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**HOUSE BILL 798**

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

**INTRODUCED BY**

**Bengie Regensberg**

**AN ACT**

**RELATING TO GAME AND FISH; PROVIDING THAT CERTAIN LANDOWNER  
TAKINGS CAN ONLY OCCUR IN THE CASE OF AN IMMEDIATE THREAT TO  
HUMAN LIFE.**

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

**Section 1. Section 17-2-7.2 NMSA 1978 (being Laws 1997,  
Chapter 224, Section 3) is amended to read:**

**"17-2-7.2. LANDOWNER TAKING-- CONDITIONS-- DEPARTMENT  
RESPONSIBILITIES. --**

**A. A landowner or lessee, or employee of either,  
may take or kill an animal on private land, in which they have  
an ownership or leasehold interest, including game animals and  
other quadrupeds, game birds and fowl, that presents an  
immediate threat to human life [~~or an immediate threat of  
damage to property, including crops~~]; provided, however, that**

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1 the taking or killing is reported to the department [~~of game~~  
2 ~~and fish~~] within twenty-four hours and before the removal of  
3 the carcass of the animal killed, in accordance with  
4 regulations adopted by the commission.

5 B. A landowner or lessee, or employee of either,  
6 may take or kill animals on private land, in which they have  
7 an ownership or leasehold interest, including game animals and  
8 other quadrupeds, game birds and fowl, that present a threat  
9 to human life [~~or damage to property, including crops~~]  
10 according to regulations adopted by the commission. The  
11 regulations shall:

12 (1) provide a method for filing a complaint  
13 to the department by the landowner or lessee, or employee of  
14 either of them, of the existence of a depredation problem;

15 (2) provide for various departmental  
16 interventions, depending upon the type of animal and  
17 depredation;

18 (3) require the department to offer at least  
19 three different interventions, if practical;

20 (4) require the department to respond to the  
21 initial and any subsequent complaints within ten days with an  
22 intervention response to the complaint and to carry out the  
23 intervention, if agreed upon between the department and the  
24 landowner, within five days of that agreement;

25 (5) permit the landowner or lessee to reject

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1 for good cause the interventions offered by the department;

2 and

3 [~~(6) require a landowner or lessee to~~  
4 ~~demonstrate that the property depredation is greater in value~~  
5 ~~than the value of any wildlife related income or fee collected~~  
6 ~~by the landowner or lessee for permission to take or kill an~~  
7 ~~animal of the same species on the private property or portion~~  
8 ~~of the private property identified in the complaint as the~~  
9 ~~location where the depredation occurred; and~~

10 ~~(7)]~~ (6) permit the landowner, lessee or  
11 employee, when interventions by the department have not been  
12 successful and after one year from the date of the filing of  
13 the initial complaint, to kill or take an animal believed  
14 responsible for [property] depredation.

15 C. For purposes of this section:

16 (1) "commission" means the state game  
17 commi ssi on;

18 (2) "department" means the department of game  
19 and fish; and

20 (3) "intervention" means a solution proposed  
21 by the department to eliminate the depredation. "

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

24 "17-2-10. VIOLATION OF GAME AND FISH LAWS OR  
25 [REGULATIONS] RULES-- PENALTIES. --

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1           A. ~~[Any]~~ A person violating any of the provisions  
2 of Chapter 17 NMSA 1978 or any ~~[regulations]~~ rules adopted by  
3 the state game commission that relate to the time, extent,  
4 means or manner that game animals, birds or fish may be  
5 hunted, taken, captured, killed, possessed, sold, purchased or  
6 shipped is guilty of a misdemeanor and upon conviction may be  
7 sentenced to imprisonment in the county jail for a term not to  
8 exceed six months. In addition, the person shall be sentenced  
9 to the payment of a fine in accordance with the following  
10 schedule:

11                   (1) for illegally taking, attempting to take,  
12 killing, capturing or possessing of each deer, antelope,  
13 javelina, bear or cougar during a closed season, a fine of  
14 four hundred dollars (\$400);

15                   (2) for illegally taking, attempting to take,  
16 killing, capturing or possessing of each elk, bighorn sheep,  
17 oryx, ibex or Barbary sheep, a fine of one thousand dollars  
18 (\$1,000);

19                   (3) for hunting big game without a proper and  
20 valid license, lawfully procured, a fine of one hundred  
21 dollars (\$100);

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

24                   (5) for attempting to exceed the bag limit of  
25 any big game species by the hunting of any big game animal

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1 after having tagged a similar big game species, a fine of two  
2 hundred dollars (\$200);

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

7 (7) for using a hunting or fishing license  
8 issued to another person, a fine of one hundred dollars  
9 (\$100);

10 (8) for a violation of Section 17-2-31 NMSA  
11 1978, a fine of three hundred dollars (\$300);

12 (9) for selling, offering for sale, offering  
13 to purchase or purchasing any big game animal, unless  
14 otherwise provided by Chapter 17 NMSA 1978, a fine of one  
15 thousand dollars (\$1,000);

16 (10) for illegally taking, attempting to  
17 take, killing, capturing or possessing of each jaguar, a fine  
18 of two thousand dollars (\$2,000); and

19 (11) for a violation of the provisions of  
20 Subsection A of Section 17-2A-3 NMSA 1978, a fine of five  
21 hundred dollars (\$500).

