

HOUSE BILL 242

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

INTRODUCED BY

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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; PROVIDING FOR DISSOLUTION OF MARRIAGE ON GROUNDS OF THE MARRIAGE BEING VOID, VOIDABLE OR INVALID; AMENDING FEES; PRESCRIBING MARRIAGE RECORDING AND INDEXING GUIDELINES; AMENDING PENALTIES; REVISING TERMS THAT DESCRIBE PARTIES TO A MARRIAGE; CLARIFYING PROPERTY RIGHTS; AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER 40 NMSA 1978.

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

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

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

3 A. "Indian nation, tribe or pueblo" means an
4 indigenous nation, tribe, pueblo or other band, organized group
5 or community of Indians, including an Alaskan Native tribe,
6 that is federally recognized by the bureau of Indian affairs of
7 the United States department of the interior;

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

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

11 (2) a justice or judge of any of the courts
12 established by the constitution or laws of the United States;
13 or

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

17 C. "religious ceremony" means a ceremony conducted
18 pursuant to any exercise of religion, whether or not compelled
19 by or central to a system of religious belief, construed in
20 favor of a broad protection of religious exercise to the
21 maximum extent pursuant to the state and federal constitutions;

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

23 (1) ordained as clergy by a religious society;

24 (2) authorized to solemnize a marriage by the
25 written and approved rites or rules of a religious society; or

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1 (3) designated by the laws or customs of an
2 Indian nation, tribe or pueblo as a religious officer, if the
3 nation, tribe or pueblo designates religious officers;

4 E. "religious society" means a religious
5 organization, including a church, mosque, synagogue, temple,
6 denominational ministry, nondenominational ministry,
7 interdenominational or ecumenical organization, mission
8 organization, faith-based social agency, religious educational
9 institution or any other nonprofit entity whose principal
10 purpose is the study, practice or advancement of religion;

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

13 G. "uniformed services" means:

14 (1) the active or reserve components of the
15 United States army, navy, air force, marine corps, space force,
16 coast guard or merchant marine;

17 (2) the commissioned corps of the United
18 States public health service, the national oceanic and
19 atmospheric administration or the astronaut program of the
20 national aeronautics and space administration; and

21 (3) the army national guard division and the
22 air national guard division of the department of military
23 affairs; and

24 H. "witnesses" means two individuals at least
25 eighteen years of age chosen by a couple to witness a ceremony

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1 and, if needed, to testify to the time and place where the
2 ceremony took place."

3 SECTION 2. Section 40-1-2 NMSA 1978 (being Laws 1859-
4 1860, p. 120, as amended) is amended to read:

5 "40-1-2. MARRIAGES SOLEMNIZED--~~[ORDAINED CLERGY OR CIVIL~~
6 ~~MAGISTRATES]~~ WHO MAY SOLEMNIZE.--

7 A. The civil contract of marriage is entered into
8 when solemnized as provided in Chapter 40, Article 1
9 NMSA 1978. ~~[As used in Chapter 40, Article 1 NMSA 1978,~~
10 ~~"solemnize" means to join in marriage before witnesses by means~~
11 ~~of a ceremony.~~

12 B. ~~A person who is an ordained member of the clergy~~
13 ~~or who is an authorized representative of a federally~~
14 ~~recognized Indian nation, tribe or pueblo may solemnize the~~
15 ~~contract of marriage without regard to sect or rites and~~
16 ~~customs the person may practice.]~~

17 B. The civil contract of marriage may be solemnized
18 by a ceremony officiated by:

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

24 C. ~~[Active or retired judges, justices and~~
25 ~~magistrates of any of the courts established by the~~

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1 ~~constitution of New Mexico, United States constitution, laws of~~
2 ~~the state or laws of the United States are civil magistrates~~
3 ~~having authority to solemnize contracts of marriage. Civil~~
4 ~~magistrates solemnizing contracts of marriage] A judicial~~
5 officer shall charge no fee ~~[therefor]~~ to solemnize the civil
6 contract of marriage."

7 SECTION 3. Section 40-1-3 NMSA 1978 (being Laws 1862-
8 1863, p. 66, as amended) is amended to read:

9 "40-1-3. CEREMONY BY RELIGIOUS SOCIETY OR INDIAN NATION,
10 TRIBE OR PUEBLO.--~~[It is lawful for]~~

11 A. Any religious society or ~~[federally recognized]~~
12 Indian nation, tribe or pueblo ~~[to]~~ may lawfully solemnize a
13 marriage conformably with its rites and customs, and the
14 religious officer, secretary of the society or the person
15 authorized by the society or ~~[federally recognized]~~ Indian
16 nation, tribe or pueblo shall make and transmit a transcript to
17 the county clerk certifying to the marriages solemnized.

