

1 SENATE BILL 299

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO MARRIAGE LICENSES; ADDRESSING THE COLLECTION AND
12 USE OF SOCIAL SECURITY NUMBERS; PROVIDING A DEFINITION OF
13 "SOLEMNIZE" IN REGARD TO THE MARRIAGE CONTRACT; UPDATING
14 RESTRICTIONS ON MARRIAGE FOR MINORS AND BETWEEN CERTAIN
15 RELATIVES; ADDRESSING THE LEGAL RIGHTS OF CHILDREN BORN TO
16 PARENTS WHO ARE NOT MARRIED TO EACH OTHER; REQUIRING A PERSONAL
17 APPEARANCE IN MOST CASES TO APPLY FOR A MARRIAGE LICENSE;
18 ELIMINATING THE NEED FOR CERTAIN PHYSICIAN CERTIFICATES;
19 CLARIFYING THE NEED TO ASCERTAIN QUALIFICATIONS FOR MARRIAGE;
20 PROVIDING FOR CORRECTION OF A MARRIAGE CERTIFICATE; INCREASING
21 THE PENALTY FOR VIOLATIONS OF CHAPTER 40, ARTICLE 1 NMSA 1978;
22 AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. Section 27-1-10 NMSA 1978 (being Laws 1997,

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1 Chapter 237, Section 15) is amended to read:

2 "27-1-10. COLLECTION AND USE OF SOCIAL SECURITY NUMBERS
3 FOR USE IN CHILD SUPPORT ENFORCEMENT.--

4 A. For applicants or persons who have been assigned
5 a social security number, the state [~~must~~] shall have and use
6 procedures requiring that the social security number of any:

7 (1) [~~any~~] applicant for a professional
8 license, commercial driver's license or occupational license
9 [~~or marriage license~~] be recorded on the application;

10 (2) applicant for a marriage license be
11 collected and placed in the records maintained by the county
12 clerk;

13 [~~(2) any~~] (3) person who is subject to a
14 divorce decree, support order or paternity determination or
15 acknowledgment be placed in the records relating to the matter;
16 and

17 [~~(3) any~~] (4) person who has died be placed in
18 the records relating to the death and be recorded on the death
19 certificate.

20 B. The collection and use of social security
21 numbers shall be made available to the [~~state Title IV-D~~
22 ~~agency~~] human services department for use in child support
23 enforcement."

24 SECTION 2. Section 40-1-2 NMSA 1978 (being Laws 1859-
25 1860, p. 120, as amended) is amended to read:

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1 "40-1-2. [~~CLERGYMEN~~] MARRIAGES SOLEMNIZED--ORDAINED
2 CLERGY OR CIVIL MAGISTRATES MAY SOLEMNIZE [~~FEES~~].--

3 A. The civil contract of marriage is entered into
4 when solemnized as provided in Chapter 40, Article 1 NMSA 1978.
5 As used in Chapter 40, Article 1 NMSA 1978, "solemnize" means
6 to join in marriage before witnesses by means of a ceremony.

7 [~~A.~~] B. A person [may solemnize the contract of
8 matrimony by means of] who is an ordained [clergyman] member of
9 the clergy or who is an authorized representative of a
10 federally recognized Indian [tribe] nation, tribe or pueblo may
11 solemnize the contract of marriage without regard to [~~the~~] sect
12 [~~to which he may belong~~] or [~~the~~] rites and customs [~~he~~] the
13 person may practice.

14 [~~B.~~] C. Judges, justices and magistrates of any of
15 the courts established by the constitution of New Mexico,
16 United States constitution, laws of the state or laws of the
17 United States are civil magistrates having authority to
18 solemnize contracts of [matrimony.---G.] marriage. Civil
19 magistrates solemnizing contracts of [matrimony] marriage shall
20 charge no fee therefor."

21 **SECTION 3.** Section 40-1-3 NMSA 1978 (being Laws 1862-
22 1863, p. 66, as amended) is amended to read:

23 "40-1-3. CEREMONY BY RELIGIOUS SOCIETY.--It is lawful for
24 any religious society or federally recognized Indian tribe to
25 [~~celebrate~~] solemnize marriage conformably with its rites and

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1 customs, and the secretary of the society or the person
2 [~~presiding over~~] authorized by the society or federally
3 recognized Indian [~~tribe~~] nation, tribe or pueblo shall make
4 and transmit a transcript to the county clerk certifying to the
5 marriages solemnized."

