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AN ACT

RELATING TO LIVESTOCK; DEFINING "EQUINE" AND SUBSTITUTING THAT TERM FOR "HORSE"; REVISING PROCEDURES FOR EQUINE ESTRAYS; AMENDING THE LIVESTOCK CODE AND OTHER SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 7-2-30.7 NMSA 1978 (being Laws 2013, Chapter 49, Section 2) is amended to read:

"7-2-30.7. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--EQUINE SHELTER RESCUE FUND.--

A. Any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the equine shelter rescue fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Equine Shelter Rescue Fund - Check [] if you wish to contribute a part or all of your tax refund to the equine shelter rescue fund. Enter here

1 \$_____ the amount of your contribution.".

2 C. The provisions of this section do not apply to
3 income tax refunds subject to interception under the
4 provisions of the Tax Refund Intercept Program Act, and any
5 designation made under the provisions of this section to such
6 refunds is void."

7 SECTION 2. Section 30-18-1.2 NMSA 1978 (being Laws
8 1999, Chapter 107, Section 3, as amended) is amended to read:

9 "30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

10 A. If the court finds that a seized animal is not
11 being cruelly treated and that the animal's owner is able to
12 provide for the animal adequately, the court shall return the
13 animal to its owner.

14 B. If the court finds that a seized animal is
15 being cruelly treated or that the animal's owner is unable to
16 provide for the animal adequately, the court shall hold a
17 hearing to determine the disposition of the animal.

18 C. An agent of the New Mexico livestock board, an
19 animal control agency operated by the state, a county or a
20 municipality, or an animal shelter or other animal welfare
21 organization designated by an animal control agency or an
22 animal shelter, in the custody of which an animal that has
23 been cruelly treated has been placed may petition the court
24 to request that the animal's owner may be ordered to post
25 security with the court to indemnify the costs incurred to

1 care and provide for the seized animal pending the
2 disposition of any criminal charges of committing cruelty to
3 animals pending against the animal's owner.

4 D. The court shall determine the amount of
5 security while taking into consideration all of the
6 circumstances of the case including the owner's ability to
7 pay, and may conduct periodic reviews of its order. If the
8 posting of security is ordered, the New Mexico livestock
9 board, animal control agency, animal shelter or animal
10 welfare organization may, with permission of the court, draw
11 from the security to indemnify the costs incurred to care and
12 provide for the seized animal pending disposition of the
13 criminal charges.

14 E. If the owner of the animal does not post
15 security within fifteen days after the issuance of the order,
16 or if, after reasonable and diligent attempts the owner
17 cannot be located, the animal may be deemed abandoned and
18 relinquished to the New Mexico livestock board, animal
19 control agency, animal shelter or animal welfare organization
20 for adoption or humane destruction; provided that if the
21 animal is livestock other than poultry associated with
22 cockfighting, the animal may be sold pursuant to the
23 procedures set forth in Section 77-18-2 NMSA 1978.

24 F. Nothing in this section shall prohibit an owner
25 from voluntarily relinquishing an animal to an animal control

1 agency or shelter in lieu of posting security. A voluntary
2 relinquishment shall not preclude further prosecution of any
3 criminal charges alleging that the owner has committed felony
4 cruelty to animals.

5 G. Upon conviction, the court shall place the
6 animal with an animal shelter or animal welfare organization
7 for placement or for humane destruction.

8 H. As used in this section, "livestock" means all
9 domestic or domesticated animals that are used or raised on a
10 farm or ranch and exotic animals in captivity and includes
11 equines as defined in Section 77-2-1.1 NMSA 1978, cattle,
12 sheep, goats, swine, bison, poultry, ostriches, emus, rheas,
13 camelids and farmed cervidae but does not include canine or
14 feline animals."

