

Proposed

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 515

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
ENACTING THE DOMESTIC PARTNERSHIP ACT; REQUIRING ALL PERSONS  
WISHING TO FORM A DOMESTIC PARTNERSHIP TO FILE WITH THE  
SECRETARY OF STATE; REQUIRING THE SECRETARY OF STATE TO  
PROMULGATE RULES; REPEALING SECTIONS OF THE NMSA 1978 RELATING  
TO MARRIAGE LICENSING AND COMMUNITY PROPERTY; CREATING A  
REBUTTABLE PRESUMPTION OF EQUAL TIME SHARING OF A CHILD IN  
CUSTODY MATTERS IN THE EVENT OF A DISSOLUTION OF A DOMESTIC  
PARTNERSHIP.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Domestic Partnership Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Domestic Partnership Act:

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1           A. "common law domestic partnership" means a  
2 domestic partnership that can be evidenced by an oral or  
3 implied domestic partnership agreement;

4           B. "domestic partnership" means an association of  
5 any adult persons who enter into a partnership to formalize a  
6 domestic relationship as legally committed to one another as  
7 validated by a domestic partnership agreement and is an entity  
8 distinct from its partners;

9           C. "domestic partnership agreement" means the  
10 agreement between the partners concerning the domestic  
11 partnership, including amendments to the domestic partnership  
12 agreement;

13           D. "domestic relationship" means a relationship for  
14 certain purposes, including but not limited to child rearing,  
15 cohabitation, spousal support and the sharing of spousal  
16 benefits;

17           E. "partner" or "spouse" means a person who enters  
18 into a domestic partnership; and

19           F. "statement" means a statement of domestic  
20 partnership authority.

21           **SECTION 3. [NEW MATERIAL] FORMATION OF A DOMESTIC**  
22 **PARTNERSHIP--EXECUTION--FILING--STATEMENT.--**

23           A. Adult persons desiring to enter into a domestic  
24 partnership shall file a statement to register the domestic  
25 partnership along with a domestic partnership agreement in the

1 office of the secretary of state and record the statement of  
2 registration in the county office for recording transfers of  
3 real property. A certified copy of a statement that is filed  
4 in another state may be filed in the office of the secretary of  
5 state. The statement shall include:

6 (1) the names of the partners;

7 (2) the street address of the residence of the  
8 partners; and

9 (3) the authority, or limitations on the  
10 authority, of the partners to enter into other transactions on  
11 behalf of the domestic partnership and any other matter desired  
12 by the partners.

13 B. Unless the domestic partnership agreement is  
14 voided pursuant to Section 7 of the Domestic Partnership Act, a  
15 statement filed with the secretary of state shall only be  
16 canceled upon dissolution pursuant to this act.

17 C. A certified copy of a statement that has been  
18 filed in the office of the secretary of state and recorded in  
19 the county office for recording transfers of real property has  
20 the effect provided for recorded statements.

21 D. An individual who executes a statement as, or on  
22 behalf of, a partner shall personally declare under penalty of  
23 perjury that the contents of the statement are accurate.

24 E. A person who files a statement pursuant to this  
25 section shall promptly send a copy of the statement to the

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1 other partners; provided that failure to send a copy of the  
2 statement shall not limit the effectiveness of the statement as  
3 to a person not a partner.

4 F. The secretary of state may collect a reasonable  
5 fee for filing or providing a certified copy of a statement.  
6 The county officer responsible for recording transfers of real  
7 property may collect a reasonable fee for recording a  
8 statement.

9 SECTION 4. [NEW MATERIAL] FORMATION OF A DOMESTIC  
10 PARTNERSHIP--COMMON LAW DOMESTIC PARTNERSHIP.--

11 A. Except as otherwise provided in Subsection B of  
12 this section, the association of persons to carry on as legally  
13 committed to one another forms a domestic partnership, whether  
14 or not a statement is filed pursuant to Section 3 of the  
15 Domestic Partnership Act.

16 B. In the absence of a statement evidencing a  
17 domestic partnership pursuant to Section 3 of the Domestic  
18 Partnership Act, a common law domestic partnership shall be  
19 evidenced by:

20 (1) holding property, debts and earnings in  
21 joint tenancy, tenancy in common, tenancy by the entireties,  
22 joint property, common property or part ownership;

23 (2) cohabitation of the partners; and

24 (3) the partners holding themselves out as  
25 being domestic partners.

