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

C. Owners of livestock ranging in pastures through  
which unfenced roads or highways pass shall not be liable for  
damages by reason of injury or damage to persons or property  
occasioned by collisions of vehicles using the roads and  
highways and livestock ranging in the pastures unless the  
owner of the livestock is guilty of negligence other than

1 allowing livestock to range in the pasture.

2 D. As the department of transportation's  
3 annual budget permits, the department of transportation  
4 shall:

5 (1) construct, inspect regularly and  
6 maintain fences along all highways under its jurisdiction and  
7 provide cattle underpasses, water pipelines and cattle guards  
8 as the department of transportation may deem necessary,  
9 unless it makes a fact determination that no livestock can  
10 enter the highway from a portion left unfenced; and

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

21 E. A person who violates the provisions of  
22 Subsection A or B of this section is guilty of a penalty  
23 assessment misdemeanor."

24 SECTION 2. Section 30-8-14 NMSA 1978 (being Laws 1975,  
25 Chapter 283, Section 1) is recompiled as Section 66-7-363.1

1 NMSA 1978 and is amended to read:

2 "66-7-363.1. DEPARTMENT OF TRANSPORTATION--AGREEMENTS  
3 WITH OWNERS OR LESSEES OF HIGHWAY FRONTAGE--PROVISIONS.--

4 A. Notwithstanding the responsibility of the  
5 department of transportation under the provisions of Section  
6 66-7-363 NMSA 1978 to construct, inspect regularly and  
7 maintain fences along all highways under its jurisdiction,  
8 the department of transportation may enter into an agreement  
9 with an owner or lessee of property adjoining a public  
10 highway to keep a specified section of the highway frontage  
11 unfenced for use as roadside business; provided, however,  
12 that the owner or lessee, whoever is party to the agreement,  
13 agrees:

14 (1) to assume full responsibility for  
15 constructing and maintaining livestock fencing on the  
16 property that the owner or lessee owns or leases in such a  
17 manner so as to prevent the entry of livestock onto the  
18 highway; and

19 (2) to be liable for any damage caused by  
20 livestock entering upon the public highway from the owner's  
21 or lessee's property if the property in question is not  
22 fenced or the fencing not maintained pursuant to the  
23 agreement with the department of transportation.

24 B. Nothing in this section shall preclude an owner  
25 or lessee who has entered into an agreement with the

1 department of transportation pursuant to this section from  
2 also being subject to the penalties set out in Section  
3 66-7-363 NMSA 1978." \_\_\_\_\_

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