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SENATE BILL 140

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO CHILD WELFARE; CREATING THE OUTDOOR YOUTH PROGRAM ACT; ESTABLISHING THE OUTDOOR YOUTH PROGRAM BOARD; REQUIRING LICENSURE TO OPERATE OUTDOOR YOUTH PROGRAMS; REQUIRING BACKGROUND CHECKS; PROVIDING FOR FEES AND DISCIPLINARY ACTION; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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 "Outdoor Youth Program Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Outdoor Youth Program Act:

- A. "board" means the outdoor youth program board;
- B. "department" means the children, youth and families department;
- C. "outdoor youth program" means a program that is

1 designed to provide educational, disciplinary, counseling,
2 behavioral or substance abuse services to a minor and that:

3 (1) serves adjudicated or nonadjudicated
4 minors;

5 (2) charges a fee for its services or requires
6 a minor to work as a condition of enrollment in the outdoor
7 youth program;

8 (3) accepts anything of value in exchange for
9 enrolling a minor in the outdoor youth program;

10 (4) arranges for the enrollment of a minor in
11 the outdoor youth program through a scholarship or any other
12 means;

13 (5) may provide room and board for a minor;

14 (6) may provide all or a part of its services
15 in the outdoors;

16 (7) may limit access to the parents or
17 guardians of a minor;

18 (8) may assume temporary guardianship of a
19 minor during enrollment in the outdoor youth program;

20 (9) prohibits or restricts a minor's ability
21 to leave the program at any time of the minor's own free will;

22 (10) is not operated by a public school system
23 or governed by a local school board;

24 (11) is not a private school accredited or
25 recognized by the public education department;

1 (12) is not a "health facility" as that term
2 is defined in Section 24-1-2 NMSA 1978;

3 (13) is not operated by the federal government
4 or a tribal government;

5 (14) is not a summer religious school held on
6 the premises of a religious organization;

7 (15) is not a summer camp or solely
8 recreational program operated by a nonprofit organization, such
9 as a church, school or the boy scouts or girl scouts;

10 (16) is not a facility that provides child
11 care for twenty-four hours on a continuous basis and that is
12 regulated by the department;

13 (17) is not a residential treatment program;

14 (18) is not a wilderness experience program
15 provided by the department for treatment of children alleged or
16 found to be delinquent or in need of supervision pursuant to
17 Section 32A-13-3 NMSA 1978; and

18 (19) is not a children's crisis shelter,
19 multiservice home, community home or new and innovative program
20 licensed by the department;

21 D. "premises" means the buildings, grounds,
22 equipment and real property occupied or used by an outdoor
23 youth program;

24 E. "room and board" means to provide a place to
25 live and meals in exchange for money, labor or another form of

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1 consideration; and

2 F. "secretary" means the secretary of children,
3 youth and families.

4 SECTION 3. [NEW MATERIAL] LICENSE REQUIRED.--

5 A. Unless licensed to operate under the Outdoor
6 Youth Program Act, a person shall not:

- 7 (1) operate an outdoor youth program;
- 8 (2) market or promote an outdoor youth
9 program; or
- 10 (3) make any representation that the person is
11 licensed to operate an outdoor youth program.

12 B. A person who, with or without a license under
13 the Outdoor Youth Program Act, engages in the operation,
14 marketing or promotion of an outdoor youth program is subject
15 to the jurisdiction of the state and to the administrative
16 jurisdiction of the board and is subject to all penalties and
17 remedies available for a violation of a provision of the
18 Outdoor Youth Program Act.

19 SECTION 4. [NEW MATERIAL] OUTDOOR YOUTH PROGRAM BOARD
20 CREATED.--

- 21 A. There is created the "outdoor youth program
22 board".
- 23 B. The board is administratively attached to the
24 department.
- 25 C. The board consists of six members. Three

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1 members shall have at least five years of professional
2 experience working with adolescents and shall be licensed for
3 independent practice under either the Medical Practice Act, the
4 Professional Psychologist Act or the Counseling and Therapy
5 Practice Act. Two members shall represent the public and shall
6 never have had any financial interest, direct or indirect, in
7 any outdoor youth program. One member shall be a designee of
8 the secretary.