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SECTION 5. [NEW MATERIAL] DOMESTIC PARTNERSHIP

AGREEMENTS.--Contracts made in the anticipation of entering into a domestic partnership and other marital agreements shall govern the rights of each partner in the course of undertaking a domestic partnership.

SECTION 6. [NEW MATERIAL] LIABILITY OF DOMESTIC PARTNERS AND PARTNERSHIP.--

A. All partners shall be jointly and severally liable for obligations of the domestic partnership unless otherwise agreed or provided by law.

B. A partner shall not be personally liable for any obligation incurred by the other partner or partners, including debt, before the domestic partnership.

C. A spouse shall not be personally liable, directly or indirectly, by way of contribution, indemnification or otherwise, for an obligation of the other spouse incurred before the domestic partnership solely by reason of being or acting as a spouse unless personally liable as provided by law.

SECTION 7. [NEW MATERIAL] UNLAWFUL DOMESTIC PARTNERSHIPS--VOID PARTNERSHIPS--VOIDABLE PARTNERSHIPS.--A

domestic partnership shall be void if:

A. a person under the age of eighteen is a party to the domestic partnership; or

B. the domestic partnership is incestuous, as being between:

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- 1 (1) parents and children;
- 2 (2) grandparents and grandchildren of all
- 3 degrees;
- 4 (3) brothers and sisters of full blood or of
- 5 half blood;
- 6 (4) uncles and nieces; and
- 7 (5) aunts and nephews.

8 SECTION 8. [NEW MATERIAL] DOMESTIC PARTNERSHIP  
9 PROPERTY.--

10 A. Property shall be domestic partnership property  
11 if acquired in the name of:

- 12 (1) the domestic partnership; or
- 13 (2) a partner if the domestic partnership is
- 14 indicated as the recipient of title in the instrument
- 15 transferring title to the property.

16 B. Property shall be acquired in the name of the  
17 domestic partnership by a transfer to:

- 18 (1) the domestic partnership; or
- 19 (2) a partner in that partner's capacity as a
- 20 partner, if the names of any partners to the domestic
- 21 partnership are indicated in the instrument transferring title
- 22 to the property.

23 C. Property acquired by any partner separately,  
24 without an indication in the instrument transferring title to  
25 the property that the property shall be domestic partnership

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1 property or of the existence of a domestic partnership is  
 2 presumed to be separate property, even if used for domestic  
 3 partnership purposes.

4 D. Funds and accounts held in the name of all  
 5 partners shall be considered domestic partnership property.

6 SECTION 9. [NEW MATERIAL] APPLICATION OF LAW.--

7 A. Nothing in the Domestic Partnership Act shall be  
 8 construed to interfere with the marriage records kept by any  
 9 civil magistrate, religious society, church organization or  
 10 federally recognized Indian nation, tribe or pueblo or with any  
 11 additional form of ceremony, regulation or requirement  
 12 prescribed by those entities for marriage.

13 B. A marriage entered into before the effective  
 14 date of the Domestic Partnership Act in this state or another  
 15 state shall be valid without a domestic partnership and shall  
 16 continue as valid with full faith and credit.

17 SECTION 10. [NEW MATERIAL] RULEMAKING.--The secretary of  
 18 state shall promulgate rules for the administration of the  
 19 Domestic Partnership Act, including the filing of a statement  
 20 for the purposes of registering the domestic partnership, but  
 21 shall in no way substantively limit the agreement of the  
 22 persons entering into a domestic partnership.

23 SECTION 11. [NEW MATERIAL] CUSTODY OF CHILDREN IN THE  
 24 EVENT OF A DISSOLUTION OF A DOMESTIC PARTNERSHIP--JOINT  
 25 CUSTODY--STANDARDS FOR DETERMINATION--PARENTING PLAN.--

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1           A. There shall be a presumption that joint custody  
2 with equal time-sharing is in the best interests of a child in  
3 an initial custody determination. Joint custody shall not be  
4 awarded as a substitute for an existing custody arrangement  
5 unless there has been a substantial and material change in  
6 circumstances since the entry of the prior custody order or  
7 decree, which change affects the welfare of the child such that  
8 joint custody is presently in the best interests of the child.  
9 If the court has previously entered an order determining joint  
10 legal custody but has not awarded equal physical custody of the  
11 child, and there has been no specific finding that joint  
12 custody is not in the child's best interest pursuant to the  
13 factors set forth in this section, the court shall set a  
14 hearing in a timely manner on the motion to determine whether  
15 the parties shall have equal legal and physical joint custody.  
16 In determining joint physical custody, it shall be presumed  
17 that joint physical custody means equal time-sharing. The  
18 court may make a determination for equal joint legal and  
19 physical custody on these matters without making a finding that  
20 there has been a substantial change of family circumstances.  
21 With respect to any proceeding in which it is proposed that  
22 joint custody be terminated, the court shall not terminate  
23 joint custody unless there has been a substantial and material  
24 change in circumstances affecting the welfare of the child,  
25 since entry of the joint custody order, such that joint custody

