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## FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>2/13/24</u> ORIGINAL DATE <u>2/9/24</u>
SHORT TITLE <u>Marriage &amp; Divorce Changes</u>	BILL NUMBER <u>CS/House Bill 242/HJCS</u>
ANALYST <u>Daly</u>	

### REVENUE\* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Counties		\$65.0	\$65.0	\$65.0	\$65.0	Recurring	County General Funds

Parentheses ( ) indicate revenue decreases.  
 \*Amounts reflect most recent analysis of this legislation.

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

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
County Jails		At least \$19.2	At least \$19.2	At least \$38.4	Recurring	County General Funds

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From  
 Administrative Office of the Courts (AOC)\*  
 Department of Veterans' Services (DVS)  
 New Mexico Attorney General's Office (NMAG)  
 Secretary of State (SOS)\*

\*On original bill

## SUMMARY

### Synopsis of HJC Substitute for House Bill 242

The House Judiciary Committee Substitute for House Bill 242 (CS/HB242) updates and revises existing law governing marriage and divorce (dissolution), including replacing the terms “husband” and “wife” with “spouse” or “parties to a marriage” and use of other gender-neutral terms and making provisions apply with equal force to either spouse. More substantive changes include:

**Marriages.** These provisions are updated to allow any person over the age of 21 and selected by the parties of the marriage to officiate at the ceremony solemnizing the union. CS/HB242 also clarifies the law shall not be construed to interfere with the practices of any religious society or Indian nation, tribe, or pueblo. Polygamous and plural marriages are prohibited and shall not be recognized in any circumstance. Marriage of an unemancipated person who is 16 or 17 remains subject to written consent of each living parent, but is now subject to a new requirement that the other person be within four years of the age of the 16 or 17 year old. Provisions barring marriage between family members are clarified. New provisions are added to allow uniformed service members deployed outside the state to apply for a marriage license without appearing personally by providing a declaration in the format provided and to be married by appearing using remote communication technology. Provisions for expiration of a license are also made. The license fee is raised from \$25 to \$40 dollars and to \$80 dollars when neither party has an in-state address. Ten dollars of every fee collected goes to the county general fund, while existing law requiring \$15 to go to the children's trust fund remains. Additional provisions prescribe marriage certificate recording and indexing guidelines. New language establishes that failure to return a certificate of marriage by the officiant does not itself void an otherwise properly conducted marriage.

**Property Rights and Dissolutions.** Existing law prohibiting the exclusion of one spouse from the dwelling of another is maintained. The grounds for dissolution of marriage are updated to include only incompatibility between the parties to the marriage or that the marriage is void, voidable, or invalid. This bill codifies the provision that, on pleading incompatibility, the district court shall accept that pleading as sufficient evidence incompatibility exists. New language provides a marriage is void if incestuous. A marriage is voidable if at least one party was under 18 at the time of marriage and that party has not yet reached 22. The marriage is invalid if it is polygamous or plural. On dissolution of a marriage that is void, voidable, or invalid, state law governing community property, child support, and spousal support shall be applied to the same extent as if the marriage had been entered into lawfully.

**Domestic Partner Rights and Responsibilities Act.** CS/HB242 also enacts the Domestic Partner Rights and Responsibilities Act (Act) in Sections 16 through 26. The act allows two persons who are otherwise qualified to marry to choose instead to enter into a domestic partnership by applying to the county clerk, by affidavit in the form provided, for a certificate of domestic partnership following procedures similar to those for marriage certificates, with the same fee structure. The act sets forth requirements for a domestic partnership ceremony, and county clerks must keep a separate, uniform system of records for domestic partnerships. A person who certifies a domestic partnership who neglects or fails to comply with the act's provisions and willfully deceives or attempts to deceive or mislead to obtain a certificate contrary to law is guilty of a misdemeanor.

Domestic partners are entitled to the same legal obligations, responsibilities, protections, and benefits afforded by state law to spouses, former spouses, widows, or widowers. Domestic partnerships may be dissolved or annulled, or subject to a legal separation, following the same procedures as for spouses in a marriage, with jurisdiction in district court, except where that would conflict with the Uniform Child-Custody Jurisdiction and Enforcement Act or the Uniform Interstate Family Support Act.

