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HOUSE BILL 4

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL 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 registered 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 a relationship of mutual  
8 caring and support and who has established a domestic  
9 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 someone else and are  
17 not 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. "record of domestic partnership" means a  
22 permanent record book kept by the county clerk of each county,  
23 at the expense of each respective county in the state, for the  
24 purpose of properly recording and indexing affidavits and  
25 certificates of domestic partnerships and ensuring the

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1 affidavits and certificates of domestic partnerships are kept  
2 as county records; and

3 G. "registration fee" means twenty-five dollars  
4 (\$25.00) to be paid by the domestic partners to the county  
5 clerk at the time of submitting an application for registration  
6 of domestic partnership.

7 Section 3. EQUAL RIGHTS AND RESPONSIBILITIES.--

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

15 B. A domestic partner who dissolves a domestic  
16 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 dissolves a marriage.  
20 Obligations imposed by law on a spouse in matters such as  
21 dissolution of marriage and child support apply equally to a  
22 domestic partner.

23 C. Following the death of a domestic partner, the  
24 surviving domestic partner has the same rights, protections and  
25 benefits and shall be subject to the same responsibilities,

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1 obligations and duties under law as those granted to and  
2 imposed upon a widow or a widower.

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

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

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

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

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

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1 marriage, except that a dissolution, annulment or legal  
2 separation of a domestic partnership registered in this state  
3 may be filed in the district courts of this state if no other  
4 forum is available with comparable remedies to address  
5 distribution of assets, debts, support and other issues related  
6 thereto, even if neither domestic partner is a resident of, or  
7 maintains a domicile in, the state at the time the proceedings  
8 are filed. Nothing in this section shall be construed as  
9 granting jurisdiction in conflict with the Uniform Child-  
10 Custody Jurisdiction and Enforcement Act as adopted in New  
11 Mexico.

12 Section 5. RECOGNITION OF LEGAL UNION.--A legal union  
13 other than the marriage of two persons formalized in another  
14 jurisdiction but substantially equivalent to a domestic  
15 partnership as defined in the Domestic Partner Rights and  
16 Responsibilities Act shall be recognized as a valid domestic  
17 partnership in this state regardless of whether it bears the  
18 name "domestic partnership".

19 Section 6. AFFIDAVIT REQUIRED--COUNTY CLERK--REGISTRATION  
20 FEES.--An adult prepared to form a domestic partnership shall  
21 obtain an affidavit of domestic partnership from the secretary  
22 of state or a county clerk and file it for recording in the  
23 county issuing the certificate of domestic partnership. A  
24 county clerk shall receive a registration fee of twenty-five  
25 dollars (\$25.00) for issuing and recording a certificate of

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1 domestic partnership. Fifteen dollars (\$15.00) of each  
2 registration fee shall be remitted by the county treasurer to  
3 the state treasurer within fifteen days of the last day of each  
4 month, for credit to the children's trust fund.

5 Section 7. ESTABLISHING A DOMESTIC PARTNERSHIP.--

6 A. A domestic partnership is established when the  
7 affidavit of domestic partnership is accepted and the  
8 certificate of domestic partnership is issued and recorded.

9 The completed affidavit of domestic partnership shall be  
10 accepted by the county clerk, filed and recorded in the record  
11 of domestic partnership.

12 B. To obtain a certificate of domestic partnership,  
13 prospective domestic partners shall:

14 (1) submit an application for a certificate of  
15 domestic partnership and an affidavit of domestic partnership  
16 to a county clerk on a form that conforms with the requirements  
17 of the Domestic Partner Rights and Responsibilities Act stating  
18 that the domestic partners desire to become domestic partners  
19 and:

20 (a) currently share or will share a  
21 common residence immediately upon becoming registered;

22 (b) have reached the age of majority;

23 (c) are capable of consenting to the  
24 domestic partnership;

25 (d) are not married to someone else and

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1 are not part of a valid domestic partnership or civil union to  
2 someone else; and

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

5 (2) provide a mailing address;

6 (3) state that they consent to the  
7 jurisdiction of the district courts of New Mexico for the  
8 purpose of a proceeding related to the domestic partnership  
9 even if they are no longer a resident of or domiciled in this  
10 state;

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

15 (5) have a notary public acknowledge the  
16 signatures. Both partners' signatures shall be affixed to one  
17 affidavit of domestic partnership form, which original  
18 affidavit shall then be transmitted or delivered to the county  
19 clerk according to the instructions provided on the affidavit;  
20 and

21 (6) pay the required registration fee.

22 C. The county clerk shall immediately upon receipt  
23 of the completed application and affidavit of domestic  
24 partnership issue a certificate of domestic partnership, record  
25 and index the certificate in the record of domestic partnership

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

4 Section 8. MISREPRESENTATION OF DOMESTIC PARTNERSHIP  
5 ELIGIBILITY.--Filing an intentionally and materially false  
6 declaration of domestic partnership shall be punishable as a  
7 misdemeanor.

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

10 A. An affidavit of domestic partnership shall be  
11 substantially as provided in this section, with each form to be  
12 numbered consecutively corresponding with the page number of  
13 the record book in the county clerk's office. All such forms  
14 shall be provided free of cost by the county.

15 B. The affidavit form shall be substantially as  
16 follows:

17 "APPLICATION FOR CERTIFICATE OF DOMESTIC PARTNERSHIP AND  
18 AFFIDAVIT OF DOMESTIC PARTNERSHIP NO. \_\_\_\_  
19 STATEMENTS RECEIVED AND FILED IN COUNTY CLERK'S OFFICE AT  
20 \_\_\_\_ O'CLOCK \_\_\_\_ .M. ON \_\_\_\_\_, 20 \_\_\_\_.  
21 COUNTY CLERK, \_\_\_\_\_ COUNTY  
22 By \_\_\_\_\_ Deputy  
23 To the county clerk:

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

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1                   We share a common residence or will share one as of  
2 the date of this affidavit;

3                   Each of us has reached the age of majority;

4                   Each of us is capable of consenting to this domestic  
5 partnership;

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

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

12                  Both persons consent to the jurisdiction of the  
13 district courts of New Mexico for the purpose of a proceeding  
14 related to the domestic partnership or to the partners' rights  
15 and obligations, even if one or both partners ceases to be a  
16 resident of, or to maintain a domicile in, this state.

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

20	Applicant 1	Applicant 2
21	Full Name:	Full Name:
22	_____	_____
23	Date of birth:	Date of birth:
24	_____	_____
25	Place of birth:	Place of birth:

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\_\_\_\_\_  
Present address: Present address:  
\_\_\_\_\_  
\_\_\_\_\_  
Signature: Signature:  
\_\_\_\_\_

State of New Mexico  
County of \_\_\_\_\_

On \_\_\_\_\_, before me, Notary Public, personally appeared  
\_\_\_\_\_ and \_\_\_\_\_,  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.  
Signature of Notary Public  
[PLACE NOTARY PUBLIC SEAL HERE]

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

This Space For Filing Use Only".

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 \_\_\_\_\_, \_\_\_\_\_, at  
\_\_\_\_\_ 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.