

BOARD OF REGENTS

BRIEFING PAPER

Handbook Revision: Domestic Partners in Residency Determinations

BACKGROUND & POLICY CONTEXT OF ISSUE:

Senate Bill 283 (Chapter 393, *Statutes of Nevada 2009*), enacted during the 2009 Session of the Nevada State Legislature, establishes a domestic partnership as a new type of civil contract recognized in the State of Nevada. Under the provisions of Senate Bill 283, with certain exceptions, domestic partners have the same rights, protections, benefits, responsibilities, obligations and duties as do parties to any other civil contract created pursuant to state law. Pursuant to the bill, to be recognized as such, domestic partners must register with the Office of the Nevada Secretary of State. The provisions of the bill are effective as of October 1, 2009.

Current Board policy governs the circumstances under which a student may be classified as a resident or non-resident for tuition purposes. Those provisions address a variety of situations that may be a result of the status of the student's spouse. For example, if a student's spouse has relocated to Nevada for the primary purposes of permanent full-time employment the student shall be considered a resident.

Staff recommends aligning the provisions governing residency determinations with the provisions governing domestic partners as enacted under Senate Bill 283. Therefore, registered domestic partners will be treated in the same manner as spouses in residency determinations.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Amend Title 4, Chapter 15, Section 2 to define spouse to include individuals recognized by the state as being domestic partners through the required registration process with the Office of the Nevada Secretary of State. (See attached Policy Proposal.)

IMPETUS (WHY NOW?):

The proposal is brought forward as a result of the passage of Senate Bill 283, enacted during the 2009 Session of the Nevada State Legislature.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

Adopting a definition of spouse that recognizes registered domestic partnerships will align the residency provisions with the requirement of state law which indicates that domestic partners, with certain exceptions, shall have the same rights, protections, benefits, responsibilities, obligations and duties as do parties to any other civil contract created pursuant to state law.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None have been brought forward.

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Failing to recognize registered domestic partnerships is a violation of state law; therefore, no alternative to this recommendation has been considered.

COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Board Policy: *Title 4, Chapter 15, Section 2*
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- X Fiscal Impact: Yes No _____

Explain: *Recognizing registered domestic partnerships for the purposes of residency classifications may result in the classification of resident students that would have otherwise been deemed non-residents for tuition purposes; and therefore, resulting in the assessment of fewer non-resident tuition dollars the number of which cannot be estimated at this time.*

POLICY PROPOSAL
TITLE 4, CHAPTER 15, SECTIONS 2
Residency and Tuition Charges

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 2. Definitions

For the purposes of these regulations, the terms stated below shall have the following meanings:

1. "Alien" means a person who is not a citizen of the United States of America.
2. "Armed Forces of the United States" means the Army, the Navy, the Air Force, the Marine Corps and the Coast Guard, on active duty and does not include the National Guard or other reserve force, with the exception of active members of the Nevada National Guard.
3. "Clear and convincing evidence" means evidence that is clear in the sense that it is not ambiguous, equivocal or contradictory and convincing in the sense that it is of such a credible, reliable, authentic and relevant nature as to evoke confidence in the truth of it.
4. "Continuously enrolled" means enrollment within a normal academic year for which continuous enrollment is claimed. A person need not attend summer sessions or other between-semester sessions in order to be continuously enrolled.
5. "Date of matriculation" means the first day of instruction in the semester or term in which enrollment of a student first occurs, except that at the University of Nevada School of Medicine it means the date that a notice of admittance is sent to a student, and at the community colleges it excludes correspondence courses and community service courses that are not state funded. A person who enrolled in an institution of the Nevada System of Higher Education but withdrew enrollment during the 100% refund period may, for the purposes of these regulations, be deemed not to have matriculated and any determination concerning residency status shall be voided until such time as the person again enrolls at a System institution.
6. "Dependent" means a person who is not financially independent and is claimed as an exemption for federal income tax purposes under Section 152 of the Internal Revenue Code (*26 U.S.C. § 152*) by another person for the most recent tax year.
7. "Family" means the natural or legally adoptive parent or parents of a dependent person, or if one parent has legal custody of a dependent person, that parent.
8. "Financially independent" means a person who has not been and will not be claimed as an exemption for federal income tax purposes under Section 152 of the Internal Revenue Code (*26 U.S.C. § 152*) by another person, except his or her spouse, for the most recent tax year.
9. "Most recent tax year" means the income tax return submitted for the prior income year.
10. "Legal guardian" means a court-appointed guardian of a dependent person, who was appointed guardian at least twelve (12) months immediately prior to the dependent person's date of matriculation and for purposes other than establishing the dependent person's residence.
11. "Nonresident" means a person who is not a resident.

