

1 HOUSE BILL 446

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO ANIMALS; AMENDING AND ENACTING SECTIONS OF THE NMSA
12 1978 TO PROVIDE FOR WILD HORSES.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 17-2-38 NMSA 1978 (being Laws 1974,
16 Chapter 83, Section 2, as amended) is amended to read:

17 "17-2-38. DEFINITIONS.--As used in the Wildlife
18 Conservation Act:

19 A. "commission" means the state game commission;

20 B. "director" means the director of the department
21 of game and fish;

22 C. "ecosystem" means a system of living organisms
23 and their environment;

24 D. "endangered species" means any species of fish
25 or wildlife whose prospects of survival or recruitment within

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1 the state are in jeopardy due to any of the following factors:

2 (1) the present or threatened destruction,
3 modification or curtailment of its habitat;

4 (2) overutilization for scientific, commercial
5 or sporting purposes;

6 (3) the effect of disease or predation;

7 (4) other natural or man-made factors
8 affecting its prospects of survival or recruitment within the
9 state; or

10 (5) any combination of the foregoing factors.

11 [~~The term~~] "Endangered species" may also include any
12 species of fish or wildlife appearing on the United States list
13 of endangered native and foreign fish and wildlife as set forth
14 in Section 4 of the Endangered Species Act of 1973 as
15 endangered species, provided that the commission adopts those
16 lists in whole or in part. The term shall not include any
17 species covered by the provisions of 16 U.S.C. 1331 through
18 1340 (1971) and shall not include any species of the class
19 insecta determined by the director to constitute a pest whose
20 protection under the Wildlife Conservation Act would present an
21 overwhelming and overriding risk to man;

22 E. "investigation" means a process pursuant to
23 Subsections B through L of Section 17-2-40 NMSA 1978 undertaken
24 whenever the director suspects that a species may be threatened
25 or endangered and [~~which~~] that consists of a formal review of

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1 existing data and studies and may include additional field
2 research to determine whether a species is threatened or
3 endangered;

4 F. "land or aquatic habitat interests" means
5 interests in real property or water rights consisting of fee
6 simple title, easements in perpetuity, time certain easements,
7 long-term leases and short-term leases;

8 G. "management" means the collection and
9 application of biological information for the purposes of
10 establishing and maintaining a congruous relationship between
11 individuals within species and populations of wildlife and the
12 carrying capacity of their habitat. [~~The term~~] "Management"
13 includes the entire range of activities that constitutes a full
14 scientific resource program [~~of~~], including [~~but not limited~~
15 ~~to~~] research, census, law enforcement, propagation, acquisition
16 or maintenance of land or aquatic habitat interests appropriate
17 for recovery of the species; improvement and maintenance,
18 education and related activities; [~~or~~] and protection and
19 regulated taking;

20 H. "recovery plan" means a designated program or
21 methodology reasonably expected to lead to restoration and
22 maintenance of a species and its habitat;

23 I. "peer review panel" means an advisory panel of
24 scientists, each of whom possesses expertise relevant to the
25 proposed investigation and at least one of whom is a wildlife

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1 biologist, convened to review the scientific methodology for
2 collection and analysis of data by a researcher based on
3 commonly accepted scientific peer review;

4 J. "species" means any species or subspecies;

5 K. "substantial public interest" means a
6 nonfrivolous claim indicated by a broad-based expression of
7 public concern;

8 L. "take" or "taking" means to harass, hunt,
9 capture or kill any wildlife or attempt to do so;

10 M. "threatened species" means any species that is
11 likely to become an endangered species within the foreseeable
12 future throughout all or a significant portion of its range in
13 New Mexico; the term may also include any species of fish or
14 wildlife appearing on the United States list of endangered
15 native and foreign fish and wildlife as set forth in Section 4
16 of the Endangered Species Act of 1973 as threatened species,
17 provided that the commission adopts the list in whole or in
18 part; and

19 N. "wildlife" means any nondomestic mammal, wild
20 horse, bird, reptile, amphibian, fish, mollusk or crustacean or
21 any part, egg or offspring or the dead body or parts thereof."

22 SECTION 2. A new section of The Livestock Code is enacted
23 to read:

24 "[NEW MATERIAL] CONSERVATION SERVICES DIVISION--ADDITIONAL
25 DUTIES--WILD HORSE PRESUMPTION.--A horse that is not branded,

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1 tattooed, microchipped or showing other indicia of ownership
2 shall be presumed to be a wild horse, subject to provisions of
3 Section 77-18-5 NMSA 1978 regarding Spanish colonial
4 descendance and subject to any applicable rules of the
5 conservation services division of the department of game and
6 fish, and shall be released at the place of capture by the
7 person conducting the inspection or by the owner of the
8 property on which the horse was captured. A wild horse shall
9 not be considered stray for purposes of capture and sale of
10 unclaimed estrays."

