

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 390

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO ANIMALS; PROVIDING A REGISTERED EQUINE RESCUE OR
RETIREMENT FACILITY WITH THE RIGHT OF FIRST REFUSAL TO PURCHASE
ESTRAY, CRUELLY TREATED OR TRESPASSING EQUINES; DEFINING
"EQUINE"; MAKING CONFORMING CHANGES.

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--~~[HORSE]~~ 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

.208054.2

underscored material = new
[bracketed material] = delete

1 individual to be paid to the [~~horse~~] equine shelter rescue
2 fund. In the case of a joint return, both individuals must
3 make such a designation.

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

7 "[~~Horse~~] Equine Shelter Rescue Fund - Check [] if
8 you wish to contribute a part or all of your tax
9 refund to the [~~horse~~] equine shelter rescue fund.
10 Enter here \$ _____ the amount of your
11 contribution."

12 C. The provisions of this section do not apply to
13 income tax refunds subject to interception under the provisions
14 of the Tax Refund Intercept Program Act, and any designation
15 made under the provisions of this section to such refunds is
16 void."

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

19 "30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

20 A. If the court finds that a seized animal is not
21 being cruelly treated and that the animal's owner is able to
22 provide for the animal adequately, the court shall return the
23 animal to its owner.

24 B. If the court finds that a seized animal is being
25 cruelly treated or that the animal's owner is unable to provide

1 for the animal adequately, the court shall hold a hearing to
2 determine the disposition of the animal.

3 C. An agent of the New Mexico livestock board, an
4 animal control agency operated by the state, a county or a
5 municipality, [~~or~~] an animal shelter or other animal welfare
6 organization designated by an animal control agency or an
7 animal shelter, in the custody of which an animal that has been
8 cruelly treated has been placed may petition the court to
9 request that the animal's owner may be ordered to post security
10 with the court to indemnify the costs incurred to care and
11 provide for the seized animal pending the disposition of any
12 criminal charges of committing cruelty to animals pending
13 against the animal's owner.

14 D. The court shall determine the amount of security
15 while taking into consideration all of the circumstances of the
16 case, including the owner's ability to pay, and may conduct
17 periodic reviews of its order. If the posting of security is
18 ordered, the animal control agency, animal shelter or animal
19 welfare organization may, with permission of the court, draw
20 from the security to indemnify the costs incurred to care and
21 provide for the seized animal pending disposition of the
22 criminal charges.

23 E. If the owner of the animal does not post
24 security within fifteen days after the issuance of the order,
25 or if, after reasonable and diligent attempts the owner cannot

.208054.2

1 be located, the animal may be deemed abandoned and relinquished
2 to the animal control agency, animal shelter or animal welfare
3 organization for adoption or humane destruction; provided that
4 if the animal is livestock other than poultry associated with
5 cockfighting, the animal may be sold pursuant to the procedures
6 set forth in Section 77-18-2 NMSA 1978.

7 F. Nothing in this section shall prohibit an owner
8 from voluntarily relinquishing an animal to an animal control
9 agency or shelter in lieu of posting security. A voluntary
10 relinquishment shall not preclude further prosecution of any
11 criminal charges alleging that the owner has committed felony
12 cruelty to animals.

13 G. Upon conviction, the court shall place the
14 animal with an animal shelter or animal welfare organization
15 for placement or for humane destruction.

16 H. As used in this section:

17 (1) "livestock" means all domestic or
18 domesticated animals that are used or raised on a farm or ranch
19 and exotic animals in captivity and includes [~~horses, asses,~~
20 ~~mules~~] equines, cattle, sheep, goats, swine, bison, poultry,
21 ostriches, emus, rheas, camelids and farmed cervidae but does
22 not include canine or feline animals; and

23 (2) "equine" means a horse, pony, mule, donkey
24 or hinny."

25 SECTION 3. Section 77-2-1.1 NMSA 1978 (being Laws 1993,

.208054.2

1 Chapter 248, Section 2, as amended) is amended to read:

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

3 A. "animals" or "livestock" means all domestic or
4 domesticated animals that are used or raised on a farm or
5 ranch, including the carcasses thereof, and exotic animals in
6 captivity and includes [~~horses, asses, mules~~] equines, cattle,
7 sheep, goats, swine, bison, poultry, ostriches, emus, rheas,
8 camelids and farmed cervidae upon any land in New Mexico.

