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# **Budget Briefs**

*from the Legislative Reference Bureau*

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Budget Brief 09-2

September 2009

## **DOMESTIC PARTNERSHIP**

The biennial state budget act, 2009 Wisconsin Act 28, passed by the legislature and signed by Governor Jim Doyle on June 29, 2009, created legal status for domestic partnership of two persons of the same gender. The new law creates a procedure for declaring domestic partnership and provides domestic partners with various legal protections in the areas of insurance, decisions about medical treatment and health care, retirement, death benefits and probate, and other subjects.

Although the legal protections provided by the new law are comparable to some of the legal protections provided by marriage, domestic partnership does not include many important aspects of the legal status of marriage, including the mutual obligation of support, marital property law, reciprocity with other states, and the requirements of divorce law and child custody, among many other legal aspects of marriage.

The domestic partnership provisions became effective on August 3, 2009.

### **ELIGIBILITY AND DECLARATION**

Act 28 created a new Chapter 770 of the statutes defining “domestic partner” and “domestic partnership.” To form a domestic partnership, the two people must be of the same gender, at least 18 years old, legally capable of consenting to the partnership, and sharing a common residence. They need not both have legal ownership of the common residence, and one or both of them may have one or more additional residences not shared with the partner. They cannot be nearer of kin than second cousins and cannot be married to another individual or in another domestic partnership.

Individuals seeking to declare domestic partnership need to apply to the county clerk of the county in which at least one of the persons has resided for at least 30 days immediately prior

to application. Each person must provide a Social Security number, birth certificate, proof of residence, and, if applicable, documentation of termination of prior domestic partnership or other judgment affecting eligibility for domestic partnership.

Following application, the county clerk must issue a declaration of domestic partnership no sooner than five days following application, except that the county clerk may, at the clerk’s discretion, issue it sooner if the applicants pay a fee of not more than \$10 for expedited processing. The applicants then need to complete the declaration, sign it before a notary, and submit it to the register of deeds in the county of residence. The register of deeds is required to record the declaration and forward it to the State Registrar of Vital Records.

A domestic partnership may be terminated by one or both partners by filing a notice of termination with the county clerk in the county where the declaration was originally filed. If the notice is signed by only one of the partners, the person filing for termination must certify that he or she has served the other partner in writing, or has published notice in a general circulation newspaper in the county where they last resided if the other partner cannot be located. Termination of a domestic partnership becomes effective 90 days after recording of a certificate of termination, except that it is immediate if one of the partners enters into a marriage that is recognized as valid in Wisconsin.

### **LEGAL PROTECTIONS**

It is difficult to cite a precise number of the legal protections for domestic partners that are similar to those extended to married couples, because some provisions may be counted as single items or subdivided into multiple items. Early drafting instructions for the legislation cited “42 benefits,” but a Legislative Fiscal

Bureau memo refers to 27 different “areas of domestic partner rights,” as well as 22 different “areas of law not affected by domestic partner provisions.”

A large number of the legal protections for domestic partners relate to health care, health insurance, medical decision making, and legal issues following the death of a domestic partner. Examples of such rights guaranteed by the new law include:

- Various insurance-related benefits, including eligibility for state employee coverage on a partner’s policy, for fraternal organizations to be able to provide insurance benefits to a domestic partner of an employee, and for dependent coverage of domestic partners in the AIDS/HIV insurance premium subsidy program;
- Visitation of a domestic partner in a care facility;
- Access and disclosure rights for a partner’s health care and treatment records;
- Use of family leave to care for a partner or a parent of a partner with a serious health condition;
- Ability to consent to admission to a nursing home, community-based residential facility, or hospice for an incapacitated partner who does not have a power of attorney for health care;
- Ability to consent to the performance of an autopsy and to make an anatomical gift if the deceased did not specify another agent; and
- Rights relating to worker’s compensation death benefits, payment of unpaid wages to surviving partner, retirement benefits for surviving partner of state employee, wrongful death benefits, purchase of deceased partner’s interest in the shared home, priority rules for transfer of certain personal property, etc.

Selected miscellaneous protections include:

- Confidentiality privilege of private communications in judicial proceedings;
- Inclusion of domestic partner and family under the Crime Victim Compensation Program and for victim notification;
- Inclusion of partner for power of attorney for property and finances; and
- Exemption from transfer fees between partners for real estate, motor vehicle titles, and manufactured home titles.

## CONSTITUTIONAL ISSUES

The Wisconsin Constitution was amended in November 2006 to restrict the definition of marriage to only that between one man and one woman, prohibiting a “legal status identical or substantially similar to that of marriage for unmarried individuals.”

The domestic partnership law includes a declaration of policy stating that the legislature finds that domestic partnership “is not substantially similar to that of marriage” and is not inconsistent with the state constitutional provision on marriage. Although the issue may ultimately be subject to judicial interpretation, a Legislative Council memo outlined substantial legal aspects of marriage that are not included in domestic partnership, and described how the status of domestic partnership is less comprehensive than that either of marriage or of “civil unions” enacted or proposed in other states.

The Legislative Council memo also cites a sponsorship memo circulated when the constitutional amendment was proposed, which stated that the sponsors did not intend to prohibit various privileges such as hospital visitation, health insurance, pension benefits, joint tax return filing, or other particular privileges, provided that the legal construct for doing so did not rise to the level of a legal status identical or substantially similar to marriage.

## FOR MORE INFORMATION

For the text of the new Chapter 770, Wisconsin Statutes, see 2009 Wisconsin Act 28 starting at page 604 of [www.legis.state.wi.us/2009/data/acts/09Act28.pdf](http://www.legis.state.wi.us/2009/data/acts/09Act28.pdf). Search the document for “domestic partner” to find other references.

For the Legislative Fiscal Bureau summary, which includes a memo from the Legislative Council, see [www.legis.state.wi.us/lfb/2009-11Budget/Act 28/general provisions.pdf](http://www.legis.state.wi.us/lfb/2009-11Budget/Act%2028/general%20provisions.pdf) and [www.legis.state.wi.us/lfb/2009-11Budget/Budget Papers/391.pdf](http://www.legis.state.wi.us/lfb/2009-11Budget/Budget%20Papers/391.pdf)