

HOUSE BILL 579

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

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

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

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

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

A. "body-gripping trap" means a trap that grips an  
animal's body or body part, including, but not limited to,  
steel-jawed leg-hold traps, padded-jaw leg-hold traps,  
conibear-type traps and all other kill-type traps and snares.  
Cage and box traps, colony traps, nets, suitcase-type live

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

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

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

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

11 E. "feral animal" means any domestic animal that  
12 has escaped human control and is now living freely;

13 F. "non-lethal" means any method not resulting in  
14 or intending to result in the death of the animal. Non-lethal  
15 methods include, but are not limited to, exclusion, such as  
16 fencing or other devices that block access; frightening devices  
17 using visual, auditory or scent deterrents; guard animals or  
18 human herders or guards; and other industry-accepted methods  
19 that are effective in reducing losses. Where obstruction of  
20 waterways is concerned, methods include the use of water-level  
21 control devices, including bafflers and levelers;

22 G. "person" means any local, state or federal  
23 governmental agency or municipality; an individual; a  
24 partnership; a corporation; an organization; a trade or  
25 professional association; a firm; a limited liability company;

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1 a joint venture; an association; a trust; an estate; or any  
2 other legal entity and any officer, member, shareholder,  
3 director, employee, agent or representative thereof;

4 H. "poison" means any substance applied in a manner  
5 intended to kill, but excludes commercially available rodent  
6 poisons applied to kill rodent pests;

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

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

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

25 L. "trap" means a device designed to confine or

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1 immobilize an animal, including a body-gripping trap; however,  
2 common rat and mouse traps shall not be considered traps for  
3 purposes of the New Mexico Wildlife Protection and Public  
4 Safety Act; and

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

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

12 A. It is a violation of the New Mexico Wildlife  
13 Protection and Public Safety Act for:

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

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

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

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

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1 (5) the owner, possessor or any other person  
2 in control of a lot, track or parcel of land to knowingly  
3 permit the unlawful use of a trap or poison to kill or injure  
4 wildlife or a feral or domestic animal on the property.

5 B. The provisions of Subsection A of this section  
6 shall not prohibit:

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

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

17 (3) the taking of wildlife by traps to conduct  
18 scientific research;

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

22 (5) the use of non-body-gripping traps for the  
23 lawful taking of wildlife to abate damages caused to property,  
24 crops or livestock. Traps used for this purpose must be  
25 checked every twenty-four hours by the person who set the

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1 traps, or the person's designee, and any captured wildlife  
2 removed. Captured wildlife found alive must be released  
3 immediately or killed, unless permission has been granted by  
4 the department for relocation and release. If captured  
5 wildlife is to be killed, it shall be killed:

6 (a) by gunshot, where local ordinances,  
7 landowners and safety permit;

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

12 (c) by humane euthanasia by injection,  
13 provided it is performed by a person trained and authorized to  
14 administer a controlled substance manufactured and sold for the  
15 purpose of euthanizing animals;

16 (6) the taking of wildlife with a conibear-  
17 type trap set in water, or a padded leg-hold trap used with a  
18 permit issued by the department to abate damages caused to  
19 property, crops or livestock that cannot be reasonably abated  
20 by non-body-gripping traps or nonlethal control tools on  
21 private land. Any person requesting a damage-control permit  
22 must apply in writing, stating the threat or damages, the  
23 nonlethal control methods attempted or why they cannot be  
24 applied, and agreeing to use the traps for no more than thirty  
25 days under the permit granted. A person may be issued only one

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1 thirty-day permit each calendar year. Traps used for this  
2 purpose must be checked every twenty-four hours by the person  
3 who set the traps, or the person's designee, and any captured  
4 wildlife removed. Captured wildlife found alive must be  
5 released immediately or killed unless permission has been  
6 granted by the department for relocation and release. If  
7 captured wildlife is to be killed, it shall be killed:

8 (a) by gunshot, where local ordinances,  
9 landowners and safety permit;

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

14 (c) by humane euthanasia by injection,  
15 provided it is performed by a person trained and authorized to  
16 administer a controlled substance manufactured and sold for the  
17 purpose of euthanizing animals; or

18 (7) the use of the devices or methods  
19 described in Subsection A of this section for the otherwise  
20 lawful taking of:

21 (a) rodent pests;  
22 (b) wild birds; or  
23 (c) fish or other nonmammalian aquatic  
24 wildlife by the department or the United States fish and  
25 wildlife service.

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1           C. The provisions of Subsection A of this section  
2 shall not apply to the taking of wildlife with firearms,  
3 fishing equipment, archery equipment, falconry equipment or  
4 other implements in hand as authorized by law.