6 SECTION 4. Section 40-1-6 NMSA 1978 (being Laws 1876,
7 Chapter 31, Section 2, as amended) is repealed and a new
8 Section 40-1-6 NMSA 1978 is enacted to read:

9 "40-1-6. [NEW MATERIAL] RESTRICTIONS ON MARRIAGE OF
10 MINORS.--

11 A. The county clerk shall not issue a marriage
12 license to an unemancipated person sixteen or seventeen years
13 of age, and no person authorized by the laws of this state to
14 solemnize marriages shall knowingly unite in marriage any
15 person sixteen or seventeen years of age, unless the minor
16 first receives the written consent of each of the minor's
17 living parents as shown on the minor's certificate of birth, or
18 the district court has authorized the marriage of such person
19 for good cause shown, and a certified copy of the judicial
20 authorization is filed with the county clerk.

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 in settlement of proceedings to compel support and
3 establish parentage, or where an applicant for the marriage
4 license is pregnant, and a certified copy of the judicial
5 authorization is filed with the county clerk."

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

8 "40-1-7. INCESTUOUS MARRIAGES.--~~[Sec. 6.]~~ All marriages
9 between relations and children, including [~~grandfathers~~]
10 grandparents and grandchildren of all degrees; between [~~half~~]
11 brothers and sisters [~~as also~~] of full blood or of half blood;
12 between uncles and nieces; and between aunts and nephews are
13 [~~hereby~~] declared incestuous and absolutely void. [~~This~~
14 ~~section shall extend to illegitimate as well as to legitimate~~
15 ~~children.~~]"

16 SECTION 6. Section 40-1-9 NMSA 1978 (being Laws 1876,
17 Chapter 32, Section 1, as amended) is amended to read:

18 "40-1-9. PROHIBITED MARRIAGES--ANNULMENT.--No marriage
19 between relatives within the prohibited degrees or between or
20 with [~~infants~~] persons under the prohibited ages shall be
21 declared void except by a decree of the district court upon
22 proper proceedings [~~being had therein~~]. A cause of action may
23 be instituted by the minor, by next friend, by either parent or
24 legal guardian of [~~such~~] the minor or by the district attorney.
25 In the case of minors, no party to the marriage who may be over

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1 the prohibited age shall be allowed to apply for or obtain a
2 decree of the court declaring [~~such~~] the marriage void; but
3 [~~such~~] the minor may do so, and the court may, in its
4 discretion, grant alimony until the minor becomes of age or
5 remarries. [~~All children of marriage so declared void as~~
6 ~~aforsaid shall be deemed and held as legitimate with the right~~
7 ~~of inheritance from both parents; and also in the case of~~
8 ~~minors]~~ If the parties should live together until they arrive
9 at the age under which marriage is [~~prohibited~~] permitted by
10 statute, then [~~and in that case, such~~] the marriage shall be
11 deemed legal and binding."

12 SECTION 7. Section 40-1-10 NMSA 1978 (being Laws 1905,
13 Chapter 65, Section 1, as amended) is amended to read:

14 "40-1-10. LICENSE REQUIRED--COUNTY CLERK.--

15 A. Each couple desiring to marry [~~in~~] pursuant to
16 the laws of New Mexico shall first obtain a license from a
17 county clerk of this state and following a ceremony conducted
18 in this state file the [~~same~~] license for recording in the
19 county issuing the license. [~~following the marriage ceremony.~~
20 ~~Except as provided in Section 57-1-6 NMSA 1953, a county clerk~~
21 ~~shall issue no license for the marriage of any person under the~~
22 ~~age of majority without the consent of his parent or guardian.~~
23 ~~It shall be the duty of each county clerk to require the~~
24 ~~affidavit of at least two reliable persons who are acquainted~~
25 ~~with the age of the applicant for license, as to the age of~~