9 "Animals" or "livestock" does not include canine or feline
10 animals;

11 B. "bill of sale" means an instrument in
12 substantially the form specified in The Livestock Code by which
13 the owner or the owner's authorized agent transfers to the
14 buyer the title to animals described in the bill of sale;

15 C. "bison" or "buffalo" means a bovine animal of
16 the species bison;

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

18 E. "bond" means cash or an insurance agreement from
19 a New Mexico licensed surety or insurance corporation pledging
20 surety for financial loss caused to another, including
21 certificate of deposit, letter of credit or other surety as may
22 be approved by the grain inspection, packers and stockyards
23 administration of the United States department of agriculture
24 or the board;

25 F. "brand" means a symbol or device in a form

.208054.2

1 approved by and recorded with the board as may be sufficient to
2 readily distinguish livestock should they become intermixed
3 with other livestock;

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

6 H. "carcasses" means dead or dressed bodies of
7 livestock or parts thereof;

8 I. "cattle" means animals of the genus bos,
9 including dairy cattle, and does not include any other kind of
10 livestock;

11 J. "dairy cattle" means animals of the genus bos
12 raised not for consumption but for dairy products and
13 distinguished from meat breed cattle;

14 K. "director" means the executive director of the
15 board;

16 L. "disease" means a communicable, infectious or
17 contagious disease;

18 M. "district" means a livestock inspection
19 district;

20 N. "equine" means a horse, pony, mule, donkey or
21 hinny;

22 [N.] O. "estray" means livestock found running at
23 large upon public or private lands, either fenced or unfenced,
24 whose owner is unknown, or that is branded with a brand that is
25 not on record in the office of the board or is a freshly

.208054.2

1 branded or marked offspring not with its branded or marked
2 mother, unless other proof of ownership is produced;

3 P. "hinny" means the offspring of a male horse and
4 a female donkey;

5 [~~Q.~~] Q. "inspector" means a livestock or brand
6 inspector;

7 [~~P.~~] R. "livestock inspector" means a certified
8 inspector who is granted full law enforcement powers for
9 enforcement of The Livestock Code and other criminal laws
10 relating to livestock;

11 [~~Q.~~] S. "mark" means an ear tag or ownership mark
12 that is not a brand;

13 [~~R.~~] T. "meat" means the edible flesh of poultry,
14 birds or animals sold for human consumption and includes
15 livestock, poultry and livestock and poultry products;

16 [~~S.~~] U. "mule" means [~~a hybrid resulting from the~~
17 ~~cross]~~ the offspring of a female horse and [an ass; and] a male
18 donkey; and

19 [~~T.~~] V. "person" means an individual, firm,
20 partnership, association, corporation or similar legal entity."

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

23 "77-2-30. [~~HORSE]~~ EQUINE RESCUE OR RETIREMENT FACILITY--
24 REGISTRATION--BOARD POWERS AND DUTIES--FEES.--

25 A. As used in this section, "facility" means [a

.208054.2

1 ~~horse]~~ an equine rescue or retirement facility, including a
2 private reserve or private preserve, that advertises [~~of~~] or
3 solicits for [~~horses~~] equines and provides lifelong care or
4 finds new owners for [~~horses~~] equines that are unwanted or have
5 been neglected or abused or captured wild [~~horses~~] equines that
6 cannot be returned to their range.

7 B. A facility shall not operate in New Mexico
8 unless registered by the board.

9 C. The board shall:

10 (1) register facilities that meet the
11 requirements of this section;

12 (2) annually consult with representatives from
13 the equine industry, equine rescue organizations and
14 veterinarians on facility standards; and

15 (3) after consideration of recommendations by
16 facilities and national organizations for the care of unwanted
17 [~~horses and equine rescue and retirement facilities~~] equines,
18 promulgate rules for facilities, including:

19 (a) health and sanitary requirements;

20 (b) standards for barns, paddocks,
21 pastures and ranges;

22 (c) qualifications of the facility
23 staff;

24 (d) provision of veterinary care;

25 (e) feeding and watering requirements;

- 1 (f) transportation; [~~and~~]
2 (g) a process to issue a temporary
3 capacity waiver to a facility for the purpose of transferring
4 to a facility equines in the custody of the board; and
5 [~~g~~] (h) other requirements necessary
6 to ensure the humane care of [~~horses~~] equines.