15 SECTION 3. Section 77-2-1.1 NMSA 1978 (being Laws 1993,
16 Chapter 248, Section 2, as amended) is amended to read:

17 "77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

18 A. "animals" or "livestock" means all domestic or
19 domesticated animals that are used or raised on a farm or
20 ranch, including the carcasses thereof, and exotic animals in
21 captivity and includes equines, cattle, sheep, goats, swine,
22 bison, poultry, ostriches, emus, rheas, camelids and farmed
23 cervidae upon any land in New Mexico. "Animals" or
24 "livestock" does not include canine or feline animals;

25 B. "bill of sale" means an instrument in

1 substantially the form specified in The Livestock Code by
2 which the owner or the owner's authorized agent transfers to
3 the buyer the title to animals described in the bill of sale;

4 C. "bison" or "buffalo" means a bovine animal of
5 the species bison;

6 D. "board" means the New Mexico livestock board;

7 E. "bond" means cash or an insurance agreement
8 from a New Mexico licensed surety or insurance corporation
9 pledging surety for financial loss caused to another,
10 including certificate of deposit, letter of credit or other
11 surety as may be approved by the grain inspection, packers
12 and stockyards administration of the United States department
13 of agriculture or the board;

14 F. "brand" means a symbol or device in a form
15 approved by and recorded with the board as may be sufficient
16 to readily distinguish livestock should they become
17 intermixed with other livestock;

18 G. "brand inspector" means an inspector who is not
19 certified as a peace officer;

20 H. "carcasses" means dead or dressed bodies of
21 livestock or parts thereof;

22 I. "cattle" means animals of the genus bos,
23 including dairy cattle, and does not include any other kind
24 of livestock;

25 J. "dairy cattle" means animals of the genus bos

1 raised not for consumption but for dairy products and
2 distinguished from meat breed cattle;

3 K. "director" means the executive director of the
4 board;

5 L. "disease" means a communicable, infectious or
6 contagious disease;

7 M. "district" means a livestock inspection
8 district;

9 N. "equine" means a horse, pony, mule, donkey or
10 hinny;

11 O. "estrays" means livestock found running at large
12 upon public or private lands, either fenced or unfenced,
13 whose owner is unknown, or that is branded with a brand that
14 is not on record in the office of the board or is a freshly
15 branded or marked offspring not with its branded or marked
16 mother, unless other proof of ownership is produced;

17 P. "inspector" means a livestock or brand
18 inspector;

19 Q. "livestock inspector" means a certified
20 inspector who is granted full law enforcement powers for
21 enforcement of The Livestock Code and other criminal laws
22 relating to livestock;

23 R. "mark" means an ear tag or ownership mark that
24 is not a brand;

25 S. "meat" means the edible flesh of poultry, birds SB 271
Page 6

1 or animals sold for human consumption and includes livestock,
2 poultry and livestock and poultry products;

3 T. "mule" means a hybrid resulting from the cross
4 of a horse and an ass; and

5 U. "person" means an individual, firm,
6 partnership, association, corporation or similar legal
7 entity."

8 SECTION 4. Section 77-2-30 NMSA 1978 (being Laws 2005,
9 Chapter 236, Section 1) is amended to read:

10 "77-2-30. EQUINE RESCUE OR RETIREMENT FACILITY--
11 REGISTRATION--BOARD POWERS AND DUTIES--FEES.--

12 A. As used in this section, "facility" means an
13 equine rescue or retirement facility, including a private
14 reserve or private preserve, that advertises or solicits for
15 equines and provides lifelong care or finds new owners for
16 equines that are unwanted or have been neglected or abused or
17 captured wild equines that cannot be returned to their range.

18 B. A facility shall not operate in New Mexico
19 unless registered by the board.

20 C. The board shall:

21 (1) register facilities that meet the
22 requirements of this section;

23 (2) annually consult with representatives
24 from the equine industry, equine rescue organizations and
25 veterinarians on facility standards; and

1 (3) after consideration of recommendations
2 by national organizations for the care of unwanted equines
3 and equine rescue and retirement facilities, promulgate rules
4 for facilities, including:

- 5 (a) health and sanitary requirements;
- 6 (b) standards for barns, paddocks,
7 pastures and ranges;
- 8 (c) qualifications of the facility
9 staff;
- 10 (d) provision of veterinary care;
- 11 (e) feeding and watering requirements;
- 12 (f) transportation;
- 13 (g) a process to issue a temporary
14 capacity waiver to a facility for the purpose of transferring
15 equines in the custody of the board to a facility; and
- 16 (h) other requirements necessary to
17 ensure the humane care of equines.

