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**HOUSE BILL 764**

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

**INTRODUCED BY**

Dianne Miller Hamilton

**AN ACT**

**RELATING TO FERAL ANIMALS; MITIGATING THE FORESEEABLE INHERENT  
DANGERS TO THE LIVES AND PROPERTY OF NEW MEXICO CITIZENS  
ASSOCIATED WITH THE RELEASE OF WOLVES WITHIN THE STATE OF NEW  
MEXICO; DECLARING AN EMERGENCY.**

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

**Section 1. FINDINGS. -- The legislature finds that:**

**A. prior to April 2000 there were no known  
unconfined wolves existing within the borders of New Mexico;**

**B. since April 2000, there have been a significant  
number of wolves released upon federal lands to roam within the  
borders of New Mexico, together with their offspring.**

**Hereinafter wolves, including their offspring, shall be  
referred to individually as the "wolf" and collectively as the  
"wolves" by employees or agents of the United States fish and**

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1 wildlife service either independently or in cooperation with  
2 and with the assistance of other individuals under, and  
3 pursuant to, the alleged authority of the Endangered Species  
4 Act of 1973;

5 C. by definition, wolves are by their very nature  
6 undomesticated and free-roaming carnivorous predators with the  
7 foreseeable and undeniable ability, if not propensity, to  
8 threaten or inflict death or grievous bodily harm;

9 D. by virtue of these characteristics, wolves must  
10 be found by the state of New Mexico to be inherently dangerous  
11 to any human beings they may randomly encounter;

12 E. the United States fish and wildlife service and  
13 other federal authorities have by various means informed the  
14 citizens of New Mexico that the lives and well-being of wolves  
15 have the full protection of federal law and that any human  
16 being or New Mexico citizen found responsible for the death or  
17 maiming of wolves shall be prosecuted by federal authorities to  
18 the full extent of applicable federal law, which includes up to  
19 one year in federal prison or a fine of up to one thousand  
20 dollars (\$1,000) per incident;

21 F. following considerable reflection upon the  
22 sanctity that is afforded the lives and well-being of wolves  
23 under the law, the state of New Mexico has determined that  
24 basic notions of justice and equity demand that the law also  
25 provide the citizens of New Mexico equal, if not greater,

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1 protections under the laws of this state as those afforded  
2 wolves based on the following three fundamental premises; and

3 G. following considerable reflection upon the  
4 sanctity that is afforded the lives and well-being of wolves  
5 under the law, the state of New Mexico has determined that  
6 basic notions of justice and equity demand that the law also  
7 provide the citizens of New Mexico equal, if not greater,  
8 protections under the laws of this state as those afforded  
9 wolves based on the following three fundamental premises:

10 (1) the life and physical safety of any  
11 individual human being is, at minimum, at least of equal value  
12 to that of any wolf and, in fact, is of greater inherent value  
13 in and to the state of New Mexico than any individual or  
14 cumulative benefits that may be claimed by some to be derived  
15 from the reintroduction of wolves in New Mexico under cover of  
16 the Endangered Species Act of 1973;

17 (2) the foreseeable death or grievous bodily  
18 injury of any individual human being by a species intentionally  
19 released in the state of New Mexico under the alleged authority  
20 of the Endangered Species Act of 1973 cannot conceivably have  
21 been a permissible or acceptable consequence intended or even  
22 foreseen by the United States congress when the Endangered  
23 Species Act was enacted in 1973; and

24 (3) if a citizen of New Mexico may be  
25 criminally prosecuted, imprisoned or fined for causing the

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1 death or bodily injury of a wolf, equity and justice demands  
2 that any individual found responsible for unleashing such  
3 foreseeable inherently dangerous animals within New Mexico  
4 shall also be subject to criminal prosecution, imprisonment or  
5 fine when it is determined that any wolf or wolves released by  
6 that individual has caused the death or bodily injury of any  
7 citizen or other human being in the New Mexico.

8 Section 2. REGULATION OF WOLF RELEASES. --Based on the  
9 foregoing findings, the legislature hereby declares the  
10 following:

11 A. the knowing, premeditated and intentional  
12 unconstrained release of any inherently dangerous carnivorous  
13 predator, including without limitation, any wolf, in New Mexico  
14 by any individual or individuals shall be found to constitute  
15 an act that:

16 (1) poses a foreseeable threat to the health,  
17 safety and welfare of a New Mexico citizen and one's livestock;

18 (2) exceeds the scope of authority intended to  
19 be vested in the executive branch of the federal government by  
20 the United States congress when the latter body enacted the  
21 Endangered Species Act of 1973, if it is determined in a state  
22 court of competent jurisdiction that one or more wolves has  
23 either caused the death of, or inflicted great bodily injury  
24 upon, any New Mexico citizen or one livestock; or