7 D. The board may charge the following fees:

- 8 (1) an initial inspection and registration fee
9 of not more than two hundred fifty dollars (\$250);
10 (2) an annual inspection and registration fee
11 of not more than one hundred dollars (\$100); and
12 (3) reinspection fees of not more than one
13 hundred dollars (\$100).

14 E. Fees collected pursuant to this section shall be
15 deposited in the New Mexico livestock board general fund and
16 may be used to carry out the provisions of [~~Sections 1 and 2 of~~
17 ~~this act~~] this section and Section 77-2-31 NMSA 1978."

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

20 "77-2-31. [~~HORSE~~] EQUINE RESCUE OR RETIREMENT
21 FACILITIES--INSPECTIONS--REINSPECTION.--

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

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

1 C. If, following an inspection, the board
2 determines that the facility does not meet the board's minimum
3 facility requirements, it shall give the registrant written
4 notice of the deficiencies and schedule a reinspection,
5 allowing a reasonable time for the registrant to correct the
6 deficiencies.

7 D. The registrant shall remedy the deficiencies and
8 submit evidence to the board demonstrating compliance with
9 board rules for the facility.

10 E. If on reinspection the board determines that the
11 facility is still deficient in those areas for which it has
12 been given written notice, the [~~horses~~] equines may be
13 impounded in accordance with the provisions of Section 77-18-2
14 NMSA 1978 and the board shall hold a hearing as provided in the
15 Uniform Licensing Act to determine if the registration should
16 be suspended or revoked.

17 F. If a facility's registration is suspended or
18 revoked, the board shall place the [~~horses~~] equines in another
19 facility."

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

22 "77-2-32. [~~HORSE~~] EQUINE SHELTER RESCUE FUND--CREATED.--

23 A. The "[~~horse~~] equine shelter rescue fund" is
24 created as a nonreverting fund in the state treasury. The fund
25 consists of appropriations, gifts, grants, donations and

.208054.2

1 amounts designated pursuant to Section [~~2 of this 2013 act~~]
 2 7-2-30.7 NMSA 1978. The board shall administer the fund, and
 3 money in the fund is appropriated to the board to carry out the
 4 intent of aiding [~~horse~~] equine rescues and homeless [~~horses~~]
 5 equines in the state.

6 B. The board shall establish by rule the
 7 distribution of funds from the [~~horse~~] equine shelter rescue
 8 fund to [~~horse~~] equine rescue and retirement facilities
 9 registered by the board pursuant to Section 77-2-30 NMSA 1978,
 10 taking into consideration the number of [~~horses~~] equines being
 11 cared for in each facility and the need of each facility."

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

14 "77-13-4. OWNER UNKNOWN--PUBLICATION AND POSTING OF
 15 NOTICE.--

16 A. If the director of the [~~New Mexico livestock~~]
 17 board is unable to determine from the records and description
 18 who is the owner or probable owner of [~~such~~] an estray, [~~or~~
 19 ~~estrays, he~~] the director shall publish at least once in some
 20 publication in general circulation in the county in which the
 21 estray animal was picked up, [~~said~~] the publication to be
 22 designated by the [~~New Mexico livestock~~] board, a notice of
 23 [~~such~~] the estray [~~which~~].

24 B. For an estray that is not an equine, the notice
 25 shall give a description of the animal [~~or animals~~], shall

.208054.2

1 state when and where [~~the same were~~] it was impounded and shall
2 give notice that unless the animal [~~or animals are~~] is claimed
3 by the legal owner within five days after the publication of
4 the notice, the [~~same~~] animal shall be sold by the [~~New Mexico~~
5 ~~livestock~~] board for the benefit of the owner when found.