18 B. Religious societies or Indian nations, tribes or
19 pueblos shall not be required to provide services,
20 accommodations, advantages, facilities, goods or privileges for
21 the solemnization or celebration of a marriage.

22 C. Nothing in Chapter 40, Article 1 NMSA 1978 shall
23 be construed in any manner to interfere with any form of
24 religious ceremony, traditional indigenous ceremony, additional
25 regulation or requirement prescribed by any religious society

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1 or Indian nation, tribe or pueblo nor with any records kept by
2 them.

3 D. Nothing in Chapter 40, Article 1 NMSA 1978 shall
4 be construed to diminish or abrogate a religious liberty or
5 conscience protection otherwise available to an individual or
6 organization under the federal or state constitutions or under
7 federal or state law or with the rites and customs of an Indian
8 nation, tribe or pueblo."

9 SECTION 4. Section 40-1-4 NMSA 1978 (being Laws 1862-
10 1863, p. 64, as amended) is amended to read:

11 "40-1-4. FOREIGN MARRIAGES RECOGNIZED.--~~[Sec. 5.]~~

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

18 B. The state gives its full faith and credit to any
19 marriage between two individuals solemnized in another state or
20 country, regardless of the sex, sexual orientation, gender,
21 gender identity, race, ethnicity or national origin of those
22 individuals.

23 C. A marriage that is polygamous or plural is
24 contrary to Section 1 of the Compact with the United States,
25 notwithstanding the laws of the state or country wherein that

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1 marriage or polygamous or plural additions to that marriage
2 were celebrated or contracted."

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

5 "40-1-6. [~~RESTRICTIONS ON~~] MARRIAGE OF MINORS--
6 VOIDABLE--[A.] The county clerk shall not issue a marriage
7 license to [~~an unemancipated~~] a person [~~sixteen or seventeen~~
8 ~~years of age~~] under the age of eighteen, and no person
9 authorized by the laws of this state to solemnize marriages
10 shall knowingly unite in marriage any person [~~sixteen or~~
11 ~~seventeen years of age, unless the minor first receives the~~
12 ~~written consent of each of the minor's living parents as shown~~
13 ~~on the minor's certificate of birth, or the district court has~~
14 ~~authorized the marriage of such person upon request of a parent~~
15 ~~or legal guardian of the person for good cause shown, and a~~
16 ~~certified copy of the judicial authorization is filed with the~~
17 ~~county clerk.~~

18 B. ~~The county clerk shall not issue a marriage~~
19 ~~license to any person under sixteen years of age, and no person~~
20 ~~authorized by the laws of this state to solemnize marriages~~
21 ~~shall knowingly unite in marriage any person under sixteen~~
22 ~~years of age, unless the children's or family court division of~~
23 ~~the district court has first authorized the marriage of the~~
24 ~~person upon request of a parent or legal guardian of the person~~
25 ~~in settlement of proceedings to compel support and establish~~

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1 ~~parentage, or where an applicant for the marriage license is~~
2 ~~pregnant, and a certified copy of the judicial authorization is~~
3 ~~filed with the county clerk] under the age of eighteen."~~

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

6 "40-1-7. INCESTUOUS MARRIAGES--VOID.--~~[All]~~ The following
7 incestuous marriages between relations ~~[and children,~~
8 ~~including]~~ are prohibited in this state:

9 A. grandparents [and] with grandchildren, [of all
10 degrees; between] including great-grandparents with great-
11 grandchildren;

12 B. parents with their children;

13 C. siblings, being brothers [and] or sisters; [of
14 full blood or of half blood; between]

15 D. cousins within the first degree of
16 consanguinity; and

17 E. aunts or uncles, [and] with nieces [and between
18 aunts and] or nephews [are declared incestuous and absolutely
19 void]."

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

23 "40-1-9. [NEW MATERIAL] POLYGAMOUS OR PLURAL MARRIAGES--
24 INVALID.--Pursuant to Section 1 of the Compact with the United
25 States, polygamous or plural marriages are prohibited in this

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1 state."

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

4 "40-1-10. LICENSE REQUIRED--COUNTY CLERK.--

5 A. Each couple desiring to marry pursuant to the
6 laws of New Mexico shall first obtain a license from a county
7 clerk of this state and, following a ceremony conducted in this
8 state, file the license for recording in the county issuing the
9 license.