25 (3) because wolves are inherently dangerous

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1 carnivorous predators, it shall be the joint and several lawful  
2 duty of each and every individual who causes, participates in  
3 or assists in the release of any wolf in New Mexico to at all  
4 times properly supervise, monitor and control both that wolf  
5 and any progeny produced by that wolf and to appropriately  
6 limit the migrations of wolves in and around the New Mexico for  
7 the purposes of achieving full and complete compliance with any  
8 and all of the requirements and objectives of this statute;

9 B. any and all individuals charged under this  
10 statute with the duty to supervise, monitor and control any  
11 wolf or to limit the migrations of any wolf shall discharge  
12 those responsibilities in full and complete compliance with the  
13 following requirements:

14 (1) it shall be unlawful for any wolf at any  
15 time to be located on, or allowed to migrate to, any  
16 non-federal lands, state or private lands, within New Mexico;

17 (2) it shall be unlawful for any wolf at any  
18 time to injure or kill a human being in New Mexico;

19 (3) it shall be unlawful for any wolf at any  
20 time to threaten to injure or kill a human being in New Mexico;

21 (4) it shall be unlawful for any wolf to  
22 injure or kill any pet or any livestock of any New Mexico  
23 citizen, provided that such pet or livestock is lawfully  
24 entitled to be in the location that it is attacked by the wolf;

25 (5) it shall be unlawful for any wolf to

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1 threaten to injure or kill any pet or any livestock of any New  
2 Mexico citizen, provided that such pet or livestock is lawfully  
3 entitled to be in the location where the threat of attack by  
4 the wolf occurs;

5 (6) any individual found in violation of his  
6 or her lawful duty to supervise, monitor and control a wolf or  
7 to appropriately limit its migration under this section shall  
8 for each separate offense be guilty of a misdemeanor punishable  
9 by up to six months in county jail or a fine not to exceed five  
10 hundred dollars;

11 (7) any wolf found to be in violation of this  
12 section may be captured or euthanized by any New Mexico citizen  
13 that encounters that wolf;

14 (8) any wolf found to be in violation this  
15 section shall be captured and euthanized by any state or county  
16 law enforcement officials with jurisdiction over the territory  
17 in which that wolf is located;

18 (9) any wolf found to be in violation of this  
19 section may be captured or euthanized by any state or law  
20 enforcement official at any time during or after the occurrence  
21 of the violation or by any New Mexico citizen who is present at  
22 the time the violation is occurring;

23 (10) in the event that it is determined in a  
24 state court of competent jurisdiction that any human being has  
25 been killed by a wolf in the New Mexico in violation of this

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1 section, each individual charged under the provisions of this  
2 section with the duty to supervise, monitor and control the  
3 wolf or wolves involved in the attack or to limit the wolf's or  
4 wolves' migration shall be guilty of committing an act greatly  
5 dangerous to the lives of others pursuant to the provisions of  
6 Section 30-2-1 NMSA, 1978 provided that the human being that  
7 was attacked was lawfully entitled to be at the location where  
8 said attack occurred;

9 (11) in the event that it is determined in a  
10 state court of competent jurisdiction that any human being has  
11 been attacked or injured by a wolf in New Mexico in violation  
12 of this section, each individual charged under the provisions  
13 of this section with the duty to supervise, monitor and control  
14 the wolf or wolves involved in the attack or to limit the  
15 wolf's or wolves' migration shall be guilty of committing an  
16 act of aggravated battery with a deadly weapon pursuant to the  
17 provisions of Section 30-2-5 NMSA 1978, provided that the human  
18 being that was attacked was lawfully entitled to be at the  
19 location where said attack occurred;

20 (12) in the event that it is determined in a  
21 state court of competent jurisdiction that any pet or livestock  
22 owned by any citizen of New Mexico has been attacked and killed  
23 or injured by a wolf in New Mexico in violation of this  
24 section, each individual charged under the provisions of this  
25 section with the duty to supervise, monitor and control the

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1 wolf or wolves involved in the attack or to limit the wolf's or  
2 wolves' migration shall be guilty of destruction of property  
3 and shall be jointly and severally liable to the owner of the  
4 pet or livestock for any and all damages, including costs  
5 caused by or resulting from said attack, provided that the pet  
6 or livestock that was attacked or killed was lawfully entitled  
7 to be at the location where the attack occurred;

8 (13) it shall be unlawful for any wolf to be  
9 released in New Mexico at any time or in any location  
10 whatsoever unless, prior to said release, an authorized  
11 representative of the individuals charged with the duty to  
12 supervise, monitor and control the wolf or to limit said wolf's  
13 migration under the provisions of this section provides to the  
14 state a certified DNA sample of the wolf that shall be received  
15 and retained by the department of game and fish;

16 (14) it shall be unlawful for any wolf that is  
17 the offspring of any wolf released in New Mexico to remain at  
18 large within the state of New Mexico for a period exceeding six  
19 months immediately following its birth unless, within that six-  
20 month period, an authorized representative of the individual  
21 charged with the duty to supervise, monitor and control the  
22 wolf or to limit the wolf's migration under the provisions of  
23 this section provides to the state a certified DNA sample of  
24 the wolf that shall be received and retained by the department  
25 of game and fish;

