

1 SENATE BILL 295

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Daniel A. Ivey-Soto

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9  
10 AN ACT

11 RELATING TO DOMESTIC AFFAIRS; CLARIFYING THE PROCESS OF  
12 SOLEMNIZATION, LICENSURE AND CONTRACTS FOR MARRIAGE; PROVIDING  
13 DEFINITIONS; PROVIDING A FORM; PROVIDING CIRCUMSTANCES FOR  
14 VOIDABLE MARRIAGES; AMENDING FEES; PRESCRIBING MARRIAGE  
15 RECORDING AND INDEXING GUIDELINES; AMENDING PENALTIES; REVISING  
16 TERMS THAT DESCRIBE PARTIES TO A MARRIAGE; CLARIFYING PROPERTY  
17 RIGHTS; REPEALING SECTIONS OF CHAPTER 40, ARTICLE 1 NMSA 1978;  
18 PROVIDING A DELAYED REPEAL.

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "40-1-1.1. [NEW MATERIAL] DEFINITIONS.--As used in  
24 Chapter 40, Article 1 NMSA 1978:

25 A. "civil officer" means a person who is:

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1 (1) an actively serving official elected to  
2 any nonjudicial office established by the constitution of New  
3 Mexico, the laws of this state, including its political  
4 subdivisions, or the United States constitution;

5 (2) an attorney licensed to practice law in  
6 this state;

7 (3) a notarial officer; or

8 (4) designated as a civil officer by the laws  
9 or customs of an Indian nation, tribe or pueblo, if the nation,  
10 tribe or pueblo designates civil officers;

11 B. "Indian nation, tribe or pueblo" means an  
12 indigenous nation, tribe, pueblo or other band, organized group  
13 or community of Indians, including an Alaskan Natives tribe,  
14 which is federally recognized by the bureau of Indian affairs  
15 of the United States department of the interior;

16 C. "judicial officer" means a person who is:

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

19 (2) a justice or judge of any of the courts  
20 established by the constitution or laws of the United States;  
21 or

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

25 D. "military officer" means a person who is a

1 commissioned officer of:

2 (1) the active or reserve components of the  
3 United States army, navy, air force, marine corps, space force,  
4 coast guard or merchant marine;

5 (2) the commissioned corps of the United  
6 States public health service, the national oceanic and  
7 atmospheric administration or the astronaut program of the  
8 national aeronautics and space administration;

9 (3) the army national guard division, the air  
10 national guard division, the state defense force division or  
11 the civil air patrol division of the department of military  
12 affairs; or

13 (4) a military officer designated by the laws  
14 or customs of an Indian nation, tribe or pueblo, if the nation,  
15 tribe or pueblo designates military officers;

16 E. "registered marriage officer" means a person who  
17 desires to solemnize a civil contract of marriage and who,  
18 before solemnizing such civil contract of marriage, has filed a  
19 notarized statement in the previous two years with the county  
20 clerk who issued the marriage license attesting that the person  
21 is at least eighteen years of age and desires to be a  
22 registered marriage officer;

23 F. "religious ceremony" means a ceremony conducted  
24 pursuant to any exercise of religion, whether or not compelled  
25 by or central to a system of religious belief, construed in

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1 favor of a broad protection of religious exercise to the  
2 maximum extent pursuant to the state and federal constitutions;

3 G. "religious society" means a nonprofit religious  
4 organization, including a church, mosque, synagogue, temple,  
5 denominational ministry, nondenominational ministry,  
6 interdenominational or ecumenical organization, mission  
7 organization, faith-based social agency, religious educational  
8 institution or any other nonprofit entity whose principal  
9 purpose is the study, practice or advancement of religion;  
10 "religious society" does not include a society, organization,  
11 institution, service or corporation, whether for profit or  
12 nonprofit, whose primary purpose is to provide ordinations or  
13 authorizations for the purpose of solemnizing the civil  
14 contract of marriage;

15 H. "religious officer" means a person who is:

- 16 (1) ordained as clergy by a religious society;  
17 (2) authorized to solemnize the civil contract  
18 of marriage by the rites, rules or customs of a religious  
19 society; and  
20 (3) designated by the laws or customs of an  
21 Indian nation, tribe or pueblo as a religious officer, if the  
22 nation, tribe or pueblo designates religious officers;

23 I. "retired officer" means a person who has served  
24 a cumulative of at least eight years as a justice, judge,  
25 elected official or military officer; provided that a person

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1 who has served at least eight years as:

2 (1) a justice or judge may also be referred to  
3 as a "retired judicial officer";

4 (2) an elected official may also be referred  
5 to as a "retired elected officer"; and

6 (3) a military officer may also be referred to  
7 as a "retired military officer"; and

8 J. "solemnize" means to join in marriage before:

9 (1) witnesses by means of a ceremony; or

10 (2) the county clerk or deputy county clerk by  
11 contract in the county clerk's office."