6 C. For an estray that is an equine, the notice
7 shall give a description of the equine, shall state when and
8 where it was impounded and shall give notice that, unless the
9 equine is claimed by the legal owner within five days after
10 publication of the notice, a registered equine rescue or
11 retirement facility shall be given the right of first refusal
12 to purchase the equine for an ownership transfer fee as
13 established by board rule, but not to exceed the actual costs
14 incurred in caring for the equine while the equine was
15 impounded, and that if a registered equine rescue or retirement
16 facility is unable or unwilling to purchase the equine, the
17 board shall auction the equine through a closed bid process
18 administered by the board and established in rule. If the
19 equine is not purchased through the closed bid process, the
20 board shall have the equine humanely euthanized by a licensed
21 veterinarian."

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

24 "77-13-5. [~~SALE~~] DISPOSITION OF UNCLAIMED ESTRAYS--BILL
25 OF SALE--EFFECT--SALE WITHOUT ADVERTISEMENT--CONDITIONS.--

.208054.2

1 A. If an estray, other than an equine, is not
2 claimed within five days after the last publication of notice,
3 it may be sold by the board through an inspector in such manner
4 as the board may direct. The inspector making the sale shall
5 give a bill of sale to the purchaser from the board, signed by
6 ~~[himself as]~~ the inspector. The bill of sale shall be legal
7 evidence of the ownership of the livestock by the purchaser and
8 shall be a legal title to the livestock. Where the director
9 determines that it is impractical to publish notice, the estray
10 may be sold immediately without notice. In such case, the
11 board shall publish notice of the proceeds from the sale of the
12 estrays in the same manner and for the same length of time as
13 provided for the notice of the sale and shall hold and
14 distribute the proceeds from the sale in the same manner as if
15 the sale were made after notice.

16 B. If the estray is an equine and the equine is not
17 claimed within five days after the last publication of notice,
18 the board shall give a registered equine rescue or retirement
19 facility the right of first refusal to purchase the equine for
20 an ownership transfer fee. The ownership transfer fee shall be
21 established by board rule and shall not exceed the actual costs
22 incurred in caring for the equine while the equine was
23 impounded. The board shall provide a bill of sale to the
24 registered equine rescue or retirement facility that purchases
25 the equine. The bill of sale shall be legal evidence of the

.208054.2

1 ownership of the equine by the registered equine rescue or
2 retirement facility and shall be legal title to the equine. If
3 a registered equine rescue or retirement facility is unable or
4 unwilling to purchase the equine, the board shall auction the
5 equine through a closed bid process administered by the board
6 and established in rule. If the equine is not purchased
7 through the closed bid process, the board shall have the equine
8 humanely euthanized by a licensed veterinarian."

9 SECTION 9. Section 77-13-6 NMSA 1978 (being Laws 1907,
10 Chapter 80, Section 6, as amended) is amended to read:

11 "77-13-6. DISPOSITION OF PROCEEDS--RECORD OF SALE--
12 PAYMENTS TO OWNER.--~~[The inspector making the sale of an estray~~
13 ~~shall return the]~~ Proceeds ~~[of]~~ from the sale of an estray
14 pursuant to Section 77-13-5 NMSA 1978 shall be returned to the
15 board. The board shall pay the expenses incurred in the
16 impounding, publishing of notice and selling of the animal and
17 place the balance in the fund of the board, making a record of
18 the same showing the marks and brands and other means of
19 identification of the livestock and giving the amount realized
20 from the sale. The record shall be open to ~~[the]~~ inspection
21 ~~[of]~~ by the public. Should the lawful owner of an estray that
22 has been sold be found within two years after the sale of the
23 livestock, the net amount received from the sale of the estray
24 less the sum prescribed by law for office handling fees shall
25 be paid to the owner upon ~~[his]~~ the owner's proving ownership

.208054.2

underscoring material = new
~~[bracketed material] = delete~~

1 to the satisfaction of the board."

2 SECTION 10. Section 77-14-7 NMSA 1978 (being Laws 1909,
3 Chapter 146, Section 4, as amended) is amended to read:

4 "77-14-7. LIVESTOCK RUNNING AT LARGE--WHEN UNLAWFUL--
5 IMPOUNDING--~~[SALE]~~ DISPOSITION--SUIT FOR DAMAGES.--

6 A. After the publication and posting of an order
7 pursuant to Section 77-14-6 NMSA 1978, it is unlawful for the
8 owners of livestock to allow the livestock to run at large
9 within the town, conservancy district, irrigation district or
10 military reservation or enclave. An owner who willfully allows
11 livestock to run at large in violation of the order is guilty
12 of a misdemeanor and upon conviction shall be punished in
13 accordance with the provisions of Section 31-19-1 NMSA 1978 for
14 each offense.