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1 is no longer in the best interests of the child.

2 B. In determining whether a joint custody order is  
3 in the best interests of the child, in addition to the factors  
4 provided in Section 40-4-9 NMSA 1978, the court shall consider  
5 the following factors:

6 (1) whether the child has established a close  
7 relationship with each parent;

8 (2) whether each parent is capable of  
9 providing adequate care for the child throughout each period of  
10 responsibility, including arranging for the child's care by  
11 others as needed;

12 (3) whether each parent is willing to accept  
13 all responsibilities of parenting, including a willingness to  
14 accept care of the child at specified times and to relinquish  
15 care to the other parent at specified times;

16 (4) whether the child can best maintain and  
17 strengthen a relationship with both parents through  
18 predictable, frequent contact and whether the child's  
19 development will profit from such involvement and influence  
20 from both parents;

21 (5) whether each parent is able to allow the  
22 other to provide care without intrusion, that is, to respect  
23 the other's parental rights and responsibilities and right to  
24 privacy;

25 (6) the suitability of a parenting plan for

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1 the implementation of joint custody, preferably, although not  
2 necessarily, one arrived at through parental agreement;

3 (7) geographic distance between the parents'  
4 residences;

5 (8) willingness or ability of the parents to  
6 communicate, cooperate or agree on issues regarding the child's  
7 needs; and

8 (9) whether conviction for domestic violence  
9 against the child, a parent of the child or other household  
10 member has occurred or whether a charge for domestic violence  
11 is pending, in which case the court shall set forth findings  
12 that the custody or visitation ordered by the court adequately  
13 protects the child, the abused parent or other household  
14 member.

15 C. In any proceeding in which the custody of a  
16 child is at issue, the court shall not prefer one parent as a  
17 custodian solely because of gender.

18 D. The court shall allocate parenting time pursuant  
19 to joint custody according to the child's best interests. In  
20 allocating parenting time, the court shall presume that it is  
21 in the child's best interests to award equal time to each  
22 parent and that:

23 (1) the child has a right to a strong and  
24 healthy relationship with the child's parents;

25 (2) the child's parents have a right and

1 responsibility to create and maintain a strong and healthy  
2 relationship with the child; and

3 (3) in the absence of domestic violence or any  
4 other factor that the court expressly finds to be relevant,  
5 proximity to and frequent contact with both parents promotes  
6 the child's healthy development.

7 E. In a child custody proceeding, the court shall:

8 (1) facilitate parental planning and agreement  
9 about the child's upbringing and allocation of parenting time  
10 and other parental responsibilities;

11 (2) continue existing parent-child  
12 relationships;

13 (3) secure the maximum involvement and  
14 cooperation of parents regarding the physical, mental, moral  
15 and emotional well-being of the child during and after a court  
16 proceeding;

17 (4) encourage or order the child's parents to  
18 participate in programs designed to educate parents to:

19 (a) minimize or eliminate rancor and the  
20 detrimental effect of litigation in any proceeding involving  
21 children; and

22 (b) facilitate the maximum cooperation  
23 of parents in raising their children; and

24 (5) presume that, in order to maximize the  
25 opportunity for the child to maintain and strengthen the

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1 child's relationship with each parent, the involvement of both  
2 parents for an equal amount of time is in the best interests of  
3 the child.

4 F. In any case in which the parents agree to a form  
5 of custody, the court should award custody consistent with the  
6 agreement unless the court determines that such agreement is  
7 not in the best interests of the child.

8 G. In making an order of joint custody, the court  
9 may specify the circumstances, if any, under which the consent  
10 of both legal custodians is required to be obtained in order to  
11 exercise legal control of the child and the consequences of the  
12 failure to obtain mutual consent.