12 SECTION 2. Section 40-1-2 NMSA 1978 (being Laws 1859-  
13 1860, p. 120, as amended) is amended to read:

14 "40-1-2. MARRIAGES SOLEMNIZED--~~[ORDAINED CLERGY OR CIVIL~~  
15 ~~MAGISTRATES]~~ WHO MAY SOLEMNIZE.--

16 A. The civil contract of marriage is entered into  
17 when solemnized as provided in Chapter 40, Article 1  
18 NMSA 1978. As used in Chapter 40, Article 1 NMSA 1978,  
19 [~~"solemnize" means to join in marriage before witnesses by~~  
20 ~~means of a ceremony]~~ a civil contract of marriage entered into  
21 pursuant to the laws of this state shall only be solemnized:

22 (1) in a ceremony celebrated within the  
23 territorial limits of this state using a license issued by a  
24 county clerk of this state; or

25 (2) by contract at the county clerk's office

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1 at the time the license is issued.

2 B. ~~[A person who is an ordained member of the~~  
3 ~~clergy or who is an authorized representative of a federally~~  
4 ~~recognized Indian nation, tribe or pueblo may solemnize the~~  
5 ~~contract of marriage without regard to sect or rites and~~  
6 ~~customs the person may practice.] The civil contract of~~

- 7 marriage may be solemnized in a ceremony in this state by a:
- 8 (1) civil officer;
  - 9 (2) judicial officer;
  - 10 (3) military officer;
  - 11 (4) registered marriage officer;
  - 12 (5) religious officer; or
  - 13 (6) retired officer.

14 C. ~~[Active or retired judges, justices and~~  
15 ~~magistrates of any of the courts established by the~~  
16 ~~constitution of New Mexico, United States constitution, laws of~~  
17 ~~the state or laws of the United States are civil magistrates~~  
18 ~~having authority to solemnize contracts of marriage. Civil~~  
19 ~~magistrates solemnizing contracts of marriage] A judicial~~

20 officer shall charge no fee [therefor] to solemnize a contract  
21 of marriage.

22 D. The civil contract of marriage may be solemnized  
23 in the county clerk's office at the time the license is issued.  
24 Marriage by contract before the county clerk or deputy county  
25 clerk issuing the license pursuant to this subsection does not

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1 require a ceremony or witnesses."

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

4 "40-1-3. CEREMONY BY RELIGIOUS SOCIETY OR INDIAN NATION,  
5 TRIBE OR PUEBLO.--[~~It is lawful for~~]

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

13 B. A religious officer may solemnize the contract  
14 of marriage without regard to the sect or rites and customs the  
15 person may practice.

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

20 D. Nothing in Chapter 40, Article 1 NMSA 1978 shall  
21 be construed in any manner to interfere with any form of  
22 religious ceremony, traditional indigenous ceremony, additional  
23 regulation or requirement prescribed by any religious society  
24 or Indian nation, tribe or pueblo nor with any records kept by  
25 them.

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

7           SECTION 4. Section 40-1-4 NMSA 1978 (being Laws 1862-  
8 1863, p.64, as amended) is amended to read:

9           "40-1-4. FOREIGN MARRIAGES RECOGNIZED.--~~[Sec. 5.]~~

10           A. All marriages celebrated beyond the limits of  
11 this state [which] that are valid according to the laws of the  
12 country [wherein] or state in which they were celebrated or  
13 contracted shall be [likewise] valid in this state and shall  
14 have the same force as if they had been celebrated in  
15 accordance with the laws in force in this state; provided that  
16 a marriage celebrated beyond the limits of this state pursuant  
17 to Chapter 40, Article 1 NMSA 1978 that is declared void as  
18 contrary to the compact with the United States is void in this  
19 state notwithstanding the laws of the state or country wherein  
20 the marriage was celebrated or contracted.

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

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

3 "40-1-6. [~~RESTRICTIONS ON~~] MARRIAGE OF MINORS--  
4 VOIDABLE.--

5 A. The county clerk shall not issue a marriage  
6 license to an unemancipated person [~~sixteen or seventeen years~~  
7 ~~of age, and no person authorized by the laws of this state to~~  
8 ~~solemnize marriages shall knowingly unite in marriage any~~  
9 ~~person sixteen or seventeen years of age, unless the minor~~  
10 ~~first receives the written consent of each of the minor's~~  
11 ~~living parents as shown on the minor's certificate of birth, or~~  
12 ~~the district court has authorized the marriage of such person~~  
13 ~~upon request of a parent or legal guardian of the person for~~  
14 ~~good cause shown, and a certified copy of the judicial~~  
15 ~~authorization is filed with the county clerk] under the age of  
16 eighteen. A marriage with or between persons under the  
17 prohibited age is voidable as provided in this section by or on  
18 behalf of a party to the marriage who was a minor at the time  
19 of the ceremony purporting to solemnize the civil contract of  
20 marriage.~~