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1 ~~whom a county clerk may be in doubt, and the failure of any~~
2 ~~county clerk to perform his duty under this section shall be~~
3 ~~grounds for the removal of the county clerk from office in the~~
4 ~~manner provided for the removal from office of county officers~~
5 ~~for misfeasance or malfeasance in office.]~~

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

16 C. The county clerk:

17 (1) shall collect the social security number
18 of an applicant for a marriage license only as provided for in
19 Section 27-1-10 NMSA 1978;

20 (2) shall not make available a social security
21 number to another person except as provided for in Section
22 27-1-10 NMSA 1978; and

23 (3) may, thirty days after the commencement of
24 each fiscal year, dispose of, in a secure manner, those social
25 security numbers collected in the previous fiscal year that

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1 have not been requested as provided for in Section 27-1-10 NMSA
2 1978."

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

5 "40-1-11. ~~[CERTIFICATE REQUIRED]~~ FEES--DISPOSITION.--

6 ~~[A. Before any county clerk issues any marriage~~
7 ~~license, each applicant for a marriage license shall file with~~
8 ~~the county clerk a certificate from a physician licensed to~~
9 ~~practice medicine, which certificate shall state that the~~
10 ~~applicant has had those tests and examinations as required by~~
11 ~~regulation of the health and environment department. Such~~
12 ~~tests and examinations shall be made not more than thirty days~~
13 ~~prior to the date of application for license. The certificate~~
14 ~~shall state that medical evaluation or that treatment, as~~
15 ~~indicated, has been made such that there is no bar to marriage,~~
16 ~~as specified by the regulations of the health and environment~~
17 ~~department.~~

18 ~~B. The certificate of the physician shall be on a~~
19 ~~form to be provided and distributed by the health services~~
20 ~~division to all officers authorized to issue marriage licenses~~
21 ~~and to all physicians within the state.~~

22 ~~C. The secretary of health and environment shall~~
23 ~~make rules and regulations and employ personnel necessary to~~
24 ~~effectuate the purposes of Sections 40-1-11 through 40-1-13~~
25 ~~NMSA 1978. If regulations require a laboratory test, it shall~~

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1 be done in a laboratory approved by the secretary of health and
2 environment.

3 D. A county clerk shall accept, in lieu of the
4 physician's certificate, a certificate from any other state
5 having premarital laws, if issued within the time limits
6 prescribed in Subsection A of this section and if such laws
7 meet the regulations of the secretary of health and
8 environment.

9 E.] The county clerk shall receive a fee of twenty-
10 five dollars (\$25.00) for issuing, acknowledging and recording
11 a marriage license and marriage certificate. Fifteen dollars
12 (\$15.00) of each fee shall be remitted by the county treasurer
13 to the state treasurer, within fifteen days of the last day of
14 each month, for credit to the children's trust fund."

15 SECTION 9. Section 40-1-14 NMSA 1978 (being Laws 1905,
16 Chapter 65, Section 3, as amended) is amended to read:

17 "40-1-14. PRODUCTION OF LICENSE AND PROOF OF LEGAL
18 QUALIFICATIONS.--[~~Sec. 13.~~] Prior to a ceremony, all persons
19 authorized to solemnize marriage shall require the parties
20 contemplating marriage to produce a license signed and sealed
21 by the county clerk [authorizing said marriage] issuing the
22 license. Nothing in [this] Chapter 40, Article 1 NMSA 1978
23 shall excuse any person [from exercising the same care in
24 satisfying himself] authorized by the laws of this state to
25 solemnize the contract of marriage from being satisfied as to

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1 the legal qualifications of any parties desiring [~~him to~~
2 ~~perform the marriage ceremony, now required of him by law~~] to
3 be married, in addition to the authority conferred by the
4 license [~~aforsaid~~]."