9 D. Members of the board shall be appointed by the
10 governor for staggered terms so that the terms of two members
11 expire in two years, the terms of two members expire in three
12 years and the terms of two members expire in four years.
13 Thereafter, all members shall be appointed for terms of four
14 years. Each member shall hold office until the member's
15 successor is duly qualified and appointed. Vacancies shall be
16 filled for an unexpired term in the same manner as original
17 appointments.

18 E. Members of the board are entitled to
19 reimbursement of per diem and mileage as provided in the Per
20 Diem and Mileage Act and shall receive no other compensation,
21 perquisite or allowance.

22 F. A simple majority of the board members currently
23 serving constitutes a quorum.

24 G. The board shall hold at least two regular
25 meetings each year and shall meet at such other times as it

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1 deems necessary.

2 H. A board member shall not serve more than two
3 full consecutive terms. The board shall recommend removal of
4 any board member who has three unexcused absences from properly
5 noticed meetings within a twelve-month period and may recommend
6 removal of a board member for any other just cause.

7 I. The board shall elect a chair and such other
8 officers as necessary to administer its duties.

9 SECTION 5. [NEW MATERIAL] BOARD DUTIES.--The board shall:

10 A. administer and enforce the provisions of the
11 Outdoor Youth Program Act;

12 B. provide for the examination, licensing and
13 renewal of licensing of applicants or licensees of outdoor
14 youth programs;

15 C. promulgate rules to promote the health, safety
16 and welfare of minors enrolled in outdoor youth programs; and

17 D. provide or arrange for the inspection of outdoor
18 youth programs.

19 SECTION 6. [NEW MATERIAL] INSPECTION--ACCESS--COUNSEL.--

20 A. Inspection of outdoor youth programs, including
21 all records, financial or otherwise, is authorized during
22 regular business hours. Acceptance of a license shall
23 constitute permission for the board or its designee to enter
24 any premises or location where an outdoor youth program is
25 being operated without legal process.

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1 B. An outdoor youth program shall maintain business
2 records as required by law or rule.

3 C. The board shall be represented by the attorney
4 general. The board may employ a special counsel, upon the
5 approval of the attorney general, to review and prosecute cases
6 of consumer complaints against any person licensed pursuant to
7 the Outdoor Youth Program Act. Payments for these services
8 shall be made by the board.

9 SECTION 7. [NEW MATERIAL] REQUIREMENTS FOR LICENSURE.--A
10 license to operate an outdoor youth program shall be issued to
11 any person who files a completed application, accompanied by
12 the required fees and documentation, and who submits
13 satisfactory evidence that the person:

14 A. is at least twenty-five years of age;

15 B. has not been convicted of child neglect,
16 exploitation or abuse; and

17 C. has met any other requirements as determined by
18 the department.

19 SECTION 8. [NEW MATERIAL] BACKGROUND CHECKS.--

20 A. An applicant for initial licensure and every
21 prospective employee of an applicant or licensee shall be
22 fingerprinted and shall provide two fingerprint cards or the
23 equivalent electronic fingerprints to the board to obtain the
24 applicant's or prospective employee's federal bureau of
25 investigation record. Convictions of felonies or misdemeanors

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1 contained in the federal bureau of investigation record shall
2 be used in accordance with the Criminal Offender Employment
3 Act. Other information contained in the federal bureau of
4 investigation record, if supported by independent evidence, may
5 form the basis for the denial, suspension or revocation of a
6 license for cause or for denying approval for a prospective
7 employee to work for an outdoor youth program.

8 B. Records and related information shall be
9 privileged and not disclosed to a person not directly involved
10 in the licensure or employment decisions affecting a specific
11 applicant or licensee, or a prospective or current employee.

12 C. An applicant for initial licensure or a licensee
13 shall pay for the cost of obtaining required federal bureau of
14 investigation records.

15 D. A licensee shall not employ any person for whom
16 a background check has not been completed and who, on the basis
17 of the background check, has been denied approval to work for
18 an outdoor youth program by the board.