15 B. If the livestock is not an equine, the sheriff
16 or other peace officer or proper military authority shall
17 impound livestock found running at large and sell the livestock
18 at public auction to the highest bidder for cash after giving
19 notice of the time and place of sale in some newspaper
20 published in the county where the violation occurred three days
21 prior to the day of sale; provided that in the case of a
22 military reservation or enclave, the sale shall be conducted by
23 the board pursuant to the procedure set forth in Section
24 77-14-36 NMSA 1978. The proceeds up to five dollars (\$5.00)
25 per day for each animal shall be retained by the impounding

.208054.2

1 authority to cover its expense and fees. The balance, if any,
2 shall be paid to the general fund.

3 C. If the livestock is an equine, the sheriff,
4 other peace officer, proper military authority or the board
5 shall impound the equine running at large and give notice in
6 some newspaper published in the county where the violation
7 occurred that unless the equine is redeemed by the legal owner
8 within three days after publication of the notice, a registered
9 equine rescue or retirement facility shall be given the right
10 of first refusal to purchase the equine for an ownership
11 transfer fee as established by board rule, but not to exceed
12 the actual costs incurred in caring for the equine while the
13 equine was impounded, and that 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 closed bid
16 process administered by the board and established in rule. If
17 the equine is not purchased through the closed bid process, the
18 board shall have the equine humanely euthanized by a licensed
19 veterinarian. The notice shall additionally give a description
20 of the equine and state when and where it was impounded. Any
21 proceeds from the sale of an equine pursuant to this subsection
22 shall be retained by the impounding authority to cover its
23 expenses and costs. The balance, if any, shall be paid to the
24 general fund.

25 [~~G.~~] D. The owner of livestock impounded may redeem

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

6 ~~[D-]~~ E. A person claiming damages for violation of
 7 the order may file suit to recover damages as in other civil
 8 cases; provided that such damages, in the case of a violation
 9 involving a military reservation or enclave, shall include
 10 direct, indirect, incidental and consequential damages."

11 **SECTION 11.** Section 77-14-15 NMSA 1978 (being Laws 1919,
 12 Chapter 88, Section 9) is amended to read:

13 "77-14-15. DISPOSITION OF LIVESTOCK BEFORE JUDGMENT--
 14 PROCEEDS--LIABILITY.--

15 A. In the event suit is filed and ~~[said animals~~
 16 ~~are]~~ the livestock is not replevined and the ~~[justice of the~~
 17 ~~peace]~~ magistrate is of the opinion that the cost of caring for
 18 ~~[said animals]~~ the livestock until final judgment ~~[and]~~ will
 19 ~~[ascertain]~~ exceed the value of ~~[said animals, he may]~~ the
 20 livestock, the magistrate:

21 (1) if the livestock is not an equine, may
 22 sell the ~~[same as hereinafter]~~ livestock as provided in Section
 23 77-14-16 NMSA 1978 and after deducting from the proceeds of
 24 ~~[said]~~ the sale all costs to date, ~~[he]~~ the magistrate shall
 25 deposit the remainder ~~[thereof]~~ of the proceeds with the county

.208054.2

1 clerk to be held by [~~him~~] the county clerk to await final
2 determination of [~~said~~] the matter. The county clerk receiving
3 any [~~moneys~~] money under the provisions of [~~this act~~] Sections
4 77-14-8 through 77-14-24 NMSA 1978 shall be liable on [~~his~~] the
5 county clerk's official bond for the [~~same~~] money; and

6 (2) if the livestock is an equine, shall give
7 a registered equine rescue or retirement facility the right of
8 first refusal to purchase the equine for an ownership transfer
9 fee. The ownership transfer fee shall be established by board
10 rule and shall not exceed the actual costs incurred in caring
11 for the equine while the equine was impounded. The magistrate
12 shall provide a bill of sale to the registered equine rescue or
13 retirement facility that purchases the equine. The bill of
14 sale shall be legal evidence of the ownership of the equine by
15 the registered equine rescue or retirement facility and shall
16 be legal title to the equine.