5 SECTION 10. Section 40-1-15 NMSA 1978 (being Laws 1905,
6 Chapter 65, Section 4, as amended) is amended to read:

7 "40-1-15. CERTIFICATION OF MARRIAGE--RECORDING AND
8 INDEXING.--[~~Sec. 14.~~]

9 A. It [~~shall be~~] is the duty of all persons
10 [~~performing the marriage ceremony~~] solemnizing the contract of
11 marriage in this state [~~as herein provided~~] to certify [~~said~~]
12 the marriage to the county clerk within ninety days from the
13 date of the marriage [~~The~~] ceremony. Upon ensuring the
14 information on the certificate is complete and legible, the
15 county clerk shall immediately upon receipt of [~~said~~] the
16 certificate cause [~~the same~~] it to be properly recorded and
17 indexed in a permanent record [~~book kept for that purpose~~] as a
18 part of the county records.

19 B. The county clerk may issue a certificate of
20 correction or correct or reissue an application for a marriage
21 license, a marriage license or a certificate of marriage as a
22 result of a typographical or data entry error by the office of
23 the county clerk. The county clerk shall issue a certificate
24 of correction or correct or reissue an application for a
25 marriage license, a marriage license or a certificate of

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1 marriage to correct an error on the document upon order of the
2 district court."

3 SECTION 11. Section 40-1-16 NMSA 1978 (being Laws 1905,
4 Chapter 65, Section 5, as amended) is amended to read:

5 "40-1-16. APPLICATION OF LAW.--~~[Sec. 15.]~~

6 A. A child born to parents who are not married to
7 each other has the same rights pursuant to the law as a child
8 born to parents who are married to each other.

9 B. Nothing in ~~[this]~~ Chapter 40, Article 1 NMSA
10 1978 shall be construed to in any manner interfere with the
11 records kept by any civil magistrate, religious society, ~~[or]~~
12 church organization or federally recognized Indian nation,
13 tribe or pueblo or with any additional form of ceremony,
14 regulation or requirement prescribed by them."

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

17 "40-1-17. UNIFORM USE FORM.--~~[Sec. 17.]~~ To ~~[insure]~~
18 ensure a uniform system of records of all marriages ~~[hereafter]~~
19 contracted and the better preservation of ~~[said record]~~ the
20 records for future reference, the form of application, license
21 and certificate ~~[provided herein]~~ shall be substantially as
22 ~~[follows]~~ provided in Section 40-1-18 NMSA 1978, each blank to
23 be numbered consecutively corresponding with the page number of
24 the record book in the clerk's office ~~[All such blanks to be~~
25 ~~provided free of cost by the county for public use];~~ provided

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1 that the medical evaluation language shall not be printed on
2 the application until such time as the secretary of health
3 deems such evaluation necessary through the issuance of rules."

4 SECTION 13. Section 40-1-19 NMSA 1978 (being Laws 1905,
5 Chapter 65, Section 9, as amended) is amended to read:

6 "40-1-19. OFFENSES--PENALTIES.--~~[Sec. 19. Any county~~
7 ~~clerk or]~~

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

12 B. A person ~~[authorized by law to perform]~~ who
13 performs the marriage ceremony or certifies a marriage to the
14 county clerk, who ~~[shall neglect or fail]~~ neglects or fails to
15 comply with the provisions of ~~[the eight preceding sections]~~
16 Chapter 40, Article 1 NMSA 1978 and any person who ~~[shall]~~
17 willfully ~~[violate]~~ violates the law by deceiving or attempting
18 to deceive or mislead any officer or person ~~[authorized to~~
19 ~~perform the marriage ceremony]~~ in order to obtain a marriage
20 license or to be married contrary to law ~~[shall be deemed]~~ is
21 upon conviction guilty of a misdemeanor and ~~[upon conviction be~~
22 ~~fined in any sum not less than fifty dollars nor more than one~~
23 ~~hundred dollars or by imprisonment in the county jail for not~~
24 ~~less than ten days nor more than sixty days or by both fine and~~
25 ~~imprisonment in the discretion of the court]~~ shall be sentenced

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pursuant to the provisions of Section 31-19-1 NMSA 1978."

SECTION 14. REPEAL.--Sections 40-1-5, 40-1-8, 40-1-12 and 40-1-13 NMSA 1978 (being Laws 1862-1863, p. 64, Laws 1876, Chapter 31, Section 3, and Laws 1957, Chapter 33, Sections 2 and 3, as amended) are repealed.