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1 (15) it shall be unlawful for any wolf  
2 released in New Mexico prior to the enactment of this statute  
3 to remain at large within New Mexico for a period exceeding six  
4 months immediately following that enactment unless, within that  
5 six-month period, an authorized representative of the  
6 individuals charged with the duty to supervise, monitor and  
7 control said wolf or to limit said wolf's migration under the  
8 provisions of this section provides to the state a certified  
9 DNA sample of the wolf that shall be received and retained by  
10 the department of game and fish;

11 (16) each DNA sample required to be filed with  
12 the state pursuant to this section shall be given a separate  
13 and unique identification number issued by the department of  
14 game and fish and shall be retained for a period not less than  
15 fifteen years or until it is determined by the department of  
16 game and fish that the wolf to which the DNA sample pertains is  
17 deceased;

18 (17) it shall be unlawful for any wolf to be  
19 released in New Mexico at any time or in any location  
20 whatsoever unless, prior to said release, each individual  
21 charged with the duty to supervise, monitor and control any  
22 wolf or to limit the wolf's migration under the provisions of  
23 this section has signed under penalty of perjury a declaration  
24 of responsibility and that Declaration of Responsibility is  
25 delivered to and received by the department of game and fish;

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1 (18) it shall be unlawful for any wolf that is  
2 the offspring of any wolf released in New Mexico to remain at  
3 large within New Mexico for a period exceeding six months  
4 immediately following its birth unless, within that six-month  
5 period, a declaration of responsibility pertaining to the wolf  
6 is signed under penalty of perjury by each individual charged  
7 with the duty to supervise, monitor and control the wolf or to  
8 limit said wolf's migration under the provisions of this  
9 section of this act and that declaration of responsibility is  
10 delivered to and received by the department of game and fish;

11 (19) it shall be unlawful for any wolf  
12 released in New Mexico prior to the enactment of this act to  
13 remain at large within New Mexico for a period exceeding six  
14 months immediately following said enactment unless, within that  
15 six-month period, a declaration of responsibility pertaining to  
16 the wolf is signed under penalty of perjury by each individual  
17 charged with the duty to supervise, monitor and control said  
18 wolf or to limit the wolf's migration under the provisions of  
19 this section and that declaration of responsibility is  
20 delivered to and received by the department of game and fish;

21 (20) each declaration of responsibility  
22 executed and filed pursuant to this section shall be retained  
23 by the department of game and fish for a period equal to the  
24 period that the corresponding DNA sample is retained pursuant  
25 to Paragraph (14) of this subsection and shall contain the

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1 following:

2 (a) the identification number assigned  
3 by the department of game and fish to the DNA sample of the  
4 wolf to which the declaration applies;

5 (b) the name and social security number  
6 of each individual who is required to sign the declaration  
7 pursuant to this section;

8 (c) a statement declaring that each  
9 individual who signs the Declaration acknowledges under penalty  
10 of perjury that he is, and for so long as the wolf remains at  
11 large in New Mexico shall be, jointly and severally responsible  
12 for the control, monitoring and supervision of the wolf to  
13 which the declaration pertains together with any of its  
14 progeny;

15 (d) a statement declaring that each  
16 individual who signs the declaration further acknowledges under  
17 penalty of perjury that for so long as the wolf identified in  
18 the declaration remains at large in New Mexico, he as an  
19 individual shall be entirely responsible for any failure to  
20 properly control, monitor and supervise the wolf or its progeny  
21 or to limit the wolf's migration in the event that such failure  
22 is determined by a state court of competent jurisdiction to  
23 have resulted in any violation of any one or more of the  
24 provisions of this act;

25 (e) any individual required by this

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1 statute to file a DNA sample or a declaration of responsibility  
2 with the department of game and fish but who fails to do so  
3 within the time permitted shall for each separate offense be  
4 guilty of a misdemeanor punishable by up to six months in  
5 county jail or a fine not to exceed five hundred dollars  
6 (\$500); and

7 (f) any wolf captured by any state or  
8 county law enforcement authority pursuant to the provisions of  
9 this act and for which it is determined that there does not  
10 exist on file with the department of game and fish a valid  
11 certified DNA sample or a valid corresponding declaration of  
12 responsibility shall be subject to capture by the department of  
13 game and fish and upon capture shall be euthanized by state  
14 authorities within ten days of capture; and

15 (21) all provisions of this act are and shall  
16 be applicable to any offspring of any wolf in New Mexico  
17 notwithstanding the fact that it may have been born in the  
18 wild.

19 Section 3. CIVIL REMEDIES NOT LIMITED.--Nothing in the  
20 provisions of this act is intended to limit in any way  
21 whatsoever any civil remedies that are or may be available  
22 under either federal or state law to any New Mexico citizen who  
23 is the victim of a wolf attack or their families.

24 Section 4. EMERGENCY.--It is necessary for the public  
25 peace, health and safety that this act take effect immediately.

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