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HOUSE BILL 21

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO DOMESTIC AFFAIRS; ENACTING THE DOMESTIC PARTNER RIGHTS AND RESPONSIBILITIES ACT; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Domestic Partner Rights and Responsibilities Act".

Section 2. DEFINITIONS.--As used in the Domestic Partner Rights and Responsibilities Act:

A. "affidavit of domestic partnership" means an affidavit that identifies domestic partners and affirms that both domestic partners meet the requirements for entering into a domestic partnership with each other according to the provisions of the Domestic Partner Rights and Responsibilities Act;

B. "certificate of domestic partnership" means a

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1 certificate issued by the county clerk on behalf of the state
2 certifying that the domestic partnership has been registered;

3 C. "domestic partner" means an adult who has chosen
4 to share in another adult's life in a relationship of mutual
5 caring and support and who has established a domestic
6 partnership;

7 D. "domestic partnership" means a legal
8 relationship that is not marriage that two domestic partners
9 establish with each other according to the provisions and
10 requirements of the Domestic Partner Rights and
11 Responsibilities Act;

12 E. "record of domestic partnership" means a
13 permanent record book kept by the county clerk of each county
14 for the purpose of properly recording and indexing affidavits
15 and certificates of domestic partnerships and ensuring that the
16 affidavits and certificates of domestic partnerships are kept
17 as county records; and

18 F. "registration fee" means twenty-five dollars
19 (\$25.00) to be paid by the domestic partners to the county
20 clerk at the time of submitting an affidavit of domestic
21 partnership.

22 Section 3. PROTECTIONS, OBLIGATIONS, BENEFITS AND
23 RESPONSIBILITIES--EXCEPTIONS.--

24 A. Domestic partners shall be subject to the same
25 legal obligations and responsibilities and shall be entitled to

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1 the same protections and benefits as are afforded or recognized
2 by the laws of the state to spouses, former spouses, widows or
3 widowers, whether they derive from statute, administrative or
4 court rule or regulation, policy, common law or any other
5 source of civil or criminal law. The Domestic Partner Rights
6 and Responsibilities Act shall not repeal or adversely affect
7 any other manner in which relationships between adults may be
8 recognized or given effect in New Mexico, or the legal
9 consequences of those relationships.

10 B. Notwithstanding the provisions of this section,
11 taxable status shall be governed as follows:

12 (1) in filing a state income tax return, a
13 domestic partner shall use the same filing status as is used on
14 a federal income tax return filed in the same tax year, or
15 would have been used if a federal income tax return had been
16 filed in the same year. A domestic partner's income and
17 earnings shall not be treated as community property for state
18 income tax purposes; and

19 (2) nothing in this section requires or
20 permits the extension of any tax benefit if the extension of
21 the tax benefit would conflict or be inconsistent with
22 provisions of the Internal Revenue Code of 1986 or regulations
23 issued under that code.

24 Section 4. JURISDICTION.--

25 A. The district court shall have jurisdiction over

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1 any proceeding relating to domestic partnership, including
2 dissolution, annulment and legal separation, and shall follow
3 the same procedures as are used for spouses in a marriage.

4 B. In accordance with the consent acknowledged by
5 the domestic partners in the affidavit of domestic partnership,
6 if no other forum is available with comparable remedies to
7 address distribution of assets, debts, support upon
8 dissolution, annulment or legal separation as well as any other
9 issues related to a domestic partnership registered in this
10 state, the district court shall have jurisdiction even if
11 neither party is a resident of, or maintains a domicile in, the
12 state at the time the proceedings are filed.

13 C. A petition for dissolution, annulment or legal
14 separation of a domestic partnership may be filed in the
15 district court of the county in which the petitioner or
16 respondent resides or last resided or in the county in which
17 the domestic partnership is registered.

18 D. Nothing in this section shall be construed as
19 granting jurisdiction in conflict with the Uniform Child-
20 Custody Jurisdiction and Enforcement Act or the Uniform
21 Interstate Family Support Act as adopted in New Mexico.

22 Section 5. RECIPROCITY.--A domestic partnership, civil
23 union or a substantially similar legal relationship other than
24 common law marriage entered into in another jurisdiction shall
25 be afforded the same rights in New Mexico as a domestic

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1 partnership as defined in the Domestic Partner Rights and
2 Responsibilities Act.

3 Section 6. RELIGIOUS FREEDOM.--Nothing in the Domestic
4 Partner Rights and Responsibilities Act shall interfere with or
5 regulate the religious practice of any religious body.

6 Section 7. COUNTY CLERK--DUTIES.--

7 A. A county clerk shall provide an affidavit of
8 domestic partnership form to individuals prepared to establish
9 a domestic partnership.

10 B. A county clerk shall receive a registration fee
11 of twenty-five dollars (\$25.00) for issuing and recording a
12 certificate of domestic partnership.

13 C. A county clerk shall accept the affidavit of
14 domestic partnership when it is submitted and shall issue and
15 record a certificate of domestic partnership.

16 D. Each county shall maintain a record of domestic
17 partnership at the expense of each respective county in the
18 state for the purpose of recording and indexing affidavits and
19 certificates of domestic partnerships as county records.

