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HOUSE BILL 610

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

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AN ACT

RELATING TO WILDLIFE; ENACTING THE WILD HORSE PROTECTION ACT;
PROVIDING FOR THE PROTECTION OF WILD HORSES; PROVIDING FOR
THEIR ADOPTION UNDER CERTAIN CIRCUMSTANCES; PROVIDING A
CRIMINAL PENALTY; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 6 of this act may be cited as the "Wild Horse
Protection Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Wild Horse Protection Act:

- A. "commission" means the state game commission;
- B. "department" means the department of game and
fish; and
- C. "wild horse" means a free-roaming and unowned

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1 horse. A free-roaming horse shall be presumed to be a "wild
2 horse" if it is not:

3 (1) branded;

4 (2) identified by a freeze mark or freeze
5 brand approved by the New Mexico livestock board;

6 (3) subject to a registration certificate from
7 a recognized breed association; or

8 (4) an offspring with a mare identified in
9 Paragraphs (1) through (3) of this subsection.

10 Section 3. [NEW MATERIAL] WILD HORSES-- PROTECTION-- TAKING
11 OR IMPOUNDING PROHIBITED-- PENALTY. --

12 A. Wild horses shall be protected as a valuable
13 resource of this state. The commission shall promulgate such
14 rules as are necessary to protect wild horses.

15 B. Except as allowed pursuant to the Wild Horse
16 Protection Act, no person shall take, possess, impound or sell
17 wild horses or parts thereof.

18 C. A person who violates any provision of the Wild
19 Horse Protection Act or a rule adopted pursuant to that act is
20 guilty of a fourth degree felony and shall be sentenced in
21 accordance with the provisions of Section 31-18-15 NMSA 1978.

22 Section 4. [NEW MATERIAL] IMPOUNDMENT AUTHORIZED. --

23 A. A person may impound a wild horse on property
24 the person owns or controls only if the wild horse has damaged
25 or is threatening to damage the person's property. Within

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1 twenty-four hours of impounding a wild horse, the person shall
2 notify the department of the impoundment.

3 B. The New Mexico livestock board, upon receiving
4 notification that a wild horse has been impounded, shall
5 immediately notify the department of the impoundment.

6 C. Upon receiving notice of an impoundment pursuant
7 to this section, the department shall, as soon as practicable,
8 take possession of the impounded wild horse. If, after taking
9 possession, the department determines that the horse was not a
10 wild horse when impounded, the department shall transfer the
11 horse to the New Mexico livestock board for sale or other
12 disposal pursuant to The Livestock Code.

13 Section 5. [NEW MATERIAL] ADOPTION PROGRAM - DISPOSITION
14 OF FEES. --

15 A. The commission shall establish an adoption
16 program for wild horses impounded and possessed by the
17 department pursuant to the Wild Horse Protection Act. The
18 program:

19 (1) shall include procedures to assure the
20 department that the adoptive owner intends and has the
21 facilities to care for the horse in an humane manner and will
22 not abuse or destroy the horse;

23 (2) shall include provisions for a fee
24 schedule to charge adoptive owners. Fees received from the
25 adoptive owners shall be first applied by the department to

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1 compensate the owner or lessee of the land for any damage
2 caused by the wild horse and next to the department to be
3 retained by it as reimbursement for costs incurred in the
4 impoundment and adoption proceedings;

5 (3) may include provisions for contracting
6 with a public or private entity to administer the adoption
7 program on behalf of the department; and

8 (4) may be implemented in coordination with
9 the federal wild horse adoption program administered pursuant
10 to the federal Wild Free-Roaming Horses and Burros Act.

11 B. If the department determines that a wild horse
12 is old, sick, lame or otherwise unadoptable, the department may
13 destroy the horse in the most humane manner possible.

14 Section 6. [NEW MATERIAL] COORDINATION WITH FEDERAL AND
15 STATE AGENCIES. --

16 A. Pursuant to the Joint Powers Agreements Act, the
17 department may enter into agreements with agencies of the
18 federal government or with the New Mexico livestock board for
19 the purpose of implementing the Wild Horse Protection Act.

20 B. The Wild Horse Protection Act does not apply to
21 horses under the jurisdiction of the federal government
22 pursuant to the provisions of the federal Wild Free-Roaming
23 Horses and Burros Act.