21 B. [~~The county clerk shall not issue a marriage~~  
22 ~~license to any person under sixteen years of age, and no person~~  
23 ~~authorized by the laws of this state to solemnize marriages~~  
24 ~~shall knowingly unite in marriage any person under sixteen~~  
25 ~~years of age, unless the children's or family court division of~~

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1 ~~the district court has first authorized the marriage of the~~  
2 ~~person upon request of a parent or legal guardian of the person~~  
3 ~~in settlement of proceedings to compel support and establish~~  
4 ~~parentage, or where an applicant for the marriage license is~~  
5 ~~pregnant, and a certified copy of the judicial authorization is~~  
6 ~~filed with the county clerk] A person who at the time of the  
7 marriage in this state was a minor and who has not attained the  
8 age of nineteen may file, under oath, a notice of void marriage  
9 at the office of the county clerk where the original marriage  
10 license was filed. No party to the marriage who was over the  
11 prohibited age at the time of the marriage may file a notice of  
12 void marriage at the office of the county clerk.~~

13 C. A cause of action shall not be required for the  
14 dissolution of a voidable marriage entered into in this state,  
15 but upon a cause of action instituted by a person who at the  
16 time of the marriage was a minor and who has not attained the  
17 age of nineteen, by next friend or a parent or legal guardian  
18 of the minor or by the district attorney, regardless of whether  
19 the voidable marriage was entered into in this state, the  
20 district court shall enter a decree declaring such marriage to  
21 a minor void. The court may, in its discretion, grant alimony  
22 until the minor emancipates, remarries or reaches the age of  
23 nineteen. No party to the marriage who was over the prohibited  
24 age at the time of the marriage shall be allowed to apply for  
25 or obtain a decree of the court declaring the marriage void.

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1           D. If the parties should remain married until each  
2 of the parties has attained the age of nineteen, the marriage  
3 shall not be voidable."

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--

7           ~~[All]~~ A. The following marriages between relations  
8 [and children, including] are void:

9                   (1) grandparents [and] with grandchildren, [of  
10 all degrees; between] including great-grandparents with great-  
11 grandchildren;

12                   (2) parents with children;

13                   (3) siblings, being brothers [and] or sisters;  
14 [of full blood or of half blood; between]

15                   (4) cousins; and

16                   (5) aunts or uncles, [and] with nieces [and  
17 between aunts and] or nephews [are declared incestuous and  
18 absolutely void].

19           B. A marriage between relatives within the  
20 prohibited degrees at the time the civil contract of marriage  
21 was solemnized is declared void.

22           C. A person who was within the prohibited degree of  
23 relations at the time of a marriage in this state may file,  
24 under oath, a notice of void marriage at the office of the  
25 county clerk where the original marriage license was filed.

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1                   D. No cause of action is required for the  
2                   dissolution of a void marriage entered into in this state, but  
3                   upon a cause of action instituted by a party to the marriage or  
4                   by the district attorney, regardless of whether the void  
5                   marriage was entered into in this state, the district court  
6                   shall enter a decree declaring such incestuous marriage void."

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

10                   "40-1-9. [NEW MATERIAL] POLYGAMOUS OR PLURAL MARRIAGES--  
11                   VOID.--Pursuant to Section 1 of the Compact with the United  
12                   States, polygamous or plural marriages are prohibited in this  
13                   state. A polygamous or plural marriage in this state is  
14                   declared void as contrary to the Compact with the United  
15                   States, regardless of whether the marriage was initially  
16                   celebrated in this state or became polygamous or plural in this  
17                   state; provided that:

18                   A. a marriage that was initially entered into  
19                   lawfully that later became polygamous or plural is not void  
20                   with regard to the initial marriage, but any polygamous or  
21                   plural additions to the initial marriage are declared void as  
22                   contrary to the Compact with the United States, regardless of  
23                   whether the initial marriage or additions to the marriage were  
24                   initially celebrated in this state;

25                   B. a person who has entered into a polygamous or

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1 plural marriage in this state may file, under oath, a notice of  
2 void marriage as to that person at the office of the county  
3 clerk where the original marriage license was filed;

4 C. no cause of action is required for the  
5 dissolution of a void marriage or those aspects of a marriage  
6 that are void pursuant to this section if entered into in this  
7 state, but upon a cause of action instituted by any person,  
8 regardless of whether the void marriage or those aspects of the  
9 marriage which are void were entered into in this state, the  
10 district court shall enter a decree declaring such polygamous  
11 or plural marriage void or the polygamous or plural aspects of  
12 a marriage void; and

13 D. upon entering a decree pursuant to this section,  
14 the district court shall send a copy of the decree to the  
15 district attorney."

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

18 "40-1-10. LICENSE REQUIRED--COUNTY CLERK.--

19 A. Each couple desiring to marry pursuant to the  
20 laws of New Mexico shall first obtain a license from a county  
21 clerk of this state and, following a ceremony conducted in this  
22 state, file the license for recording in the county issuing the  
23 license. A marriage license may be used in a ceremony  
24 conducted within six months of obtaining the marriage license.  
25 If the ceremony is not conducted within six months of issuance

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1 of the marriage license, the license shall expire and may not  
2 be used to solemnize the civil contract of marriage.

3 B. A marriage license shall be issued to any couple  
4 in New Mexico who otherwise qualifies pursuant to Chapter 40,  
5 Article 1 NMSA 1978, regardless of the sex, sexual orientation,  
6 gender, gender identity, race, ethnicity or national origin of  
7 the two individuals seeking to obtain the marriage license.

8 ~~[B.]~~ C. To obtain a marriage license, the couple  
9 shall personally appear at the office of the county clerk or  
10 before the county clerk or an assigned deputy county clerk  
11 issuing the license and provide sufficient identification to  
12 satisfy the county clerk or deputy county clerk as to each  
13 person's identity and qualification to receive a marriage  
14 license pursuant to Chapter 40, Article 1 NMSA 1978. On  
15 application to a judge of the district court, the court, for  
16 good cause, may authorize a person unable to appear personally  
17 to obtain a license from the county clerk, and a certified copy  
18 of the judicial authorization shall be filed with the county  
19 clerk.

20 ~~[C.]~~ D. The county clerk shall:

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

25 (2) ~~[shall]~~ not make available a social

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1 security number to another person except as provided for in  
2 Section 27-1-10 NMSA 1978; and

3 (3) [~~may~~] thirty days after the commencement  
4 of each fiscal year, dispose of, in a secure manner, those  
5 social security numbers collected in the previous fiscal year  
6 that have not been requested as provided for in Section 27-1-10  
7 NMSA 1978."

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

10 "40-1-11. FEES--DISPOSITION.--The county clerk shall  
11 receive a fee of [~~twenty-five dollars (\$25.00)~~] fifty dollars  
12 (\$50.00) for each of the following instruments and, except as  
13 otherwise provided in this section, such fees shall be  
14 deposited in the county clerk recording and filing fund for:

15 A. issuing, acknowledging and recording a marriage  
16 license and marriage certificate, unless neither party to the  
17 marriage has an address in the county, in which case the fee  
18 shall be one hundred dollars (\$100), and of which fifteen  
19 dollars (\$15.00) of each fee for issuing, acknowledging and  
20 recording a marriage license and marriage certificate shall be  
21 remitted by the county treasurer to the state treasurer, within  
22 fifteen days of the last day of each month, for credit to the  
23 children's trust fund;

24 B. recording a form submitted by a person desiring  
25 to be a registered marriage officer;

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1           C. recording a notice of void marriage for reason  
2 of one or both of the parties being below the permitted age,  
3 for reason that the marriage is incestuous or for reason that  
4 the marriage or aspects of the marriage are polygamous or  
5 plural; or

6           D. issuing a certificate of correction or  
7 correcting or reissuing an application for a marriage license,  
8 a marriage license or a certificate of marriage upon an order  
9 of the district court."

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

12           "40-1-14. PRODUCTION OF LICENSE AND PROOF OF LEGAL  
13 QUALIFICATIONS.--~~[Prior to a ceremony]~~

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

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

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

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

3 A. It is the duty of all persons solemnizing the  
4 contract of marriage in this state to certify the marriage to  
5 the county clerk within ninety days from the date of the  
6 marriage ceremony. Upon ensuring the information on the  
7 certificate is complete and legible, the county clerk shall  
8 immediately upon receipt of the certificate cause it to be  
9 properly recorded and indexed in a permanent record as a part  
10 of the county records in a physical or electronic book kept for  
11 that purpose.

12 B. The county clerk:  
13 (1) may issue a certificate of correction or  
14 correct or reissue an application for a marriage license, a  
15 marriage license or a certificate of marriage as a result of a  
16 typographical or data entry error by the office of the county  
17 clerk [~~The county clerk~~]; and

18 (2) shall 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 to correct an  
21 error on the document upon order of the district court."

