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SENATE BILL 430

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

INTRODUCED BY

MICHAEL S. SANCHEZ

AN ACT

RELATING TO HUNTING LICENSES; REVISING PROVISIONS AFFECTING
HUNTING GUIDES, OUTFITTERS AND LICENSES; AMENDING AND REPEALING
SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 17-2-10 NMSA 1978 (being Laws 1931,
Chapter 117, Section 7, as amended) is amended to read:

"17-2-10. VIOLATION OF GAME AND FISH LAWS OR REGULATIONS--
PENALTIES. --

A. Except as otherwise provided in this section, any
person violating any of the provisions of Chapter 17 NMSA 1978
or any regulations adopted by the state game commission which
relate to the time, extent, means or manner that game animals,
birds or fish may be hunted, taken, captured, killed, possessed,
sold, purchased or shipped is guilty of a misdemeanor and upon

Underscored material = new
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1 conviction may be sentenced to imprisonment in the county jail
2 for a term not to exceed six months and shall be sentenced to
3 the payment of a fine in accordance with the following schedule:

4 (1) illegally taking, attempting to take,
5 killing, capturing or possessing of each deer, antelope,
6 javelina, bear or cougar during a closed season, a fine of four
7 hundred dollars (\$400);

8 (2) illegally taking, attempting to take,
9 killing, capturing or possessing of each elk, bighorn sheep,
10 oryx, ibex or Barbary sheep, a fine of one thousand dollars
11 (\$1,000);

12 (3) hunting big game without a proper and valid
13 license, lawfully procured, a fine of one hundred dollars
14 (\$100);

15 (4) exceeding the bag limit of any big game
16 species, a fine of four hundred dollars (\$400);

17 (5) attempting to exceed the bag limit of any
18 big game species by the hunting of any big game animal after
19 having tagged a similar big game species, a fine of two hundred
20 dollars (\$200);

21 (6) signing a false statement to procure a
22 resident hunting or fishing license when the applicant is
23 residing in another state at the time of application for a
24 license, a fine of four hundred dollars (\$400);

25 (7) using a hunting or fishing license issued

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1 to another person, a fine of one hundred dollars (\$100);

2 (8) violation of Section 17-2-31 NMSA 1978, a
3 fine of three hundred dollars (\$300); and

4 (9) [~~to sell, offer~~] selling, offering for
5 sale, [~~offer~~] offering to purchase or [~~purchase~~] purchasing any
6 big game animal unless otherwise provided by Chapter 17 NMSA
7 1978, a fine of one thousand dollars (\$1,000).

8 B. Any person who is convicted of a violation of any
9 regulations adopted by the state game commission which relate to
10 the time, extent, means or manner that game animals, birds or
11 fish may be hunted, taken, captured, killed, possessed, sold,
12 purchased or shipped, or of a violation of any of the provisions
13 of Chapter 17 NMSA 1978, for which a punishment is not set forth
14 under Subsection A of this section, shall be fined not less than
15 fifty dollars (\$50.00) nor more than five hundred dollars (\$500)
16 or imprisoned not more than six months, or both.

17 C. Any person who violates as a first offense
18 Section 17-2A-3 NMSA 1978 or any regulations adopted pursuant to
19 that section is guilty of a misdemeanor and upon conviction may
20 be sentenced to imprisonment in the county jail for a term not
21 to exceed six months and shall be fined not less than fifty
22 dollars (\$50.00) or more than five hundred dollars (\$500), or
23 both. Any person who violates as a second or subsequent offense
24 Section 17-2A-3 NMSA 1978 or any regulations adopted pursuant to
25 that section is guilty of a fourth degree felony and shall be

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1 sentenced and fined pursuant to the provisions of Section
2 31-18-15 NMSA 1978."

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

5 "17-2A-3. HUNTING GUIDES AND OUTFITTERS. --

6 A. Effective April 1, 1997, it is unlawful to be a
7 hunting guide or outfitter in New Mexico without being
8 registered, except for a private landowner or his ~~[authorized~~
9 ~~agent]~~ regular employee who outfits or guides ~~[pursuant to a~~
10 ~~landowner permit issued by the department of game and fish for~~
11 ~~the landowner's property or for the landowner's shared private~~
12 ~~and public unit]~~ on the landowner's deeded property.

