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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC WATERS; AMENDING SECTION 17-4-7 NMSA 1978
(BEING LAWS 1967, CHARTER 6, SECTION 1, AS AMENDED); DEFINING
THE SCOPE OF EASEMENT CREATED BY CONSTITUTIONAL PROVISIONS
REGARDING OWNERSHIP OF PUBLIC WATERS, BENEFICIAL USE OF PUBLIC
WATERS AND THE RIGHT TO ACQUIRE, OWN AND PROTECT PRIVATE
PROPERTY; PROVIDING LIABILITY PROTECTION FOR LANDOWNERS FROM
RECREATIONAL USERS OF PUBLIC WATERS AND TO PROVIDE FOR LAWFUL
RECREATIONAL ACCESS TO PUBLIC WATERS; PROVIDING FOR INJUNCTIVE
RELIEF.

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

SECTION 1. Section 17-4-7 NMSA 1978 (being Laws 1967,
Chapter 6, Section 1, as amended) is amended to read:

"17-4-7. LIABILITY OF LANDOWNER PERMITTING PERSONS TO
HUNT, FISH OR USE LANDS FOR RECREATION--DUTY OF CARE--

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1 EXCEPTIONS--RECREATIONAL ACCESS TO PUBLIC WATER--INJUNCTIVE
2 RELIEF.--

3 A. This subsection applies to the relationship
4 between an owner of land and a trespasser. Any owner, lessee
5 or person in control of lands who, without charge or other
6 consideration, other than a consideration paid to the landowner
7 by the state, the federal government or any other governmental
8 agency, grants permission to any person or group to use the
9 owner's, lessee's or land controller's lands for the purpose of
10 hunting, fishing, trapping, camping, hiking, sightseeing, the
11 operation of aircraft or any other recreational use does not
12 thereby:

13 (1) extend any assurance that the premises are
14 safe for such purpose;

15 (2) assume any duty of care to keep such lands
16 safe for entry or use; or

17 (3) assume responsibility or liability for any
18 injury or damage to or caused by such person or group. [~~or~~

19 ~~(4) assume any greater responsibility, duty of~~
20 ~~care or liability to such person or group than if permission~~
21 ~~had not been granted and the person or group were trespassers.]~~

22 B. This section shall not limit the liability of
23 any landowner, lessee or person in control of lands that may
24 otherwise exist by law for injuries to any person granted
25 permission to hunt, fish, trap, camp, hike, sightsee, operate

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1 aircraft or use the land for recreation in exchange for a
2 consideration, other than a consideration paid to the landowner
3 by the state, the federal government or any other governmental
4 agency.

5 C. Chapter 72 NMSA 1978 provides that all natural
6 waters flowing in streams and watercourses, whether such be
7 perennial or torrential, within the limits of the state of New
8 Mexico, belong to the public and are subject to appropriation
9 for beneficial use. The right of the public to use public
10 water on private property for recreational purposes shall be
11 governed by this section.

12 D. The public may use a public water for
13 recreational activity if the public water is a navigable water
14 or is on public property and the recreational activity is not
15 otherwise prohibited by law. A person may access and use
16 public water on private property for any lawful purpose if the
17 private property owner permits. A person may not access or use
18 a public water on private property for recreational purposes if
19 the property is private property to which access is restricted.
20 A person may not access or use public water on private property
21 for recreational purposes by walking or wading into private
22 property.

23 E. The owner of private property may obtain
24 injunctive relief against a person who, without permission,
25 enters, remains or persists in an effort to enter or remain on

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1 the owner's property for recreational use of public water other
2 than use pursuant to this section. An injunction under this
3 section is in addition to any remedy for trespass. If a person
4 against whom an injunction is sought, or a person charged with
5 trespass, establishes by clear and convincing evidence the
6 existence of an easement for defense purposes, the
7 establishment of the existence of the easement applies only to
8 the defense and does not constitute a judicial declaration of
9 the easement's existence for any other purpose. If an owner
10 obtains an injunction against a person under this section, the
11 injunction does not serve as a declaration that there is no
12 public easement on the owner's property. The court may award
13 attorney fees and costs in an action under this section if the
14 court finds that the losing party's arguments lack a reasonable
15 basis in law or fact.

16 F. Nothing in this section affects the right of the
17 public to use public water for public recreational access,
18 including the touching of the bed beneath the public water if
19 the bed beneath the public water is public property or the bed
20 beneath the public water is private property to which access is
21 not restricted. A person using a public water for public
22 recreational access is subject to any other restriction
23 lawfully placed on the use of the public water by a
24 governmental entity with authority to restrict the use of the
25 public water. Nothing in this section limits or enlarges any

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1 right granted by express easement.

2 G. When leaving a public access area, a person
3 shall remove any refuse or tangible personal property the
4 person brought into the public access area.

5 H. As used in this section:

6 (1) "department" means the department of game
7 and fish;

8 (2) "navigable water" means a water course
9 that at the time of statehood was used or was capable of being
10 used as a highway for commerce over which trade and travel were
11 or could have been conducted in the customary modes of trade
12 and travel on water;

13 (3) "private property to which access is
14 restricted" means privately owned real property that is:

15 (a) cultivated land;

16 (b) properly posted pursuant to Sections
17 17-4-6 and 17-4-26 NMSA 1978; and

18 (c) fenced or enclosed as a posted area
19 pursuant to Section 17-4-6 or 17-4-26 NMSA 1978; or from which
20 the owner or a person authorized to act on the owner's behalf
21 has requested a person to leave;

22 (4) "public access area" means the limited
23 part of privately owned property that is open to public
24 recreational access by public easement contracted for by the
25 department and private landowner; and

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1 (5) "public recreational access" means the
2 right to engage in recreational access pursuant to this
3 section."

4 SECTION 2. SEVERABILITY.--If any part or application of
5 this act is held invalid, the remainder or its application to
6 other situations or persons shall not be affected.

7 SECTION 3. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2015.

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