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SENATE BILL 1196

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DELORES C. WRIGHT

AN ACT

RELATING TO HUNTING; PROVIDING FOR QUOTAS FOR SPECIAL ELK HUNTS;
DECLARING AN EMERGENCY.

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

Section 1. Section 17-2A-3 NMSA 1978 (being Laws 1996,
Chapter 89, Section 5) is amended to read:

"17-2A-3. HUNTING GUIDES AND OUTFITTERS. --

A. Effective April 1, 1997, it is unlawful to be a
hunting guide or outfitter in New Mexico without being
registered, except for a private landowner or his authorized
agent who outfits or guides pursuant to a landowner permit
issued by the department of game and fish for the landowner's
property or for the landowner's shared private and public unit.

B. The state game commission shall adopt regulations
by September 1, 1997 to govern the granting of non-interim

1 registration, permits and certificates to hunting guides and
2 outfitters and to regulate the operations and professional
3 conduct of registered hunting guides and outfitters.

4 Regulations shall be adopted in accordance with the following
5 procedures and standards:

6 (1) the commission shall establish dates and
7 locations for a public hearing and provide reasonable prior
8 public notice of a hearing. A public hearing shall be held at a
9 place within any quadrant of the state affected by the proposed
10 regulation when the commission determines there is substantial
11 public interest in holding a hearing in that quadrant;

12 (2) a hearing shall be held within six months
13 of the date a proposed regulation is issued;

14 (3) notice of a hearing shall:

15 (a) include the date, time and location
16 of the hearing;

17 (b) include a statement of the
18 recommended action;

19 (c) include an indication of the location
20 and availability of the public file on the regulation;

21 (d) indicate where and by what date
22 written and oral comments and testimony may be received; and

23 (e) specify that the public record shall
24 remain open for comments for thirty days after the date of the
25 final hearing; and

1 (4) the commission shall make its decision and
2 take action based upon relevant and reliable evidence.

3 C. No person shall be allowed to work as a
4 registered hunting guide or outfitter in New Mexico:

5 (1) without being registered by the state game
6 commission;

7 (2) if the person has had a guide or outfitter
8 license, registration, permit or certificate revoked in another
9 state;

10 (3) if the person has had a guide or outfitter
11 license, registration, permit or certificate suspended in
12 another state and it has not been reinstated; or

13 (4) if the person has been convicted of a
14 felony.

15 D. The state game commission shall develop a point
16 system for the suspension or revocation of a guide or outfitter
17 registration. The point system shall be similar to the point
18 system that governs individual hunting and fishing license
19 privileges.

20 E. To be granted a registration to be a guide, an
21 applicant shall, in addition to any other reasonable criteria
22 adopted by the state game commission, and except as provided for
23 persons granted an interim registration:

24 (1) be at least eighteen years of age;

25 (2) pass a written or oral examination approved

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1 by the department of game and fish at a date and time approved
2 by the department; and

3 (3) be endorsed on his application by a New
4 Mexico registered or interim registered outfitter.

5 F. A registered or interim registered guide shall
6 work only under the supervision of a New Mexico registered or
7 interim registered outfitter and in an area designated by the
8 registered or interim registered outfitter.

9 G. The department of game and fish may provide a
10 registration for a temporary emergency guide, provided the
11 registration is limited to a maximum seven-day period and is
12 granted only in emergency circumstances as determined by the
13 department. The fee for a temporary emergency guide
14 registration is ten dollars (\$10.00).

15 H. To be granted a registration to be an outfitter,
16 an applicant shall, in addition to any other reasonable criteria
17 adopted by the state game commission, and except as provided for
18 persons granted an interim registration:

19 (1) be at least twenty-one years of age;

20 (2) have operated as a New Mexico registered
21 guide for at least three years or have been granted an interim
22 outfitter's registration;

23 (3) not be a convicted felon or have a history
24 of violation of federal or state game and fish laws or
25 regulations or federal or state guide or outfitter licensing or

1 registration laws or regulations;

2 (4) pass a written or oral examination approved
3 by the department of game and fish at a date and time determined
4 by the department; and

5 (5) be endorsed by a registered outfitter or
6 present experience and other qualifications satisfactory to the
7 state game commission.