13 B. The state game commission shall adopt regulations
14 by September 1, 1997 to govern the granting of non-interim
15 registration, permits and certificates to hunting guides and
16 outfitters and to regulate the operations and professional
17 conduct of registered hunting guides and outfitters.
18 Regulations shall be adopted in accordance with the following
19 procedures and standards:

20 (1) the commission shall establish dates and
21 locations for a public hearing and provide reasonable prior
22 public notice of a hearing. A public hearing shall be held at a
23 place within any quadrant of the state affected by the proposed
24 regulation when the commission determines there is substantial
25 public interest in holding a hearing in that quadrant;

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

3 (3) notice of a hearing shall:

4 (a) include the date, time and location
5 of the hearing;

6 (b) include a statement of the
7 recommended action;

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

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

12 (e) specify that the public record shall
13 remain open for comments for thirty days after the date of the
14 final hearing; and

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

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

19 (1) without being registered by the state game
20 commission;

21 (2) if the person has had a guide or outfitter
22 license, registration, permit or certificate revoked in another
23 state;

24 (3) if the person has had a guide or outfitter
25 license, registration, permit or certificate suspended in

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[bracketed material] = delete

1 another state and it has not been reinstated; or

2 (4) if the person has been convicted of a
3 felony.

4 D. The state game commission shall develop a point
5 system for the suspension or revocation of a guide or outfitter
6 registration. The point system shall be similar to the point
7 system that governs individual hunting and fishing license
8 privileges.

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

13 (1) be at least eighteen years of age; and

14 (2) pass a written or oral examination approved
15 by the department of game and fish at a date and time approved
16 by the department [~~and~~

17 ~~(3) be endorsed on his application by a New~~
18 ~~Mexico registered or interim registered outfitter].~~

19 F. A registered or interim registered guide shall
20 work only under the supervision of a New Mexico registered or
21 interim registered outfitter and in an area designated by the
22 registered or interim registered outfitter.

23 G. The department of game and fish may provide a
24 registration for a temporary emergency guide, provided the
25 registration is limited to a maximum seven-day period and is

1 granted only in emergency circumstances as determined by the
2 department. The fee for a temporary emergency guide
3 registration is ten dollars (\$10.00).

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

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

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

12 (3) not be a convicted felon or have a history
13 of violation of federal or state game and fish laws or
14 regulations or federal or state guide or outfitter licensing or
15 registration laws or regulations; and

16 (4) pass a written or oral examination approved
17 by the department of game and fish at a date and time determined
18 by the department [and

19 ~~(5) be endorsed by a registered outfitter~~].

20 I. A registered outfitter shall:

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

23 (2) responsibly supervise each registered guide
24 working under his direction;

25 (3) provide a written contract for outfitting

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1 services, signed by the registered outfitter and identifying the
2 outfitter's registration number, to each resident and
3 nonresident who seeks to use ~~[and before the nonresident applies~~
4 ~~for, a license granted from a special drawing for a hunt on~~
5 ~~public lands pursuant to the provisions of Section 17-3-16 NMSA~~
6 ~~1978]~~ the services of a registered outfitter,

7 (4) register with the taxation and revenue
8 department and provide proof of that registration to the
9 department of game and fish; and

10 (5) provide at least one registered guide or
11 outfitter for every four or fewer resident or nonresident
12 hunters ~~[who are granted a license, pursuant to an application~~
13 ~~listing the outfitter's registration number, from a special~~
14 ~~drawing for a hunt on public lands pursuant to the provisions of~~
15 ~~Section 17-3-16 NMSA 1978]~~ who have contracted for outfitter
16 services.

17 J. The department of game and fish shall provide to
18 the taxation and revenue department a copy of each outfitter
19 registration that is granted.

