acknowledgment~~
21 ~~is presumed to be the date upon which delivery and acceptance~~
22 ~~occurred.~~

23 ~~G. The presumptions contained in Subsection B of~~
24 ~~this section are conclusive in favor of any person dealing in~~
25 ~~good faith and for valuable consideration with a married woman~~

1 ~~or her legal representative or successor in interest.]"~~

2 SECTION 37. Section 40-4-1 NMSA 1978 (being Laws 1973,
3 Chapter 319, Section 1) is amended to read:

4 "40-4-1. DISSOLUTION OF MARRIAGE.--On the petition of
5 either party to a marriage, a district court may decree a
6 dissolution of marriage on [~~any of~~] the following grounds of:

7 A. incompatibility between the parties to the
8 marriage; or

9 [~~B. cruel and inhuman treatment;~~

10 ~~C. adultery; or~~

11 ~~D. abandonment;]~~

12 B. the marriage is void, voidable or invalid."

13 SECTION 38. Section 40-4-2 NMSA 1978 (being Laws 1973,
14 Chapter 319, Section 2) is amended to read:

15 "40-4-2. INCOMPATIBILITY.--

16 A. Incompatibility exists between the parties when,
17 because of discord or conflict of personalities, [the
18 legitimate ends of the marriage relationship are destroyed,
19 preventing any reasonable] there exists no expectation of
20 reconciliation.

21 B. When a dissolution is sought on the grounds of
22 incompatibility, the district court shall accept the pleading
23 of incompatibility to be sufficient evidence that
24 incompatibility exists."

25 SECTION 39. A new Section 40-4-2.1 NMSA 1978 is enacted

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1 to read:

2 "40-4-2.1. [NEW MATERIAL] VOID, VOIDABLE AND INVALID
3 MARRIAGES.--

4 A. A marriage is void if the marriage is
5 incestuous, as provided in Section 40-1-7 NMSA 1978.

6 B. A marriage is voidable if at least one party to
7 the marriage was under the age of eighteen at the time the
8 marriage was solemnized and that party has not yet reached the
9 age of twenty-two.

10 C. A marriage is invalid if it is polygamous or
11 plural; provided that a marriage that was initially valid that
12 later became polygamous or plural is not invalid as to the
13 initial, valid marriage, but any polygamous or plural additions
14 to the valid marriage are invalid."

15 SECTION 40. Section 40-4-3 NMSA 1978 (being Laws 1901,
16 Chapter 62, Section 23, as amended) is amended to read:

17 "40-4-3. PROCEEDING FOR DIVISION OF PROPERTY, DISPOSITION
18 OF CHILDREN OR ALIMONY WITHOUT THE DISSOLUTION OF MARRIAGE.--

19 Whenever the [~~husband and wife~~] parties to a marriage have
20 permanently separated and no longer live or cohabit together as
21 [~~husband and wife~~] a married couple, either may institute
22 proceedings in the district court for a division of property,
23 disposition of children or alimony without asking for or
24 obtaining in the proceedings a dissolution of marriage."

25 SECTION 41. A new Section 40-4-5.1 NMSA 1978 is enacted

1 to read:

2 "40-4-5.1. [NEW MATERIAL] DISSOLUTION OF MARRIAGE--VOID,
3 VOIDABLE OR INVALID MARRIAGES.--

4 A. When a verified petition for dissolution of
5 marriage alleges that the marriage is void, voidable or
6 invalid, if the underlying allegations that would make the
7 marriage void, voidable or invalid is:

8 (1) not contested, the court may accept the
9 uncontested representation that a factual basis exists for a
10 finding to be entered that the marriage is void, voidable or
11 invalid; or

12 (2) contested, the district court shall hold a
13 hearing to determine if a factual basis exists for a finding to
14 be entered that the marriage is void, voidable or invalid.

15 B. After entering an order of dissolution of a
16 marriage on the grounds of the marriage being void, voidable or
17 invalid, the court, sitting as a court of equity, shall apply
18 the laws of this state regarding community property, child
19 support and spousal support in the same manner as if the
20 marriage had been entered into lawfully.

21 C. In a cause of action for dissolution of marriage
22 instituted by a person who alleges that at the time of the
23 marriage the parties to the marriage were relatives within the
24 prohibited degrees based on the laws in effect at the time that
25 the marriage was entered into, and regardless of whether the

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1 void marriage was entered into in this state, upon a finding
2 that a factual basis exists, the district court shall enter a
3 decree that such incestuous marriage is void and enter a decree
4 dissolving the marriage.

