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HOUSE BILL 603

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Mimi Stewart

AN ACT

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

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 meet the requirements for entering into a domestic  
partnership with each other as provided in the Domestic Partner  
Rights and Responsibilities Act;

B. "certificate of domestic partnership" means a  
certificate issued by the county clerk on behalf of the state,

1 certifying the domestic partnership has been registered;

2 C. "common residence" means a residence shared by  
3 licensed domestic partners, even if one person temporarily  
4 leaves the shared place of residence on either a short-term or  
5 long-term basis;

6 D. "domestic partner" means an adult who has chosen  
7 to share in another adult's life in an intimate and committed  
8 relationship of mutual caring and support and who has  
9 established a domestic partnership;

10 E. "domestic partnership" means the legal  
11 relationship two domestic partners establish with each other,  
12 provided the partners:

- 13 (1) share a common residence;  
14 (2) are, at minimum, at the age of majority;  
15 (3) are capable of consenting;  
16 (4) are not married to another and are not  
17 part of a valid domestic partnership or a civil union  
18 recognized in another state; and

19 (5) are not related by blood in a way that  
20 would prevent marriage under the laws of New Mexico;

21 F. "license fee" means twenty-five dollars (\$25.00)  
22 to be paid by the domestic partners to the county clerk at the  
23 time of submitting an application for license of domestic  
24 partnership; and

25 G. "record of domestic partnership" means a

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1 permanent record book kept by the county clerk of each county,  
2 at the expense of each respective county in the state, for the  
3 purpose of properly recording and indexing affidavits and  
4 certificates of domestic partnerships and ensuring the  
5 affidavits and certificates of domestic partnerships are kept  
6 as county records.

7 Section 3. EQUAL RIGHTS AND RESPONSIBILITIES.--

8 A. A domestic partner has the same rights,  
9 protections and benefits under law as a spouse in a marriage.  
10 Definitions in law and rule applicable to marriage, including  
11 terms such as "next of kin", "spouse", "immediate family",  
12 "dependent", "parent", "step-parent", "children" or other term  
13 related to the spousal relationship shall apply equally to a  
14 domestic partnership.

15 B. A domestic partner who contemplates leaving a  
16 domestic partnership is subject to the same responsibilities,  
17 obligations and duties under law, whether derived from statute,  
18 rule, common law or other provisions or sources of law, as  
19 those imposed on a spouse who leaves a marriage. Obligations  
20 imposed by law on a spouse in matters such as dissolution of  
21 marriage and child support apply equally to a domestic partner.

22 C. Following the death of a domestic partner, the  
23 surviving domestic partner has the same rights, protections and  
24 benefits and shall be subject to the same responsibilities,  
25 obligations and duties under law as those granted to and

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1 imposed upon a widow or a widower.

2 D. The parental rights and obligations of a  
3 domestic partner are the same as those of a parent in a  
4 marriage.

5 E. In laws and policies regarding community  
6 property, mutual responsibility for debts to third parties,  
7 financial support, property ownership and other duties and  
8 obligations, rights and responsibilities of marriage or marital  
9 spouses, the date of registration of a domestic partnership  
10 with the state is substituted for a date of marriage.

11 F. The state shall not discriminate against a  
12 domestic partner or domestic partnership on the grounds that  
13 the partner is not a spouse, a widow or widower or in a  
14 marriage.

15 G. Notwithstanding the provisions of this section,  
16 in filing a state income tax return, a domestic partner shall  
17 use the same filing status as is used on a federal income tax  
18 return, or that would have been used if a federal income tax  
19 return had been filed. Earned income shall not be treated as  
20 community property for state income tax purposes.

21 Section 4. JURISDICTION.--The district court has  
22 jurisdiction over proceedings relating to domestic partnership,  
23 including dissolution, annulment and legal separation, and  
24 shall follow the same procedures as are used for spouses in a  
25 marriage, except that a domestic partnership registered in this

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1 state may be filed in the district courts of this state even if  
2 neither domestic partner is a resident of, or maintains a  
3 domicile in, the state at the time the proceedings are filed.

