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HOUSE BILL 875

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Thomas A. Garcia

AN ACT

RELATING TO GAME HUNTING; AMENDING A CERTAIN SECTION OF THE
NMSA 1978 CONCERNING THE REQUIREMENTS FOR REGISTRATION AS AN
OUTFITTER.

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

Section 1. Section 17-2A-3 NMSA 1978 (being Laws 1996,
Chapter 89, Section 5, as amended) is amended to read:

"17-2A-3. HUNTING GUIDES AND OUTFITTERS.--

A. [~~Effective April 1, 1997~~] It is unlawful to be a
hunting guide or outfitter in New Mexico without being
registered, except for a private landowner or [~~his~~] the
landowner's authorized agent who outfits or guides pursuant to
a landowner permit issued by the department of game and fish
for the landowner's property or for the landowner's shared
private and public unit.

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1 B. The state game commission shall adopt
2 regulations [~~by September 1, 1997~~] to govern the granting of
3 [~~non-interim~~] registration, permits and certificates to hunting
4 guides and outfitters and to regulate the operations and
5 professional conduct of registered hunting guides and
6 outfitters. Regulations shall be adopted in accordance with
7 the following procedures and standards:

8 (1) the commission shall establish dates and
9 locations for a public hearing and provide reasonable prior
10 public notice of a hearing. A public hearing shall be held at
11 a place within any quadrant of the state affected by the
12 proposed regulation when the commission determines there is
13 substantial public interest in holding a hearing in that
14 quadrant;

15 (2) a hearing shall be held within six months
16 of the date a proposed regulation is issued;

17 (3) notice of a hearing shall:

18 (a) include the date, time and location
19 of the hearing;

20 (b) include a statement of the
21 recommended action;

22 (c) include an indication of the
23 location and availability of the public file on the regulation;

24 (d) indicate where and by what date
25 written and oral comments and testimony may be received; and

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1 (e) specify that the public record shall
2 remain open for comments for thirty days after the date of the
3 final hearing; and

4 (4) the commission shall make its decision and
5 take action based upon relevant and reliable evidence.

6 C. No person shall be allowed to work as a
7 registered hunting guide or outfitter in New Mexico:

8 (1) without being registered by the state game
9 commission;

10 (2) if the person has had a guide or outfitter
11 license, registration, permit or certificate revoked in another
12 state;

13 (3) if the person has had a guide or outfitter
14 license, registration, permit or certificate suspended in
15 another state and it has not been reinstated; or

16 (4) if the person has been convicted of a
17 felony.

18 D. The state game commission shall develop a point
19 system for the suspension or revocation of a guide or outfitter
20 registration. The point system shall be similar to the point
21 system that governs individual hunting and fishing license
22 privileges.

23 E. To be granted a registration to be a guide, an
24 applicant shall, in addition to any other reasonable criteria
25 adopted by the state game commission [~~and except as provided~~

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1 ~~for persons granted an interim registration]:~~

2 (1) be at least eighteen years of age; and

3 (2) pass a written or oral examination

4 approved by the department of game and fish at a date and time
5 approved by the department.

6 F. A registered [~~or interim registered~~] guide shall
7 work only under the supervision of a New Mexico registered [~~or~~
8 ~~interim registered~~] outfitter and in an area designated by the
9 registered [~~or interim registered~~] outfitter.

10 G. The department of game and fish may provide a
11 registration for a temporary emergency guide, provided the
12 registration is limited to a maximum seven-day period and is
13 granted only in emergency circumstances as determined by the
14 department. The fee for a temporary emergency guide
15 registration is ten dollars (\$10.00).

16 H. To be granted a registration to be an outfitter,
17 an applicant shall, in addition to any other reasonable
18 criteria adopted by the state game commission [~~and except as~~
19 ~~provided for persons granted an interim registration]:~~

20 (1) be at least twenty-one years of age;

21 [~~(2) have operated as a New Mexico registered~~
22 ~~guide for at least three years or have been granted an interim~~
23 ~~outfitter's registration;~~

24 ~~(3)] (2) not be a convicted felon or have a~~

25 history of violation of federal or state game and fish laws or

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1 regulations or federal or state guide or outfitter licensing or
2 registration laws or regulations; and

3 [~~(4)~~] (3) pass a written or oral examination
4 approved by the department of game and fish at a date and time
5 determined by the department.

