

1 SENATE BILL 326

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Mary Kay Papen

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10 AN ACT

11 RELATING TO RAILROADS; AMENDING A SECTION OF THE LIVESTOCK CODE
12 TO PROVIDE BETTER ENFORCEMENT OF FENCING LAWS REQUIRED OF
13 RAILROADS.

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

16 SECTION 1. Section 77-16-16 NMSA 1978 (being Laws 1889,
17 Chapter 75, Section 1, as amended) is amended to read:

18 "77-16-16. RAILROADS--FENCING OF LINES--DAMAGE.--

19 A. Every railroad in this state whose lines of
20 road, or any part thereof, are open for use and every railroad
21 company formed or to be formed shall, within six months after
22 the lines of [~~such~~] the railroad or any part thereof are open,
23 erect and thereafter maintain fences on the sides of [~~their~~
24 ~~said~~] the railroad or the part thereof so open for use,
25 suitably and amply sufficient to prevent cattle, horses, sheep,

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underscored material = new
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1 mules, burros and hogs from getting on the [~~said~~] railroad,
2 except at the crossings of public roads and highways and within
3 the limits of [~~towns, cities and villages~~] municipalities and
4 shall also construct, where [~~the same has~~] not already [~~been~~]
5 done, and maintain at all public road crossings now existing or
6 hereafter established cattle guards suitable and sufficient to
7 prevent cattle, horses, sheep, burros, mules and hogs from
8 getting onto [~~said~~] the railroad. If any railroad [~~shall fail~~]
9 fails to construct and maintain [~~such~~] fences and cattle guards
10 as [~~herein~~] directed [~~such~~] in this section, the railroad shall
11 be liable to the owner for all damages resulting from injury or
12 death caused to any [~~such~~] livestock, including [~~a~~] reasonable
13 attorney fees, on order of the court should legal proceedings
14 be commenced by [~~such~~] the owner. [~~Provided, further, that~~]
15 Should the [~~cattle sanitary~~] New Mexico livestock board be
16 unable to determine ownership of livestock crippled or killed
17 by the railroad within thirty [~~(30)~~] days of the date it first
18 receives notice of such injury or death, by report or
19 otherwise, then the board may institute legal proceedings in
20 the name of [~~such~~] the unknown owner in any court of competent
21 jurisdiction and recover damages as [~~herein~~] provided in this
22 section, and the proceeds shall be disposed of as provided for
23 under the laws pertaining to estrays.

24 B. In the event that a fence is in a condition of
25 neglect, disrepair or nonexistence, the adjacent landowner may

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underscoring material = new
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1 contact the railroad supervisor or the owner of the right of
2 way by certified mail, return receipt requested, and demand
3 repair or construction to the legal standard provided in
4 Section 77-16-17 NMSA 1978. Within ten days thereafter, the
5 railroad shall commence construction or provide proof of intent
6 to comply, and after ten more days, if the railroad has failed
7 to commence construction or to comply with agreed-upon terms of
8 construction or repair, the adjacent landowner may repair,
9 construct or cause to be repaired or constructed the fence at
10 the expense of the railroad calculated at the cost of
11 commercial rates common to the area. If the railroad fails to
12 comply within thirty days of presentation of proof of cost, the
13 landowner shall be compensated in an amount equal to three
14 times the amount of the presented proof plus any cost of
15 litigation, including attorney fees.

16 C. Narrow-gauge and recreational railroads are
17 exempt from the provisions of this section."