8 I. A registered outfitter shall:

9 (1) provide proof of commercial liability
10 insurance of at least five hundred thousand dollars (\$500,000);

11 (2) responsibly supervise each registered guide
12 working under his direction;

13 (3) provide a written contract for outfitting
14 services, signed by the registered outfitter and identifying the
15 outfitter's registration number, to each nonresident who seeks
16 to use, and before the nonresident applies for, a license
17 granted from a special drawing for a hunt on public lands
18 pursuant to the provisions of Section 17-3-16 NMSA 1978;

19 (4) register with the taxation and revenue
20 department and provide proof of that registration to the
21 department of game and fish; and

22 (5) provide at least one registered guide or
23 outfitter for every four or fewer [~~nonresident~~] hunters who are
24 granted a license, pursuant to an application listing the
25 outfitter's registration number, from a special drawing for a

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1 hunt on public lands pursuant to the provisions of Section
2 17-3-16 NMSA 1978.

3 J. The department of game and fish shall provide to
4 the taxation and revenue department a copy of each outfitter
5 registration that is granted.

6 K. No person shall be allowed to charge a processing
7 or other fee to obtain for [~~a nonresident~~] another person a
8 license that is granted from a special drawing for a hunt on
9 public lands pursuant to the provisions of Section 17-3-16 NMSA
10 1978, unless the person who obtains the license is a registered
11 New Mexico guide or outfitter who physically accompanies the
12 [~~nonresident~~] hunter on the hunt.

13 [~~L. The department of game and fish shall develop by~~
14 ~~September 1, 1996 a point system to provide preferences for the~~
15 ~~use of registered outfitters who are New Mexico residents. The~~
16 ~~point system shall include a progressive preference based upon~~
17 ~~the total number of years of guiding or outfitting operations in~~
18 ~~New Mexico.~~

19 M-] L. A New Mexico resident registered outfitter
20 shall be defined by the state game commission in accordance with
21 regulations it adopts. The regulations shall require at a
22 minimum that a resident registered outfitter shall maintain a
23 residence and business address in New Mexico and derive at least
24 fifty percent of his guiding or outfitting income from guiding
25 or outfitting services provided in New Mexico, as determined by

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1 gross receipts or corporate or individual income tax returns for
2 the immediately preceding three years. The registration
3 applicant may voluntarily provide copies of the necessary tax
4 records or the taxation and revenue department shall assist the
5 commission as needed to make this determination. Tax records
6 shall be confidential.

7 [N.] M. The department of game and fish shall
8 maintain for public distribution a list of New Mexico registered
9 outfitters.

10 [O.] N. The annual registration fee for a registered
11 guide in New Mexico is fifty dollars (\$50.00). [~~for a resident~~
12 ~~and one hundred dollars (\$100) for a nonresident.~~

13 [P.] O. The annual registration fee to be a
14 registered outfitter in New Mexico is five hundred dollars
15 (\$500). [~~for a resident and five thousand dollars (\$5,000) for a~~
16 ~~nonresident.~~

17 [Q.] P. Annual registration fees for guides and
18 outfitters shall be deposited in the game protection fund.

19 [R.] Q. The state game commission shall adopt by
20 September 1, 1996 interim regulations, consistent to the
21 greatest extent practicable with the provisions of this section,
22 to provide for the granting of interim registrations to guides
23 and outfitters. The commission shall issue interim
24 registrations prior to mailing applications for 1997 licensed
25 hunts to persons who qualify for interim registration and submit

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1 applications to the department of game and fish by November 1,
2 1996.

3 [S-] R. A person adversely affected by an action,
4 other than a regulation, taken pursuant to the provisions of
5 this section, including the denial, suspension or revocation of
6 a registration, license, permit or certificate, may seek review
7 of the action pursuant to the provisions of the Uniform
8 Licensing Act.

9 [T-] S. A person adversely affected by a regulation
10 adopted by the state game commission pursuant to this section
11 may appeal to the court of appeals. All appeals shall be made
12 upon the record at the hearing and shall be taken to the court
13 of appeals within thirty days following the date of the action.
14 The date of the action shall be the date of the filing of the
15 regulation by the commission, pursuant to the provisions of the
16 State Rules Act.

17 [U-] T. Upon appeal, the court of appeals shall set
18 aside a regulation only if it is found to be:

19 (1) arbitrary, capricious or an abuse of
20 discretion;

21 (2) not supported by substantial evidence in
22 the record; or

23 (3) otherwise not in accordance with law.