13 H. When joint custody is awarded, the court shall  
14 approve a parenting plan for the implementation of the  
15 prospective custody arrangement prior to the award of joint  
16 custody. The parenting plan shall include a division of a  
17 child's time and care into periods of responsibility for each  
18 parent. It may also include:

19 (1) statements regarding the child's religion,  
20 education, child care, recreational activities and medical and  
21 dental care;

22 (2) designation of specific decision-making  
23 responsibilities;

24 (3) methods of communicating information about  
25 the child, transporting the child, exchanging care for the

1 child and maintaining telephone and mail contact between parent  
2 and child;

3 (4) procedures for future decision-making,  
4 including procedures for dispute resolution; and

5 (5) other statements regarding the welfare of  
6 the child or designed to clarify and facilitate parenting under  
7 joint custody arrangements.

8 In a case where joint custody is not agreed to or  
9 necessary aspects of the parenting plan are contested, the  
10 parties shall each submit parenting plans. The court may  
11 accept the plan proposed by either party or it may combine or  
12 revise these plans as it deems necessary in the child's best  
13 interests. The time of filing of parenting plans shall be set  
14 by local rule. A plan adopted by the court shall be entered as  
15 an order of the court.

16 I. Where custody is contested, the court shall  
17 refer that issue to mediation if feasible. The court may also  
18 use auxiliary services such as professional evaluation by  
19 application of Rule 706 of the New Mexico Rules of Evidence or  
20 Rule 53 of the Rules of Civil Procedure for the District  
21 Courts.

22 J. Notwithstanding any other provisions of law,  
23 access to records and information pertaining to a minor child,  
24 including medical, dental and school records, shall not be  
25 denied to a parent because that parent is not the child's

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1 physical custodial parent or because that parent is not a joint  
2 custodial parent.

3 K. Whenever a request for joint custody is granted  
4 or denied, the court shall state in its decision its basis for  
5 granting or denying the request for joint custody. A statement  
6 that joint custody is or is not in the best interests of the  
7 child is not sufficient to meet the requirements of this  
8 subsection.

9 L. An award of joint custody means that:

10 (1) each parent shall have significant, well-  
11 defined periods of responsibility for the child;

12 (2) each parent shall have, and be allowed and  
13 expected to carry out, responsibility for the child's  
14 financial, physical, emotional and developmental needs during  
15 that parent's periods of responsibility;

16 (3) the parents shall consult with each other  
17 on major decisions involving the child before implementing  
18 those decisions; that is, neither parent shall make a decision  
19 or take an action that results in a major change in a child's  
20 life until the matter has been discussed with the other parent  
21 and the parents agree. If the parents, after discussion,  
22 cannot agree and if one parent wishes to effect a major change  
23 while the other does not wish the major change to occur, then  
24 no change shall occur until the issue has been resolved as  
25 provided in this subsection;

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1 (4) the following guidelines apply to major  
2 changes in a child's life:

3 (a) if either parent plans to change the  
4 parent's home city or state of residence, that parent shall  
5 provide to the other parent thirty days' notice in writing  
6 stating the date and destination of move;

7 (b) the religious denomination and  
8 religious activities, or lack thereof, that were being  
9 practiced during the domestic partnership should not be changed  
10 unless the parties agree or it has been otherwise resolved as  
11 provided in this subsection;

12 (c) both parents shall have access to  
13 school records, teachers and activities. The type of  
14 education, public or private, that was in place during the  
15 domestic partnership should continue, whenever possible, and  
16 school districts should not be changed unless the parties agree  
17 or it has been otherwise resolved as provided in this  
18 subsection;

19 (d) both parents shall have access to  
20 medical and dental treatment providers and records. Each  
21 parent has authority to make emergency medical decisions.  
22 Neither parent may contract for major elective medical or  
23 dental treatment unless both parents agree or it has been  
24 otherwise resolved as provided in this subsection; and

25 (e) both parents may attend the child's

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1 public activities and both parents should know the necessary  
2 schedules. Whatever recreational activities the child  
3 participated in during the domestic partnership should continue  
4 with the child's agreement, regardless of which of the parents  
5 has physical custody. Also, neither parent may enroll the  
6 child in a new recreational activity unless the parties agree  
7 or it has been otherwise resolved as provided in this  
8 subsection; and

9 (5) decisions regarding major changes in a  
10 child's life may be decided by:

11 (a) agreement between the joint  
12 custodial parents;

13 (b) requiring that the parents seek  
14 family counseling, conciliation or mediation service to assist  
15 in resolving their differences;

16 (c) agreement by the parents to submit  
17 the dispute to binding arbitration;

18 (d) allocating ultimate responsibility  
19 for a particular major decision area to one legal custodian;

20 (e) terminating joint custody and  
21 awarding sole custody to one person;

22 (f) reference to a master pursuant to  
23 Rule 53 of the Rules of Civil Procedure for the District  
24 Courts; or

25 (g) the district court.