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

24 C. A member of the uniformed services who is
25 deployed or activated to a duty assignment or station outside

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1 of this state may be issued a marriage license without
2 appearing personally in the office of the county clerk and
3 without a judicial authorization as provided for in Subsection
4 B of this section if:

5 (1) the other party to the marriage appears
6 personally in the office of the county clerk or before the
7 county clerk or an authorized deputy county clerk;

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

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

13 (4) a copy of the order deploying or
14 activating the person and indicating the place of the duty
15 assignment or station is attached to the declaration;

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

18 (6) the civil contract of marriage is
19 solemnized by means of a ceremony conducted in this state in
20 which the deployed member appears by remote communication
21 technology, while the other party to the marriage, the person
22 solemnizing the marriage and the witnesses are physically
23 located in this state.

24 D. A marriage license shall be issued to any couple
25 in New Mexico who otherwise qualify pursuant to Chapter 40,

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1 Article 1 NMSA 1978, regardless of the sex, sexual orientation,
2 gender, gender identity, race, ethnicity or national origin of
3 the two individuals seeking to obtain the marriage license.

4 E. A marriage license issued pursuant to this
5 section expires and shall not be used for a ceremony to
6 solemnize the civil contract of marriage if:

7 (1) one year passes from the issuance of the
8 marriage license without a ceremony taking place within this
9 state; or

10 (2) a later marriage license is issued to
11 either party on a marriage license listing a different person
12 as the second party to a marriage.

13 ~~[G.]~~ F. The county clerk shall:

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

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

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

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

3 "40-1-11. FEES--DISPOSITION.--

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

8 (1) issuing, acknowledging and recording a
9 marriage license and marriage certificate [fifteen dollars
10 (\$15.00) of each fee shall be remitted by the county treasurer
11 to the state treasurer, within fifteen days of the last day of
12 each month, for credit to the children's trust fund];

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

16 (3) issuing a certificate of correction or
17 correcting or reissuing an application for a marriage license,
18 a marriage license or a certificate of marriage upon an order
19 of the district court.

20 B. In those counties where the county clerk has
21 posted on the county website and in the county clerk's office,
22 the county clerk shall receive a fee of eighty dollars (\$80.00)
23 for issuing, acknowledging and recording a marriage license and
24 marriage certificate where neither party to the marriage has an
25 address in this state.

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1 C. Fees collected pursuant to this section shall be
2 deposited in the county clerk recording and filing fund;
3 provided that for each fee received by the county clerk for
4 issuing, acknowledging and recording a marriage license and
5 marriage certificate pursuant to Subsections A and B of this
6 section, within fifteen days of the last day of each month, the
7 county treasurer shall remit:

- 8 (1) ten dollars (\$10.00) to the county general
9 fund; and
- 10 (2) fifteen dollars (\$15.00) to the state
11 treasurer for credit to the children's trust fund."

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

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

16 A. All persons authorized to solemnize the civil
17 contract of marriage shall first require the parties
18 contemplating marriage to produce a license signed and sealed
19 by the county clerk issuing the license.

20 B. Nothing in Chapter 40, Article 1 NMSA 1978 shall
21 excuse any person authorized by the laws of this state to
22 solemnize the civil contract of marriage from being satisfied
23 as to the legal qualifications of any parties desiring to be
24 married, in addition to the authority conferred by the
25 license."

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

3 "40-1-15. CERTIFICATION OF MARRIAGE--RECORDING AND
4 INDEXING.--

5 A. It is the duty of all persons solemnizing the
6 contract of marriage in this state to certify the marriage to
7 the county clerk within ninety days from the date of the
8 marriage ceremony. Upon ensuring the information on the
9 certificate is complete and legible, the county clerk shall
10 immediately upon receipt of the certificate cause it to be
11 properly recorded and indexed in a permanent record as a part
12 of the county records in a separate physical or electronic book
13 kept for that purpose. The failure to return the certificate
14 of marriage to the county clerk who issued the license does not
15 by itself void the marriage created by the ceremony conducted
16 pursuant to Chapter 40, Article 1 NMSA 1978.

17 B. The county clerk:

18 (1) may issue a certificate of correction or
19 correct or reissue an application for a marriage license, a
20 marriage license or a certificate of marriage as a result of a
21 typographical or data entry error by the office of the county
22 clerk [~~The county clerk~~]; and

23 (2) shall issue a certificate of correction or
24 correct or reissue an application for a marriage license, a
25 marriage license or a certificate of marriage to correct an

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1 error on the document upon order of the district court."