17 B. If a registered equine rescue or retirement
18 facility is unable or unwilling to purchase the equine, the
19 board shall auction the equine through a closed bid process
20 administered by the board and established in rule. If the
21 equine is purchased through the closed bid process, the
22 proceeds of the sale less costs shall be deposited with the
23 county clerk pending final determination of the matter. If the
24 equine is not purchased through the closed bid process, the
25 equine shall remain in the custody of the magistrate or board

.208054.2

1 pending the disposition of the case."

2 SECTION 12. Section 77-14-17 NMSA 1978 (being Laws 1919,
3 Chapter 88, Section 11) is amended to read:

4 "77-14-17. DELIVERY OF LIVESTOCK TO MAGISTRATE.--

5 A. In the event the party claiming damages and the
6 owner of the property cannot agree as to the damages or in the
7 event [~~said~~] the parties do not agree to arbitrate [~~the same~~]
8 or in the event [~~said~~] the parties do agree as to the damages
9 and the owner fails or refuses to immediately pay the [~~same~~]
10 damages or in the event [~~said~~] the parties agree to arbitrate
11 and the owner of [~~said animals~~] the livestock fails to
12 immediately pay the amount adjudged to be due by [~~said~~]
13 arbitrators, if [~~said animals have~~] the livestock has not
14 already been delivered to the [~~justice of the peace~~]
15 magistrate, the [~~same~~] livestock shall be immediately delivered
16 to [~~said justice of the peace to be by him sold, and said~~
17 ~~justice of the peace~~] the magistrate.

18 B. If the livestock is not an equine, the
19 magistrate shall immediately proceed to sell the livestock as
20 [~~hereinafter~~] provided in Section 77-14-18 NMSA 1978.

21 C. If the livestock is an equine:

22 (1) the magistrate shall give a registered
23 equine rescue or retirement facility the right of first refusal
24 to purchase the equine for an ownership transfer fee. The
25 ownership transfer fee shall be established by board rule and

.208054.2

1 shall not exceed the actual costs incurred in caring for the
2 equine while the equine was impounded. The magistrate shall
3 provide a bill of sale to the registered equine rescue or
4 retirement facility that purchases the equine. The bill of
5 sale shall be legal evidence of the ownership of the equine by
6 the registered equine rescue or retirement facility and shall
7 be legal title to the equine;

8 (2) if a registered equine rescue or
9 retirement facility is unable or unwilling to purchase the
10 equine, the board shall auction the equine through a closed bid
11 process administered by the board and established in rule.
12 After deducting from the proceeds of the sale all costs to
13 date, the magistrate shall deposit the remainder of the
14 proceeds with the county clerk to be held by the county clerk
15 pending a final determination of the matter; and

16 (3) if the equine is not purchased through the
17 closed bid process, the equine shall remain in the custody of
18 the magistrate or board pending an agreement by the owner to
19 the satisfaction of the magistrate that the damages will be
20 paid or pending the disposition of the matter. The magistrate
21 may order the owner to sell the equine to satisfy the
22 judgment."

23 SECTION 13. Section 77-14-18 NMSA 1978 (being Laws 1919,
24 Chapter 88, Section 12) is amended to read:

25 "77-14-18. NOTICE OF SALE.--

.208054.2

1 A. In the event that it becomes the duty of [~~said~~
2 ~~justice of the peace~~] the magistrate to sell any [~~of said~~
3 ~~animals~~] livestock that is not an equine under the terms of
4 [~~this chapter, he~~] Sections 77-14-8 through 77-14-24 NMSA 1978,
5 the magistrate shall give notice of [~~said~~] the sale by posting
6 notices [~~thereof~~] in six public places within [~~said~~] the
7 political subdivision and also [~~to~~] give notice to the owner of
8 [~~said~~] the property by mailing a copy of [~~said~~] the posted
9 notice to [~~said~~] the owner at [~~his~~] the owner's last and
10 ordinary place of address. [~~Said~~] The notice shall state the
11 purpose of [~~said~~] the sale, describe the number and kind of
12 animals, give their brands and marks, if any, state the amount
13 of costs, fees and damages for which [~~said animals are~~] the
14 livestock is to be sold and shall state the hour and day of
15 sale, which time shall not be less than five nor more than
16 twenty days from the time of posting [~~said~~] the notice.

