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HOUSE BILL 9

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

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 entitled to the same
25 legal obligations, responsibilities, protections and benefits

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

10 B. It is unlawful to discriminate against a
11 domestic partner or domestic partnership on the grounds that
12 the partner is not a spouse, widow or widower, or is not in a
13 marriage. It is also unlawful to discriminate against persons
14 seeking to form a domestic partnership based upon any
15 classification protected under the Human Rights Act. Any
16 person who suffers any loss of money or property, real or
17 personal, as a result of a violation of this section may bring
18 an action to recover actual damages. Any person who is
19 otherwise damaged or is likely to be damaged by a violation of
20 this section, either by being prevented from forming a domestic
21 partnership or by being deprived of the rights provided for
22 under the Domestic Partner Rights and Responsibilities Act, may
23 be granted an injunction against the person or entity violating
24 that act under the principles of equity and on terms that the
25 court considers reasonable. In any action or proceeding under

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1 this section, if the complaining party prevails, the court in
2 its discretion may allow actual damages and reasonable attorney
3 fees. Proof of actual damages is not required to recover
4 attorney fees.

5 C. Notwithstanding the provisions of this section,
6 taxable status shall be governed as follows:

7 (1) in filing a state income tax return, a
8 domestic partner shall use the same filing status as is used on
9 a federal income tax return filed in the same tax year, or
10 would have been used if a federal income tax return had been
11 filed in the same year. Earned income shall not be treated as
12 community property for state income tax purposes; and

13 (2) nothing in this section requires or
14 permits the extension of any tax benefit if the extension of
15 the tax benefit would conflict with the federal tax qualified
16 plan requirements of the Internal Revenue Code of 1986 or
17 implementing regulations.

18 Section 4. JURISDICTION.--

19 A. The district court shall have jurisdiction over
20 any proceeding relating to domestic partnership, including
21 dissolution, annulment and legal separation, and shall follow
22 the same procedures as are used for spouses in a marriage.

23 B. In accordance with the consent acknowledged by
24 the domestic partners in the affidavit of domestic partnership,
25 if no other forum is available with comparable remedies to

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1 address distribution of assets, debts, support upon
2 dissolution, annulment or legal separation as well as any other
3 issues related to a domestic partnership registered in this
4 state, the district court shall have jurisdiction even if
5 neither party is a resident of, or maintains a domicile in, the
6 state at the time the proceedings are filed.

7 C. A petition for dissolution, annulment or legal
8 separation of a domestic partnership may be filed in the
9 district court of the county in which the petitioner or
10 respondent resides or last resided or in the county in which
11 the domestic partnership is registered.

12 D. Nothing in this section shall be construed as
13 granting jurisdiction in conflict with the Uniform Child-
14 Custody Jurisdiction and Enforcement Act or the Uniform
15 Interstate Family Support Act as adopted in New Mexico.

16 Section 5. RECIPROCITY.--A marriage between persons of
17 the same sex, domestic partnership, civil union or a
18 substantially similar legal relationship other than common law
19 marriage entered into in another jurisdiction shall be
20 recognized in New Mexico as a domestic partnership as defined
21 in the Domestic Partner Rights and Responsibilities Act.

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

25 Section 7. COUNTY CLERK--DUTIES.--

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1 A. A county clerk shall provide an affidavit of
2 domestic partnership form to individuals prepared to establish
3 a domestic partnership.

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

7 C. A county clerk shall accept the affidavit of
8 domestic partnership when it is submitted and shall issue and
9 record a certificate of domestic partnership.

10 D. Each county shall maintain a record of domestic
11 partnership at the expense of each respective county in the
12 state for the purpose of recording and indexing affidavits and
13 certificates of domestic partnerships as county records.

14 Section 8. ESTABLISHING A DOMESTIC PARTNERSHIP--
15 CERTIFICATE.--

16 A. A domestic partnership is established when the
17 affidavit of domestic partnership is accepted by a county clerk
18 and the certificate of domestic partnership is issued and
19 recorded.

20 B. To obtain a certificate of domestic partnership,
21 individuals shall:

22 (1) submit an affidavit of domestic
23 partnership to a county clerk on a form that conforms with the
24 requirements of the Domestic Partner Rights and
25 Responsibilities Act stating that the two individuals desire to

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1 become domestic partners and they:

2 (a) have reached the age of majority;

3 (b) are capable of consenting to the
4 domestic partnership;

5 (c) are not married to someone else and
6 are not part of another domestic partnership or civil union
7 with someone else; and

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

10 (2) provide a mailing address;

11 (3) consent to the jurisdiction of the
12 district courts of New Mexico for the purpose of a proceeding
13 related to the domestic partnership;

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

17 (5) notarize the affidavit of domestic
18 partnership and deliver the affidavit to a county clerk for
19 signature and recording according to the instructions provided
20 on the affidavit; and

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

23 C. Upon receipt of the affidavit of domestic
24 partnership, the county clerk shall immediately issue a
25 certificate of domestic partnership and record and index the

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1 certificate in the record of domestic partnership as part of
2 the county records. After recording, a certificate of domestic
3 partnership shall be provided to the domestic partners.

4 Section 9. MISREPRESENTATION OF DOMESTIC PARTNERSHIP
5 ELIGIBILITY--PENALTY.--Filing an intentionally and materially
6 false affidavit of domestic partnership shall be punishable as
7 a misdemeanor.

8 Section 10. AFFIDAVIT AND CERTIFICATE OF DOMESTIC
9 PARTNERSHIP--FORMS.--

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

17 B. The affidavit of domestic partnership form shall
18 be substantially as follows:

19 "AFFIDAVIT OF DOMESTIC PARTNERSHIP NO. ____
20 STATEMENTS RECEIVED AND FILED IN THE COUNTY CLERK'S OFFICE
21 AT ____ O'CLOCK ____ .M. ON _____, 20 ____.
22 COUNTY CLERK, _____ COUNTY
23 By _____ Deputy

24 To the county clerk:

25 We the undersigned hereby intend to be united in a

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1 domestic partnership and certify the following.

2 Each of us has reached the age of majority.

3 Each of us is capable of consenting to this domestic
4 partnership.

5 Neither of us is married to someone else or is part
6 of another domestic partnership or civil union with someone
7 else that has not been terminated, dissolved or adjudged a
8 nullity.

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

11 Each of us consents to the jurisdiction of the
12 district courts of New Mexico for the purpose of a proceeding
13 related to this domestic partnership or to domestic partners'
14 rights and obligations, even if one or both of us do not reside
15 in the state.

16 The representations here are true and correct and
17 contain no material omission of fact to the best of our
18 knowledge and belief.

19	Individual 1	Individual 2
20	Full name:	Full name:
21	_____	_____
22	Date of birth:	Date of birth:
23	_____	_____
24	Place of birth:	Place of birth:
25	_____	_____

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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.

Signature of Notary Public

(PLACE NOTARY PUBLIC SEAL HERE)

FILE NO: _____".

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

"CERTIFICATE OF DOMESTIC PARTNERSHIP

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State of New Mexico,

ss.

County of _____.

_____ of _____ and

Partner 1 Address

_____ of _____

Partner 2 Address

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

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

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

County Clerk."

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

Section 12. SEVERABILITY.--If any part or application of the Domestic Partner Rights and Responsibilities Act is held invalid, the remainder or its application to other situations or persons shall not be affected.