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

4 "40-1-17. UNIFORM ~~[USE FORM]~~ SYSTEM OF RECORDS.--

5 A. To ensure a uniform system of records of all
6 marriages contracted and the better preservation of the records
7 for future reference, the form of application, license and
8 certificate shall be ~~[substantially as provided in Section~~
9 ~~40-1-18 NMSA 1978, each blank to be]~~ numbered consecutively
10 ~~[corresponding with the page number of the record book in the~~
11 ~~clerk's office; provided that the medical evaluation language~~
12 ~~shall not be printed on the application until such time as the~~
13 ~~secretary of health deems such evaluation necessary through the~~
14 ~~issuance of rules].~~

15 B. The county clerk shall also record in the same
16 uniform system of records all other forms recorded, filed or
17 appended pursuant to Chapter 40, Article 1 NMSA 1978. The
18 uniform system of records shall be segregated from other
19 records recorded or filed in the county clerk's office."

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

22 "40-1-18. FORM OF APPLICATION, LICENSE AND CERTIFICATE.--

23 "APPLICATION FOR MARRIAGE LICENSE

24 No. _____ STATEMENTS

25 RECEIVED AND FILED

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IN COUNTY CLERK'S OFFICE
at _____ o'clock _____ m.
_____ [19] 20_____

~~[DATE OF PREMARITAL PHYSICAL EXAMINATION~~
Bride _____
Groom _____
COUNTY CLERK _____ COUNTY
By _____ Deputy]

To the County Clerk: We the undersigned hereby make application to be united in marriage and certify under penalty of perjury that we are not related within the degree prohibited by the laws of this state; that neither is bound by marriage to another; that any marriage license previously issued to either party to the marriage where a ceremony has not taken place is expired by the issuance of this marriage license; that there exists no legal impediment to this marriage; and that the information contained herein is true and correct.

<u>Applicant</u>	<u>Applicant</u>
Date of Birth	Date of Birth
_____	_____
Place of Birth	Place of Birth
_____	_____
Present Address _____	Present Address _____
_____	_____
Signature	Signature

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1 Subscribed and sworn to before me this _____ day
2 of _____ [A.D. 19] 20_____.

3 (seal)
4 _____ By _____ Deputy
5 Signature County Clerk

6 ~~[CONSENT OF PARENT OR GUARDIAN (where either party~~
7 ~~is under age)~~

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

11 _____
12 Signature Parent (Guardian)

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

16 _____
17 Signature Parent (Guardian)]

18 MARRIAGE LICENSE

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

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

23 Greeting:

24 You are hereby authorized to join in marriage _____
25 [of _____] and _____

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1 [of _____] within one year from the date
2 this license was issued and of this license you will make due
3 return to my office within [~~the time prescribed by law~~] ninety
4 days of the ceremony conducted within the state of New Mexico.

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

9 County Clerk

10 Recorded _____, [19] 20_____, at
11 _____ m.

12 In marriage record book no. _____ page _____
13 _____

14 County Clerk

15 MARRIAGE CERTIFICATE

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

18 I hereby certify that on the _____ day of _____,
19 [A.D., 19] 20_____, at _____ in [~~said~~
20 ~~county and~~] the state of New Mexico, I, the undersigned, a
21 _____, did [~~join in the Holy Bonds of~~
22 ~~Matrimony~~] solemnize the civil contract of marriage in
23 accordance with the laws of the state of New Mexico and the
24 authorization of the foregoing license _____ [of
25 _____] and _____ [of

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1 Let it be Known to All:

2 I attest under penalty of perjury that:

3 1) My name is: _____, and my date of
4 birth is: _____.

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

8 3) I desire to marry: _____, whose
9 date of birth is: _____.

10 4) I am at least eighteen (18) years of age, not related
11 within the prohibited degrees to the person I desire to marry,
12 and not currently married to another person.

13 5) I understand that I will appear by remote
14 communication technology at a ceremony conducted in the state
15 of New Mexico in which the person I desire to marry, the person
16 solemnizing the marriage and the witnesses appear in person at
17 the ceremony.

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

21 _____

22 (Signed)

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

24 _____ Date Name of individual

25 _____

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1 Signature of notarial officer

2 Stamp

3 _____

4 Title of officer

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

6 Marriage Record No. ____.

7 _____

8 County Clerk."."

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

11 "40-1-19. OFFENSES--PENALTIES.--

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

16 B. A person who performs the marriage ceremony or
17 certifies a marriage to the county clerk, who neglects or fails
18 to comply with the provisions of Chapter 40, Article 1 NMSA
19 1978 and any person who willfully violates the law by deceiving
20 or attempting to deceive or mislead any officer or person in
21 order to obtain a marriage license or to be married contrary to
22 law is upon conviction guilty of a misdemeanor for each
23 ceremony conducted or for each marriage certified to the county
24 clerk and shall be sentenced pursuant to the provisions of
25 Section 31-19-1 NMSA 1978.