12. "Objective evidence" means evidence that is verifiable by means other than a person's own statements.
13. "Relocated," means evidence of permanent, full-time employment or establishment of a business in Nevada prior to the date of matriculation.
14. "Residence" a term which for the purposes of these regulations is synonymous with the legal term "domicile," and means that location in which a person is considered to have the most settled and permanent connection, intends to remain and intends to return after any temporary absences. Residence results from the union of a person's physical presence in the location with objective evidence of an intent to remain at that location for other than a temporary purpose.
15. "Resident" means a person who has established a bona fide residence in the State of Nevada with the intent of making Nevada the person's true, fixed and permanent home and place of habitation, having clearly abandoned any former residence and having no intent to make any other location outside of Nevada the person's home and habitation. The term also includes a member of the Armed Forces of the United States who has previously established a bona fide residence in the State of Nevada, but who has been transferred to a military posting outside of Nevada while continuing to maintain a bona fide residence in Nevada. When residence for a particular period is required under these regulations, this shall mean that the person claiming residence for the period must be physically present and residing in Nevada during all of the period required, excluding temporary, short-term absences for business or pleasure.
16. "Returning student" means a student who re-enrolls after a break in enrollment of one of more semesters.
17. ***"Spouse" means a person's partner in legal marriage or a person's domestic partner if the domestic partnership is registered with the Office of the Nevada Secretary of State***
18. "Student" means a person who is enrolled at an institution of the Nevada System of Higher Education.
- [18]19. "Tuition" means a monetary charge assessed against nonresident students, which is in addition to registration fees, or other fees assessed against all students.

CHAPTER.....

AN ACT relating to domestic relations; providing for the registration and dissolution of domestic partnerships in the State of Nevada; setting forth the rights and responsibilities attendant to such partnerships; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill establishes a domestic partnership as a new type of civil contract recognized in the State of Nevada. Under the provisions of this bill, with certain exceptions, domestic partners have the same rights, protections, benefits, responsibilities, obligations and duties as do parties to any other civil contract created pursuant to title 11 of NRS. This bill also clarifies that a domestic partnership is not a marriage for the purposes of Section 21 of Article 1 of the Nevada Constitution.

Section 8 of this bill sets forth that no public or private employer in this State is required to provide health care benefits to or for the domestic partner of an officer or employee. **Section 8** also clarifies that any public or private employer in this State may voluntarily provide health care benefits to or for the domestic partner of an officer or employee upon such terms and conditions as the affected parties may deem appropriate.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 11 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 13, inclusive, of this act.

Sec. 2. *This chapter may be cited as the Nevada Domestic Partnership Act.*

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Domestic partners” means persons who:*

1. Have registered a valid domestic partnership pursuant to section 6 of this act; and

2. Have not terminated that domestic partnership pursuant to section 9 of this act.

Sec. 5. *“Domestic partnership” means the social contract between two persons that is described in section 6 of this act.*

Sec. 6. *1. A valid domestic partnership is registered in the State of Nevada when two persons who satisfy the requirements of subsection 2:*



(a) File with the Office of the Secretary of State, on a form prescribed by the Secretary of State, a signed and notarized statement declaring that both persons:

(1) Have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and

(2) Desire of their own free will to enter into a domestic partnership; and

(b) Pay to the Office of the Secretary of State a reasonable filing fee established by the Secretary of State, which filing fee must not exceed the total of an amount set by the Secretary of State to estimate:

(1) The cost incurred by the Secretary of State to issue the Certificate described in subsection 3; and

(2) Any other associated administrative costs incurred by the Secretary of State.

↳ The Office of the Secretary of State shall account for the fees received pursuant to paragraph (b) separately, and use those fees, and any interest and income earned on those fees, solely to pay for expenses related to administering the registration of domestic partnerships pursuant to this chapter, including, without limitation, the cost of materials and technology necessary to process and record the filing.

2. To be eligible to register pursuant to subsection 1, two persons desiring to enter into a domestic partnership must furnish proof satisfactory to the Office of the Secretary of State that:

(a) Both persons have a common residence;

(b) Except as otherwise provided in section 10 of this act, neither person is married or a member of another domestic partnership;

(c) The two persons are not related by blood in a way that would prevent them from being married to each other in this State;

(d) Both persons are at least 18 years of age; and

(e) Both persons are competent to consent to the domestic partnership.

3. The Office of the Secretary of State shall issue a Certificate of Registered Domestic Partnership to persons who satisfy the requirements of this section.

4. As used in this section:

(a) "Common residence" means a residence shared by both domestic partners on at least a part-time basis, irrespective of whether:



(1) Ownership of the residence or the right to occupy the residence is in the name of only one of the domestic partners; and

(2) One or both of the domestic partners owns or occupies an additional residence.

(b) "Residence" means any house, room, apartment, tenement or other building, vehicle, vehicle trailer, semitrailer, house trailer or boat designed or intended for occupancy as a residence.

Sec. 7. 1. *Except as otherwise provided in section 8 of this act:*

(a) Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.

(b) Former domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon former spouses.

(c) A surviving domestic partner, following the death of the other partner, has the same rights, protections and benefits, and is subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.