5 D. In a cause of action for dissolution of marriage
6 instituted by a person, next friend or a parent or guardian of
7 the person, who alleges that at the time of the marriage the
8 person was a minor and has not yet attained the age of twenty-
9 two, and regardless of whether the voidable marriage was
10 entered into in this state, upon a finding that a factual basis
11 exists, the district court shall enter a decree that such
12 marriage is voidable and enter a decree dissolving the
13 marriage. The court may, in its discretion, grant spousal
14 support until the person emancipates, remarries or reaches the
15 age of twenty-two. If the parties should remain married until
16 each of the parties to the marriage has attained the age of
17 twenty-two, the marriage shall no longer be considered
18 voidable.

19 E. In a cause of action for dissolution of marriage
20 instituted by a person who alleges that the marriage is
21 polygamous or plural, and regardless of whether the invalid
22 marriage was entered into in this state or was entered into
23 lawfully beyond this state, upon a finding that a factual basis
24 exists, the district court shall enter a decree that such
25 marriage or portion of such marriage is invalid and enter a

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1 decree dissolving the marriage in its entirety or dissolving
 2 the marriage as it applies to the petitioner. The court may
 3 determine whether a marriage that was initially between two
 4 parties but that later became polygamous or plural is invalid
 5 as to all parts of the marriage or if only the polygamous or
 6 plural additions to the initial marriage are invalid. If the
 7 court determines a party to a polygamous or plural marriage was
 8 unaware of the polygamous or plural nature of the marriage,
 9 that party's community property rights shall not be abrogated.
 10 A polygamous or plural marriage is contrary to the Compact with
 11 the United States.

12 F. When a court enters an order for dissolution of
 13 a marriage pursuant to this section, the court shall send a
 14 copy of the decree to the district attorney."

15 SECTION 42. Section 40-4-12 NMSA 1978 (being Laws 1947,
 16 Chapter 16, Section 1, as amended) is amended to read:

17 "40-4-12. ALLOWANCE FROM SPOUSE'S SEPARATE PROPERTY AS
 18 ALIMONY.--In proceedings for the dissolution of marriage,
 19 separation or support between [~~husband and wife~~] married
 20 persons, the court may make an allowance to either spouse of
 21 the other spouse's separate property as alimony, and the decree
 22 making the allowance shall have the [~~force and~~] effect of
 23 vesting the title of the property so allowed in the recipient."

24 SECTION 43. Section 40-4-14 NMSA 1978 (being Laws 1947,
 25 Chapter 16, Section 3, as amended) is amended to read:

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1 "40-4-14. ALLOWANCE IN PROPERTY--APPOINTMENT AND REMOVAL
2 OF GUARDIAN.--In proceedings for the dissolution of marriage,
3 separation or support between [~~husband and wife~~] spouses, the
4 court may make an allowance of certain property [~~or properties~~]
5 of either party or of both parties for the maintenance,
6 education and support of the minor children of the parties and
7 may vest title to the part of the property so allowed in a
8 conservator appointed by the court. The conservator must
9 qualify and serve in such capacity as provided in Sections
10 [~~5-101 through 5-502 of the Probate Code~~] 45-5-101 through
11 45-5-502 NMSA 1978 and the Uniform Power of Attorney Act."

12 **SECTION 44.** Section 40-4-20 NMSA 1978 (being Laws 1901,
13 Chapter 62, Section 31, as amended) is amended to read:

14 "40-4-20. FAILURE TO DIVIDE OR DISTRIBUTE PROPERTY ON THE
15 ENTRY OF A DECREE OF DISSOLUTION OF MARRIAGE OR SEPARATION--
16 DISTRIBUTION OF SPOUSAL OR CHILD SUPPORT AND DETERMINATION OF
17 PATERNITY WHEN DEATH OCCURS DURING PROCEEDINGS FOR DISSOLUTION
18 OF MARRIAGE, SEPARATION, ANNULMENT OF MARRIAGE OR PATERNITY.--

19 A. The failure to divide or distribute property on
20 the entry of a decree of dissolution of marriage or of
21 separation shall not affect the property rights of either [~~the~~
22 ~~husband or wife~~] party to a marriage, and either may
23 subsequently institute and prosecute a suit for division and
24 distribution or with reference to any other matter pertaining
25 thereto that could have been litigated in the original

1 proceeding for dissolution of marriage or separation.