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

24 "40-1-17. UNIFORM [~~USE FORM~~] SYSTEM OF RECORDS.--

25 A. To ensure a uniform system of records of all

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1 marriages contracted and the better preservation of the records  
2 for future reference, the form of application, license and  
3 certificate shall be [~~substantially as provided in Section~~  
4 ~~40-1-18 NMSA 1978, each blank to be~~] numbered consecutively  
5 [~~corresponding with the page number of the record book in the~~  
6 ~~clerk's office; provided that the medical evaluation language~~  
7 ~~shall not be printed on the application until such time as the~~  
8 ~~secretary of health deems such evaluation necessary through the~~  
9 ~~issuance of rules~~].

10 B. The county clerk shall also record in the same  
11 uniform system of records all other forms recorded, filed or  
12 appended pursuant to Chapter 40, Article 1 NMSA 1978. The  
13 uniform system of records shall be segregated from other  
14 records recorded or filed in the county clerk's office.

15 C. As used on the forms, a person who possesses  
16 more than one title authorizing the person to solemnize the  
17 civil contract of marriage shall select a single title to use  
18 on a marriage certificate. Titles of persons solemnizing the  
19 civil contract of marriage by ceremony are:

- 20 (1) civil officer, including the use of:  
21 (a) a specified elected office the  
22 person holds;  
23 (b) attorney and counselor to the court;  
24 (c) notarial officer or notary public,  
25 but not "notario publico"; or

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1                   (d) a title used by a civil officer of  
2 an Indian nation, tribe or pueblo;

3                   (2) judicial officer, including the use of the  
4 justice's or judge's specific title and court;

5                   (3) military officer, including the use of the  
6 military officer's branch and rank;

7                   (4) registered marriage officer;

8                   (5) religious officer, including the use of:

9                   (a) the officer's religious society; and

10                   (b) the title of the officer or the  
11 officer's ordination within a religious society; or

12                   (6) retired officer, including the use of:

13                   (a) "retired elected officer", which may  
14 substitute the title of the office to which a person was  
15 elected following the word "retired";

16                   (b) "retired judicial officer", which  
17 may substitute the title of the judicial office that the person  
18 held following the word "retired"; or

19                   (c) "retired military officer", which  
20 may substitute the branch and rank that the person held  
21 following the word "retired".

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

24                   "40-1-18. FORM OF APPLICATION, LICENSE AND CERTIFICATE.--

25                   "APPLICATION FOR MARRIAGE LICENSE

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No. \_\_\_\_\_

STATEMENTS

RECEIVED AND FILED

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 there exists no legal impediment to this marriage; and that the information contained herein is correct.

Applicant

Applicant

Date of Birth

Date of Birth

\_\_\_\_\_

\_\_\_\_\_

Place of Birth

Place of Birth

\_\_\_\_\_

\_\_\_\_\_

Present Address \_\_\_\_\_

Present Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature

Signature

Subscribed and sworn to before me this \_\_\_\_\_ day

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1 of \_\_\_\_\_ A.D. [~~19~~] 20\_\_\_\_\_.

(seal)

3 \_\_\_\_\_ By \_\_\_\_\_ Deputy

4 Signature County Clerk

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

7 ~~I, the parent (guardian) of \_\_\_\_\_,~~  
8 ~~hereby consent to the granting of a license to marry, waiving~~  
9 ~~the question of minority.~~

10 \_\_\_\_\_

11 ~~Signature Parent (Guardian)~~

12 ~~I, the parent (guardian) of \_\_\_\_\_,~~  
13 ~~hereby consent to the granting of a license to marry, waiving~~  
14 ~~the question of minority.~~

15 \_\_\_\_\_

16 ~~Signature Parent (Guardian)]~~

17 MARRIAGE LICENSE

18 State of New Mexico, )

19 County of \_\_\_\_\_ ) ss.

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

22 Greeting:

23 You are hereby authorized to join in marriage \_\_\_\_\_  
24 of \_\_\_\_\_ and \_\_\_\_\_ [of  
25 \_\_\_\_\_] and of this license you will make

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1 due return to my office within [~~the time prescribed by law~~]  
2 ninety days of the ceremony conducted within the state of New  
3 Mexico.

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

8 County Clerk

9 Recorded \_\_\_\_\_, [19] 20\_\_\_\_\_, at  
10 \_\_\_\_\_ m.

11 In marriage record book no. \_\_\_\_\_ page \_\_\_\_\_  
12 \_\_\_\_\_

13 County Clerk

14 MARRIAGE CERTIFICATE

15 State of New Mexico, )  
16 County of \_\_\_\_\_ ) ss.

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

25 Witness my hand [~~and seal~~] on the day and year last above

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written.