22 B. A person convicted a second time for violating  
23 any of the provisions of Chapter 17 NMSA 1978 or any  
24 [~~regulations~~] rules adopted by the state game commission that  
25 relate to the time, extent, means or manner that game animals,

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1 birds or fish may be hunted, taken, captured, killed,  
2 possessed, sold, purchased or shipped is guilty of a  
3 misdemeanor and upon conviction may be sentenced to  
4 imprisonment in the county jail for a term of not more than  
5 three hundred sixty-four days. In addition, the person shall  
6 be sentenced to the payment of a fine in accordance with the  
7 following schedule:

8 (1) for illegally taking, attempting to take,  
9 killing, capturing or possessing of each deer, antelope,  
10 javelina, bear or cougar during a closed season, a fine of six  
11 hundred dollars (\$600);

12 (2) for illegally taking, attempting to take,  
13 killing, capturing or possessing of each elk, bighorn sheep,  
14 oryx, ibex or Barbary sheep, a fine of one thousand five  
15 hundred dollars (\$1,500);

16 (3) for hunting big game without a proper and  
17 valid license, lawfully procured, a fine of four hundred  
18 dollars (\$400);

19 (4) for exceeding the bag limit of any big  
20 game species, a fine of six hundred dollars (\$600);

21 (5) for attempting to exceed the bag limit of  
22 any big game species by the hunting of any big game animal  
23 after having tagged a similar big game species, a fine of six  
24 hundred dollars (\$600);

25 (6) for signing a false statement to procure

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1 a resident hunting or fishing license when the applicant is  
2 residing in another state at the time of application for a  
3 license, a fine of six hundred dollars (\$600);

4 (7) for using a hunting or fishing license  
5 issued to another person, a fine of two hundred fifty dollars  
6 (\$250);

7 (8) for a violation of Section 17-2-31 NMSA  
8 1978, a fine of five hundred dollars (\$500);

9 (9) for selling, offering for sale, offering  
10 to purchase or purchasing any big game animal, unless  
11 otherwise provided by Chapter 17 NMSA 1978, a fine of one  
12 thousand five hundred dollars (\$1,500);

13 (10) for illegally taking, attempting to  
14 take, killing, capturing or possessing of each jaguar, a fine  
15 of four thousand dollars (\$4,000); and

16 (11) for a violation of the provisions of  
17 Subsection A of Section 17-2A-3 NMSA 1978, a fine of one  
18 thousand dollars (\$1,000).

19 C. Notwithstanding the provisions of  
20 Section 31-18-13 NMSA 1978, a person convicted a third or  
21 subsequent time for violating any of the provisions of Chapter  
22 17 NMSA 1978 or any ~~regulations~~ rules adopted by the state  
23 game commission that relate to the time, extent, means or  
24 manner that game animals, birds or fish may be hunted, taken,  
25 captured, killed, possessed, sold, purchased or shipped is

1 guilty of a misdemeanor and upon conviction may be sentenced  
2 to imprisonment in the county jail for a term of not less than  
3 ninety days, which shall not be suspended or deferred, and not  
4 more than three hundred sixty-four days. In addition, the  
5 person shall be sentenced to the payment of a fine in  
6 accordance with the following schedule:

7 (1) for illegally taking, attempting to take,  
8 killing, capturing or possessing of each deer, antelope,  
9 javelina, bear or cougar during a closed season, a fine of one  
10 thousand two hundred dollars (\$1,200);

11 (2) for illegally taking, attempting to take,  
12 killing, capturing or possessing of each elk, bighorn sheep,  
13 oryx, ibex or Barbary sheep, a fine of three thousand dollars  
14 (\$3,000);

15 (3) for hunting big game without a proper and  
16 valid license, lawfully procured, a fine of one thousand  
17 dollars (\$1,000);

18 (4) for exceeding the bag limit of any big  
19 game species, a fine of one thousand two hundred dollars  
20 (\$1,200);

21 (5) for attempting to exceed the bag limit of  
22 any big game species by the hunting of any big game animal  
23 after having tagged a similar big game species, a fine of one  
24 thousand dollars (\$1,000);

25 (6) for signing a false statement to procure



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1 a resident hunting or fishing license when the applicant is  
2 residing in another state at the time of application for a  
3 license, a fine of one thousand two hundred dollars (\$1,200);