5           **SECTION 4. [NEW MATERIAL] PENALTIES--FORFEITURE.--**

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

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

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

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

22           "17-5-3. SEASONS--SPECIAL PERMITS TO TAKE ANIMALS DOING  
23 DAMAGE.--Fur-bearing animals, as defined in Section 17-5-2 NMSA  
24 1978, shall be taken only during the seasons declared by  
25 regulation of the state game commission promulgated as provided

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1 in Section 17-5-4 NMSA 1978. The director of the department of  
2 game and fish may, however, issue permits at any time for the  
3 taking of fur-bearing animals doing damage to game, private  
4 property, poultry or livestock pursuant to the provisions of  
5 the New Mexico Wildlife Protection and Public Safety Act."

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

8 "17-5-5. [~~TRAPPER'S~~] FUR-BEARER LICENSES.--

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

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

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

25 [~~D. Trappers shall release all fur-bearing animals~~

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1 ~~trapped during closed seasons, and resident trappers who~~  
2 ~~release all fur-bearing animals during open seasons need not~~  
3 ~~procure a trapper's license.~~

4 ~~E.]~~ D. Trappers on official business, paid from  
5 state and federal funds and under supervision of the department  
6 of game and fish, the New Mexico department of agriculture or  
7 the United States fish and wildlife service need not purchase a  
8 [~~trapper's~~] fur-bearer license. Trapping under this subsection  
9 shall be undertaken pursuant to the provisions of the New  
10 Mexico Wildlife Protection and Public Safety Act.

11 [~~F.]~~ E. Trapping of animals, both fur-bearing and  
12 nongame, by a resident in order to protect [~~his~~] the resident's  
13 livestock or domesticated animals or fowl shall [~~not be subject~~  
14 ~~to rules and regulations on trapping made pursuant to Section~~  
15 ~~17-5-4 NMSA 1978 or to licensing requirements provided in this~~  
16 ~~section]~~ be undertaken pursuant to the provisions of the New  
17 Mexico Wildlife Protection and Public Safety Act.

18 [~~G.]~~ F. The state game commission may by regulation  
19 require holders of [~~trapper's~~] fur-bearer licenses to use  
20 bobcat pelt tags and may specify the conditions for use of the  
21 tags."

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

24 "17-5-6. FUR [~~DEALER~~] DEALER'S LICENSES.--

25 A. Except for [~~trappers~~] hunters selling their own

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1 [atches] pelts, any person, firm or corporation engaged in the  
2 business of buying or selling unprocessed skins or pelts of any  
3 fur-bearing animal obtained as a result of hunting is a "fur  
4 dealer". It is a misdemeanor to engage in business as a fur  
5 dealer or solicit such business without first procuring a fur  
6 [~~dealer~~] dealer's license, except that resident fur dealers who  
7 buy and sell less than fifty skins or pelts of fur-bearing  
8 animals each year need not purchase a fur [~~dealer~~] dealer's  
9 license.

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

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

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

21 "17-5-7. DISPOSITION OF LICENSE FEES.--All fees for  
22 [~~trappers~~] fur-bearer licenses and fur [~~dealers~~] dealer's  
23 licenses shall be collected by the [~~State Game Warden~~] director  
24 of the department of game and fish and turned over to the state  
25 treasurer to be credited to the game protection fund; provided

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1 that license vendors shall retain ten cents [~~(+10¢)~~] (\$.10) for  
2 each license sold as compensation for [~~his~~] their services, but  
3 no regular employee of the [~~State Game~~] department of game and  
4 fish shall be entitled to [~~such~~] that fee."

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

7 "77-15-3. APPORTIONMENT OF APPROPRIATION--SALE OF FURS  
8 AND SPECIMENS--BOUNTY.--

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

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1 rodent inspector or the assistant of the biological survey in  
2 charge of rodent pest repression, respectively.

3 B. All furs, skins and specimens taken by hunters  
4 [~~or trappers~~] paid from the state funds shall be sold upon  
5 sealed bids, after advertisement, as may be prescribed by the  
6 president of [~~said~~] New Mexico state university, and the  
7 proceeds of [~~such~~] the sales shall be paid to the state  
8 treasurer to be credited and added to [~~said~~] the predatory  
9 animal fund; provided that any specimens [~~so~~] taken may be  
10 presented free of charge to the museum of New Mexico [~~museum~~]  
11 or any state institution.

12 C. No bounty shall be collected from any county for  
13 animals taken by hunters [~~or trappers~~] operating under such  
14 agreements, and scalps of animals [~~so~~] taken shall be destroyed  
15 or [~~cancelled~~] canceled or marked in such manner that they  
16 cannot be used by any other person for collecting of bounty."

17 **SECTION 10. EFFECTIVE DATE.**--The effective date of the  
18 provisions of this act is July 1, 2013.