20 K. No person shall be allowed to charge a processing
21 or other fee to obtain for a resident or nonresident a license
22 that is granted from a special drawing for a hunt on public
23 lands pursuant to the provisions of Section 17-3-16 NMSA 1978,
24 unless the person who obtains the license is a registered New
25 Mexico guide or outfitter who physically accompanies the

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1 resident or nonresident hunter on the hunt, except that nothing
2 in this subsection shall prohibit the department of game and
3 fish from collecting an application fee

4 ~~[L. The department of game and fish shall develop by~~
5 ~~September 1, 1996 a point system to provide preferences for the~~
6 ~~use of registered outfitters who are New Mexico residents. The~~
7 ~~point system shall include a progressive preference based upon~~
8 ~~the total number of years of guiding or outfitting operations in~~
9 ~~New Mexico.~~

10 M-) L. A New Mexico resident registered outfitter
11 shall be ~~[defined by the state game commission in accordance~~
12 ~~with regulations it adopts. The regulations shall require] a~~
13 registered outfitter who is a resident as defined in Section
14 17-3-4 NMSA 1978. The state game commission shall adopt
15 regulations that set forth additional requirements and that
16 shall include at a minimum that a resident registered outfitter
17 shall maintain a ~~[residence and]~~ business address in New Mexico
18 and derive at least fifty percent of his guiding or outfitting
19 income from guiding or outfitting ~~[services provided]~~ in New
20 Mexico, as determined by gross receipts or corporate or
21 individual income tax returns for the immediately preceding
22 three years. ~~[The registration applicant may voluntarily~~
23 ~~provide copies of the necessary tax records or the taxation and~~
24 ~~revenue department shall assist the commission as needed to make~~
25 ~~this determination. Tax records shall be confidential.~~

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1 ~~N.-]~~ M. The department of game and fish shall
2 maintain for public distribution a list of New Mexico registered
3 outfitters.

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

7 ~~[P.-]~~ O. The annual registration fee to be a
8 registered outfitter in New Mexico is five hundred dollars
9 (\$500) for either a resident [~~and five thousand dollars (\$5,000)~~
10 ~~for~~] or a nonresident.

11 ~~[Q.-]~~ P. Annual registration fees for guides and
12 outfitters shall be deposited in the game protection fund.

13 ~~[R.-]~~ Q. The state game commission shall adopt by
14 September 1, 1996 interim regulations, consistent to the
15 greatest extent practicable with the provisions of this section,
16 to provide for the granting of interim registrations to guides
17 and outfitters. The commission shall issue interim
18 registrations prior to mailing applications for 1997 licensed
19 hunts to persons who qualify for interim registration and submit
20 applications to the department of game and fish by November 1,
21 1996.

22 ~~[S.-]~~ R. A person adversely affected by an action,
23 other than a regulation, taken pursuant to the provisions of
24 this section, including the denial, suspension or revocation of
25 a registration, license, permit or certificate, may seek review

1 of the action pursuant to the provisions of the Uniform
2 Licensing Act.

3 [F.] S. A person adversely affected by a regulation
4 adopted by the state game commission pursuant to this section
5 may appeal to the court of appeals. All appeals shall be made
6 upon the record at the hearing and shall be taken to the court
7 of appeals within thirty days following the date of the action.
8 The date of the action shall be the date of the filing of the
9 regulation by the commission, pursuant to the provisions of the
10 State Rules Act.

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

13 (1) arbitrary, capricious or an abuse of
14 discretion;

15 (2) not supported by substantial evidence in
16 the record; or

17 (3) otherwise not in accordance with law.