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1 C. The criminal penalty provided for in this
2 section is not exclusive of other charges or penalties that may
3 be applicable."

4 SECTION 16. Section 40-2-1 NMSA 1978 (being Laws 1907,
5 Chapter 37, Section 1, as amended) is amended to read:

6 "40-2-1. MUTUAL OBLIGATION OF MARRIED PERSONS.--[Section
7 ~~1. Husband and wife~~] The parties to a marriage contract toward
8 each other obligations of mutual respect, fidelity and
9 support."

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

12 "40-2-2. CONTRACT RIGHTS OF MARRIED PERSONS.--[Sec. 7.]
13 Either [~~husband or wife~~] spouse may enter into any engagement
14 or transaction with the other or with any other person
15 [~~respecting~~] with respect to property [~~which~~] that either might
16 enter into if unmarried; subject, in transactions between
17 themselves, to the general rules of common law [~~which~~] that
18 control the actions of persons occupying confidential relations
19 with each other."

20 SECTION 18. Section 40-2-3 NMSA 1978 (being Laws 1901,
21 Chapter 62, Section 20, as amended) is amended to read:

22 "40-2-3. POWER OF ATTORNEY--JOINDER OF SPOUSE
23 UNNECESSARY.--[Sec. 8.] It shall not be necessary in any case
24 for [~~the husband~~] a spouse to join with [~~the wife~~] a signing
25 spouse when [~~she executes~~] executing a power of attorney for

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1 [herself; nor shall it be necessary for the wife to join with
2 the husband when he executes a power of attorney for himself]
3 the signing spouse."

4 SECTION 19. Section 40-2-8 NMSA 1978 (being Laws 1907,
5 Chapter 37, Section 5, as amended) is amended to read:

6 "40-2-8. EXTENT OF MUTUAL ALTERATION OF LEGAL
7 RELATIONS.--[~~Sec. 39. A husband and wife~~] The parties to a
8 marriage cannot by any contract with each other alter their
9 legal relations, except [~~of~~] with respect to their property and
10 except that they may agree in writing to an immediate
11 separation and may make provisions for the support of either of
12 them and of their children during their separation."

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

15 "40-3-1. PROPERTY RIGHTS.--[~~Sec. 29.~~] The property rights
16 of [~~husband and wife~~] a married couple are governed by [~~this~~]
17 Chapter 40 NMSA 1978 unless there is a marriage settlement
18 containing stipulations contrary thereto."

19 SECTION 21. Section 40-3-2 NMSA 1978 (being Laws 1907,
20 Chapter 37, Section 7, as amended) is amended to read:

21 "40-3-2. METHODS FOR HOLDING PROPERTY.--[~~Sec. 13. Husband~~
22 ~~and wife~~] The parties to a marriage may hold property as joint
23 tenants or tenants in common or may hold property as community
24 property."

25 SECTION 22. Section 40-3-3 NMSA 1978 (being Laws 1907,

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1 Chapter 37, Section 3, as amended) is amended to read:

2 "40-3-3. SEPARATION OF PROPERTY--ADMISSION TO DWELLING OF
3 SPOUSE.--~~[Sec. 6.]~~ Neither ~~[husband nor wife]~~ spouse has any
4 interest in the property of the other, but neither can be
5 excluded from the other's dwelling."

6 SECTION 23. Section 40-3-4 NMSA 1978 (being Laws 1965,
7 Chapter 74, Section 1) is amended to read:

8 "40-3-4. CONTRACTS OF INDEMNITY--NO OBLIGATION OF
9 COMMUNITY PROPERTY UNLESS SIGNED BY BOTH [HUSBAND AND WIFE]
10 SPOUSES.--It is against the public policy of this state to
11 allow one spouse to obligate community property by entering
12 into a contract of indemnity whereby ~~[he will indemnify]~~ the
13 spouse indemnifies a surety company in case of default of the
14 principal upon a bond or undertaking issued in consideration of
15 the contract of indemnity. No community property shall be
16 liable for any indebtedness incurred as a result of any
17 contract of indemnity made after the effective date of this
18 section unless both ~~[husband and wife]~~ spouses sign the
19 contract of indemnity."

20 SECTION 24. Section 40-3-8 NMSA 1978 (being Laws 1973,
21 Chapter 320, Section 3, as amended) is amended to read:

22 "40-3-8. CLASSES OF PROPERTY.--

23 A. "Separate property" means:

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

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

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

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

8 (5) property designated as separate property
9 by a written agreement between the spouses, including a deed or
10 other written agreement concerning property held by the spouses
11 as joint tenants or tenants in common in which the property is
12 designated as separate property.

13 B. Except as provided in Subsection C of this
14 section, "community property" means property acquired by either
15 or both spouses during marriage ~~[which]~~ that is not separate
16 property. Property acquired ~~[by a husband and wife]~~ during a
17 marriage by an instrument in writing whether as tenants in
18 common or as joint tenants or otherwise shall be presumed to be
19 held as community property unless such property is separate
20 property within the meaning of Subsection A of this section.

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

25 (1) by either spouse while domiciled elsewhere

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1 [which] that would have been community property if the spouse
2 who acquired the property had been domiciled in this state at
3 the time of its acquisition; or

4 (2) in exchange for real or personal property,
5 wherever situated, [which] that would have been community
6 property if the spouse who acquired the property so exchanged
7 had been domiciled in this state at the time of its
8 acquisition.

9 D. For purposes of division of property incident to
10 a dissolution of marriage or a legal separation under Section
11 40-4-3 NMSA 1978, quasi-community property shall be treated as
12 community property if both parties are domiciliaries of New
13 Mexico at the time of the dissolution or legal separation
14 proceeding.

15 E. "Property" includes the rents, issues and
16 profits thereof.

17 F. The right to hold property as joint tenants or
18 as tenants in common and the legal incidents of so holding,
19 including but not limited to the incident of the right of
20 survivorship of joint tenancy, are not altered by the Community
21 Property Act of 1973, except as provided in Sections 40-3-10,
22 40-3-11 and 40-3-13 NMSA 1978.

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

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1 SECTION 25. Section 40-3-12 NMSA 1978 (being Laws 1973,
2 Chapter 320, Section 7) is amended to read:

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

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

17 ~~C. The presumptions contained in Subsection B of~~
18 ~~this section are conclusive in favor of any person dealing in~~
19 ~~good faith and for valuable consideration with a married woman~~
20 ~~or her legal representative or successor in interest.]"~~

21 SECTION 26. Section 40-4-1 NMSA 1978 (being Laws 1973,
22 Chapter 319, Section 1) is amended to read:

23 "40-4-1. DISSOLUTION OF MARRIAGE.--On the petition of
24 either party to a marriage, a district court may decree a
25 dissolution of marriage on [~~any of~~] the following grounds of:

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1 A. incompatibility between the parties to the
2 marriage; or
3 B. [~~eruel and inhuman treatment;~~
4 ~~C. adultery; or~~
5 ~~D. abandonment]~~ the marriage is void, voidable or
6 invalid."

7 SECTION 27. Section 40-4-2 NMSA 1978 (being Laws 1973,
8 Chapter 319, Section 2) is amended to read:

9 "40-4-2. INCOMPATIBILITY.--

10 A. Incompatibility exists between the parties when,
11 because of discord or conflict of personalities, [~~the~~
12 ~~legitimate ends of the marriage relationship are destroyed,~~
13 ~~preventing any reasonable]~~ there exists no expectation of
14 reconciliation.

15 B. When a dissolution is sought on the grounds of
16 incompatibility, the district court shall accept the pleading
17 of incompatibility to be sufficient evidence that
18 incompatibility exists."

19 SECTION 28. A new Section 40-4-2.1 NMSA 1978 is enacted
20 to read:

21 "40-4-2.1. [NEW MATERIAL] VOID, VOIDABLE AND INVALID
22 MARRIAGES.--

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

25 B. A marriage is voidable if at least one party to
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1 the marriage was under the age of eighteen at the time the
2 marriage was solemnized and that party has not yet reached the
3 age of nineteen.

4 C. A marriage is invalid if it is polygamous or
5 plural; provided that a marriage that was initially valid that
6 later became polygamous or plural is not invalid as to the
7 initial, valid marriage, but any polygamous or plural additions
8 to the valid marriage are invalid."

9 SECTION 29. Section 40-4-3 NMSA 1978 (being Laws 1901,
10 Chapter 62, Section 23, as amended) is amended to read:

11 "40-4-3. PROCEEDING FOR DIVISION OF PROPERTY, DISPOSITION
12 OF CHILDREN OR ALIMONY WITHOUT THE DISSOLUTION OF MARRIAGE.--
13 Whenever the [~~husband and wife~~] parties to a marriage have
14 permanently separated and no longer live or cohabit together as
15 [~~husband and wife~~] a married couple, either may institute
16 proceedings in the district court for a division of property,
17 disposition of children or alimony without asking for or
18 obtaining in the proceedings a dissolution of marriage."

19 SECTION 30. A new Section 40-4-5.1 NMSA 1978 is enacted
20 to read:

21 "40-4-5.1. [NEW MATERIAL] DISSOLUTION OF MARRIAGE--VOID,
22 VOIDABLE OR INVALID MARRIAGES.--

23 A. When a verified petition for dissolution of
24 marriage alleges that the marriage is void, voidable or
25 invalid, if the underlying allegations that would make the

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1 marriage void, voidable or invalid is:

2 (1) not contested, the court may accept the
3 uncontested representation that a factual basis exists for a
4 finding to be entered that the marriage is void, voidable or
5 invalid; or

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

9 B. After entering an order of dissolution of a
10 marriage on the grounds of the marriage being void, voidable or
11 invalid, the court, sitting as a court of equity, shall apply
12 the laws of this state regarding community property, child
13 support and spousal support in the same manner as if the
14 marriage had been entered into lawfully.

15 C. In a cause of action for dissolution of marriage
16 instituted by a person who alleges that at the time of the
17 marriage the parties to the marriage were relatives within the
18 prohibited degrees based on the laws in effect at the time that
19 the marriage was entered into, and regardless of whether the
20 void marriage was entered into in this state, upon a finding
21 that a factual basis exists, the district court shall enter a
22 decree that such incestuous marriage is void and enter a decree
23 dissolving the marriage.

24 D. In a cause of action for dissolution of marriage
25 instituted by a person, next friend or a parent or guardian of

1 the person, who alleges that at the time of the marriage the
2 person was a minor and has not yet attained the age of
3 nineteen, and regardless of whether the voidable marriage was
4 entered into in this state, upon a finding that a factual basis
5 exists, the district court shall enter a decree that such
6 marriage is voidable and enter a decree dissolving the
7 marriage. The court may, in its discretion, grant spousal
8 support until the minor emancipates, remarries or reaches the
9 age of nineteen. If the parties should remain married until
10 each of the parties to the marriage has attained the age of
11 nineteen, the marriage shall no longer be considered voidable.

12 E. In a cause of action for dissolution of marriage
13 instituted by a person who alleges that the marriage is
14 polygamous or plural, and regardless of whether the invalid
15 marriage was entered into in this state or was entered into
16 lawfully beyond this state, upon a finding that a factual basis
17 exists, the district court shall enter a decree that such
18 marriage or portion of such marriage is invalid and enter a
19 decree dissolving the marriage in its entirety or dissolving
20 the marriage as it applies to the petitioner. The court may
21 determine whether a marriage that was initially between two
22 parties but that later became polygamous or plural is invalid
23 as to all parts of the marriage or if only the polygamous or
24 plural additions to the initial marriage are invalid. If the
25 court determines a party to a polygamous or plural marriage was

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1 unaware of the polygamous or plural nature of the marriage,
2 that party's community property rights shall not be abrogated.
3 A polygamous or plural marriage is contrary to the Compact with
4 the United States.

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

8 SECTION 31. Section 40-4-12 NMSA 1978 (being Laws 1947,
9 Chapter 16, Section 1, as amended) is amended to read:

10 "40-4-12. ALLOWANCE FROM SPOUSE'S SEPARATE PROPERTY AS
11 ALIMONY.--In proceedings for the dissolution of marriage,
12 separation or support between ~~[husband and wife]~~ married
13 persons, the court may make an allowance to either spouse of
14 the other spouse's separate property as alimony, and the decree
15 making the allowance shall have the ~~[force and]~~ effect of
16 vesting the title of the property so allowed in the recipient."

17 SECTION 32. Section 40-4-14 NMSA 1978 (being Laws 1947,
18 Chapter 16, Section 3, as amended) is amended to read:

19 "40-4-14. ALLOWANCE IN PROPERTY--APPOINTMENT AND REMOVAL
20 OF GUARDIAN.--In proceedings for the dissolution of marriage,
21 separation or support between ~~[husband and wife]~~ spouses, the
22 court may make an allowance of certain property ~~[or properties]~~
23 of either party or of both parties for the maintenance,
24 education and support of the minor children of the parties and
25 may vest title to the part of the property so allowed in a

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1 conservator appointed by the court. The conservator must
2 qualify and serve in such capacity as provided in Sections
3 ~~[5-101 through 5-502 of the Probate Code]~~ 45-5-101 through
4 45-5-502 NMSA 1978 and the Uniform Power of Attorney Act."