17 B. In case the damages are awarded by judgment in
18 court in an action brought for that purpose, [~~said animals~~]
19 livestock that is not an equine shall be sold under execution
20 as in other cases."

21 SECTION 14. Section 77-14-19 NMSA 1978 (being Laws 1919,
22 Chapter 88, Section 13) is amended to read:

23 "77-14-19. SALE OF LIVESTOCK--DOCKET ENTRY--OWNER
24 SUMMONED.--

25 A. Should the party claiming damages deliver [~~said~~

.208054.2

1 ~~animals]~~ the livestock to the [~~said justice of the peace~~]
2 magistrate to be held and impounded for damages, it [~~shall be~~]
3 is the duty of [~~said justice of the peace~~] the magistrate to
4 note on [~~his~~] the magistrate's docket at the time of delivery
5 the number and kind of [~~such~~] animals, the marks and brands
6 thereon, the time of delivery [~~thereof and~~], the name of the
7 owner if known and of the person delivering the [~~same~~]
8 livestock and the amount of [~~his~~] the person's claim for
9 damages. [~~The justice of the peace~~]

10 B. The magistrate shall [~~then~~] summon the owner of
11 [~~said animals~~] the livestock, if known or [~~his~~] the owner's
12 whereabouts can be ascertained, to appear [~~forthwith~~] before
13 [~~him~~] the magistrate and show cause [~~if any~~] why [~~said~~
14 ~~animals~~]:

15 (1) if the livestock is not an equine, the
16 livestock should not be sold to pay [~~said~~] the claim for
17 damages and costs of court; and

18 (2) if the livestock is an equine, a
19 registered equine rescue or retirement facility should not be
20 given the right of first refusal to purchase the equine or if a
21 registered equine rescue or retirement facility is unable or
22 unwilling to purchase the equine, auctioned through a closed
23 bid process administered by the board."

24 **SECTION 15.** Section 77-14-36 NMSA 1978 (being Laws 1975,
25 Chapter 329, Section 1, as amended) is amended to read:

.208054.2

1 "77-14-36. IMPOUNDMENT OF TRESPASS LIVESTOCK.--

2 A. Any livestock found to be in trespass upon the
 3 lands of another or running at large upon any public highway
 4 [~~which~~] that is fenced on both sides or running at large within
 5 the limits of any municipality, town or village, whether
 6 incorporated or not, or within a military reservation or
 7 enclave [~~whether incorporated or not~~] is subject to impoundment
 8 by an agent of the [~~New Mexico livestock~~] board. The place of
 9 impoundment shall be at the nearest or most convenient location
 10 from where the trespass occurred.

11 B. Any livestock impounded under the provisions of
 12 this section [~~will~~] shall be released to the owner or [~~his~~] the
 13 owner's representative upon the payment by the owner of a fee
 14 set by regulation of the [~~New Mexico livestock~~] board not to
 15 exceed amounts prescribed by law for impounding [~~if any~~
 16 ~~incurred~~].

17 C. The [~~New Mexico livestock~~] board shall designate
 18 [~~the person~~] a custodian and a place of impoundment and allow a
 19 reasonable fee to be charged by the custodian of the impounded
 20 livestock; provided that in case of a controversy as to what
 21 constitutes a reasonable charge, the board shall set the amount
 22 of the charge.

23 D. This section shall not be construed to affect
 24 the obligation of a property owner of meeting the requirements
 25 of Section 77-16-1 NMSA 1978 for fencing against such

.208054.2

1 trespasses.

2 E. Any cost charged against trespass livestock will
3 be a lien on the livestock. If the owner does not pay the
4 charges and reclaim possession of the livestock within five
5 days after receipt of notification by the owner, the livestock
6 shall be considered unclaimed estrays and may be [~~sold~~
7 disposed of in accordance with the provisions of Section
8 77-13-5 NMSA 1978."