18 D. The board may charge the following fees:

- 19 (1) an initial inspection and registration
20 fee of not more than two hundred fifty dollars (\$250);
- 21 (2) an annual inspection and registration
22 fee of not more than one hundred dollars (\$100); and
- 23 (3) reinspection fees of not more than one
24 hundred dollars (\$100).

25 E. Fees collected pursuant to this section shall

1 be deposited in the New Mexico livestock board general fund
2 and may be used to carry out the provisions of this section
3 and Section 77-2-31 NMSA 1978."

4 SECTION 5. Section 77-2-31 NMSA 1978 (being Laws 2005,
5 Chapter 236, Section 2) is amended to read:

6 "77-2-31. EQUINE RESCUE OR RETIREMENT
7 FACILITIES--INSPECTIONS--REINSPECTION.--

8 A. Prior to annual registration, each facility
9 shall be inspected in accordance with board rules.

10 B. The board or its agents may enter the premises
11 of a facility to conduct unannounced inspections.

12 C. If, following an inspection, the board
13 determines that the facility does not meet the board's
14 minimum facility requirements, it shall give the registrant
15 written notice of the deficiencies and schedule a
16 reinspection, allowing a reasonable time for the registrant
17 to correct the deficiencies.

18 D. The registrant shall remedy the deficiencies
19 and submit evidence to the board demonstrating compliance
20 with board rules for the facility.

21 E. If on reinspection the board determines that
22 the facility is still deficient in those areas for which it
23 has been given written notice, the equines may be impounded
24 in accordance with the provisions of Section 77-18-2 NMSA
25 1978 and the board shall hold a hearing as provided in the

1 Uniform Licensing Act to determine if the registration should
2 be suspended or revoked.

3 F. If a facility's registration is suspended or
4 revoked, the board shall place the equines in another
5 facility."

6 SECTION 6. Section 77-2-32 NMSA 1978 (being Laws 2013,
7 Chapter 49, Section 1) is amended to read:

8 "77-2-32. EQUINE SHELTER RESCUE FUND--CREATED.--

9 A. The "equine shelter rescue fund" is created as
10 a nonreverting fund in the state treasury. The fund consists
11 of appropriations, gifts, grants, donations and amounts
12 designated pursuant to Section 7-2-30.7 NMSA 1978. The board
13 shall administer the fund, and money in the fund is
14 appropriated to the board to carry out the intent of aiding
15 equine rescues and homeless equines in the state.

16 B. The board shall establish by rule the
17 distribution of funds from the equine shelter rescue fund to
18 equine rescue and retirement facilities registered by the
19 board pursuant to Section 77-2-30 NMSA 1978, taking into
20 consideration the number of equines being cared for in each
21 facility and the need of each facility."

22 SECTION 7. Section 77-13-4 NMSA 1978 (being Laws 1907,
23 Chapter 80, Section 4, as amended) is amended to read:

24 "77-13-4. OWNER UNKNOWN--PUBLICATION AND POSTING OF
25 NOTICE.--

1 A. If the director is unable to determine from the
2 records and description who is the owner or probable owner of
3 an estray, the director shall publish at least once in some
4 publication in general circulation in the county in which the
5 estray animal was picked up, the publication to be designated
6 by the board, a notice of the estray.

7 B. For an estray that is not an equine, the notice
8 shall give a description of the animal, shall state when and
9 where the animal was impounded and shall give notice that
10 unless the animal is claimed by the legal owner within five
11 days after the publication of the notice, the animal shall be
12 sold by the board for the benefit of the owner when found.