11 SECTION 3. Section 77-2-1.1 NMSA 1978 (being Laws 1993,
12 Chapter 248, Section 2, as amended) is amended to read:

13 "77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

14 A. "animals" or "livestock" means all domestic or
15 domesticated animals that are used or raised on a farm or
16 ranch, including the carcasses thereof, and exotic animals in
17 captivity and includes horses, asses, mules, cattle, sheep,
18 goats, swine, bison, poultry, ostriches, emus, rheas, camelids
19 and farmed cervidae upon any land in New Mexico. "Animals" or
20 "livestock" does not include canine or feline animals;

21 B. "bill of sale" means an instrument in
22 substantially the form specified in The Livestock Code by which
23 the owner or the owner's authorized agent transfers to the
24 buyer the title to animals described in the bill of sale;

25 C. "bison" or "buffalo" means a bovine animal of

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1 the species bison;

2 D. "board" means the New Mexico livestock board;

3 E. "bond" means cash or an insurance agreement from
4 a New Mexico licensed surety or insurance corporation pledging
5 surety for financial loss caused to another, including
6 certificate of deposit, letter of credit or other surety as may
7 be approved by the grain inspection, packers and stockyards
8 administration of the United States department of agriculture
9 or the board;

10 F. "brand" means a symbol or device in a form
11 approved by and recorded with the board as may be sufficient to
12 readily distinguish livestock should they become intermixed
13 with other livestock;

14 G. "brand inspector" means an inspector who is not
15 certified as a peace officer;

16 H. "carcasses" means dead or dressed bodies of
17 livestock or parts thereof;

18 I. "cattle" means animals of the genus bos,
19 including dairy cattle, and does not include any other kind of
20 livestock;

21 J. "dairy cattle" means animals of the genus bos
22 raised not for consumption but for dairy products and
23 distinguished from meat breed cattle;

24 K. "director" means the executive director of the
25 board;

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1 L. "disease" means a communicable, infectious or
2 contagious disease;

3 M. "district" means a livestock inspection
4 district;

5 N. "estrays" means livestock found running at large
6 upon public or private lands, either fenced or unfenced, whose
7 owner is unknown, or that is branded with a brand that is not
8 on record in the office of the board or is a freshly branded or
9 marked offspring not with its branded or marked mother, unless
10 other proof of ownership is produced;

11 O. "inspector" means a livestock or brand
12 inspector;

13 P. "livestock inspector" means a certified
14 inspector who is granted full law enforcement powers for
15 enforcement of The Livestock Code and other criminal laws
16 relating to livestock;

17 Q. "mark" means an ear tag or ownership mark that
18 is not a brand;

19 R. "meat" means the edible flesh of poultry, birds
20 or animals sold for human consumption and includes livestock,
21 poultry and livestock and poultry products;

22 S. "mule" means a hybrid resulting from the cross
23 of a horse and an ass; ~~and~~

24 T. "person" means an individual, firm, partnership,
25 association, corporation or similar legal entity; and

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1 U. "wild horse" means an unbranded and unclaimed
2 horse that is not livestock."

3 SECTION 4. Section 77-16-1 NMSA 1978 (being Laws 1909,
4 Chapter 70, Section 1, as amended) is amended to read:

5 "77-16-1. FENCES--WHEN REQUIRED.--~~[Section 1.]~~ Every
6 gardener, farmer, planter or other person having lands or crops
7 that would be injured by trespassing animals, including wild
8 horses, shall make a sufficient fence about [~~his~~] the land in
9 cultivation or other lands that may be so injured, the same to
10 correspond with the requirements of the laws of this state
11 prescribing and defining a legal fence."

12 SECTION 5. Section 77-18-5 NMSA 1978 (being Laws 2007,
13 Chapter 216, Section 1) is amended to read:

14 "77-18-5. WILD HORSES--CONFORMATION, HISTORY AND
15 DEOXYRIBONUCLEIC ACID TESTING--SPANISH COLONIAL HORSES--BIRTH
16 CONTROL.--

17 A. As used in this section:

18 (1) "public land" does not include federal
19 land controlled by the bureau of land management, the forest
20 service or state trust land controlled by the state land
21 office;

22 (2) "range" means the amount of land necessary
23 to sustain a herd of wild horses, which does not exceed its
24 known territorial limits;

25 (3) "Spanish colonial horse" means a wild

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1 horse that is descended from horses of the Spanish colonial
2 period; and

3 (4) "wild horse" means ~~[an unclaimed horse on~~
4 ~~public land that is not an estray]~~ a horse that shows no
5 indicia of ownership.

6 B. A wild horse that is captured on public land
7 shall have its conformation, history and deoxyribonucleic acid
8 tested to determine if it is a Spanish colonial horse. If it
9 is a Spanish colonial horse, the wild horse shall be relocated
10 to a state or private wild horse preserve created and
11 maintained for the purpose of protecting Spanish colonial
12 horses. If it is not a Spanish colonial horse, it shall be
13 returned to the public land, relocated to a public or private
14 wild horse preserve or put up for adoption by the agency on
15 whose land the wild horse was captured.

16 C. Jurisdiction and management of wild horses,
17 including descendants of Spanish colonial horses, shall be
18 with the conservation services division of the department of
19 game and fish, which shall adopt rules regarding the
20 preservation, health, safety and management of all wild
21 horses that are not subject to federal or tribal
22 jurisdiction. The board shall not exercise jurisdiction over
23 wild horses except in compliance with the provisions of
24 Chapter 77, Article 13 NMSA 1978. If the ~~[mammal]~~ division
25 ~~[of the museum of southwestern biology at the university of~~

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1 ~~New Mexico~~] determines that a wild horse herd exceeds the
2 number of horses that is necessary for preserving the genetic
3 stock of the herd and for preserving and maintaining the
4 range, it may cause control of the wild horse population
5 through the use of birth control and may cause excess horses
6 to be:

7 (1) humanely captured and relocated to other
8 public land or to a public or private wild horse preserve;

9 (2) adopted by a qualified person for
10 private maintenance; or

11 (3) euthanized; provided that this option
12 applies only to wild horses that are determined by a
13 veterinarian to be crippled or otherwise unhealthy."

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