(d) The rights and obligations of domestic partners with respect to a child of either of them are the same as those of spouses. The rights and obligations of former or surviving domestic partners with respect to a child of either of them are the same as those of former or surviving spouses.

(e) To the extent that provisions of Nevada law adopt, refer to or rely upon provisions of federal law in a way that otherwise would cause domestic partners to be treated differently from spouses, domestic partners must be treated by Nevada law as if federal law recognized a domestic partnership in the same manner as Nevada law.

(f) Domestic partners have the same right to nondiscriminatory treatment as that provided to spouses.

(g) A public agency in this State shall not discriminate against any person or couple on the basis or ground that the person is a



domestic partner rather than a spouse or that the couple are domestic partners rather than spouses.

(h) The provisions of this chapter do not preclude a public agency from exercising its regulatory authority to carry out laws providing rights to, or imposing responsibilities upon, domestic partners.

(i) Where necessary to protect the rights of domestic partners pursuant to this chapter, gender-specific terms referring to spouses must be construed to include domestic partners.

(j) For the purposes of the statutes, administrative regulations, court rules, government policies, common law and any other provision or source of law governing the rights, protections and benefits, and the responsibilities, obligations and duties of domestic partners in this State, as effectuated by the provisions of this chapter, with respect to:

(1) Community property;

(2) Mutual responsibility for debts to third parties;

(3) The right in particular circumstances of either partner to seek financial support from the other following the dissolution of the partnership; and

(4) Other rights and duties as between the partners concerning ownership of property,

↳ any reference to the date of a marriage shall be deemed to refer to the date of registration of the domestic partnership.

2. As used in this section, "public agency" means an agency, bureau, board, commission, department or division of the State of Nevada or a political subdivision of the State of Nevada.

Sec. 8. *1. The provisions of this chapter do not require a public or private employer in this State to provide health care benefits to or for the domestic partner of an officer or employee.*

2. Subsection 1 does not prohibit any public or private employer from voluntarily providing health care benefits to or for the domestic partner of an officer or employee upon such terms and conditions as the affected parties may deem appropriate.

Sec. 9. *1. Except as otherwise provided in subsection 2, domestic partners who wish to terminate a domestic partnership registered pursuant to section 6 of this act must follow the procedures set forth in chapter 125 of NRS.*

2. If a domestic partnership meets the criteria specified in subsection 3, domestic partners in a domestic partnership registered pursuant to section 6 of this act may terminate the domestic partnership by:



(a) Filing with the Office of the Secretary of State, on a form prescribed by the Secretary of State, a signed and notarized statement declaring that both persons have chosen of their own free will to terminate the domestic partnership; and

(b) Paying to the Office of the Secretary of State a reasonable filing fee established by the Secretary of State, which filing fee must not exceed the total of any administrative costs incurred by the Secretary of State.

3. For a domestic partnership to qualify for the simplified termination proceedings set forth in subsection 2, all of the following conditions must exist at the time of the filing pursuant to that subsection:

(a) The domestic partnership has been registered for 5 years or less.

(b) There are no minor children of the relationship of the parties born before or during the domestic partnership or adopted by the parties during the domestic partnership and no female member of the domestic partnership, to her knowledge, is pregnant, or the parties have executed an agreement as to the custody of any children and setting forth the amount and manner of their support.

(c) There is no community or joint property or the parties have executed an agreement setting forth the division of community property and the assumption of liabilities of the community, if any, and have executed any deeds, certificates of title, bills of sale or other evidence of transfer necessary to effectuate the agreement.

(d) The parties waive any rights to support or the parties have executed an agreement setting forth the amount and manner of support.

(e) The parties waive any right to the conduct of more comprehensive proceedings pursuant to chapter 125 of NRS.

Sec. 10. *A legal union of two persons, other than a marriage as recognized by the Nevada Constitution, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this chapter, must be recognized as a valid domestic partnership in this State regardless of whether the union bears the name of a domestic partnership. For a legal union that was validly formed in another jurisdiction to be recognized as a valid domestic partnership in this State, the parties desiring such recognition must comply with the provisions of section 6 of this act.*

Sec. 11. *A domestic partnership is not a marriage for the purposes of Section 21 of Article 1 of the Nevada Constitution.*



Sec. 12. *The provisions of this chapter do not require the performance of any solemnization ceremony to enter into a binding domestic partnership contract. It is left to the dictates and conscience of partners entering into a domestic partnership to determine whether to seek a ceremony or blessing over the domestic partnership and to the dictates of each religious faith to determine whether to offer or allow a ceremony or blessing of domestic partnerships. Providing recognition to partnerships through a domestic partnership system in no way interferes with the right of each religious faith to choose freely to whom to grant the religious status, sacrament or blessing of marriage under the rules or practices of that faith.*

Sec. 13. *The provisions of this chapter must be construed liberally to the effect of resolving any doubt or question in favor of finding that a domestic partnership is a valid civil contract entitled to be treated in all respects under the laws of this State as any other civil contract created pursuant to title 11 of NRS would be treated.*