13 C. For an estray that is an equine, the notice
14 shall give a description of the equine and shall:

15 (1) state when and where the equine was
16 impounded and shall give notice that, unless the equine is
17 claimed by the legal owner within five days after publication
18 of the notice, a registered equine rescue or retirement
19 facility shall be given the right of first refusal to
20 purchase the equine for an ownership transfer fee equal to
21 all actual costs incurred by the impounding agency in caring
22 for the equine while the equine was impounded; and

23 (2) give notice that if a registered equine
24 rescue or retirement facility is unable or unwilling to
25 purchase the equine, the board shall auction the equine

1 through a sealed-bid process administered by the board and
2 established in rule and that if the equine is not purchased
3 through the sealed-bid process, the board may pursue an
4 alternative placement for care with a last resort option to
5 humanely euthanize the equine by a licensed veterinarian."

6 SECTION 8. Section 77-13-5 NMSA 1978 (being Laws 1907,
7 Chapter 80, Section 5, as amended) is amended to read:

8 "77-13-5. DISPOSITION OF UNCLAIMED ESTRAYS--BILL OF
9 SALE--EFFECT--SALE WITHOUT ADVERTISEMENT--CONDITIONS.--

10 A. If an estray that is not an equine is not
11 claimed within five days after publication of notice, it may
12 be sold by the board through an inspector in such manner as
13 the board may direct. The inspector making the sale shall
14 give a bill of sale to the purchaser from the board, signed
15 by the inspector. The bill of sale shall be legal evidence
16 of the ownership of the livestock by the purchaser and shall
17 be a legal title to the livestock. Where the director
18 determines that it is impractical to publish notice, the
19 estray may be sold immediately without notice. In such case,
20 the board shall publish notice of the proceeds from the sale
21 of the estray in the same manner and for the same length of
22 time as provided for the notice of the sale and shall hold
23 and distribute the proceeds from the sale in the same manner
24 as if the sale were made after notice.

25 B. If the estray is an equine and the equine is

1 not claimed within five days after publication of notice:

2 (1) the board shall give a registered equine
3 rescue or retirement facility the right of first refusal to
4 purchase the equine for an ownership transfer fee;

5 (2) the ownership transfer fee shall be
6 equal to all actual costs incurred by the impounding agency
7 in caring for the equine while the equine was impounded;

8 (3) the board shall provide a bill of sale
9 to the registered equine rescue or retirement facility that
10 purchases the equine;

11 (4) the bill of sale shall be legal evidence
12 of the ownership of the equine by the registered equine
13 rescue or retirement facility and shall be legal title to the
14 equine;

15 (5) if a registered equine rescue or
16 retirement facility is unable or unwilling to purchase the
17 equine, the board shall auction the equine through a
18 sealed-bid process administered by the board and established
19 in rule; and

20 (6) if the equine is not purchased through
21 the sealed-bid process, the board may pursue an alternative
22 placement for care with a last resort option to humanely
23 euthanize the equine by a licensed veterinarian."

24 SECTION 9. Section 77-14-7 NMSA 1978 (being Laws 1909,
25 Chapter 146, Section 4, as amended) is amended to read:

1 "77-14-7. LIVESTOCK RUNNING AT LARGE--WHEN UNLAWFUL--
2 IMPOUNDING--DISPOSITION--SUIT FOR DAMAGES.--

3 A. It is unlawful for the owners of livestock to
4 willfully allow the livestock to run at large within the
5 town, conservancy district, irrigation district or military
6 reservation or enclave. An owner who willfully allows
7 livestock to run at large is guilty of a misdemeanor and upon
8 conviction shall be punished in accordance with the
9 provisions of Section 31-19-1 NMSA 1978 for each offense.

10 B. For livestock that is not an equine, the
11 sheriff or other peace officer or proper military authority
12 or the board shall impound livestock found running at large
13 and sell the livestock at public auction to the highest
14 bidder for cash after giving notice of the time and place of
15 sale in some newspaper published in the county where the
16 violation occurred three days prior to the day of sale;
17 provided that in the case of a military reservation or
18 enclave, the sale shall be conducted by the board pursuant to
19 the procedure set forth in Section 77-14-36 NMSA 1978. The
20 proceeds up to ten dollars (\$10.00) per day for each animal
21 shall be retained by the impounding authority to cover its
22 expense and fees. The balance, if any, shall be paid to the
23 general fund.