24 [V-] U. After a hearing and a showing of good cause
25 by the appellant, a stay of a regulation being appealed may be

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1 granted:

2 (1) by the state game commission; or

3 (2) by the court of appeals if the state game
4 commission denies a stay or fails to act upon an application for
5 a stay within sixty days after receipt of the application.

6 [W-] V. The appellant shall pay all costs for any
7 appeal found to be frivolous by the court of appeals. "

8 Section 2. A new section of Chapter 17, Article 2A NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] OUTFITTING OR GUIDING WITHOUT
11 REGISTRATION--PENALTIES.--A person who outfits or guides, offers
12 to outfit or guide or holds himself out as an outfitter or guide
13 without being registered is, except as otherwise provided in
14 this section, guilty of a misdemeanor and upon conviction shall
15 be punished by a fine of not less than fifty dollars (\$50.00) or
16 more than five hundred dollars (\$500) or by imprisonment for a
17 definite term not to exceed six months, or both. Upon a second
18 conviction, the person shall be punished by a fine of not less
19 than one thousand dollars (\$1,000) or more than two thousand
20 dollars (\$2,000) or by imprisonment for a definite term not to
21 exceed six months, or both. A third or subsequent conviction
22 under this section is a fourth degree felony. "

23 Section 3. Section 17-3-16 NMSA 1978 (being Laws 1964 (1st
24 S.S.), Chapter 17, Section 7, as amended) is repealed and a new
25 Section 17-3-16 NMSA 1978 is enacted to read:

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1 "17-3-16. [NEW MATERIAL] SPECIAL DRAWING FOR ELK
2 LICENSES. --

3 A. The director of the department of game and fish
4 may provide special envelopes and application blanks when a
5 special drawing is to be held to determine the persons to
6 receive a special elk license. Money required to be submitted
7 with the applications, if enclosed in the special envelopes,
8 need not be deposited with the state treasurer but may be held
9 by the director until the successful applicants are determined.
10 At that time, the fees of the successful applicants shall be
11 deposited with the state treasurer, and the fees submitted by
12 the unsuccessful applicants shall be returned to them.

13 B. Residents are eligible for seventy percent of the
14 special elk licenses offered each year.

15 C. Nonresidents are eligible for thirty percent of
16 the special elk licenses offered each year, divided as follows:

17 (1) fifteen percent of the licenses shall be
18 drawn by nonresidents who will be guided by a New Mexico
19 outfitter or guide; and

20 (2) fifteen percent of the licenses shall be
21 drawn by nonresidents who are not required to be guided by a New
22 Mexico outfitter or guide.

23 D. If there are not enough nonresident applicants
24 for licenses available pursuant to Paragraph (2) of Subsection C
25 of this section, applicants who qualify pursuant to Paragraph

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1 (1) of Subsection C of this section shall be eligible for the
2 licenses; thereafter, unclaimed licenses shall be made available
3 to residents.

4 E. Of the total amount of money generated from the
5 sale of nonresident special elk licenses, one-third shall be
6 dedicated to and used for the acquisition by the state game
7 commission of conservation and access easements and habitat
8 management. "

9 Section 4. Laws 1996, Chapter 89, Section 8 is amended to
10 read:

11 "Section 8. EFFECTIVE DATE. -- [A-] The effective date of
12 the provisions of Sections 1 and 3 through 5 of this act is July
13 1, 1996.

14 [~~B. The effective date of the provisions of Section
15 2 of this act is June 30, 1999.~~]"

16 Section 5. REPEAL. --

17 A. Section 17-2A-2 NMSA 1978 (being Laws 1996,
18 Chapter 89, Section 4) is repealed.

19 B. Laws 1996, Chapter 89, Sections 2, 6 and 7 are
20 repealed.

21 Section 6. EMERGENCY--It is necessary for the public peace,
22 health and safety that this act take effect immediately.

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State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 4, 1997

Mr. Speaker:

Your **CONSUMER AND PUBLIC AFFAIRS COMMITTEE**, to
whom has been referred

HOUSE BILL 1196

has had it under consideration and reports same with
recommendation that it **DO PASS**, and thence referred to the
JUDICIARY COMMITTEE.

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Respectfully submitted,

Gary King, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Rios, Sandel, Vigil

Absent: None

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