

1 AN ACT

2 RELATING TO RAILROADS; AMENDING A SECTION OF THE LIVESTOCK
3 CODE TO PROVIDE BETTER ENFORCEMENT OF FENCING LAWS REQUIRED
4 OF RAILROADS.

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

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

9 "77-16-16. RAILROADS--FENCING OF LINES--DAMAGE.--

10 A. Every railroad in this state whose lines of
11 road, or any part thereof, are open for use and every
12 railroad company formed or to be formed shall, within six
13 months after the lines of the railroad or any part thereof
14 are open, erect and thereafter maintain fences on the sides
15 of the railroad or the part thereof so open for use, suitably
16 and amply sufficient to prevent cattle, horses, sheep, mules,
17 burros and hogs from getting on the railroad, except at the
18 crossings of public roads and highways and within the limits
19 of municipalities and shall also construct, where not already
20 done, and maintain at all public road crossings now existing
21 or hereafter established cattle guards suitable and
22 sufficient to prevent cattle, horses, sheep, burros, mules
23 and hogs from getting onto the railroad. If any railroad
24 fails to construct and maintain fences and cattle guards as
25 directed in this section, the railroad shall be liable to the

1 owner for all damages resulting from injury or death caused
2 to any livestock, including reasonable attorney fees, on
3 order of the court should legal proceedings be commenced by
4 the owner. Should the New Mexico livestock board be unable
5 to determine ownership of livestock crippled or killed by the
6 railroad within thirty days of the date it first receives
7 notice of such injury or death, by report or otherwise, then
8 the board may institute legal proceedings in the name of the
9 unknown owner in any court of competent jurisdiction and
10 recover damages as provided in this section, and the proceeds
11 shall be disposed of as provided for under the laws
12 pertaining to estrays.

13 B. In the event that a fence is in a condition of
14 neglect, disrepair or nonexistence, the adjacent landowner
15 may contact the railroad supervisor or the owner of the right
16 of way by certified mail, return receipt requested, and
17 demand repair or construction to the legal standard provided
18 in Section 77-16-17 NMSA 1978. Within thirty days
19 thereafter, the railroad shall commence construction or
20 provide proof of intent to comply, and after ten more days,
21 if the railroad has failed to commence construction or to
22 comply with agreed-upon terms of construction or repair, the
23 adjacent landowner may repair, construct or cause to be
24 repaired or constructed the fence at the expense of the
25 railroad calculated at the cost of commercial rates common to

1 the area. If the railroad fails to comply within thirty days
2 of presentation of proof of cost, the landowner shall be
3 compensated in an amount equal to two times the amount of the
4 presented proof plus any cost of litigation, including
5 attorney fees.

6 C. State-owned railroads and narrow-gauge and
7 recreational railroads are exempt from the provisions of this
8 section." _____

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