

1 HOUSE BILL 426

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO WILDLIFE; ENACTING THE NEW MEXICO WILDLIFE
12 PROTECTION AND PUBLIC SAFETY ACT; PROVIDING FOR RESTRICTIONS ON
13 THE USE OF TRAPS AND POISONS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
17 through 4 of this act may be cited as the "New Mexico Wildlife
18 Protection and Public Safety Act".

19 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
20 New Mexico Wildlife Protection and Public Safety Act:

21 A. "body-gripping trap" means a trap that grips an
22 animal's body or body part, including, but not limited to,
23 steel-jawed leg-hold traps, padded-jaw leg-hold traps,
24 conibear-type traps and all other kill-type traps and snares.
25 Cage and box traps, catch poles when being physically used by a

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1 person, corral traps, colony traps, nets, suitcase-type live
2 beaver traps, glue traps and common rat and mouse traps shall
3 not be considered body-gripping traps for the purposes of the
4 New Mexico Wildlife Protection and Public Safety Act;

5 B. "conibear-type trap" means a spring-loaded,
6 rotating jaw trap intended to deal a crushing and fatal blow to
7 an animal when the animal passes through;

8 C. "department" means the department of game and
9 fish;

10 D. "domestic animal" means any animal under human
11 control, such as cats, dogs or livestock;

12 E. "ecosystem management" means actions that
13 maintain or increase the long-term sustainability of whole
14 ecosystems;

15 F. "feral animal" means any domestic animal that
16 has escaped human control and is now living freely;

17 G. "person" means any local, state or federal
18 governmental agency or municipality; an individual; a
19 partnership; a corporation; an organization; a trade or
20 professional association; a firm; a limited liability company;
21 a joint venture; an association; a trust; an estate; or any
22 other legal entity and any officer, member, shareholder,
23 director, employee, agent or representative thereof;

24 H. "poison" means any substance applied in a manner
25 intended to kill, but excludes commercially available rodent

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1 poisons applied to kill rodent pests;

2 I. "public land" does not include privately owned
3 property or lands belonging to an Indian nation, tribe or
4 pueblo;

5 J. "raw fur" means any fur, pelt or skin that has
6 not been tanned or cured, except that salt- or sun-cured pelts
7 are raw furs;

8 K. "scientific research" means an investigation by
9 employees or contractors of the department; the United States
10 fish and wildlife service; or other government agencies,
11 nongovernmental organizations, educational institutions or
12 individuals who are affiliated with educational institutions
13 conducting investigations and who have applied for and received
14 a permit from the department; provided that any such
15 investigation leads to generalizable knowledge and is conducted
16 in accordance with a university-based institutional animal care
17 and use committee, or a similar process developed in accordance
18 with policies of the United States public health service, and
19 is not being conducted for commercial gain from the sale of
20 animal parts;

21 L. "snare" means any device, with or without stops,
22 often with a noose, that is used to capture, strangle or
23 otherwise entangle wildlife;

24 M. "trap" means a device designed to confine or
25 immobilize an animal, including a body-gripping trap; however,

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1 common rat and mouse traps shall not be considered traps for
2 purposes of the New Mexico Wildlife Protection and Public
3 Safety Act; and

4 N. "wildlife" means any member of the animal
5 kingdom, including all mammals, birds, reptiles, amphibians,
6 fish and other vertebrate species that are native to or found
7 in New Mexico and are not under the direct control of a human
8 or in captivity; "wildlife" does not include feral or escaped
9 animals or rodent pests.

10 SECTION 3. [NEW MATERIAL] PROHIBITIONS--EXCEPTIONS.--

11 A. Notwithstanding any other provision of law, it
12 is a violation of the New Mexico Wildlife Protection and Public
13 Safety Act for a person to:

14 (1) set or use, or attempt to set or use, a
15 trap to kill or capture wildlife on public land;

16 (2) set or use, or attempt to set or use, a
17 body-gripping trap to kill or capture any feral or domestic
18 animal on public land;

19 (3) apply or use, or attempt to apply or use,
20 any poison to kill or injure wildlife or a feral animal on
21 public land; or

22 (4) buy, sell, barter or otherwise exchange
23 for profit or to offer to buy, sell, barter or otherwise
24 exchange for profit the raw fur of any protected or unprotected
25 fur-bearing animal taken by a trap or poison.