24 C. For livestock that is an equine, the sheriff,
25 other peace officer, proper military authority or the board

1 shall impound the equine running at large and give notice in
2 some newspaper published in the county where the violation
3 occurred of three days prior to the day of disposition. The
4 notice shall include a description of the equine and state
5 when and where the equine was impounded and that:

6 (1) unless the equine is redeemed by the
7 legal owner within three days after publication of the
8 notice, a registered equine rescue or retirement facility
9 shall be given the right of first refusal to purchase the
10 equine for an ownership transfer fee equal to all actual
11 costs incurred by the impounding agency in caring for the
12 equine while the equine was impounded;

13 (2) if a registered equine rescue or
14 retirement facility is unable or unwilling to purchase the
15 equine, the board shall auction the equine through a
16 sealed-bid process administered by the board and established
17 in rule;

18 (3) if the equine is not purchased through
19 the sealed-bid process, the board may pursue an alternative
20 placement for care with a last resort option to humanely
21 euthanize the equine by a licensed veterinarian; and

22 (4) any proceeds from the sale of an equine
23 pursuant to this subsection shall be retained by the
24 impounding authority to cover its expenses and costs, and the
25 balance, if any, shall be paid to the general fund.

1 D. The owner of livestock impounded may redeem the
2 livestock at any time prior to disposition by paying the
3 impound fees and costs incurred for each day or portion of a
4 day that the livestock has been in custody; provided that in
5 the case of a military reservation or enclave, redemption
6 shall be allowed pursuant to Section 77-14-36 NMSA 1978.

7 E. A person claiming damages for violation of the
8 provisions of Subsection A of this section may file suit to
9 recover damages as in other civil cases; provided that such
10 damages, in the case of a violation involving a military
11 reservation or enclave, shall include direct, indirect,
12 incidental and consequential damages."

13 SECTION 10. Section 77-14-36 NMSA 1978 (being Laws
14 1975, Chapter 329, Section 1, as amended) is amended to read:

15 "77-14-36. IMPOUNDMENT OF TRESPASS LIVESTOCK.--

16 A. Any livestock found to be in trespass upon the
17 lands of another or running at large upon any public highway
18 that is fenced on both sides or running at large within the
19 limits of any municipality, town or village, whether
20 incorporated or not, or within a military reservation or
21 enclave is subject to impoundment by an agent of the board.
22 The place of impoundment shall be at the nearest or most
23 convenient location from where the trespass occurred.

24 B. Any livestock impounded under the provisions of
25 this section shall be released to the owner or the owner's

1 representative upon the payment by the owner of a fee set by
2 regulation of the board not to exceed amounts prescribed by
3 law for impounding.

4 C. The board shall designate a custodian and a
5 place of impoundment and allow a reasonable fee to be charged
6 by the custodian of the impounded livestock; provided that in
7 case of a controversy as to what constitutes a reasonable
8 charge, the board shall set the amount of the charge.

9 D. This section shall not be construed to affect
10 the obligation of a property owner of meeting the
11 requirements of Section 77-16-1 NMSA 1978 for fencing against
12 such trespasses.

13 E. Any cost charged against trespass livestock
14 will be a lien on the livestock. If the owner does not pay
15 the charges and reclaim possession of the livestock within
16 five days after receipt of notification by the owner, the
17 livestock shall be considered unclaimed estrays and may be
18 disposed of in accordance with the provisions of Section
19 77-13-5 NMSA 1978."

20 SECTION 11. Section 77-18-2 NMSA 1978 (being Laws 1987,
21 Chapter 151, Section 1, as amended) is amended to read:

22 "77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED
23 LIVESTOCK.--

24 A. If a livestock inspector or other peace officer
25 has reason to believe that livestock are being cruelly

1 treated, the inspector or peace officer may apply to a court
2 in the county where the livestock are located for a warrant
3 to seize the allegedly cruelly treated livestock.