9 SECTION 16. Section 77-18-2 NMSA 1978 (being Laws 1987,
10 Chapter 151, Section 1, as amended) is amended to read:

11 "77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED
12 LIVESTOCK.--

13 A. If a livestock inspector or other peace officer
14 has reason to believe that livestock [~~is~~] are being cruelly
15 treated, the inspector or peace officer may apply to a court in
16 the county where the livestock [~~is~~] are located for a warrant
17 to seize the allegedly cruelly treated livestock.

18 B. On a showing of probable cause to believe that
19 the livestock [~~is~~] are being cruelly treated, the court shall
20 issue a warrant for the seizure of the livestock and set the
21 matter for hearing as expeditiously as possible within thirty
22 days unless good cause for a later time is demonstrated by the
23 state. Seizure as authorized by this section shall be
24 restricted to only those livestock allegedly being cruelly
25 treated. The board by rule shall establish procedures for

.208054.2

1 preserving evidence of alleged cruel treatment of livestock.

2 C. If criminal charges are filed against the owner,
3 the court shall, upon proper petition, proceed to determine if
4 security is required to be posted pursuant to Section 30-18-1.2
5 NMSA 1978. Otherwise, the judge or magistrate executing the
6 warrant shall notify the board, have the livestock impounded
7 and give written notice to the owner of the livestock of the
8 time and place of a hearing to determine disposition of the
9 livestock. [~~D.~~] All interested parties, including the district
10 attorney, shall be given an opportunity to present evidence at
11 the hearing. [~~and~~]

12 D. For livestock that is not an equine:

13 (1) if the court finds that the owner has
14 cruelly treated the livestock, the court shall order the sale
15 of the livestock at fair market value or order humane
16 destruction. If the livestock [~~is~~] are ordered sold, the sale
17 shall occur within ten days of the order. If the court does
18 not find that the owner has cruelly treated the livestock, the
19 court shall order the livestock returned to the owner;

20 [~~E.~~] (2) if the court orders the sale of the
21 livestock, the board shall take proper action to ensure that
22 the livestock [~~is~~] are sold at fair market value, including
23 acceptance of reasonable bids or sale at auction. A bid by the
24 owner of the livestock or the owner's representative shall not
25 be accepted; and

.208054.2

1 [F-] (3) proceeds from the sale of the
2 livestock shall be forwarded to the court ordering the sale.
3 From these proceeds, the court shall pay all expenses incurred
4 in caring for the livestock while [~~it was~~] they were impounded
5 and any expenses involved in [~~its~~] their sale. Any excess
6 proceeds of the sale shall be forwarded to the former owner.
7 If the expenses incurred in caring for and selling the
8 livestock exceed the amount received from the sale, the court
9 shall order the former owner to pay the additional cost.

10 E. For livestock that is an equine:

11 (1) if the court finds that the owner has
12 cruelly treated the equine, the court shall give a registered
13 equine rescue or retirement facility the right of first refusal
14 to purchase the equine for an ownership transfer fee. The
15 ownership transfer fee shall be established by board rule and
16 shall not exceed the actual costs incurred in caring for the
17 equine while the equine was impounded. The board shall provide
18 a bill of sale to the registered equine rescue or retirement
19 facility that purchases the equine. The bill of sale shall be
20 legal evidence of the ownership of the equine by the registered
21 equine rescue or retirement facility and shall be legal title
22 to the equine;

23 (2) if the court finds that the owner has
24 cruelly treated the equine and a registered equine rescue or
25 retirement facility has been given the right of first refusal

1 but the registered equine rescue or retirement facility is
2 unable or unwilling to purchase the equine, the board shall
3 auction the equine through a closed bid process administered by
4 the board and established in rule. Any proceeds from the sale
5 less expenses incurred in caring for the equine while the
6 equine was impounded shall be forwarded to the former owner.
7 If the expenses incurred in caring for the equine exceed the
8 proceeds from the sale, the court shall order the former owner
9 to pay the additional cost;

10 (3) if the equine is not purchased through the
11 closed bid process, the board shall have the equine humanely
12 euthanized by a licensed veterinarian; and

13 (4) if the court does not find that the owner
14 cruelly treated the equine, the court shall order the equine
15 returned to the owner."

16 - 27 -

underscored material = new
[bracketed material] = delete