4 (7) for using a hunting or fishing license  
5 issued to another person, a fine of one thousand dollars  
6 (\$1,000);

7 (8) for a violation of Section 17-2-31 NMSA  
8 1978, a fine of one thousand dollars (\$1,000);

9 (9) for selling, offering for sale, offering  
10 to purchase or purchasing any big game animal, unless  
11 otherwise provided by Chapter 17 NMSA 1978, a fine of three  
12 thousand dollars (\$3,000);

13 (10) for illegally taking, attempting to  
14 take, killing, capturing or possessing of each jaguar, a fine  
15 of six thousand dollars (\$6,000); and

16 (11) for a violation of the provisions of  
17 Subsection A of Section 17-2A-3 NMSA 1978, a fine of two  
18 thousand dollars (\$2,000).

19 D. ~~[Any]~~ A person who is convicted of a violation  
20 of any ~~[regulations]~~ rules adopted by the state game  
21 commission that relate to the time, extent, means or manner  
22 that game animals, birds or fish may be hunted, taken,  
23 captured, killed, possessed, sold, purchased or shipped or of  
24 a violation of any of the provisions of Chapter 17 NMSA 1978,  
25 for which a punishment is not set forth under this section,

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1 shall be fined not less than fifty dollars (\$50.00) or more  
2 than five hundred dollars (\$500) or imprisoned not more than  
3 six months or both.

4 E. The provisions of this section shall not be  
5 interpreted to prevent, constrain or penalize a Native  
6 American for engaging in activities for religious purposes, as  
7 provided in Section 17-2-14 or 17-2-41 NMSA 1978.

8 F. The provisions of this section shall not apply  
9 to a landowner or lessee, or employee of either of them, who  
10 kills an animal on private land, in which they have an  
11 ownership or leasehold interest, that is threatening human  
12 life [~~or damaging or destroying property, including crops~~];  
13 provided, however, that the killing is reported to the  
14 department of game and fish within twenty-four hours and  
15 before the removal of the carcass of the animal killed; and  
16 provided further that all actions authorized in this  
17 subsection are carried out according to [~~regulations~~] rules of  
18 the department. "

19 Section 3. Section 17-2-26 NMSA 1978 (being Laws 1912,  
20 Chapter 85, Section 45, as amended) is amended to read:

21 "17-2-26. CIVIL LIABILITY. --

22 A. The director of the department of game and  
23 fish, or any other officer charged with enforcement of the  
24 laws relating to game and fish if so directed by the director,  
25 may bring a civil action in the name of the state against any

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1 person unlawfully wounding or killing, or unlawfully in  
2 possession of, any game quadruped, bird or fish, or part  
3 thereof, and recover judgment for the following minimum sums  
4 as damage for the taking, killing or injuring:

5	for each elk-----	\$ 500.00
6	for each deer-----	250.00
7	for each antelope-----	250.00
8	for each mountain sheep-----	1,000.00
9	for each Barbary sheep-----	250.00
10	for each black bear-----	500.00
11	for each cougar-----	500.00
12	for each bison-----	600.00
13	for each ibex-----	1,000.00
14	for each oryx-----	1,000.00
15	for each javelina-----	100.00
16	for each beaver-----	65.00
17	for each bird-----	20.00
18	for each fish-----	5.00
19	for each endangered species-----	500.00
20	for each raptor-----	200.00
21	for each turkey-----	150.00
22	for each jaguar-----	2,000.00.

23 B. No verdict or judgment recovered by the state  
24 in an action shall be for less than the sum fixed in this  
25 section. The action for damages may be joined with an action

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1 for possession, and recovery may be had for the possession as  
2 well as the damages.

3 C. The pendency or determination of an action for  
4 damages or payment of a judgment, or the pendency or  
5 determination of a criminal prosecution for the same taking,  
6 wounding, killing or possession, is not a bar to the other,  
7 nor does either affect the right of seizure under any other  
8 provision of the laws relating to game and fish.

9 D. The provisions of this section shall not be  
10 interpreted to prevent, constrain or penalize a Native  
11 American for engaging in activities for religious purposes, as  
12 provided in Section 17-2-14 or 17-2-41 NMSA 1978.

13 E. The provisions of this section shall not apply  
14 to a landowner or lessee, or employee of either of them, who  
15 kills an animal on private land, in which they have an  
16 ownership or leasehold interest, that is threatening human  
17 life [~~or damaging or destroying property, including crops~~];  
18 provided, however, that the killing is reported to the  
19 department of game and fish within twenty-four hours and  
20 before the removal of the carcass of the animal killed; and  
21 provided further that all actions authorized in this  
22 subsection are carried out according to [~~regulations~~] rules of  
23 the department. "