2 B. Upon the filing and service of a petition for
 3 dissolution of marriage, separation, annulment, division of
 4 property or debts, spousal support, child support or
 5 determination of paternity pursuant to the provisions of
 6 Chapter 40, Article 4 or [++] 11A NMSA 1978, if a party to the
 7 action dies during the pendency of the action, but prior to the
 8 entry of a decree granting dissolution of marriage, separation,
 9 annulment or determination of paternity, the proceedings for
 10 the determination, division and distribution of marital
 11 property rights and debts, distribution of spousal or child
 12 support or determination of paternity shall not abate. The
 13 court shall conclude the proceedings as if both parties had
 14 survived. The court may allow the spouse or any children of
 15 the marriage support as if the decedent had survived, pursuant
 16 to the provisions of Chapter 40, Article 4 or [++] 11A NMSA
 17 1978. In determining the support, the court shall, in addition
 18 to the factors listed in Chapter 40, Article 4 NMSA 1978,
 19 consider the amount and nature of the property passing from the
 20 [~~decedent~~] decedent to the person for whom the support would
 21 be paid, whether by will or otherwise."

22 SECTION 45. Section 40-10A-310 NMSA 1978 (being Laws
 23 2001, Chapter 114, Section 310) is amended to read:

24 "40-10A-310. HEARING AND ORDER.--

25 [~~(a)~~] A. Unless the court issues a temporary

.228104.3

1 emergency order pursuant to Section [~~204~~] 40-10A-204 NMSA 1978,
2 upon a finding that a petitioner is entitled to immediate
3 physical custody of the child, the court shall order that the
4 petitioner may take immediate physical custody of the child
5 unless the respondent establishes that:

6 (1) the child-custody determination has not
7 been registered and confirmed under Section [~~305~~] 40-10A-305
8 NMSA 1978 and that:

9 [~~(A)~~] (a) the issuing court did not have
10 jurisdiction under [~~Article 2 of the Uniform Child-Custody~~
11 ~~Jurisdiction and Enforcement Act~~] Sections 40-10A-201 through
12 40-10A-210 NMSA 1978;

13 [~~(B)~~] (b) the child-custody
14 determination for which enforcement is sought has been vacated,
15 stayed or modified by a court of a state having jurisdiction to
16 do so under [~~Article 2 of the Uniform Child-Custody~~
17 ~~Jurisdiction and Enforcement Act~~] Sections 40-10A-201 through
18 40-10A-210 NMSA 1978; or

19 [~~(C)~~] (c) the respondent was entitled to
20 notice, but notice was not given in accordance with the
21 standards of Section [~~108~~] 40-10A-108 NMSA 1978 in the
22 proceedings before the court that issued the order for which
23 enforcement is sought; or

24 (2) the child-custody determination for which
25 enforcement is sought was registered and confirmed under

1 Section ~~[305]~~ 40-10A-305 NMSA 1978 but has been vacated, stayed
 2 or modified by a court of a state having jurisdiction to do so
 3 under ~~[Article 2 of the Uniform Child-Custody Jurisdiction and~~
 4 ~~Enforcement Act]~~ Sections 40-10A-201 through 40-10A-210 NMSA
 5 1978.

6 ~~[(b)]~~ B. The court shall award the fees, costs and
 7 expenses authorized under Section ~~[312]~~ 40-10A-312 NMSA 1978
 8 and may grant additional relief, including a request for the
 9 assistance of law enforcement officials, and set a further
 10 hearing to determine whether additional relief is appropriate.

11 ~~[(c)]~~ C. If a party called to testify refuses to
 12 answer on the ground that the testimony may be self-
 13 incriminating, the court may draw an adverse inference from the
 14 refusal.

15 ~~[(d)]~~ D. A privilege against disclosure of
 16 communications between spouses and a defense of immunity based
 17 on the spousal relationship ~~[of husband and wife]~~ or that of
 18 parent and child may not be invoked in a proceeding under
 19 ~~[Article 3 of the Uniform Child-Custody Jurisdiction and~~
 20 ~~Enforcement Act]~~ Sections 40-10A-301 through 40-10A-317 NMSA
 21 1978."

22 **SECTION 46. REPEAL.**--Sections 40-1-16 and 40-1-20 NMSA
 23 1978 (being Laws 1905, Chapter 65, Section 5 and Laws 1909,
 24 Chapter 91, Section 1, as amended) are repealed.

25 **SECTION 47. EFFECTIVE DATE.**--The effective date of the

.228104.3

1 provisions of this act is July 1, 2024.

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