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FISCAL IMPACT REPORT

ORIGINAL DATE 1/21/08
 SPONSOR Stewart LAST UPDATED 1/23/08 HB 9/a HCPAC/HJC
 SHORT TITLE Relating to Domestic Affairs SB _____
 ANALYST Propst

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 28

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)
 Corrections Department (CD)
 Public Education Department (PED)
 Aging and Long term Services Department (ALSD)

SUMMARY

Synopsis of House Judiciary Committee Amendment

On page 2, line 24, through page 4, line 4, strike Subsections A and B and insert the following new subsection:

- A. Domestic partners shall be subject to the same legal obligations and responsibilities and shall be entitled to the same protections and benefits as are afforded or recognized by the laws of the state to spouses, former spouses, widows or widowers, whether the derive from statute, administrative or court rule or regulation, policy, common law or any other source of civil or criminal law. The Domestic Partner Rights and Responsibilities Act shall not repeal or adversely affect any other manner in which relationship between adults may be recognized or given effect in New Mexico, or the legal consequences of those relationships.

House Bill 9/a HCPAC/HJC Page 2

On page 5, line 20, strike “recognized” and insert “afforded the same rights”.

On page 7, line 6, and page 9, line 6, after “partnership”, insert “with someone else”.

Synopsis of House Consumer & Public Affairs Committee Amendment

On page 5, lines 16 and 17 strikes “marriage between persons of the same sex.”

Synopsis of Original Bill

Relating to Domestic Affairs; Enacting the Domestic Partner Rights and Responsibilities Act; Providing Penalties. HB 9 establishes that domestic partnership shall be entitled to the same legal obligations, responsibilities, protections and benefits as are currently afforded to spouses, former spouses, widows or widowers/

SIGNIFICANT ISSUES

The bill defines a domestic partner as an adult who has chosen to share another adult’s life and who has established a domestic partnership. A domestic partnership is defined as a legal relationship that is not a marriage that two domestic partners establish with each other according to the requirements of the bill.

The bill does not repeal or adversely affect any other manner in which relationships between adults in New Mexico are recognized. HB 9 makes it unlawful to discriminate against a domestic partner or a domestic partnership on the grounds that the partner is not a spouse, widow or widower or is not in a marriage. A person who suffers a loss because as the result of a violation of the Act may bring an action to recover actual damages or bring an action to halt someone from interfering with their rights under the Act.

HB 9 clarifies that nothing in the Act is intended to provide any tax benefit if the benefit would conflict with the federal tax code and that a domestic partner will use the same filing status as is used on a federal income tax return. Earned income is not treated as community property for state income tax purposes.

The bill gives jurisdiction over proceeding related to domestic partnerships, including dissolution to the district court which is to follow the same procedures as are used for spouses in a marriage. It also clarifies that the jurisdiction granted is not intended to conflict with the Uniform Child-Custody Jurisdiction and Enforcement Act or the Uniform Interstate Family Support Act.

HB 9 establishes that a domestic partnership recognized in another jurisdiction will be recognized in NM as well and that nothing in HB 9 interferes with the religious practice of any religious body.

The bill establishes procedures for the county clerk in providing an affidavit of domestic partnership and the procedure for obtaining a certificate of domestic partnership including paying a registration fee of \$25, having reached the age of majority, consenting to the jurisdiction of the district court and others.

Finally, the bill establishes a uniform affidavit and certificate of domestic partnership form.

The Aging and Long term Services Department (ALSD) notes that the bill gives committed same sex couples who cannot under state law marry, and committed heterosexual couples who choose not to marry because marriage would result in loss of certain benefits, such as surviving spouse social security benefits, the ability to secure for themselves the legal protections and benefits of marriage available under state law. Benefits to them include community property rights; being able to receive health insurance through the domestic partner's employer; being able to take family medical leave to care for an ill partner; the mutual obligation to support each other; community property rights, including in a deceased domestic partner's pension; rights of intestate succession; healthcare and end-of-life decision-making authority for each other; and access to the district courts for dissolution of the relationship, with the same rights and responsibilities regarding child support, child custody and visitation, and division of property as married couples have under state law.

ALSD also notes that HB 9 would be especially helpful for seniors and individuals with disabilities who do not marry due to the adverse impacts on their Social Security and other benefits.