\_\_\_\_\_

(Name of person solemnizing marriage)

\_\_\_\_\_

(~~Official~~) Title of

person solemnizing marriage)

WITNESSES (to be filled out when marriage is entered into by ceremony):

Signed \_\_\_\_\_

Signed \_\_\_\_\_

APPLICANTS:

Signed \_\_\_\_\_ [~~Groom~~]

Signed \_\_\_\_\_ [~~Bride~~]

Recorded this \_\_\_\_\_ day of \_\_\_\_\_,

A.D., [~~19~~] 20 \_\_\_\_\_, at \_\_\_\_\_ m.

Marriage Record [~~Book~~] No. \_\_\_\_\_ [~~Page No.~~

\_\_\_\_\_]

County Clerk.""

SECTION 14. A new Section 40-1-18.2 NMSA 1978 is enacted to read:

"40-1-18.2. [NEW MATERIAL] FORM OF AUTHORIZATION TO SOLEMNIZE MARRIAGES.--

"Authorization to Solemnize Marriages by Registered Marriage Officer

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(Print Clearly or Type)

State of New Mexico,

ss.

County of \_\_\_\_\_.

Let it be Known to All:

1) I desire to be a Registered Marriage Officer to solemnize the civil contract of marriage in New Mexico.

2) This means I will be authorized to perform marriage ceremonies pursuant to the laws of New Mexico, specifically, Chapter 40, Article 1 NMSA 1978.

3) I attest under penalty of perjury that I am at least eighteen (18) years of age.

4) I understand that this attestation to become a Registered Marriage Officer is valid for me to be authorized to perform marriage ceremonies and to solemnize the civil contract of marriage for the next two years on licenses issued by the county clerk of the county in which this form is recorded.

\_\_\_\_\_

(Signed)

Signed (or attested to) before me on \_\_\_\_\_ by \_\_\_\_\_.

Date Name of individual

\_\_\_\_\_

Signature of notarial officer

Stamp

\_\_\_\_\_



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1 Title of officer  
2 Recorded this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_ M.  
3 Marriage Record No. \_\_\_\_.

4 \_\_\_\_\_  
5 County Clerk."

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

8 "40-1-19. OFFENSES--PENALTIES.--

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

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

23 C. The criminal penalty provided for in this  
24 section is not exclusive of other charges or penalties that may  
25 be applicable."

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

3 "40-2-1. MUTUAL OBLIGATION OF MARRIED PERSONS.--[Section  
4 ~~1. Husband and wife~~] The parties to a marriage contract toward  
5 each other obligations of mutual respect, fidelity and  
6 support."

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

9 "40-2-2. CONTRACT RIGHTS OF MARRIED PERSONS.--[Sec. 7.]  
10 Either [~~husband or wife~~] spouse may enter into any engagement  
11 or transaction with the other or with any other person  
12 [~~respecting~~] with respect to property [~~which~~] that either might  
13 enter into if unmarried; subject, in transactions between  
14 themselves, to the general rules of common law [~~which~~] that  
15 control the actions of persons occupying confidential relations  
16 with each other."

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

19 "40-2-3. POWER OF ATTORNEY--JOINDER OF SPOUSE  
20 UNNECESSARY.--[Sec. 8.] It shall not be necessary in any case  
21 for [~~the husband~~] a spouse to join with [~~the wife~~] a signing  
22 spouse when [~~she executes~~] executing a power of attorney for  
23 [~~herself; nor shall it be necessary for the wife to join with~~  
24 ~~the husband when he executes a power of attorney for himself]~~  
25 the signing spouse."

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

3           "40-2-8. EXTENT OF MUTUAL ALTERATION OF LEGAL  
4 RELATIONS.--[~~Sec. 39. A husband and wife~~] The parties to a  
5 marriage cannot by any contract with each other alter their  
6 legal relations, except [~~of~~] with respect to their property and  
7 except that they may agree in writing to an immediate  
8 separation and may make provisions for the support of either of  
9 them and of their children during their separation."

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

12          "40-3-1. PROPERTY RIGHTS.--[~~Sec. 29.~~] The property rights  
13 of [~~husband and wife~~] a married couple are governed by [~~this~~]  
14 Chapter 40 NMSA 1978 unless there is a marriage settlement  
15 containing stipulations contrary thereto."

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

18          "40-3-2. METHODS FOR HOLDING PROPERTY.--[~~Sec. 13. Husband~~  
19 ~~and wife~~] The parties to a marriage may hold property as joint  
20 tenants or tenants in common or may hold property as community  
21 property."

22          SECTION 22. Section 40-3-3 NMSA 1978 (being Laws 1907,  
23 Chapter 37, Section 3, as amended) is amended to read:

24          "40-3-3. SEPARATION OF PROPERTY--ADMISSION TO DWELLING OF  
25 SPOUSE.--[~~Sec. 6.~~] Neither [~~husband nor wife~~] spouse has any

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1 interest in the property of the other, but neither can be  
2 excluded from the other's dwelling."

