

1 SENATE BILL 121

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Pat Woods

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9  
10 AN ACT

11 RELATING TO HIGHWAYS; REINSTATING THE DEPARTMENT OF  
12 TRANSPORTATION'S DUTY TO MAINTAIN FENCING, CATTLE GUARDS AND  
13 LIVESTOCK WARNING SIGNS ON PUBLIC HIGHWAYS; AMENDING AND  
14 RECOMPILING SECTIONS OF THE NMSA 1978.

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

17 SECTION 1. Section 66-7-363 NMSA 1978 (being Laws 1953,  
18 Chapter 139, Section 119.1, as amended) is amended to read:

19 "66-7-363. ANIMALS ON HIGHWAY--HIGHWAY FENCING.--

20 A. It is unlawful for any person, during the hours  
21 of darkness, to ride a horse or other animal upon the traveled  
22 portion of any highway that is normally used by motor vehicles.

23 B. It is unlawful for any person negligently to  
24 permit livestock to wander or graze upon any fenced highway at  
25 any time or, during the hours of darkness, to drive livestock

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

3 C. Owners of livestock ranging in pastures through  
4 which unfenced roads or highways pass shall not be liable for  
5 damages by reason of injury or damage to persons or property  
6 occasioned by collisions of vehicles using the roads and  
7 highways and livestock ranging in the pastures unless the owner  
8 of the livestock is guilty of specific negligence other than  
9 allowing livestock to range in the pasture.

10 D. Every owner or custodian of livestock shall  
11 exercise diligence to keep livestock off the state public  
12 fenced highways and shall promptly report to the department of  
13 transportation any damage or disrepair discovered of fences  
14 maintained by the department adjoining the livestock owner or  
15 custodian's property. The department of transportation shall:

16 (1) unless it makes a fact determination that  
17 no livestock can enter the highway from a portion left  
18 unfenced, construct, inspect regularly and maintain fences  
19 along all highways under its jurisdiction that are constructed  
20 or improved from time to time and provide cattle underpasses,  
21 water pipelines and cattle guards as may be necessary; and

22 (2) post proper signs along all highways under  
23 its jurisdiction that are not fenced on both sides and that are  
24 located adjacent to property containing livestock. The signs  
25 shall be located at intervals of not less than two miles along

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1 such unfenced highways and shall warn motorists that loose  
2 livestock may be encountered and that caution should be used.

3 E. Each board of county commissioners shall fence  
4 or post signs along highways within its jurisdiction when  
5 domestic livestock are deemed a hazard to public health and  
6 safety as may be determined by the county commissioners.

7 F. A motorist using unfenced roads or highways that  
8 have livestock warning signs shall use due care to avoid  
9 collisions with livestock.

10 ~~[D-]~~ G. A person who violates the provisions of  
11 Subsection A or B of this section is guilty of a penalty  
12 assessment misdemeanor."

13 SECTION 2. Section 30-8-14 NMSA 1978 (being Laws 1975,  
14 Chapter 283, Section 1) is recompiled as Section 66-7-363.1  
15 NMSA 1978 and is amended to read:

16 "66-7-363.1. ~~[HIGHWAY]~~ DEPARTMENT OF TRANSPORTATION--  
17 AGREEMENTS WITH OWNERS OR LESSEES OF HIGHWAY FRONTAGE--  
18 PROVISIONS.--

19 A. Notwithstanding the responsibility of the  
20 ~~[highway]~~ department of transportation under the provisions of  
21 Section ~~[40A-8-10 NMSA 1953]~~ 66-7-363 NMSA 1978 to construct,  
22 inspect regularly and maintain fences along all highways under  
23 its jurisdiction, the ~~[highway]~~ department of transportation  
24 may enter into an agreement with an owner or lessee of property  
25 adjoining a public highway to keep a specified section of the

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1 highway frontage unfenced for use as roadside business;  
2 provided, however, that ~~[such]~~ the owner or lessee, whoever is  
3 party to the agreement, ~~[shall agree]~~ agrees:

4 (1) to assume full responsibility for  
5 constructing and maintaining livestock fencing on the property  
6 ~~[which he]~~ that the owner or lessee owns or leases in such a  
7 manner so as to prevent the entry of livestock onto the  
8 highway; and

9 (2) to be liable for any damage caused by  
10 livestock entering upon the public highway from ~~[his]~~ the  
11 owner's or lessee's property if the property in question is not  
12 fenced or the fencing not maintained pursuant to the agreement  
13 with the ~~[highway]~~ department of transportation.

14 B. Nothing in this section shall preclude an owner  
15 or lessee who has entered into an agreement with the ~~[highway]~~  
16 department of transportation pursuant to this section from also  
17 being subject to the penalties set out in Section ~~[40A-8-10~~  
18 ~~NMSA 1953]~~ 66-7-363 NMSA 1978."