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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,

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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.

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