4 Section 5. RECOGNITION OF LEGAL UNION.--A legal union  
5 other than the marriage of two persons formalized in another  
6 jurisdiction but substantially equivalent to a domestic  
7 partnership as defined in the Domestic Partner Rights and  
8 Responsibilities Act shall be recognized as a valid domestic  
9 partnership in this state regardless of whether it bears the  
10 name "domestic partnership".

11 Section 6. AFFIDAVIT REQUIRED--COUNTY CLERK--LICENSE  
12 FEES.--An adult prepared to form a domestic partnership shall  
13 obtain an affidavit of domestic partnership from the secretary  
14 of state or a county clerk and file it for recording in the  
15 county issuing the certificate. A county clerk shall receive a  
16 license fee for issuing and recording a certificate of domestic  
17 partnership. Fifteen dollars (\$15.00) of each license fee  
18 shall be remitted by the county treasurer to the state  
19 treasurer within fifteen days of the last day of each month,  
20 for credit to the children's trust fund.

21 Section 7. ESTABLISHING A DOMESTIC PARTNERSHIP.--

22 A. A domestic partnership is established when the  
23 affidavit of domestic partnership is accepted and the  
24 certificate of domestic partnership is issued and recorded.  
25 The completed affidavit of domestic partnership shall be

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1 accepted by the county clerk, filed and recorded in the record  
2 of domestic partnership.

3 B. To obtain a certificate of domestic partnership,  
4 prospective domestic partners shall:

5 (1) submit an application for a certificate  
6 and an affidavit of domestic partnership to a county clerk on a  
7 form that conforms with the requirements of the Domestic  
8 Partner Rights and Responsibilities Act stating that the  
9 domestic partners desire to become domestic partners and:

10 (a) currently share or will share a  
11 common residence immediately upon becoming licensed;

12 (b) have reached the age of majority;

13 (c) are capable of consenting to the  
14 domestic partnership;

15 (d) are not married to another and are  
16 not part of a valid domestic partnership or civil union to  
17 another; and

18 (e) are not related by blood in a way  
19 that would prevent marriage under the laws of New Mexico;

20 (2) provide a mailing address;

21 (3) state that they consent to the  
22 jurisdiction of the district courts of New Mexico for the  
23 purpose of a proceeding related to the domestic partnership  
24 even if they are no longer a resident of or domiciled in this  
25 state;

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1 (4) sign the form with a declaration that  
2 representations made in the form are true, correct and contain  
3 no material omission of fact to the best knowledge and belief  
4 of the applicants;

5 (5) have a notary public acknowledge the  
6 signatures. Both partners' signatures shall be affixed to one  
7 declaration of domestic partnership form, which original form  
8 shall then be transmitted or delivered to the county clerk  
9 according to the instructions provided on the form; and

10 (6) pay the required license fee.

11 C. The county clerk shall immediately upon receipt  
12 of the completed application and affidavit of domestic  
13 partnership issue a certificate of domestic partnership, record  
14 and index the certificate in the record of domestic partnership  
15 as a part of the county records. After recording, the  
16 certificate of domestic partnership shall be returned to the  
17 domestic partners.

18 Section 8. MISREPRESENTATION OF DOMESTIC PARTNERSHIP  
19 ELIGIBILITY.--Filing an intentionally and materially false  
20 declaration of domestic partnership shall be punishable as a  
21 misdemeanor.

22 Section 9. APPLICATION, AFFIDAVIT AND CERTIFICATE OF  
23 DOMESTIC PARTNERSHIP--FORMS.--

24 A. An affidavit of domestic partnership shall be  
25 substantially as provided in this section, with each form to be

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1 numbered consecutively corresponding with the page number of  
2 the record book in the county clerk's office. All such forms  
3 shall be provided free of cost by the county.