The Office of the Attorney General notes that in February 2004 the former New Mexico Attorney General issued an advisory opinion in which she ruled that marriage in New Mexico is limited to a man and a woman. The opinion was issued in response to the Sandoval County Clerk issuing marriage licenses to persons of the same sex. A District Court Judge issued a Temporary Restraining Order prohibiting the Clerk from issuing such licenses in March, 2004. The Clerk then filed a petition in the New Mexico Supreme Court against the Attorney General and the District Judge who issued the restraining order, asking the Supreme Court to require that those officials allow her to issue marriage licenses “without interference or discrimination based on sex, sexual orientation, or gender”. *Dunlap v. Madrid and McDonald*, No.28,730. On July 8, 2004 the Supreme Court denied the Clerk’s petition, effectively letting stand the opinion of the Attorney General that “same-sex” marriages are not authorized by New Mexico state law. This bill would recognize “domestic partnerships” between persons of the same gender (and of different genders) as alternatives to marriage.

As noted by others, the Attorney General points out that HB 9 allows persons who have reached the “age of majority” to establish domestic partnerships. NMSA 12-2A-3 B (1978) defines “age of majority” as beginning on the first instant of an individual’s eighteenth birthday.

The reciprocity provisions would grant recognition to certain relationships entered into in other jurisdictions. Presumably those relationships must also be recognized as legal unions by the other jurisdiction in order to be recognized as a domestic partnership in New Mexico. For example, California recognizes domestic partnerships and affords them substantially the same rights as those afforded marriages. See California Family Code, Sections 297-297.5. Massachusetts recognizes “same-sex” marriages as a result of the ruling in *Goodrich v. Dept. of Health*, 798 N.E. 2nd 941 (Mass 2003). Note that Massachusetts also allows New Mexico residents of the same sex to obtain marriage licenses in that state after its Department of Health ruled, through a notice to all Massachusetts city and town clerks issued on July 18, 2007, that New Mexico's laws do not prohibit marriage between parties of the same gender.

<http://jurist.law.pitt.edu/paperchase/2007/07/massachusetts-oks-same-sex-marriage.php>;
http://www.mass.gov/Eeohhs2/docs/dph/vital_records/impediment.pdf.

Although the bill would provide rights, obligations, protections, etc. to domestic partners under state law, it would not affect the application of federal law. There are many federal laws in which marital status is a factor. These include rights under Social Security, Medicare, immigration law, veteran's benefits and federal tax laws. Current federal law does not recognize “domestic partners” or confer the same status on those persons as it does for married persons.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB 28.

TECHNICAL ISSUES

The Public Education Department review noted the follow potential technical issues.

Definitions from New Jersey’s domestic partnership law are illustrative of another state’s detailed approach to various definitions after the state was sued. Note the following from Section 26:8A-3 of New Jersey law:

- *Certificate of Domestic Partnership* means a certificate that includes: the full names of the domestic partners, a statement that the two individuals are members of a registered domestic partnership recognized by the State of New Jersey, the date that the domestic partnership was entered into, and a statement that the partners are entitled to all the rights, privileges and responsibilities accorded to domestic partners under the law. The certificate shall bear the seal of the State of New Jersey.
- *Domestic partner* or *partner* means a person who is in a relationship that satisfies the definition of a domestic partnership as set forth in this act.
- *Have a common residence* means that two persons share the same place to live in this State, or share the same place to live in another jurisdiction when at least one of the persons is a member of a State-administered retirement system, regardless of whether or not: the legal right to possess the place is in both of their names; one or both persons have additional places to live; or one person temporarily leaves the shared place of residence to reside elsewhere, on either a short-term or long-term basis, for reasons that include, but are not limited to, medical care, incarceration, education, a sabbatical or employment, but intends to return to the shared place of residence.
- *Jointly responsible* means that each domestic partner agrees to provide for the other partner's basic living expenses if the other partner is unable to provide for himself.
- *Notice of Rights and Obligations of Domestic Partners* means a form that advises domestic partners, or persons seeking to become domestic partners, of the procedural requirements for establishing, maintaining, and terminating a domestic partnership, and includes information about the rights and responsibilities of the partners.