19 SECTION 9. [NEW MATERIAL] FEES.--The following fees shall
20 be submitted as appropriate to the board:

21 A. an application fee not to exceed one hundred
22 fifty dollars (\$150);

23 B. a license renewal fee not to exceed one hundred
24 fifty dollars (\$150) paid annually;

25 C. a late fee not to exceed twenty-five dollars

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1 (\$25.00) for every day a licensee fails to renew its license;
2 and

3 D. an inspection fee not to exceed five hundred
4 dollars (\$500).

5 SECTION 10. [NEW MATERIAL] DISCIPLINARY PROCEEDINGS--
6 JUDICIAL REVIEW.--

7 A. The board, in accordance with the procedures set
8 forth in the Uniform Licensing Act, may take disciplinary
9 action against any applicant or licensee of an outdoor youth
10 program.

11 B. The board may take any action set forth in
12 Section 61-1-3 NMSA 1978 upon a finding by the board that an
13 applicant or licensee of an outdoor youth program is guilty of
14 any of the following acts of commission or omission:

15 (1) conviction of an offense punishable by
16 incarceration in a state penitentiary or federal prison;
17 provided that the board receives a copy of the record of
18 conviction, certified to by the clerk of the court entering the
19 conviction, which shall be conclusive evidence of the
20 conviction;

21 (2) fraud or deceit in procuring or attempting
22 to procure a license;

23 (3) gross negligence or incompetence;

24 (4) unprofessional or dishonorable conduct,
25 which includes:

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- 1 (a) misrepresentation or fraud; or
2 (b) false or misleading advertising;
3 (5) violation of the provisions of the Outdoor
4 Youth Program Act or a rule of the board;
5 (6) violation of any local, state or federal
6 ordinance, law or regulation;
7 (7) willful or negligent operation beyond the
8 scope of the license issued by the board;
9 (8) failure to give full cooperation to the
10 board or one of its committees, staff, inspectors, agents or an
11 attorney for the board in the performance of official duties;
12 (9) having had a license, certificate or
13 registration to operate an outdoor youth program revoked,
14 suspended or denied in any jurisdiction, territory or
15 possession of the United States or another country for actions
16 of the licensee or applicant similar to acts described in this
17 subsection. A certified copy of the record of the jurisdiction
18 taking the disciplinary action is conclusive evidence of the
19 violation;
20 (10) failure to adequately supervise
21 subordinate personnel; or
22 (11) failure to report to the board any
23 charges filed against, or conviction of, a licensee or a
24 licensee's employee for any felony or misdemeanor involving
25 moral turpitude.

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1 C. In addition to taking disciplinary action for
2 the offenses listed in Subsection B of this section, the board
3 may take any action set forth in Section 61-1-3 NMSA 1978 upon
4 a finding by the board that a person is guilty of any of the
5 following acts of commission or omission:

6 (1) operating an outdoor youth program without
7 a license or aiding or abetting an unlicensed person to operate
8 an outdoor youth program;

9 (2) permitting unqualified personnel to
10 supervise minors enrolled in an outdoor youth program;

11 (3) engaging or making any representation as
12 engaging in the operation of an outdoor youth program, unless
13 the person has a license to operate an outdoor youth program;
14 or

15 (4) engaging in conduct or activities for
16 which a license is required or aiding and abetting an
17 unlicensed person to engage in conduct or activities for which
18 a license is required.

19 D. Unless exonerated by the board, persons who have
20 been subjected to formal disciplinary sanctions by the board
21 shall be responsible for the payment of costs of the
22 disciplinary proceedings, which include costs for:

23 (1) court reporters;

24 (2) transcripts;

25 (3) certification or notarization;

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- 1 (4) photocopies;
- 2 (5) witness attendance and mileage fees;
- 3 (6) postage for mailings required by law;
- 4 (7) expert witnesses; and
- 5 (8) depositions.

6 E. All fees, fines and costs imposed on an
7 applicant or licensee of an outdoor youth program shall be paid
8 in full to the board before an initial or renewal license may
9 be issued.

10 SECTION 11. APPROPRIATION.--Five hundred thousand dollars
11 (\$500,000) is appropriated from the general fund to the
12 children, youth and families department for expenditure in
13 fiscal years 2015 and 2016 for the establishment of the outdoor
14 youth program board and administrative expenses associated with
15 the board's duties pursuant to the Outdoor Youth Program Act.
16 Any unexpended or unencumbered balance remaining at the end of
17 fiscal year 2016 shall revert to the general fund.

18 SECTION 12. EMERGENCY.--It is necessary for the public
19 peace, health and safety that this act take effect immediately.