5 SECTION 33. Section 40-4-20 NMSA 1978 (being Laws 1901,
6 Chapter 62, Section 31, as amended) is amended to read:

7 "40-4-20. FAILURE TO DIVIDE OR DISTRIBUTE PROPERTY ON THE
8 ENTRY OF A DECREE OF DISSOLUTION OF MARRIAGE OR SEPARATION--
9 DISTRIBUTION OF SPOUSAL OR CHILD SUPPORT AND DETERMINATION OF
10 PATERNITY WHEN DEATH OCCURS DURING PROCEEDINGS FOR DISSOLUTION
11 OF MARRIAGE, SEPARATION, ANNULMENT OF MARRIAGE OR PATERNITY.--

12 A. The failure to divide or distribute property on
13 the entry of a decree of dissolution of marriage or of
14 separation shall not affect the property rights of either ~~[the~~
15 ~~husband or wife]~~ party to a marriage, and either may
16 subsequently institute and prosecute a suit for division and
17 distribution or with reference to any other matter pertaining
18 thereto that could have been litigated in the original
19 proceeding for dissolution of marriage or separation.

20 B. Upon the filing and service of a petition for
21 dissolution of marriage, separation, annulment, division of
22 property or debts, spousal support, child support or
23 determination of paternity pursuant to the provisions of
24 Chapter 40, Article 4 or ~~[++]~~ 11A NMSA 1978, if a party to the
25 action dies during the pendency of the action, but prior to the

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

15 SECTION 34. Section 40-10A-310 NMSA 1978 (being Laws
16 2001, Chapter 114, Section 310) is amended to read:

17 "40-10A-310. HEARING AND ORDER.--

18 [~~(a)~~] A. Unless the court issues a temporary
19 emergency order pursuant to Section [204] 40-10A-204 NMSA 1978,
20 upon a finding that a petitioner is entitled to immediate
21 physical custody of the child, the court shall order that the
22 petitioner may take immediate physical custody of the child
23 unless the respondent establishes that:

24 (1) the child-custody determination has not
25 been registered and confirmed under Section [305] 40-10A-305

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1 NMSA 1978 and that:

2 [~~(A)~~] (a) the issuing court did not have
3 jurisdiction under [~~Article 2 of the Uniform Child-Custody~~
4 ~~Jurisdiction and Enforcement Act~~] Sections 40-10A-201 through
5 40-10A-210 NMSA 1978;

6 [~~(B)~~] (b) the child-custody
7 determination for which enforcement is sought has been vacated,
8 stayed or modified by a court of a state having jurisdiction to
9 do so under [~~Article 2 of the Uniform Child-Custody~~
10 ~~Jurisdiction and Enforcement Act~~] Sections 40-10A-201 through
11 40-10A-210 NMSA 1978; or

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

17 (2) the child-custody determination for which
18 enforcement is sought was registered and confirmed under
19 Section [~~305~~] 40-10A-305 NMSA 1978 but has been vacated, stayed
20 or modified by a court of a state having jurisdiction to do so
21 under [~~Article 2 of the Uniform Child-Custody Jurisdiction and~~
22 ~~Enforcement Act~~] Sections 40-10A-201 through 40-10A-210 NMSA
23 1978.

24 [~~(b)~~] B. The court shall award the fees, costs and
25 expenses authorized under Section [~~312~~] 40-10A-312 NMSA 1978

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1 and may grant additional relief, including a request for the
2 assistance of law enforcement officials, and set a further
3 hearing to determine whether additional relief is appropriate.

4 ~~[(e)]~~ C. If a party called to testify refuses to
5 answer on the ground that the testimony may be self-
6 incriminating, the court may draw an adverse inference from the
7 refusal.

8 ~~[(d)]~~ D. A privilege against disclosure of
9 communications between spouses and a defense of immunity based
10 on the spousal relationship [~~of husband and wife~~] or that of
11 parent and child may not be invoked in a proceeding under
12 [~~Article 3 of the Uniform Child-Custody Jurisdiction and~~
13 ~~Enforcement Act~~] Sections 40-10A-301 through 40-10A-317 NMSA
14 1978."

15 SECTION 35. REPEAL.--Sections 40-1-16 and 40-1-20 NMSA
16 1978 (being Laws 1905, Chapter 65, Section 5 and Laws 1909,
17 Chapter 91, Section 1, as amended) are repealed.

18 SECTION 36. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2024.