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

5 "40-3-4. CONTRACTS OF INDEMNITY--NO OBLIGATION OF  
6 COMMUNITY PROPERTY UNLESS SIGNED BY BOTH [~~HUSBAND AND WIFE~~]  
7 SPOUSES.--It is against the public policy of this state to  
8 allow one spouse to obligate community property by entering  
9 into a contract of indemnity whereby [~~he will indemnify~~] the  
10 spouse indemnifies a surety company in case of default of the  
11 principal upon a bond or undertaking issued in consideration of  
12 the contract of indemnity. No community property shall be  
13 liable for any indebtedness incurred as a result of any  
14 contract of indemnity made after the effective date of this  
15 section unless both [~~husband and wife~~] spouses sign the  
16 contract of indemnity."

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

19 "40-3-8. CLASSES OF PROPERTY.--

20 A. "Separate property" means:

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

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

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

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

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

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

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

22 (1) by either spouse while domiciled elsewhere  
23 [~~which~~] that would have been community property if the spouse  
24 who acquired the property had been domiciled in this state at  
25 the time of its acquisition; or

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

6 D. For purposes of division of property incident to  
7 a dissolution of marriage or a legal separation under Section  
8 40-4-3 NMSA 1978, quasi-community property shall be treated as  
9 community property if both parties are domiciliaries of New  
10 Mexico at the time of the dissolution or legal separation  
11 proceeding.

12 E. "Property" includes the rents, issues and  
13 profits thereof.

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

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

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

25 "40-3-12. PRESUMPTION OF COMMUNITY PROPERTY [PRESUMPTION

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

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

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

18 SECTION 26. A new Section 40-3-12.1 NMSA 1978 is enacted  
19 to read:

20 "40-3-12.1. [NEW MATERIAL] SAVING CLAUSE--PRESUMPTION OF  
21 SEPARATE PROPERTY WHERE PROPERTY IS ACQUIRED BY A MARRIED WOMAN  
22 PRIOR TO JULY 1, 1973.--

23 A. Property or any interest therein acquired during  
24 marriage by a woman by an instrument in writing, in her name  
25 alone, or in her name and the name of another person not her

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1 husband, is presumed to be the separate property of the married  
2 woman if the instrument in writing was delivered and accepted  
3 prior to July 1, 1973. The date of execution or, in the  
4 absence of a date of execution, the date of acknowledgment, is  
5 presumed to be the date upon which delivery and acceptance  
6 occurred.

7 B. The presumptions contained in Subsection A of  
8 this section are conclusive in favor of any person dealing in  
9 good faith and for valuable consideration with a married woman  
10 or her legal representative or successor in interest."

11 SECTION 27. Section 40-4-3 NMSA 1978 (being Laws 1901,  
12 Chapter 62, Section 23, as amended) is amended to read:

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

21 SECTION 28. Section 40-4-12 NMSA 1978 (being Laws 1947,  
22 Chapter 16, Section 1, as amended) is amended to read:

23 "40-4-12. ALLOWANCE FROM SPOUSE'S SEPARATE PROPERTY AS  
24 ALIMONY.--In proceedings for the dissolution of marriage,  
25 separation or support between [~~husband and wife~~] married

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1 persons, the court may make an allowance to either spouse of  
2 the other spouse's separate property as alimony, and the decree  
3 making the allowance shall have the ~~[force and]~~ effect of  
4 vesting the title of the property so allowed in the recipient."

5 SECTION 29. Section 40-4-14 NMSA 1978 (being Laws 1947,  
6 Chapter 16, Section 3, as amended) is amended to read:

7 "40-4-14. ALLOWANCE IN PROPERTY--APPOINTMENT AND REMOVAL  
8 OF GUARDIAN.--In proceedings for the dissolution of marriage,  
9 separation or support between ~~[husband and wife]~~ spouses, the  
10 court may make an allowance of certain property ~~[or properties]~~  
11 of either party or of both parties for the maintenance,  
12 education and support of the minor children of the parties and  
13 may vest title to the part of the property so allowed in a  
14 conservator appointed by the court. The conservator must  
15 qualify and serve in such capacity as provided in Sections  
16 ~~[5-101 through 5-502 of the Probate Code]~~ 45-5-101 through  
17 45-5-502 NMSA 1978."

18 SECTION 30. Section 40-4-20 NMSA 1978 (being Laws 1901,  
19 Chapter 62, Section 31, as amended) is amended to read:

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

25 A. The failure to divide or distribute property on

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1 the entry of a decree of dissolution of marriage or of  
2 separation shall not affect the property rights of either [~~the~~  
3 ~~husband or wife~~] party to a marriage, and either may  
4 subsequently institute and prosecute a suit for division and  
5 distribution or with reference to any other matter pertaining  
6 thereto that could have been litigated in the original  
7 proceeding for dissolution of marriage or separation.

