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FISCAL IMPACT REPORT

SPONSOR Maestas LAST UPDATED _____
ORIGINAL DATE 2/22/23
SHORT TITLE Dissolution of Marriage BILL NUMBER Senate Bill 322
ANALYST Campbell

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 172 and Senate Bill 295

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Senate Bill 322

Senate Bill 322 amends several statutes, to cause petitions for divorce, separation, annulment, division of property or debts, spousal support, child support or determination of paternity to abate (i.e. to terminate) upon the death of either party.

FISCAL IMPLICATIONS

Statutory amendments require minimal administrative costs to update, distribute, and document statutory changes. Increasing the types of proceedings that abate upon the death of a party could decrease court caseloads, while any challenges to the revised statutes would have the opposite effect.

SIGNIFICANT ISSUES

AOC notes several substantial issues:

1. Requiring parentage (it says paternity but it should be parentage as it is the Uniform Parentage Act) to be dismissed would absolutely result in children not being able to receive certain benefits from their deceased parent, including inheritance and Social Security Death Benefits. The child, now with maybe one living parent-or none- has no way to obtain funds available to other children who have both parents listed on their birth certificates. It would likely lead to increased child poverty (Not an overstatement at all. Establishing parentage after a parent has died is vital).

If someone dies, it is important to know who their heirs are, especially if they die intestate. Otherwise, they may not be able to inherit or be part of an insurance claim, a wrongful death settlement, etc. Many children are raised by parents who do not have that parent's name on their birth certificate or the father dies while the mother is pregnant. That would mean the unborn child never has a father, nor any of the financial benefits (including things like veteran scholarships for children of veterans, etc.) or able to be established as a Native American child based on who their father was.

Some of this might be able to be resolved through other court proceedings or in Tribal court but that is not guaranteed at all.

2. Requiring dismissal of dissolution of marriage actions and annulments would cause people who do not want to be married and take necessary steps to end their marriage, to be undermined by their death or the death of their spouse. Currently, Section 40-4-20 allows a court to dismiss a case or proceed as if both parties survived based on the determination made by the court (or by the stipulation of the estate and the surviving spouse) that the deceased party wanted to get divorced. The trial court is required to determine whether dismissal would be prejudicial to the parties or not and how dismissing or not dismissing would affect the equities of both parties. See, *Trinosky v. Johnstone*, 2011-NMCA-045.

It would undermine the estate planning and intent of parties who do not want to be married and do their best to end their marriage by requiring that case to be dismissed without any weighing of the cost/benefit of dismissing the case.

3. Dismissing a case for child support and/or spousal support could also cause significant harm to the ex-spouse or child of the now-deceased party. The court retains jurisdiction for marriages over twenty years so that the court can help that former spouse if they have significant income loss or other significant change of circumstances warranting spousal support. See Section 40-4-7(F). Again, the court can dismiss the case, if that is what is equitable, but requiring dismissal may lead to really harmful results.

4. SB322 also prevents a party from finishing the case to divide undivided property. Undivided property, that property not specified during the divorce and

therefore not divided, can be inadvertently left out or, as is often the case, hidden from the other party. If a former spouse files a petition to receive half of the retirement of the other spouse that was earned during the marriage (and is therefore community property) but was not included in the divorce decree, and the party with the retirement account dies, this bill would prevent the living ex-spouse from accessing what is rightfully their property. It could allow someone to undermine our community property system.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 172 would remove the exception for abatement of assault and battery proceedings, meaning that assault and battery cases would abate upon the death of a party.

OAG notes:

SB295 makes numerous changes to the statutes related to marriage by, *inter alia*, changing references to “husband and wife” to “married couple” etc. This does not appear to affect the substance of SB322’s changes.

TECHNICAL ISSUES

AOC notes that “paternity” should be replaced with “parentage” throughout SB322 for the sake of consistency with the New Mexico Uniform Parentage Act, Sections 40-11A-101 to -903 NMSA 1978.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Courts will continue to have discretion to dismiss cases (or not) based on equitable considerations after the death of a party. The death of a parent will not prevent a child from establishing parentage, as can be necessary (e.g. when the parent is not listed on the child’s birth certificate) in order to access various types of benefits.

JBC/al/ne