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HOUSE BILL 28

**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.