4 B. The affidavit form shall be substantially as  
5 follows:

6 "APPLICATION FOR CERTIFICATE OF DOMESTIC PARTNERSHIP AND  
7 AFFIDAVIT OF DOMESTIC PARTNERSHIP NO. \_\_\_\_  
8 STATEMENTS RECEIVED AND FILED IN COUNTY CLERK'S OFFICE AT  
9 \_\_\_\_ O'CLOCK \_\_\_\_ .M. ON \_\_\_\_\_, 20 \_\_\_\_.  
10 COUNTY CLERK, \_\_\_\_\_ COUNTY

11 By \_\_\_\_\_ Deputy

12 To the county clerk:

13 We the undersigned hereby make application to be united in  
14 a domestic partnership and certify that:

15 We share a common residence or will share one as of  
16 the date of this affidavit;

17 Each of us has reached the age of majority;

18 Each of us is capable of consenting to this domestic  
19 partnership;

20 Neither of us is married to someone else or is part  
21 of another domestic partnership or civil union with someone  
22 else that has not been terminated, dissolved or adjudged a  
23 nullity;

24 We are not related by blood in a way that would  
25 prevent marriage under the laws of New Mexico; and

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1 Both persons consent to the jurisdiction of the  
2 district courts of New Mexico for the purpose of a proceeding  
3 related to the domestic partnership or to the partners' rights  
4 and obligations, even if one or both partners ceases to be a  
5 resident of, or to maintain a domicile in, this state.

6 The representations here are true and correct and contain  
7 no material omission of fact to the best of our knowledge and  
8 belief.

9 Applicant 1 Applicant 2

10 Full Name: Full Name:

11 \_\_\_\_\_

12 Date of birth: Date of birth:

13 \_\_\_\_\_

14 Place of birth: Place of birth:

15 \_\_\_\_\_

16 Present address: Present address:

17 \_\_\_\_\_

18 \_\_\_\_\_

19 Signature: Signature:

20 \_\_\_\_\_

21 State of New Mexico

22 County of \_\_\_\_\_

23 On \_\_\_\_\_, before me, Notary Public, personally appeared

24 \_\_\_\_\_ and \_\_\_\_\_,

25 personally known to me (or proved to me on the basis of

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1 satisfactory evidence) to be the person(s) whose name(s) is/are  
2 subscribed to the within instrument and acknowledged to me that  
3 he/she/they executed the same in his/her/their authorized  
4 capacity(ies), and that by his/her/their signature(s) on the  
5 instrument the person(s), or the entity upon behalf of which  
6 the person(s) acted, executed the instrument.

7 WITNESS my hand and official seal.

8 Signature of Notary Public

9 [PLACE NOTARY PUBLIC SEAL HERE]

10 FILE NO: \_\_\_\_\_

11 This Space For Filing Use Only".

12 C. The certificate of domestic partnership form  
13 shall be substantially as follows:

14 "CERTIFICATE OF DOMESTIC PARTNERSHIP

15 State of New Mexico,

16 ss.

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

18 \_\_\_\_\_ of \_\_\_\_\_ and

19 Partner 1 Address

20 \_\_\_\_\_ of \_\_\_\_\_

21 Partner 2 Address

22 are hereby recognized as domestic partners in accordance with  
23 the laws of the state of New Mexico and the Domestic Partner  
24 Rights and Responsibilities Act.

25 Recorded this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at

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\_\_\_\_\_ M.  
Record of Domestic Partnership Book No. \_\_\_\_\_, Page No. \_\_\_\_\_.

\_\_\_\_\_  
County Clerk".

Section 10. LIBERAL CONSTRUCTION.--The Domestic Partner Rights and Responsibilities Act shall be liberally construed to carry out its purpose.

Section 11. SEVERABILITY.--If any part or particular application of the Domestic Partner Rights and Responsibilities Act is held invalid, the remainder of that act or its application to other situations or persons shall not be affected.