4 B. On a showing of probable cause to believe that
5 the livestock are being cruelly treated, the court shall
6 issue a warrant for the seizure of the livestock and set the
7 matter for hearing as expeditiously as possible within thirty
8 days unless good cause for a later time is demonstrated by
9 the state. Seizure as authorized by this section shall be
10 restricted to only those livestock allegedly being cruelly
11 treated. The board by rule shall establish procedures for
12 preserving evidence of alleged cruel treatment of livestock.

13 C. If criminal charges are filed against the
14 owner, the court shall, upon proper petition, proceed to
15 determine if security is required to be posted pursuant to
16 Section 30-18-1.2 NMSA 1978. Otherwise, the judge or
17 magistrate executing the warrant shall notify the board, have
18 the livestock impounded and give written notice to the owner
19 of the livestock of the time and place of a hearing to
20 determine disposition of the livestock. All interested
21 parties, including the district attorney, shall be given an
22 opportunity to present evidence at the hearing.

23 D. For livestock that is not an equine:

24 (1) if the court finds that the owner has
25 cruelly treated the livestock, the court shall order the sale

1 of the livestock at fair market value or order humane
2 destruction; provided that if the livestock are ordered sold,
3 the sale shall occur within ten days of the order; and
4 further provided that if the court does not find that the
5 owner has cruelly treated the livestock, the court shall
6 order the livestock returned to the owner;

7 (2) if the court orders the sale of the
8 livestock, the board shall take proper action to ensure that
9 the livestock are sold at fair market value, including
10 acceptance of reasonable bids or sale at auction; provided
11 that a bid by the owner of the livestock or the owner's
12 representative shall not be accepted; and

13 (3) proceeds from the sale of the livestock
14 shall be forwarded to the court ordering the sale; provided
15 that from these proceeds, the court shall pay all expenses
16 incurred in caring for the livestock while they were
17 impounded and any expenses involved in their sale; and
18 further provided that any excess proceeds of the sale shall
19 be forwarded to the former owner; and further provided that
20 if the expenses incurred in caring for and selling the
21 livestock exceed the amount received from the sale, the court
22 shall order the former owner to pay the additional cost.

23 E. For livestock that is an equine:

24 (1) if the court finds that the owner has
25 cruelly treated the equine, the court shall give a registered

1 equine rescue or retirement facility the right of first
2 refusal to purchase the equine for an ownership transfer fee
3 equal to all actual costs incurred by the impounding agency
4 in caring for the equine while the equine was impounded;
5 provided that:

6 (a) the board shall provide a bill of
7 sale to the registered equine rescue or retirement facility
8 that purchases the equine; and

9 (b) the bill of sale shall be legal
10 evidence of the ownership of the equine by the registered
11 equine rescue or retirement facility and shall be legal title
12 to the equine;

13 (2) if the court finds that the owner has
14 cruelly treated the equine and a registered equine rescue or
15 retirement facility has been given the right of first refusal
16 but the registered equine rescue or retirement facility is
17 unable or unwilling to purchase the equine:

18 (a) the board shall auction the equine
19 through a sealed-bid process administered by the board and
20 established by rule;

21 (b) any proceeds from the sale less
22 expenses incurred in caring for the equine while the equine
23 was impounded shall be forwarded to the former owner;

24 (c) if the expenses incurred in caring
25 for the equine exceed the proceeds from the sale, the court

1 shall order the former owner to pay the additional costs; and

2 (d) if the equine is not purchased
3 through the sealed-bid process, the board may pursue an
4 alternative placement for care with a last resort option to
5 humanely euthanize the equine by a licensed veterinarian; and

6 (3) if the court does not find that the
7 owner cruelly treated the equine, the court shall order the
8 equine returned to the owner."

9 SECTION 12. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2023. _____

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