8 B. Upon the filing and service of a petition for  
9 dissolution of marriage, separation, annulment, division of  
10 property or debts, spousal support, child support or  
11 determination of paternity pursuant to the provisions of  
12 Chapter 40, Article 4 or [~~++~~] 11A NMSA 1978, if a party to the  
13 action dies during the pendency of the action, but prior to the  
14 entry of a decree granting dissolution of marriage, separation,  
15 annulment or determination of paternity, the proceedings for  
16 the determination, division and distribution of marital  
17 property rights and debts, distribution of spousal or child  
18 support or determination of paternity shall not abate. The  
19 court shall conclude the proceedings as if both parties had  
20 survived. The court may allow the spouse or any children of  
21 the marriage support as if the decedent had survived, pursuant  
22 to the provisions of Chapter 40, Article 4 or [~~++~~] 11A NMSA  
23 1978. In determining the support, the court shall, in addition  
24 to the factors listed in Chapter 40, Article 4 NMSA 1978,  
25 consider the amount and nature of the property passing from the

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1     ~~[decendent]~~ decendent to the person for whom the support would  
2     be paid, whether by will or otherwise."

3             SECTION 31. Section 40-10A-310 NMSA 1978 (being Laws  
4     2001, Chapter 114, Section 310) is amended to read:

5             "40-10A-310. HEARING AND ORDER.--

6                     ~~[(a)]~~ A. Unless the court issues a temporary  
7     emergency order pursuant to Section ~~[204]~~ 40-10A-204 NMSA 1978,  
8     upon a finding that a petitioner is entitled to immediate  
9     physical custody of the child, the court shall order that the  
10    petitioner may take immediate physical custody of the child  
11    unless the respondent establishes that:

12                             (1) the child-custody determination has not  
13    been registered and confirmed under Section ~~[305]~~ 40-10A-305  
14    NMSA 1978 and that:

15                                     ~~[(A)]~~ (a) the issuing court did not have  
16    jurisdiction under ~~[Article 2 of the Uniform Child-Custody~~  
17    ~~Jurisdiction and Enforcement Act]~~ Sections 40-10A-201 through  
18    40-10A-210 NMSA 1978;

19                                     ~~[(B)]~~ (b) the child-custody  
20    determination for which enforcement is sought has been vacated,  
21    stayed or modified by a court of a state having jurisdiction to  
22    do so under ~~[Article 2 of the Uniform Child-Custody~~  
23    ~~Jurisdiction and Enforcement Act]~~ Sections 40-10A-201 through  
24    40-10A-210 NMSA 1978; or

25                                     ~~[(C)]~~ (c) the respondent was entitled to

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1 notice, but notice was not given in accordance with the  
2 standards of Section [~~108~~] 40-10A-108 NMSA 1978 in the  
3 proceedings before the court that issued the order for which  
4 enforcement is sought; or

5 (2) the child-custody determination for which  
6 enforcement is sought was registered and confirmed under  
7 Section [~~305~~] 40-10A-305 NMSA 1978 but has been vacated, stayed  
8 or modified by a court of a state having jurisdiction to do so  
9 under [~~Article 2 of the Uniform Child-Custody Jurisdiction and~~  
10 ~~Enforcement Act~~] Sections 40-10A-201 through 40-10A-210 NMSA  
11 1978.

12 [~~(b)~~] B. The court shall award the fees, costs and  
13 expenses authorized under Section [~~312~~] 40-10A-312 NMSA 1978  
14 and may grant additional relief, including a request for the  
15 assistance of law enforcement officials, and set a further  
16 hearing to determine whether additional relief is appropriate.

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

21 [~~(d)~~] D. A privilege against disclosure of  
22 communications between spouses and a defense of immunity based  
23 on the spousal relationship [~~of husband and wife~~] or that of  
24 parent and child may not be invoked in a proceeding under  
25 [~~Article 3 of the Uniform Child-Custody Jurisdiction and~~

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1 ~~Enforcement Act]~~ Sections 40-10A-301 through 40-10A-317 NMSA  
2 1978."

3 SECTION 32. REPEAL.--Sections 40-1-16 and 40-1-20 NMSA  
4 1978 (being Laws 1905, Chapter 65, Section 5 and Laws 1909,  
5 Chapter 91, Section 1, as amended) are repealed.

6 SECTION 33. DELAYED REPEAL.--Section 26 of this 2023 act  
7 is repealed effective June 30, 2033.

8 SECTION 34. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2023.