1 M. When a person other than a natural or adoptive  
2 parent seeks custody of a child, no such person shall be  
3 awarded custody absent a showing of unfitness of the natural or  
4 adoptive parent.

5 N. As used in this section:

6 (1) "child" means a person under the age of  
7 eighteen;

8 (2) "custody" means the authority and  
9 responsibility to make major decisions in a child's best  
10 interests in the areas of residence, medical and dental  
11 treatment, education or child care, religion and recreation;

12 (3) "domestic abuse" means any incident by a  
13 household member against another household member resulting in:

14 (a) physical harm;

15 (b) severe emotional distress;

16 (c) a threat causing imminent fear of  
17 physical harm by any household member;

18 (d) criminal trespass;

19 (e) criminal damage to property;

20 (f) stalking or aggravated stalking, as  
21 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or

22 (g) harassment, as provided in Section  
23 30-3A-2 NMSA 1978;

24 (4) "joint custody" means an order of the  
25 court awarding custody of a child to two parents;

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1 (5) "parent" means a natural parent, adoptive  
2 parent or person who is acting as a parent who has or shares  
3 legal custody of a child or who claims a right to have or share  
4 legal custody;

5 (6) "parenting plan" means a document  
6 submitted for approval of the court setting forth the  
7 responsibilities of each parent individually and the parents  
8 jointly in a joint custody arrangement;

9 (7) "period of responsibility" means a  
10 specified period of time during which a parent is responsible  
11 for providing for a child's physical, developmental and  
12 emotional needs, including the decision-making required in  
13 daily living. Specified periods of responsibility shall not be  
14 changed in an instance or more permanently except by the  
15 methods of decision-making described under Subsection L of this  
16 section;

17 (8) "sole custody" means an order of the court  
18 awarding custody of a child to one parent; and

19 (9) "visitation" means a period of time  
20 available to a noncustodial parent, under a sole custody  
21 arrangement, during which a child resides with or is under the  
22 care and control of the noncustodial parent."

23 SECTION 12. REPEAL.--

24 A. Sections 40-1-1 through 40-1-20 NMSA 1978 (being  
25 Laws 1862-1863, p. 64, Laws 1859-1860, p. 120, Laws 1862-1863

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1 p. 66 and p. 64, Laws 2013, Chapter 144, Section 4, Laws 1876,  
2 Chapter 31, Section 1, Laws 1876, Chapter 32, Section 1, Laws  
3 1905, Chapter 65, Section 1, Laws 1957, Chapter 33, Section 1,  
4 Laws 1905, Chapter 65, Sections 3, 4, 5 and 7, Laws 1961,  
5 Chapter 99, Section 1, Laws 1905, Chapter 65, Section 9 and  
6 Laws 1909, Chapter 91, Section 1, as amended) are repealed.

7 B. Sections 40-2-1 through 40-2-9 NMSA 1978 (being  
8 Laws 1907, Chapter 37, Sections 1 and 4, Laws 1901, Chapter 62,  
9 Section 20 and Laws 1907, Chapter 37, Sections 22 through 25, 5  
10 and 6, as amended) are repealed.

11 C. Sections 40-3-1 through 40-3-17 NMSA 1978 (being  
12 Laws 1907, Chapter 37, Sections 21, 7 and 3, Laws 1965, Chapter  
13 74, Section 1, Laws 1973, Chapter 105, Section 1, Laws 1973,  
14 Chapter 320, Section 1, Laws 1975, Chapter 246, Section 2, Laws  
15 1973, Chapter 320, Sections 3 and 4, Laws 1997, Chapter 190,  
16 Section 67, Laws 1973, Chapter 320, Section 5, Laws 1983,  
17 Chapter 75, Section 2 and Laws 1973, Chapter 320, Sections 6  
18 through 8 and 10 through 13, as amended) are repealed.

19 **SECTION 13. EFFECTIVE DATE.**--The effective date of the  
20 provisions of this act is July 1, 2023.