

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 121

3 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

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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.

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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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underscored material = new
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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~~] gross negligence other
9 than 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 cattle underpasses, water pipelines or cattle guards maintained
15 by the department adjoining the livestock owner or custodian's
16 property.

17 E. The department of transportation shall:

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

25 (2) post proper signs along all highways under

1 its jurisdiction that are not fenced on both sides and that are
 2 located adjacent to property containing livestock. The signs
 3 shall be located at intervals of not more than two miles along
 4 such unfenced highways. Sign intervals and postings shall be
 5 consistent with the department of transportation's
 6 specifications for a uniform system of traffic-control devices,
 7 subject to traffic safety engineering discretion, and shall
 8 warn motorists that loose livestock may be encountered and that
 9 caution should be used.

10 F. A motorist using unfenced roads or highways that
 11 have livestock warning signs shall use due care to avoid
 12 collisions with livestock.

13 ~~[D.]~~ G. A person who violates the provisions of
 14 Subsection A or B of this section is guilty of a penalty
 15 assessment misdemeanor."

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

19 "66-7-363.1. ~~[HIGHWAY]~~ DEPARTMENT OF TRANSPORTATION--
 20 AGREEMENTS WITH OWNERS OR LESSEES OF HIGHWAY FRONTAGE--
 21 PROVISIONS.--

22 A. Notwithstanding the responsibility of the
 23 ~~[highway]~~ department of transportation under the provisions of
 24 Section ~~[40A-8-10 NMSA 1953]~~ 66-7-363 NMSA 1978 to construct,
 25 inspect regularly and maintain fences along all highways under

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1 its jurisdiction, the [~~highway~~] department of transportation
2 may enter into an agreement with an owner or lessee of property
3 adjoining a public highway to keep a specified section of the
4 highway frontage unfenced for use as roadside business;
5 provided, however, that [~~such~~] the owner or lessee, whoever is
6 party to the agreement, [~~shall agree~~] agrees:

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

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

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