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1 B. The provisions of Subsection A of this section
2 shall not prohibit:

3 (1) the taking of wildlife or feral or
4 domestic animals by federal, state, county or municipal
5 government employees or their duly authorized agents when
6 prohibited devices or methods are the only feasible method
7 available to protect human health and safety;

8 (2) the taking of beaver or muskrats by use of
9 a conibear-type trap partially or wholly submerged in water by
10 federal, state, county or municipal government employees or
11 their duly authorized agents when the trap is the only feasible
12 method available to protect public waterways, levees or dams;

13 (3) the taking of wildlife by traps to conduct
14 scientific research;

15 (4) the use of traps to protect threatened or
16 endangered species, if used by the department or its agents or
17 by the United States fish and wildlife service or its agents;

18 (5) the use of non-body-gripping traps for the
19 lawful taking of wildlife to abate damages caused to property,
20 crops or livestock. Traps used for this purpose must be
21 checked every twenty-four hours by the person who set the
22 traps, or the person's designee, and any captured wildlife
23 removed. Captured wildlife found alive must be released
24 immediately or killed, unless permission has been granted by
25 the department for relocation and release. If captured

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1 wildlife is to be killed, it shall be killed:

2 (a) by gunshot, where local ordinances,
3 landowners and safety permit;

4 (b) using compressed carbon dioxide gas
5 obtained from cylinders and used in conjunction with a chamber
6 that is capable of achieving the precise and optimal flow and
7 concentration for the species; or

8 (c) by humane euthanasia by injection;
9 provided that it is performed by a person trained and
10 authorized to administer a controlled substance manufactured
11 and sold for the purpose of euthanizing animals;

12 (6) employees or agents of a state or federal
13 agency from acting in the course of the employee's or agent's
14 duties regarding ecosystem management; or

15 (7) the use of the devices or methods
16 described in Subsection A of this section for the otherwise
17 lawful taking of:

18 (a) terrestrial rodent pests;
19 (b) wild birds; or
20 (c) fish or other nonmammalian aquatic
21 wildlife by the department or the United States fish and
22 wildlife service.

23 C. The provisions of Subsection A of this section
24 shall not apply to the taking of wildlife with firearms,
25 fishing equipment, archery equipment, falconry equipment or

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1 other implements in hand as authorized by law.

2 SECTION 4. [NEW MATERIAL] PENALTIES--FORFEITURE.--

3 A. A person who violates the New Mexico Wildlife
4 Protection and Public Safety Act is, for a first offense,
5 guilty of a misdemeanor and shall be sentenced pursuant to the
6 provisions of Section 31-19-1 NMSA 1978. Upon a second or
7 subsequent conviction for a violation of that act, the offender
8 is guilty of a fourth degree felony and shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978.

10 B. A person who violates the New Mexico Wildlife
11 Protection and Public Safety Act shall be strictly liable in a
12 civil action for damages.

13 C. In addition to other penalties, upon conviction,
14 the court may consider appropriate restitution to any state
15 agency or nonprofit organization whose purpose it is to protect
16 and conserve wildlife or domestic animals.

17 SECTION 5. Section 17-5-3 NMSA 1978 (being Laws 1939,
18 Chapter 178, Section 3, as amended) is amended to read:

19 "17-5-3. SEASONS--SPECIAL PERMITS TO TAKE ANIMALS DOING
20 DAMAGE.--Fur-bearing animals, as defined in Section 17-5-2 NMSA
21 1978, shall be taken only during the seasons declared by
22 regulation of the state game commission promulgated as provided
23 in Section 17-5-4 NMSA 1978. The director of the department of
24 game and fish may, however, issue permits at any time for the
25 taking of fur-bearing animals doing damage to game, private

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1 property, poultry or livestock pursuant to the provisions of
2 the New Mexico Wildlife Protection and Public Safety Act."

3 SECTION 6. Section 17-5-5 NMSA 1978 (being Laws 1939,
4 Chapter 178, Section 5, as amended) is amended to read:

5 "17-5-5. [~~TRAPPER'S~~] FUR-BEARER LICENSES.--

6 A. No resident who has reached [~~his twelfth~~
7 ~~birthday~~] the age of twelve shall capture, trap, kill or
8 possess any fur-bearing animal or attempt to do so without
9 first procuring a resident [~~trapper's~~] fur-bearer license; or,
10 in the case of a resident who has reached [~~his twelfth~~
11 ~~birthday~~] the age of twelve but not [~~his eighteenth birthday~~]
12 the age of eighteen, a resident junior [~~trapper's~~] fur-bearer
13 license.

14 B. No nonresident shall capture, trap, kill or
15 possess any fur-bearing animal or skunk or coyote or attempt to
16 do so without first procuring a nonresident [~~trapper's~~] fur-
17 bearer license.

18 C. No nonresident who resides in a state that does
19 not permit New Mexico residents to procure nonresident
20 [~~trapper's~~] fur-bearer licenses may purchase a New Mexico
21 nonresident [~~trapper's~~] fur-bearer license.

