

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 121

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO HIGHWAYS; REINSTATING THE DEPARTMENT OF
TRANSPORTATION'S DUTY TO MAINTAIN FENCING, CATTLE GUARDS AND
LIVESTOCK WARNING SIGNS ON PUBLIC HIGHWAYS; AMENDING AND
RECOMPILING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 66-7-363 NMSA 1978 (being Laws 1953,
Chapter 139, Section 119.1, as amended) is amended to read:

"66-7-363. ANIMALS ON HIGHWAY--HIGHWAY FENCING---

A. It is unlawful for any person, during the hours
of darkness, to ride a horse or other animal upon the traveled
portion of any highway that is normally used by motor vehicles.

B. It is unlawful for any person negligently to
permit livestock to wander or graze upon any fenced highway at
any time or, during the hours of darkness, to drive livestock

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underscored material = new
[bracketed material] = delete

1 along or upon any highway that is normally used by motor
2 vehicles.

3 C. Owners of livestock ranging in pastures through
4 which unfenced roads or highways pass shall not be liable for
5 damages by reason of injury or damage to persons or property
6 occasioned by collisions of vehicles using the roads and
7 highways and livestock ranging in the pastures unless the owner
8 of the livestock is guilty of [~~specific~~] gross negligence other
9 than allowing livestock to range in the pasture.

10 D. The department of transportation shall:

11 (1) construct, inspect regularly and maintain
12 fences along all highways under its jurisdiction and provide
13 cattle underpasses, water pipelines and cattle guards as the
14 department of transportation may deem necessary, unless it
15 makes a fact determination that no livestock can enter the
16 highway from a portion left unfenced; and

17 (2) post proper signs along all highways under
18 its jurisdiction that are not fenced on both sides and that are
19 located adjacent to property containing livestock. The signs
20 shall be located at intervals of not more than two miles along
21 such unfenced highways; provided that sign intervals and
22 postings shall be consistent with the department of
23 transportation's specifications for a uniform system of
24 traffic-control devices, subject to traffic safety engineering
25 discretion, and shall warn motorists that loose livestock may

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1 be encountered and that caution should be used.

2 ~~[D.]~~ E. A person who violates the provisions of
3 Subsection A or B of this section is guilty of a penalty
4 assessment misdemeanor.

5 F. As used in this section, "gross negligence"
6 means an act or omission done without the exercise of even
7 slight care under the circumstances."

8 SECTION 2. Section 30-8-14 NMSA 1978 (being Laws 1975,
9 Chapter 283, Section 1) is recompiled as Section 66-7-363.1
10 NMSA 1978 and is amended to read:

11 "66-7-363.1. ~~[HIGHWAY]~~ DEPARTMENT OF TRANSPORTATION--
12 AGREEMENTS WITH OWNERS OR LESSEES OF HIGHWAY FRONTAGE--
13 PROVISIONS.--

14 A. Notwithstanding the responsibility of the
15 ~~[highway]~~ department of transportation under the provisions of
16 Section ~~[40A-8-10 NMSA 1953]~~ 66-7-363 NMSA 1978 to construct,
17 inspect regularly and maintain fences along all highways under
18 its jurisdiction, the ~~[highway]~~ department of transportation
19 may enter into an agreement with an owner or lessee of property
20 adjoining a public highway to keep a specified section of the
21 highway frontage unfenced for use as roadside business;
22 provided, however, that ~~[such]~~ the owner or lessee, whoever is
23 party to the agreement, ~~[shall agree]~~ agrees:

24 (1) to assume full responsibility for
25 constructing and maintaining livestock fencing on the property

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1 ~~[which he]~~ that the owner or lessee owns or leases in such a
2 manner so as to prevent the entry of livestock onto the
3 highway; and

4 (2) to be liable for any damage caused by
5 livestock entering upon the public highway from ~~[his]~~ the
6 owner's or lessee's property if the property in question is not
7 fenced or the fencing not maintained pursuant to the agreement
8 with the ~~[highway]~~ department of transportation.

9 B. Nothing in this section shall preclude an owner
10 or lessee who has entered into an agreement with the ~~[highway]~~
11 department of transportation pursuant to this section from also
12 being subject to the penalties set out in Section ~~[40A-8-10~~
13 ~~NMSA 1953]~~ 66-7-363 NMSA 1978."