24 Section 7. Section 17-2-7.2 NMSA 1978 (being Laws 1997,
25 Chapter 224, Section 3) is amended to read:

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1 "17-2-7.2. LANDOWNER TAKING--CONDITIONS--DEPARTMENT
2 RESPONSIBILITIES. --

3 A. A landowner or lessee, or employee of either,
4 may take or kill an animal on private land, in which they have
5 an ownership or leasehold interest, including game animals and
6 other quadrupeds, except wild horses subject to the Wild Horses
7 Protection Act, game birds and fowl, that presents an immediate
8 threat to human life or an immediate threat of damage to
9 property, including crops; provided, however, that the taking
10 or killing is reported to the department [~~of game and fish~~]
11 within twenty-four hours and before the removal of the carcass
12 of the animal killed, in accordance with regulations adopted by
13 the commission.

14 B. A landowner or lessee, or employee of either,
15 may take or kill animals on private land, in which they have an
16 ownership or leasehold interest, including game animals and
17 other quadrupeds, except wild horses subject to the Wild Horse
18 Protection Act, game birds and fowl, that present a threat to
19 human life or damage to property, including crops, according to
20 regulations adopted by the commission. The regulations shall:

21 (1) provide a method for filing a complaint to
22 the department by the landowner or lessee, or employee of
23 either of them, of the existence of a depredation problem;

24 (2) provide for various departmental
25 interventions, depending upon the type of animal and

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1 depredation;

2 (3) require the department to offer at least
3 three different interventions, if practical;

4 (4) require the department to respond to the
5 initial and any subsequent complaints within ten days with an
6 intervention response to the complaint and to carry out the
7 intervention, if agreed upon between the department and the
8 landowner, within five days of that agreement;

9 (5) permit the landowner or lessee to reject
10 for good cause the interventions offered by the department;

11 (6) require a landowner or lessee to
12 demonstrate that the property depredation is greater in value
13 than the value of any wildlife-related income or fee collected
14 by the landowner or lessee for permission to take or kill an
15 animal of the same species on the private property or portion
16 of the private property identified in the complaint as the
17 location where the depredation occurred; and

18 (7) permit the landowner, lessee or employee,
19 when interventions by the department have not been successful
20 and after one year from the date of the filing of the initial
21 complaint, to kill or take an animal believed responsible for
22 property depredation.

23 C. For purposes of this section:

24 (1) "commission" means the state game
25 commi ssi on;

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

3 (3) "intervention" means a solution proposed
4 by the department to eliminate the depredation. "

5 Section 8. Section 77-2-1.1 NMSA 1978 (being Laws 1993,
6 Chapter 248, Section 2, as amended by Laws 2001, Chapter 8,
7 Section 2 and also by Laws 2001, Chapter 341, Section 2) is
8 amended to read:

9 "77-2-1.1. DEFINITIONS. --As used in The Livestock Code:

10 A. "animals" or "livestock" means all domestic or
11 domesticated animals that are used or raised on a farm or
12 ranch, including the carcasses thereof, and exotic animals in
13 captivity and includes horses, asses, mules, cattle, sheep,
14 goats, swine, bison, poultry, ostriches, emus, rheas, camelids
15 and farmed cervidae upon any land in New Mexico; provided that
16 for the purposes of Chapter 77, Article 9 NMSA 1978, "animals"
17 or "livestock" have the meaning defined in that article.

18 "Animals" or "livestock" does not include canine or feline
19 animals or wild horses subject to the Wild Horse Protection
20 Act. For the purpose of the rules governing meat inspection,
21 wild animals, poultry and birds used for human consumption
22 shall also be included within the meaning of "animals" or
23 "livestock";

24 B. "bill of sale" means an instrument in
25 substantially the form specified in The Livestock Code by which

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1 the owner or his authorized agent transfers to the buyer the
2 title to animals described in the bill of sale;

3 C. "bison" or "buffalo" means a bovine animal of
4 the [~~species~~] genus bison;

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

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

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

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

18 H. "carcasses" means dead or dressed bodies of
19 livestock or parts thereof;

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

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

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1 K. "director" means the executive director of the
2 board;

3 L. "disease" means a communicable, infectious or
4 contagious disease;

5 M. "district" means a livestock inspection
6 district;

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

13 O. "inspector" means a livestock or brand
14 inspector;

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

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

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

24 S. "mule" means a hybrid resulting from the cross
25 of a horse and an ass; and

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1 T. "person" means an individual, firm, partnership,
2 association, corporation or similar legal entity."

3 Section 9. Section 77-9-1.1 NMSA 1978 (being Laws 1999,
4 Chapter 282, Section 46) is amended to read:

5 "77-9-1.1. DEFINITION.--As used in Chapter 77, Article 9
6 NMSA 1978, "livestock" means horses, asses, mules, cattle or
7 bison but does not include wild horses subject to the Wild
8 Horse Protection Act. "

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