22 D. Trappers shall release all fur-bearing animals
23 trapped during closed seasons, and resident trappers who
24 release all fur-bearing animals during open seasons need not
25 procure a [~~trapper's~~] fur-bearer license.

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1 E. Trappers on official business, paid from state
2 and federal funds and under supervision of the department of
3 game and fish, the New Mexico department of agriculture or the
4 United States fish and wildlife service need not purchase a
5 [~~trapper's~~] fur-bearer license.

6 F. Trapping of animals, both fur-bearing and
7 nongame, by a resident in order to protect [~~his~~] the resident's
8 livestock or domesticated animals or fowl shall [~~not be subject~~
9 ~~to rules and regulations on trapping made pursuant to Section~~
10 ~~17-5-4 NMSA 1978 or to licensing requirements provided in this~~
11 ~~section~~] not require a fur-bearer license.

12 G. The state game commission may by regulation
13 require holders of [~~trapper's~~] fur-bearer licenses to use
14 bobcat pelt tags and may specify the conditions for use of the
15 tags.

16 H. Trapping under this section shall be undertaken
17 pursuant to the provisions of the New Mexico Wildlife
18 Protection and Public Safety Act."

19 SECTION 7. Section 17-5-6 NMSA 1978 (being Laws 1939,
20 Chapter 178, Section 6, as amended) is amended to read:

21 "17-5-6. FUR [~~DEALER~~] DEALER'S LICENSES.--

22 A. Except for [~~trappers~~] hunters selling their own
23 [~~catches~~] pelts, any person, firm or corporation engaged in the
24 business of buying or selling unprocessed skins or pelts of any
25 fur-bearing animal obtained as a result of hunting is a "fur

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1 dealer". It is a misdemeanor to engage in business as a fur
2 dealer or solicit such business without first procuring a fur
3 [~~dealer~~] dealer's license, except that resident fur dealers who
4 buy and sell less than fifty skins or pelts of fur-bearing
5 animals each year need not purchase a fur [~~dealer~~] dealer's
6 license.

7 B. Every fur dealer shall file with the department
8 of game and fish, not later than the tenth of each month, a
9 sworn statement showing the number and kind of skins and pelts
10 of fur-bearing animals purchased and sold during the preceding
11 month.

12 C. The provisions of this section apply to fur
13 dealers who buy and sell the skins or pelts of predatory
14 animals as well as to those who buy and sell the skins or pelts
15 of protected nonpredatory fur-bearing animals."

16 SECTION 8. Section 17-5-7 NMSA 1978 (being Laws 1939,
17 Chapter 178, Section 7) is amended to read:

18 "17-5-7. DISPOSITION OF LICENSE FEES.--All fees for
19 [~~trappers~~] fur-bearer licenses and fur [~~dealers~~] dealer's
20 licenses shall be collected by the [~~State Game Warden~~] director
21 of the department of game and fish and turned over to the state
22 treasurer to be credited to the game protection fund; provided
23 that license vendors shall retain ten cents [~~(+10¢)~~] (\$.10) for
24 each license sold as compensation for [~~his~~] their services, but
25 no regular employee of the [~~State Game~~] department of game and

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1 fish shall be entitled to [~~such~~] that fee."

2 SECTION 9. Section 77-15-3 NMSA 1978 (being Laws 1919,
3 Chapter 119, Section 3, as amended) is amended to read:

4 "77-15-3. APPORTIONMENT OF APPROPRIATION--SALE OF FURS
5 AND SPECIMENS--BOUNTY.--

6 A. The funds [~~hereby~~] appropriated in Sections
7 77-15-1 through 77-15-5 NMSA 1978 shall be apportioned for
8 predatory animal destruction and rodent pest repression in such
9 amounts as may be stated in [~~such~~] the agreement or, in the
10 absence of [~~such~~] an agreement, as may be determined by the
11 president of New Mexico state university, who shall forward a
12 certificate of such apportionment to the department of finance
13 and administration and a duplicate [~~thereof~~] of the certificate
14 to the state treasurer, who shall [~~thereupon~~] credit the funds
15 available for the [~~said~~] appropriations to the predatory animal
16 fund and the rodent pest repression fund, respectively, as
17 stated in [~~said~~] the certificate. [~~Said~~] The funds shall be
18 expended in amounts as authorized by [~~said~~] the president of
19 New Mexico state university and disbursed by warrants issued by
20 the secretary of finance and administration upon itemized
21 vouchers or payrolls certified by the predatory animal
22 inspector of the bureau of biological survey of the United
23 States fish and wildlife service or by the state rodent
24 inspector or the assistant of the biological survey in charge
25 of rodent pest repression, respectively.

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