The act makes it unlawful to discriminate as to a party's status as a domestic partner, and a party may recover actual damages or injunctive relief for any violation. A special provision addresses a domestic partner's taxable status and requires a partner to use the same tax status as used when filing a federal tax return.

The effective date of this bill is July 1, 2024.

## FISCAL IMPLICATIONS

HB242 provides that \$10 from the issuance of each marriage license, marriage certificate, declaration by a deployed member of the military shall be remitted to the county's general fund. LFC staff analysis estimates that approximately 6,500 marriage licenses are issued in New Mexico each year given the state's marriage rate, which will result in an annual increase in a county's general fund of approximately \$65 thousand.

In addition, this bill creates a new misdemeanor crime for willful violation in certifying or obtaining a certificate. Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. CS/HB242 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

This analysis estimates the impact on counties to be \$19.2 thousand per year, with costs remaining constant over the next two years. Without additional available data, this analysis assumes this new misdemeanor crime will result in at least one additional person being admitted to county jail each year.

## SIGNIFICANT ISSUES

CS/HB242 makes significant changes to existing law governing marriages and dissolutions. First, it authorizes, in addition to judicial and religious officers, anyone over 21 to act as the officiant. It continues to allow an unemancipated 16- and 17-year-old to marry with the consent of each living parent or as authorized by a district court, but now requires that the other party be within four years of age of the minor.

Some confusion arises over the role of Indian nations, tribes, or pueblos that are not federally recognized in solemnizing marriages. While NMAG reads the language of the bill in Section 3(A) striking out the phrase "federally recognized" as a qualifier to an Indian nation, tribe, or pueblo, the new definition provided in Section 1(A) includes language requiring that such an entity be "federally recognized by the bureau of Indian affairs (BIA) of the United States department of the interior." Thus, it appears that an Indian nation, tribe, or pueblo that is not recognized by the BIA may not be entitled to solemnize a marriage.

CS/HB242 also updates the grounds for dissolution of a marriage and limits it to included only incompatibility. As AOC noted in its earlier analysis, this change is likely to result in less contentious proceedings and shorter times to resolution of the issues and the granting of a dissolution since evidence regarding cruel and inhumane treatment, adultery, or abandonment will no longer be admissible. Additionally, the bill creates a new section of law addressing the dissolution of a marriage that is void, voidable, or invalid, which—at least on spousal support,

community property rights, and similar matters—may impact the existing body of law governing these types of dissolutions, including annulments. The marriage of a minor (under 18 at time of marriage) is voidable until the minor reaches the age of 22.

Further, CS/HB242 removes a presumption of separate property when property was acquired by an instrument in writing by a married woman in her name alone (or with another person not her husband) prior to 1973. A married woman who acquired property in this manner prior to 1973 may still be living and may be entitled to this presumption. Similarly, the bill repeals a section of law last amended in 2013 that provides that a child born to parents who are not married to each other has the same rights pursuant to law as children born to parents who are married to each other.

The Domestic Partner Rights and Responsibilities Act creates a new, alternative mechanism to establish a new form of legal relationship between two parties who are otherwise qualified to marry. It grants the same rights, obligations, responsibilities, protections, and benefits to domestic partners as those granted to parties who enter into a valid marriage, including spouses, former spouses, widows, or widowers. A domestic partnership may be dissolved or annulled, or may be the subject of a legal separation, in the same manner as a marriage.

## **PERFORMANCE IMPLICATIONS**

The Department of Veterans Services reports that it would update benefit training to include CS/HB242 language to inform veterans and dependents of its changes.

## **TECHNICAL ISSUES**

Page 12, line 10 and page 28, line 4: It is unclear what is to be posted on the county website.

Page 13, line 19: In keeping with other changes throughout CS/HB242, the word “civil” should be inserted at the beginning of that line.

## **OTHER SUBSTANTIVE ISSUES**

The Secretary of State advised in its earlier analysis that, at least as to provisions governing marriage licenses, these procedures are a priority of the county clerks (who issue these licenses), which will aid in the administration of these licenses and their offices as a whole.

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