18 [V.] U. After a hearing and a showing of good cause
19 by the appellant, a stay of a regulation being appealed may be
20 granted:

21 (1) by the state game commission; or

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

25 [W.] V. The appellant shall pay all costs for any

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1 appeal found to be frivolous by the court of appeals. "

2 Section 3. Section 17-3-16 NMSA 1978 (being Laws 1964 (1st
3 S.S.), Chapter 17, Section 7, as amended) is amended to read:

4 "17-3-16. FUNDS--SPECIAL DRAWINGS FOR LICENSES. --

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

15 B. Beginning with the licenses issued from a special
16 drawing for a hunt code on public lands that commences on or
17 after April 1, 1997:

18 [~~(1) seventeen percent of the licenses shall be~~
19 ~~issued to nonresidents. Except for antelope and javelina~~
20 ~~licenses, each nonresident applicant shall, at the time of~~
21 ~~submission of the application for the license, sign the~~
22 ~~application and identify the registration number of the New~~
23 ~~Mexico registered outfitter who will be used with the hunting~~
24 ~~party that includes the nonresident. The nonresident shall be~~
25 ~~required to contract for outfitting services with the New Mexico~~

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1 ~~registered outfitter identified in the application. Except for~~
2 ~~antelope and javelina licenses, the nonresident shall not be~~
3 ~~allowed to hunt with a license issued from a drawing for a hunt~~
4 ~~on public lands without utilizing and being physically~~
5 ~~accompanied on the hunt by the New Mexico registered outfitter~~
6 ~~identified in the application, or one of that outfitter's~~
7 ~~guides; provided, however, that this requirement shall not apply~~
8 ~~to lands under the control of the federal military if the~~
9 ~~military objects to it. In a hunt covered by this paragraph~~
10 ~~that requires a New Mexico registered guide, there shall be at~~
11 ~~least one New Mexico registered guide or outfitter accompanying~~
12 ~~every four or fewer nonresident hunters;~~

13 ~~(2) three percent of the licenses shall be~~
14 ~~issued to individuals listed on an application where at least~~
15 ~~two of the applicants are residents and no more than two of the~~
16 ~~applicants are nonresidents. Each resident must be a New Mexico~~
17 ~~resident for at least one year prior to submitting the~~
18 ~~application. Nonresidents listed on such applications shall not~~
19 ~~be required to utilize the services of a registered New Mexico~~
20 ~~guide or outfitter, provided the nonresidents are physically~~
21 ~~accompanied on the hunt for that hunt code by the residents~~
22 ~~listed on the application; and]~~

23 (1) up to twenty percent of the licenses shall
24 be issued to nonresidents; and

25 ~~[(3)]~~ (2) at least eighty percent of the

1 licenses shall be issued to residents of New Mexico.

2 C. If the number of nonresidents who apply for
3 licenses pursuant to the provisions of ~~[Paragraphs (1) and (2)]~~
4 Paragraph (1) of Subsection B of this section does not
5 constitute the ~~[allocated percentages]~~ maximum allowable twenty
6 percent figure identified in ~~[those provisions for a hunt code]~~
7 that paragraph, then all of the nonresident applicants shall be
8 granted licenses, and the remainder of the licenses shall be
9 made available to residents for the special drawing for that
10 hunt code.

11 D. If the determination of ~~[seventeen percent or~~
12 ~~three percent in Paragraphs (1) and (2)]~~ twenty percent in
13 Paragraph (1) of Subsection B of this section yields a fraction
14 of:

15 (1) five-tenths or greater, the number of
16 licenses to be issued shall be rounded up to the next whole
17 number; and

18 (2) less than five-tenths, the number of
19 licenses shall be rounded down to the next whole number.

20 E. The fee for a nonresident license for a special
21 drawing in a high-demand hunt covered in Subsection B of this
22 section shall be assessed at the same rate as a license for
23 nonresident quality elk or quality deer. As used in this
24 subsection, "high-demand hunt" means:

25 (1) a hunt where the total number of

1 nonresident applicants for a hunt code in each unit exceeds
2 twenty percent of the total applicants based on data for the two
3 immediately preceding years; or

4 (2) an additional hunt code designated by the
5 department of game and fish as a quality hunt. "

6 Section 4. REPEAL. --

7 A. That version of Section 17-3-16 NMSA 1978 (being
8 Laws 1996, Chapter 89, Section 2) that is to become effective
9 June 30, 1999 is repealed.

