

<b>LFC Requester:</b>	<b>Julisa Rodriguez</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)**

*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 1/22/2025 *Check all that apply:*  
**Bill Number:** HB 123 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Charlotte Little **Agency Name and Code** 218 AOC  
**Short Title:** UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT **Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	N/A

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	N/A	N/A

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.  
Duplicates/Relates to Appropriation in the General Appropriation Act – None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### **Synopsis:**

HB 123 proposes the enactment of the Uniform Cohabitants' Economic Remedies Act, which aims to:

1. Provides a right of action to cohabitants for contractual and equitable claims arising out of the contributions to the relationships of cohabitants;
2. Establish requirements of a cohabitants' agreement; and
3. Allow third parties to enforce judgments against cohabitants and provide associated remedies.

#### **FISCAL IMPLICATIONS**

There will be an administrative cost associated with the statewide update, distribution, and documentation of the statutory changes in HB 123. This includes revising existing forms and rules to implement the proposed changes. Additionally, the judiciary will need to provide training to all judges on the new Act. A potential increase in caseload is anticipated if HB 123 is enacted, due to disputes arising from cohabitants' agreements.

#### **SIGNIFICANT ISSUES**

The Act may be intended for romantic couples, but roommates may also be able to sue each other. A couple is not defined in the Act and could include roommates. However, a flexible definition of "couple" may be beneficial. *See Uniform Law Commission summary.* "If individuals living together are "mere roommates, including them within the act does no harm; their claims and remedies will generally be identical whether under this act or other state law. On the other hand, had the act included an elaborate definition litigants would spend considerable time and money attempting to establish that they were (or were not) cohabitants within the definition. The point of the act is to ensure that the nature of the parties' relationship is not a bar to their ability to bring claims against one another."

See: **[THE UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT \(2021\)](#)**

The *Nonmarital Cohabitant: The US Approach* was drafted in 2021 in response to growing discussions regarding the rights or lack of those rights for non-married cohabitants. "With more couples – of greater diversity- cohabiting outside of marriage, more cohabitant disputes inevitably show up in court .... Any legal regime that forces these varied forms of nonmarital couplehood into a single prototype might provide simplicity and clarity but at the same time risks standardizing non-standard relationships based on a set of norms that may not be applicable."

See [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3881259](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3881259)

1. The legislation does not make clear if a cohabitant can be married to someone else, and how Sec. 45-2-102 might impact this proposed act.
2. The cohabitation status terminates upon the parties marrying each other, according to Section 2. (G)(3). However, Section 4 (A) (3) makes it clear that the prior claim (contractual or equitable) is not extinguished by the marriage of the cohabitants to each other. Section 4. (A) states "A person who is or was a cohabitant may commence an action on a contractual or an equitable claim that arises out of contributions to the relationship." The action is not (Section 3) extinguished by the marriage of the cohabitants to each other.
3. New Mexico is a community property state and during the marriage, each spouse is to act in the best interest of the community and owes a fiduciary duty to the spouse. Inviting one spouse to sue the other during the marriage for contributions prior to marriage may cause a breach of fiduciary duty to the community. This could also mean that the parties who marry later may bring a petition for both dissolution of marriage and a separate or joint action under this Act. That will likely lead to substantially more litigation and harder evidentiary problems.
4. According to Section 2(B), a "cohabitants' agreement" can be entered into after the couple no longer lives together "or were cohabitants" and a "cohabitants' agreement" can be implied-in-fact. See Section 6(a), which states: "A cohabitants' agreement may be oral, in a record, express or implied-in-fact." Oral contracts especially and more so with implied-in-fact contracts will lead to an increase in the workload of the family court as evidence to support the 'agreement' will not be a marriage certificate.
5. Currently, New Mexico does not permit the consummation of a New Mexico-based common law marriage (but the rule of comity for other states does exist) but the formation of this legislation would create a de facto marriage. The addition to New Mexico's family court of this remedy couched on cohabitation will increase litigation and may circumvent the prohibition of common-law marriage.
6. Unmarried couples can enter into contracts that address contributions and division of property and such agreements are enforceable under contract law and claim for unjust enrichment as well as other equity-based claims for relief. HB 123 may complicate an area of law that already provides for the relevant agreements.

## **PERFORMANCE IMPLICATIONS**

If HB 123 passes, there may be an increase in litigation, and due to its nature, much of that litigation may involve unwritten, entirely equitable actions. There are already remedies available in civil law for breach of contract, implied contract, and equitable relief. This would shift those cases to the family court and likely increase the caseload.

## **ADMINISTRATIVE IMPLICATIONS**

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

There are already remedies available in civil law for breach of contract, implied contract, and equitable relief.

### **TECHNICAL ISSUES**

1. Section 7(C) says, "An equitable claim based on contributions to the relationship accrues on termination of cohabitation and is subject to equitable defenses." so presumably the statute of limitation for an action under this Act is the four-year general limitation for equitable actions and six for contractual actions. The legislation does not clearly articulate that the general statute of limitations would apply.
2. A complication of the act is built into claims of individuals who cohabit and then marry. The marriage does not terminate the prior cause of action, but it also does not clearly establish if the date of marriage is the triggering event for the calculation of the statute of limitations. HB 123 could be interpreted to mean that the marriage is the triggering date, but the lack of clarity is problematic and could be cured with that addition.
3. A large complication is built into claims of individuals who cohabit and then marry as the marriage does not terminate the right to sue under this legislation but it also does not clearly establish if the date of marriage is the triggering event for the calculation of the statute of limitations. The legislation could be interpreted to mean that marriage is the triggering date, but clarifying the triggering date would improve HB 123.

**OTHER SUBSTANTIVE ISSUES** – none identified.

**ALTERNATIVES** – none.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL** – none.

### **AMENDMENTS**

See the information listed above.