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## FISCAL IMPACT REPORT

SPONSOR: Sharer DATE TYPED: 1/28/03 HB \_\_\_\_\_

SHORT TITLE: Define When Life Begins SB SJR 8

ANALYST: Chavez

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$30.0 (FY 05)	Non-Recurring	General Fund
			See Narrative	Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SJR 7

### SOURCES OF INFORMATION

Attorney General’s Office (AG)  
 Department of Health (DOH)  
 New Mexico Health Policy Commission (HPC)  
 LFC Files

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 8 amends Article II, Section 18 of the Constitution of New Mexico to provide that life beings at fertilization and continues until natural death.

#### Significant Issues

The Attorney General (AG) suggests that to the extent this language may be applied in the context of abortions, the federal constitution has been interpreted to supercede any such language. Additionally, this resolution conflicts with a woman’s fundamental right of privacy guaranteed under the federal constitution. Although this right is not explicitly mentioned in the federal constitution some courts have found it in various amendments to the constitution

In a non-abortion context, the AG believes by defining when life ends as being at the time of “natural” death, its adoption might raise questions as to the continued validity of state law ad-

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addressing other matters involving “unnatural” death, including justifiable homicide, the imposition of capital punishment, and other existing law that may authorize or excuse a death that is not the result of natural causes. To the extent, a decision authorized under the Uniform Healthcare Decisions Act to terminate life-sustaining treatment might be subject to challenge, depending on how one interprets the meaning of “natural” death in that context.

The Department of Health (DOH) states Senate Joint Resolution 8 would require amendment or repeal of some existing New Mexico law pertaining to organ donation (24-6A-1 through 24-6A-15 NMSA 1978), vital statistics (24-14-1 through 24-14-31 NMSA 1978), abortion (30-5-1 through 30-5-3 NMSA 1978), and criminal statutes.

Additionally, DOH indicates this resolution will have a significant impact on the availability of contraceptives such as emergency contraception and the termination of pregnancy, DOH, also expressed concern that since the beginning of life is viewed differently by various cultures and religions, passing this resolution may be seen as a conflict between church and state.

### **FISCAL IMPLICATIONS**

No appropriation is contained in this bill. However, a \$30.0 non-recurring impact to the general fund will likely occur in FY 05 (the next general election is in November 04) for advertising and printing costs incurred by the Secretary of State for this ballot measure. The impact to the general fund will occur in the preceding fiscal year if a special election is called prior to November 04. There will likely be an additional non-recurring fiscal impact to the general fund for the repeal or amendment of existing New Mexico law.

The AG may also experience fiscal implications in the event of a judicial challenge to this legislation or other statute, regulation or law of this state that may be impacted.

### **ADMINISTRATIVE IMPLICATIONS**

Because of the nature of the proposed resolution, both DOH and the AG may be faced with legal issues and questions that potentially may impact staff time in the event of a judicial challenge to this legislation or any other law of this state that may be impacted.

### **CONFLICT**

Senate Joint Resolution 8 conflicts with Senate Joint Resolution 7, which proposes a different definition of the beginning of human life, to be at conception and the onset of cell division.

### **TECHNICAL ISSUES**

On page 1, line 19 the word “natural” in referencing death is ambiguous.

### **SUBSTANTIVE ISSUES**

The following is in the context of abortions:

In 1973, the United States Supreme Court determined that a woman’s right to seek an abortion in the first trimester of pregnancy was protected under the right to privacy contained in the United

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States Constitution. See Roe v. Wade, 410 U.S. 113. In that case, the Court specifically stated it was irrelevant, in determining the validity of Texas' abortion statute, that the state had adopted the theory that life began at conception. The Court stated "[W]e do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake." Id. at 162.

Other state legislatures have attempted to define when life begins. However, federal courts have found this to be insufficient to overcome the protection afforded in the federal constitution. Until the federal constitutional protection afforded every woman in her first trimester of pregnancy is modified in the federal constitution or reinterpreted by the U.S. Supreme Court, language such as this proposed constitutional amendment will have no impact on that protection.

FC/yr