20 Section 8. ESTABLISHING A DOMESTIC PARTNERSHIP--
21 CERTIFICATE.--

22 A. A domestic partnership is established when the
23 affidavit of domestic partnership is accepted by a county clerk
24 and the certificate of domestic partnership is issued and
25 recorded.

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1 B. To obtain a certificate of domestic partnership,
2 individuals shall:

3 (1) submit an affidavit of domestic
4 partnership to a county clerk on a form that conforms with the
5 requirements of the Domestic Partner Rights and
6 Responsibilities Act stating that the two individuals desire to
7 become domestic partners and that they:

8 (a) have reached the age of majority;

9 (b) are capable of consenting to the
10 domestic partnership;

11 (c) are not married to someone else and
12 are not part of another domestic partnership with someone else
13 or civil union with someone else; and

14 (d) are not related by blood in a way
15 that would prevent marriage under the laws of New Mexico;

16 (2) provide a mailing address;

17 (3) consent to the jurisdiction of the
18 district courts of New Mexico for the purpose of a proceeding
19 related to the domestic partnership;

20 (4) declare that representations made in the
21 form are true, correct and contain no material omission of fact
22 to the best knowledge and belief of each individual;

23 (5) notarize the affidavit of domestic
24 partnership and deliver the affidavit to a county clerk for
25 signature and recording according to the instructions provided

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1 on the affidavit; and

2 (6) pay the required registration fee of
3 twenty-five dollars (\$25.00).

4 C. Upon receipt of the affidavit of domestic
5 partnership, the county clerk shall immediately issue a
6 certificate of domestic partnership and record and index the
7 certificate in the record of domestic partnership as part of
8 the county records. After recording, a certificate of domestic
9 partnership shall be provided to the domestic partners.

10 Section 9. MISREPRESENTATION OF DOMESTIC PARTNERSHIP
11 ELIGIBILITY--PENALTY.--Filing an intentionally and materially
12 false affidavit of domestic partnership shall be punishable as
13 a misdemeanor.

14 Section 10. AFFIDAVIT AND CERTIFICATE OF DOMESTIC
15 PARTNERSHIP--FORMS.--

16 A. To ensure a uniform system of records of all
17 domestic partnerships, an affidavit of domestic partnership and
18 a certificate of domestic partnership shall be substantially as
19 provided in this section, with each form to be numbered
20 consecutively corresponding with the page number of the record
21 of domestic partnership in the county clerk's office. All such
22 forms shall be provided free of cost by the county.

23 B. The affidavit of domestic partnership form shall
24 be substantially as follows:

25 "AFFIDAVIT OF DOMESTIC PARTNERSHIP NO. ____

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1 STATEMENTS RECEIVED AND FILED IN THE COUNTY CLERK'S OFFICE

2 AT ___ O'CLOCK ___ .M. ON _____, 20__.

3 COUNTY CLERK, _____ COUNTY

4 By _____ Deputy

5 To the county clerk:

6 We the undersigned hereby intend to be united in a
7 domestic partnership and certify the following.

8 Each of us has reached the age of majority.

9 Each of us is capable of consenting to this domestic
10 partnership.

11 Neither of us is married to someone else or is part
12 of another domestic partnership with someone else or civil
13 union with someone else that has not been terminated, dissolved
14 or adjudged a nullity.

15 We are not related by blood in a way that would
16 prevent marriage under the laws of New Mexico.

17 Each of us consents to the jurisdiction of the
18 district courts of New Mexico for the purpose of a proceeding
19 related to this domestic partnership or to domestic partners'
20 rights and obligations, even if one or both of us do not reside
21 in the state.

22 The representations here are true and correct and
23 contain no material omission of fact to the best of our
24 knowledge and belief.

25 Individual 1 Individual 2

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Full name:

Full name:

Date of birth:

Date of birth:

Place of birth:

Place of birth:

Present address:

Present address:

Signature:

Signature:

State of New Mexico

County of _____

Subscribed and sworn to before me this _____ day of
_____, 20__.

(Seal)

County Clerk

On _____, 20__, before me _____, Notary Public,
acknowledge that _____ and _____
personally appeared and have proved to me with satisfactory
evidence to be the persons whose names are subscribed to the
affidavit of domestic partnership.

WITNESS my hand and official seal.

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1 Signature of Notary Public
2 (PLACE NOTARY PUBLIC SEAL HERE)

3 FILE NO. _____".

4 C. The certificate of domestic partnership form
5 shall be substantially as follows:

6 "CERTIFICATE OF DOMESTIC PARTNERSHIP

7 State of New Mexico,

8 ss.

9 County of _____.

10 _____ of _____ and

11 Partner 1 Address

12 _____ of _____

13 Partner 2 Address

14 are hereby recognized as domestic partners in accordance
15 with the laws of the state of New Mexico and the Domestic
16 Partner Rights and Responsibilities Act.

17 Recorded this _____ day of _____, 20____,
18 at _____ o'clock _____ .M.

19 Record of Domestic Partnership Book No. _____, Page No. ____.

20 _____

21 County Clerk".

22 Section 11. LIBERAL CONSTRUCTION.--The Domestic Partner
23 Rights and Responsibilities Act shall be liberally construed to
24 carry out its provisions.

25 Section 12. SEVERABILITY.--If any part or application of

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1 the Domestic Partner Rights and Responsibilities Act is held
2 invalid, the remainder or its application to other situations
3 or persons shall not be affected.

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