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SENATE BILL 453

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

William H. Payne

AN ACT

**RELATING TO GAME AND FISH; PROVIDING CLARIFICATION ON
REGISTRATION REQUIREMENTS AND SERVICE FEES; AMENDING A SECTION
OF THE NMSA 1978.**

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, as amended) 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.**

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1 B. The state game commission shall adopt
2 regulations by September 1, 1997 to govern the granting of
3 non-interim registration, permits and certificates to hunting
4 guides and outfitters and to regulate the operations and
5 professional conduct of registered hunting guides and
6 outfitters. Regulations shall be adopted in accordance with
7 the following procedures and standards:

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

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

17 (3) notice of a hearing shall:

18 (a) include the date, time and location
19 of the hearing;

20 (b) include a statement of the
21 recommended action;

22 (c) include an indication of the
23 location and availability of the public file on the
24 regulation;

25 (d) indicate where and by what date

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1 written and oral comments and testimony may be received; and

2 (e) specify that the public record
3 shall remain open for comments for thirty days after the date
4 of the final hearing; and

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

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

9 (1) without being registered by the state
10 game commission;

11 (2) if the person has had a guide or
12 outfitter license, registration, permit or certificate revoked
13 in another state;

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

17 (4) if the person has been convicted of a
18 felony.

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

24 E. To be granted a registration to be a guide, an
25 applicant shall, in addition to any other reasonable criteria

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1 adopted by the state game commission, and except as provided
2 for persons granted an interim registration:

3 (1) be at least eighteen years of age; and
4 (2) pass a written or oral examination
5 approved by the department of game and fish at a date and time
6 approved by the department.

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

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

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

22 (1) be at least twenty-one years of age;
23 (2) have operated as a New Mexico registered
24 guide for at least three years or have been granted an interim
25 outfitter's registration;

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1 (3) not be a convicted felon or have a
2 history of violation of federal or state game and fish laws or
3 regulations or federal or state guide or outfitter licensing
4 or registration laws or regulations; and

5 (4) pass a written or oral examination
6 approved by the department of game and fish at a date and time
7 determined by the department.

8 I. A registered outfitter shall:

9 (1) provide proof of commercial liability
10 insurance of at least five hundred thousand dollars
11 (\$500,000);

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

14 (3) provide a written contract for outfitting
15 services, signed by the registered outfitter and identifying
16 the outfitter's registration number, to each resident and
17 nonresident who seeks to use the services of a registered
18 outfitter;

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 resident or nonresident
24 hunters who have contracted for an outfitter's guided
25 services.

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

4 K. Except as provided in this subsection, no
5 person shall be allowed to charge a processing or other fee to
6 obtain for a resident or nonresident a license that is granted
7 from a special drawing for a hunt on public lands pursuant to
8 the provisions of Section 17-3-16 NMSA 1978, except that
9 nothing in this subsection shall prohibit the department of
10 game and fish from collecting an application fee. Persons
11 involved in licensing services, booking agencies or license
12 brokering that do not provide direct guide and outfitter
13 services shall not be required to register with the department
14 of game and fish and may charge a fee, other than the
15 application fee for a license, for their services.

16 L. A New Mexico resident registered outfitter
17 shall be a registered outfitter who is a resident as defined
18 in Section 17-3-4 NMSA 1978. The state game commission shall
19 adopt regulations that set forth additional requirements and
20 that shall include at a minimum that a resident registered
21 outfitter shall maintain a business address in New Mexico and,
22 except as provided in Subsection Q of this section, derive at
23 least fifty percent of his guiding or outfitting income from
24 guiding or outfitting in New Mexico, as determined by gross
25 receipts or corporate or individual income tax returns for the

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1 immediately preceding three years.

2 M. The department of game and fish shall maintain
3 for public distribution a list of New Mexico registered
4 outfitters.

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

8 O. The annual registration fee to be a registered
9 outfitter in New Mexico is five hundred dollars (\$500) for
10 either a resident or a nonresident.

11 P. Annual registration fees for guides and
12 outfitters shall be deposited in the game protection fund.

13 Q. A resident interim registered or registered
14 outfitter may apply for inactive status of his registration
15 for any period in which he does not operate as an outfitter.
16 The state game commission shall reactivate an outfitter
17 registration at the request of the outfitter and upon proof
18 that the outfitter complies with the provisions of this
19 section and upon payment of the annual registration fee for
20 the year the registration is being reinstated and payment of a
21 reinstatement fee of not to exceed fifty dollars (\$50.00).

22 R. The state game commission shall adopt by
23 September 1, 1996 interim regulations, consistent to the
24 greatest extent practicable with the provisions of this
25 section, to provide for the granting of interim registrations

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1 to guides and outfitters. The commission shall issue interim
2 registrations prior to mailing applications for 1997 licensed
3 hunts to persons who qualify for interim registration and
4 submit applications to the department of game and fish.

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

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

19 U. Upon appeal, the court of appeals shall set
20 aside a regulation only if it is found to be:

- 21 (1) arbitrary, capricious or an abuse of
22 discretion;
23 (2) not supported by substantial evidence in
24 the record; or
25 (3) otherwise not in accordance with law.

1 V. After a hearing and a showing of good cause by
2 the appellant, a stay of a regulation being appealed may be
3 granted:

4 (1) by the state game commission; or

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

8 W. The appellant shall pay all costs for any
9 appeal found to be frivolous by the court of appeals. "