10 B. Laws 1996, Chapter 89, Sections 6 and 7 are
11 repealed.

12 Section 5. SEVERABILITY. --If any part or application of
13 this act or Laws 1996, Chapter 89, Sections 1 and 3 through 5 is
14 held invalid, the remainder or its application to other
15 situations or persons shall not be affected.

16 Section 6. ACT RETROACTIVE. --In the event this act is not
17 enacted with the emergency clause, to make it effective prior to
18 April 1, 1997, upon its effective date its provisions shall be
19 made retroactive in operation to April 1, 1997.

20 Section 7. EMERGENCY. --It is necessary for the public
21 peace, health and safety that this act take effect immediately.

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FORTY-THIRD LEGISLATURE

SB 430/a

FIRST SESSION, 1997

February 26, 1997

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

SENATE BILL 430

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 4, lines 8 and 9, strike the brackets and line-through for "authorized agent" and strike "regular employee".

2. On page 4, line 9, after "guides" strike the bracket and line-through, strike the line-through on lines 10 and 11 and on line 12, strike the bracket and line-through.

3. On page 4, line 12, strike "on the landowner's deeded property".

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

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4. On page 8, line 15, after "for" strike "outfitter" and insert in lieu thereof "an outfitter's guided".

5. On page 8, strike lines 24 and 25, and on page 9, line 1, strike "resident or nonresident hunter on the hunt,".

6. On page 10, lines 20 and 21, and strike "by November 1, 1996".

7. On page 13, line 23, strike "up to".

8. On page 13, line 25, strike "at least".

9. On page 14, strike lines 2 through 10, and insert the following:

"C. If the number of nonresidents or residents who apply for licenses pursuant to the provisions of Paragraphs (1) and (2) of Subsection B of this section does not constitute the allocated

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**FORTY-THIRD LEGISLATURE
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percentages for either category of nonresidents or residents, then the additional licenses available shall be granted to the other category of nonresidents or residents. "

10. On page 14, lines 12 and 13, strike "twenty percent in Paragraph (1) of" and insert in lieu thereof "the percentages in", and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

Michael S. Sanchez, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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

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Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: None

Excused: Maci as, Tsosi e

Absent: None

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FORTY-THIRD LEGISLATURE SB 430/a
FIRST SESSION, 1997

March 6, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE BILL 430, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 13, line 23, strike "twenty" and insert in lieu
thereof "twenty-two".

2. On page 13, line 24, before the semicolon insert:

divided as follows:

(a) twelve percent of the licenses to be drawn
by nonresidents who will be guided by a New Mexico outfitter or
guide; and

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

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(b) ten percent of the licenses to be drawn by nonresidents who are not required to be guided by a New Mexico outfitter or guide".

3. On page 13, line 25, strike "eighty" and insert in lieu thereof "seventy-eight".

4. On page 15, line 2, strike "twenty" and insert in lieu thereof "twenty-two".

5. On page 15, line 2, after "applicants" strike the remainder of the line, strike line 3 and insert in lieu thereof "and where the total applicants for a hunt exceeds the number of licenses available based on application data indicating that this criteria occurred in each of the two immediately preceding years; or".

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FIRST SESSION, 1997**

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Respectfully submitted,

Ben. D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

No: None

Excused: Carraro, McKibben

Absent: None

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

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 6, 1997

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 430, as amended

Amendment sponsored by Senator Carlos R. Cisneros

1. On page 9, line 18, after "and" insert ", except as provided in Subsection Q of this section,".

2. On page 10, between lines 12 and 13, insert a new subsection:

"Q. A resident interim registered or registered outfitter may apply for inactive status of his registration for any period in which he does not operate as an outfitter. The state game commission shall reactivate an outfitter registration at the request of the outfitter and upon proof that the outfitter

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FORTY-THIRD LEGISLATURE
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complies with the provisions of this section and upon payment of
the annual registration fee for the year the registration is being
reinstated and payment of a reinstatement fee of not to exceed
fifty dollars (\$50.00). "

Carlos R. Cisneros

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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[bracketed material] = delete