6 I. A registered outfitter shall:

7 (1) provide proof of commercial liability
8 insurance of at least five hundred thousand dollars (\$500,000);

9 (2) responsibly supervise each registered
10 guide working under [~~his~~] the outfitter's direction;

11 (3) provide a written contract for outfitting
12 services, signed by the registered outfitter and identifying
13 the outfitter's registration number, to each resident and
14 nonresident who seeks to use the services of a registered
15 outfitter;

16 (4) register with the taxation and revenue
17 department and provide proof of that registration to the
18 department of game and fish; and

19 (5) provide at least one registered guide or
20 outfitter for every four or fewer resident or nonresident
21 hunters who have contracted for an outfitter's guided services.

22 J. The department of game and fish shall provide to
23 the taxation and revenue department a copy of each outfitter
24 registration that is granted.

25 K. Except as provided in this subsection, no person

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1 shall be allowed to charge a processing or other fee to obtain
2 for a resident or nonresident a license that is granted from a
3 special drawing for a hunt on public lands pursuant to the
4 provisions of Section 17-3-16 NMSA 1978, except that nothing in
5 this subsection shall prohibit the department of game and fish
6 from collecting an application fee. Persons involved in
7 licensing services, booking agencies or license brokering that
8 do not provide direct guide and outfitter services shall not be
9 required to register with the department of game and fish and
10 may charge a fee, other than the application fee for a license,
11 for their services.

12 L. A New Mexico resident registered outfitter shall
13 be a registered outfitter who is a resident as defined in
14 Section 17-3-4 NMSA 1978. The state game commission shall
15 adopt regulations that set forth additional requirements and
16 that shall include at a minimum that a resident registered
17 outfitter shall maintain a business address in New Mexico and,
18 except as provided in Subsection Q of this section, derive at
19 least fifty percent of ~~[his]~~ the outfitter's guiding or
20 outfitting income from guiding or outfitting in New Mexico, as
21 determined by gross receipts or corporate or individual income
22 tax returns for the immediately preceding three years.

23 M. The department of game and fish shall maintain
24 for public distribution a list of New Mexico registered
25 outfitters.

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1 N. The annual registration fee for a registered
2 guide in New Mexico is fifty dollars (\$50.00) for a resident
3 and one hundred dollars (\$100) for a nonresident.

4 O. The annual registration fee to be a registered
5 outfitter in New Mexico is five hundred dollars (\$500) for
6 either a resident or a nonresident.

7 P. Annual registration fees for guides and
8 outfitters shall be deposited in the game protection fund.

9 Q. A resident [~~interim registered or~~] registered
10 outfitter may apply for inactive status of [~~his~~] the
11 registration for any period in which [~~he~~] the outfitter does
12 not operate as an outfitter. The state game commission shall
13 reactivate an outfitter registration at the request of the
14 outfitter and upon proof that the outfitter complies with the
15 provisions of this section and upon payment of the annual
16 registration fee for the year the registration is being
17 reinstated and payment of a reinstatement fee of not to exceed
18 fifty dollars (\$50.00).

19 ~~[R. The state game commission shall adopt by~~
20 ~~September 1, 1996 interim regulations, consistent to the~~
21 ~~greatest extent practicable with the provisions of this~~
22 ~~section, to provide for the granting of interim registrations~~
23 ~~to guides and outfitters. The commission shall issue interim~~
24 ~~registrations prior to mailing applications for 1997 licensed~~
25 ~~hunts to persons who qualify for interim registration and~~

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1 ~~submit applications to the department of game and fish.~~

2 ~~S.]~~ R. A person adversely affected by an action,
3 other than a regulation, taken pursuant to the provisions of
4 this section, including the denial, suspension or revocation of
5 a registration, license, permit or certificate, may seek review
6 of the action pursuant to the provisions of the Uniform
7 Licensing Act.

8 ~~F.]~~ S. A person adversely affected by a regulation
9 adopted by the state game commission pursuant to this section
10 may appeal to the court of appeals. All appeals shall be made
11 upon the record at the hearing and shall be taken to the court
12 of appeals within thirty days following the date of the action.
13 The date of the action shall be the date of the filing of the
14 regulation by the commission, pursuant to the provisions of the
15 State Rules Act.

16 ~~U.]~~ T. Upon appeal, the court of appeals shall set
17 aside a regulation only if it is found to be:

- 18 (1) arbitrary, capricious or an abuse of
19 discretion;
20 (2) not supported by substantial evidence in
21 the record; or
22 (3) otherwise not in accordance with law.

23 ~~V.]~~ U. After a hearing and a showing of good cause
24 by the appellant, a stay of a regulation being appealed may be
25 granted:

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(1) by the state game commission; or

(2) by the court of appeals if the state game commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

~~[W.]~~ V. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals."