States’ Fence Laws

State of New Mexico

www.NationalAgLawCenter.org
N.M. Stat. §§ 77-12-1 to 77-12-12, N.M. Stat. §§ 77-14-2 to 77-14-36, N.M. Stat. §§ 77-16-1 to 77-16-18

Current through all 2010 legislation

Article 12. Herd Law Districts

§ 77-12-1. “Person” defined

Whenever the word “person” is used in this act, it shall include persons, firms and corporations.

§ 77-12-2. Petition for herd law district; contents and filing; hearing; publication of notice; conduct; order; publication; exception

Whenever persons who own or hold under lease or contract of purchase a majority of the acres of contiguous tracts of land, aggregating not less than three thousand eight hundred and forty acres, shall file with the board of county commissioners of the county in which such lands or a major portion thereof, are situated, a petition in writing signed and acknowledged in the same manner as conveyances of deeds to real estate, and accurately defining such tracts of land and setting forth the correct acreage of each tract, requesting such board to declare such tracts of land a herd law district, said board of county commissioners shall, at the next regular or special meeting of said board, enter an order fixing the time and place, not less than twenty nor more than thirty days from the date of such regular or special meeting, for a hearing on said petition. The clerk of such board shall give notice of the time and place of such hearing by publishing a notice thereof in two successive issues of a legal newspaper of general circulation published nearest to the said proposed district. The last publication shall be not less than ten days prior to the date of said hearing. At the time and place fixed for said hearing said board of county commissioners shall hear said petition, and if it finds the same is duly signed and acknowledged as herein provided, by persons who are owners, lessees or contract purchase holders, of a majority of the acres of lands within said proposed districts and otherwise complies with the provisions of this act, it shall enter an order declaring that all of said tracts of land embraced in said proposed district, from and after thirty days from the date of said order, shall be a herd law district within the meaning of this act, and shall cause a notice thereof, accurately defining the boundaries of said district, and stating that said district from and after the expiration of thirty days from the date of said order shall be a herd law district within the meaning of this act, to be published in two consecutive issues of the same newspaper as the notice of said hearing. The last of such publications shall be not less than ten days prior to the date said order shall take effect. Provided, however, that no such herd law district shall be
created unless at least one-fourth of the land embraced therein is being used for agricultural purposes.

§ 77-12-3. Parts of lands not to be included without consent

Such district shall not include any part of the contiguous land held by any person as owner, lessee or contract purchaser, unless it shall include the whole of all such lands of such person, except where such person shall expressly consent thereto by signing and acknowledging said petition.

§ 77-12-4. Publications; language

The publications required by this act shall be made in English or Spanish or both in the discretion of the board of county commissioners. The board of county commissioners at the time of entering the orders herein provided for shall enter an order directing the language or languages in which such publication shall be made.

§ 77-12-5. Trespassing in district; damages; lien on brand

From and after the date said order takes effect, when any trespassing shall have been done by any cattle, horses, sheep, goats, hogs or other livestock, upon the land or property within said district, whether such land or property is enclosed with a legal fence or not, the person who is the owner, lessee or contract purchase holder of such land or property, may recover any damages he may sustain by reason thereof in any court of competent jurisdiction, and the person so damaged is hereby given a lien on all livestock of the same kind or brand belonging to the owner of such trespassing animals or livestock for the recovery of all damages and costs.

§ 77-12-6. Detaint of livestock for damages

A person damaged by trespassing livestock may hold and detain the trespassing livestock until the damages that he has suffered and the costs, including a reasonable amount set by the board per head per day for feeding and caring for the livestock during the time the livestock is so detained, are paid or legally tendered. The person detaining the livestock shall give notice to the owner, if known or ascertainable, within forty-eight hours after detaint.

§ 77-12-7. Petition for dissolution of district; procedure

Upon like petition requesting the dissolution of such district, and after the same notice and hearing as herein provided for the formation of such district, the board of county commissioners of the county in which such tracts of land or a major portion thereof are situated shall enter an order dissolving such district.

§ 77-12-8. Judicial notice of district proceedings

The court shall take judicial notice of the filing of such petition, the granting of such order, the publication thereof and of the location, extent and description of the district set forth in such order and publication.
§ 77-12-9. Fencing of exterior boundaries

The owners, contract purchasers or lessees of lands, lying next to the exterior boundaries of any such herd law district, may construct a legal fence along the whole or any part of such exterior boundaries including the intersection with the roads which enter such districts, provided they construct automobile runways and cattle guards and gates in such fences where same cross such roads, according to plans and specifications approved by the state highway engineer and such runways, cattle guards and gates when so constructed, provided said gates are closed, shall not be construed to render such fence not a legal fence.

§ 77-12-10. Failure to close gate; penalty

A person who opens and fails to close a gate provided for in Section 77-12-9 NMSA 1978 is guilty of a misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

§ 77-12-11. Livestock at large on herd law district road; penalty

An owner or holder of livestock described in Section 77-12-6 NMSA 1978 who permits livestock to run at large on a public road within a herd law district is guilty of a misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

§ 77-12-12. Application of act

This act shall not apply to territory within an incorporated city, town or village, nor shall it be construed to repeal, amend or in anywise affect the provisions of Chapter 88 of the Session Laws of 1919, as amended by Chapter 70 of the Session Laws of 1921, but such owners, lessees and contract purchase holders within any organized irrigation district may take advantage of the provisions of this act.

Article 14. Trespass and Running at Large

§ 77-14-2. Definition

As used in Chapter 77, Article 14 NMSA 1978, “proper military authority” means the commanding officer or other person in charge of a military reservation or enclave.

§ 77-14-3. Trespass on lands

A. It is unlawful for a person or his agents or employees having charge of livestock to permit or allow the livestock to go upon the lands of others in this state for the purpose of grazing or watering upon any waters upon the lands without the permission of the owner or legal claimant or his agent. The provisions of this section shall not be construed to affect the obligation of a property owner to meet the requirements of Section 77-16-1 NMSA 1978 for fencing against such trespasses and shall apply not only to titled lands in this state but to any lands upon which
a person may have a valid existing filing under the laws of the United States or any lands that may be leased by any person from the state.

B. A person or proper military authority who claims the benefits of the protection of this section shall carefully and conspicuously mark the line of his lands so that such mark may be easily seen by persons handling livestock and shall post a notice upon the land conspicuously, warning against trespassing or shall serve personal written notice giving description of the land by government surveys or by metes and bounds.

§ 77-14-4. Animals running at large in unincorporated towns, conservancy districts, irrigation districts and on military reservations or enclaves

The boards of county commissioners of the counties of this state are authorized and empowered to prohibit the running at large of livestock within the limits of any conservancy or irrigation district organized under the laws of the state, and within any portion of a military reservation or enclave, and situate in whole or in part in such county. The high line canals of the conservancy or irrigation district and the fence erected by a military reservation or enclave are the boundaries of the district for the purposes of Sections 77-14-4 through 77-14-7 NMSA 1978.

§ 77-14-5. Livestock running at large; petition to prohibit

The inhabitants of any such town, conservancy district, irrigation district or a proper military authority desiring such action in the county in which they reside or in which any portion of a military reservation or enclave is located, may apply to the board of county commissioners of the county in which the town is situate or the board of county commissioners of that county by petition in writing signed by at least twenty-five residents of the town or districts, or by the proper military authority, asking for an order prohibiting the running at large of livestock within the limits of the town, districts or by the military reservation or enclave. The petition shall define the limits of the town, district or military reservation or enclave which limits shall be plainly marked by posts at the corners of the platted townsites of the town, and of any platted additions to the town. The limits of the conservancy or irrigation districts shall be the boundaries of the high line canals of the districts as defined in Section 77-14-4 NMSA 1978. The limits of a military reservation or enclave shall be marked by proper fencing which complies with New Mexico State Law pursuant to 77-16-1 and 77-14-11.

§ 77-14-6. Animals running at large; order prohibiting; publication

Upon receipt of such petition, the board of county commissioners shall make an order prohibiting the running at large of livestock within the limits of the platted townsite and platted addition or within the limits of the conservancy or irrigation districts, or within the limits of the military reservation or enclave as the case may be, and shall cause the order to be published once each week for four consecutive weeks in some newspaper published in the county where the petition has been filed.

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

B. The sheriff or other peace officer or proper military authority shall impound livestock found running at large and sell the livestock at public auction to the highest bidder for cash after giving notice of the time and place of sale in some newspaper published in the county where the violation occurred three days prior to the day of sale; provided that in the case of a military reservation or enclave, the sale shall be conducted by the board pursuant to the procedure set forth in Section 77-14-36 NMSA 1978. The proceeds up to five dollars ($5.00) per day for each animal shall be retained by the impounding authority to cover its expense and fees. The balance, if any, shall be paid to the general fund.

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

D. A person claiming damages for violation of the order may file suit to recover damages as in other civil cases; provided that such damages, in the case of a violation involving a military reservation or enclave, shall include direct, indirect, incidental and consequential damages.

§ 77-14-8. Irrigation districts; impounding trespassing animals

Whenever a majority of the resident landowners who are qualified voters in any political subdivision of an irrigation section petitions the board of county commissioners in which the political subdivision is located for an order permitting trespassing livestock to be restrained and held for damages under the terms set forth in Sections 77-14-8 through 77-14-24 NMSA 1978, the board of county commissioners, at its first regular session after the filing of the petition with the county clerk, shall grant the request in the petition and cause an order to that effect to be duly entered. Sections 77-14-8 through 77-14-24 NMSA 1978 also apply to such animals as are kept, fed, pastured and maintained outside of the political subdivision and include livestock running on the range outside of or kept, fed, pastured and maintained outside of the political subdivision.

§ 77-14-9. Definition of political subdivision

By the term “political subdivision,” as used herein, is meant:

A. any division of an irrigation district organized under Chapter 60 of the New Mexico Code of 1915, and amendments thereto;

B. any election precinct of any water users' association organized under Chapter 113 of the New Mexico Code of 1915;
C. any district described by metes and bounds in the petition for said order, provided that said district shall contain not less than three square miles of territory, and not less than one-third of said territory within said district shall be in actual cultivation by irrigation.

§ 77-14-10. Publication of order to restrain animals in irrigation district; effective date; judicial notice

Immediately upon the granting of said order by the board of county commissioners it shall be published under the direction of said board, in both Spanish and English, in some newspaper or newspapers published in the county in which said subdivision is located, said publication to be for four consecutive weeks and the same shall also be posted in six public places within said subdivision. Said order shall be effective after five days from and after the last day of said publication. In the event no newspaper is published in said county, said posting shall be sufficient, and the said order shall take effect thirty days after the date of posting thereof.

The courts shall take judicial notice of the filing of said petition, the granting of the order, the publication and posting thereof, and shall also take judicial notice of the location, extent and description of the political subdivision mentioned in said petition.

§ 77-14-11. Right to impound; fences

After the order has taken effect, a person within the political subdivision finding any livestock trespassing upon his premises has the right to take up, hold and restrain the livestock for such damages as it may have inflicted or he may deliver the livestock to the nearest magistrate to be held and impounded under the conditions set forth in Sections 77-14-8 through 77-14-24 NMSA 1978; provided, however, that no person has the right under those sections to hold and restrain livestock for damages when at the time of the trespass, the person did not have surrounding his premises a fence equivalent to that described in Chapter 77, Article 16 NMSA 1978. A fence greater or equivalent to such fence in strength and resisting power, constructed of other material, shall be considered sufficient for the purposes of Sections 77-14-8 through 77-14-24 NMSA 1978.

§ 77-14-12. Holding animals for damages

Any person taking up any trespassing animals under the provisions of this act may hold and restrain said animals, and may adjust the damages with the owner of said stock, either by agreement or arbitration.

§ 77-14-13. Suit for damages in irrigation district; failure to file suit; return of animals

In the event the owner of said stock and the party claiming damages cannot agree as to the amount thereof, and are not willing to arbitrate the same, the party claiming damages may file suit to recover damages, as in other civil cases. In the event the party claiming damages shall fail to file suit within ten days from the date of delivery of said animals to said justice of the peace [magistrate], said animals shall be returned to the owner thereof upon payment of all costs.
§ 77-14-14. Replevin of animals; bond

The party owning said animals may replevin the same at any time in the same manner and form as is provided in replevin actions. Provided, however, that the bond given shall be conditioned as follows:

STATE OF NEW MEXICO
COUNTY OF ...........

Know All Men By These Presents, that we ..........., as principal, and ........... and ........... as sureties, acknowledge ourselves bound unto ........... in the penal sum of ........... ($ ...........) dollars, for the payment of which we bind ourselves, our heirs, executors, administrators and assigns.

The condition of this bond is that,

Whereas, ........... claims damages in the sum of ........... dollars against ........... for injuries he claims to have received by stock belonging to the said ...........: now if the said ........... shall recover damages against the said ........... either by arbitration or by suit, and the said ........... shall pay all sums that may be adjudged against him, either by arbitration or by suit, together with all costs, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands this ... day of ..........., 19....

§ 77-14-15. Sale of animals before judgment; proceeds; liability of clerk

In the event suit is filed and said animals are not replevined, and the justice of the peace [magistrate] is of the opinion that the cost of caring for said animals until final judgment, and [sic] will ascertain the value of said animals, he may sell the same as hereinafter provided, and after deducting from the proceeds of said sale all costs to date, he shall deposit the remainder thereof with the county clerk to be held by him to await final determination of said matter. The county clerk receiving any moneys under the provisions of this act shall be liable on his official bond for the same.

§ 77-14-16. Animals taken up in irrigation district; sale; number necessary

Should it be necessary to sell any of said animals under the terms of this act, the justice of the peace [magistrate] shall sell only such number as in his opinion shall be sufficient to pay all costs and claims based upon the amount claimed or sued for, and shall deliver the remainder of said animals to the owner thereof. Provided, that nothing herein shall be construed as relieving the owner of said stock for any damages in excess of the proceeds derived from said sale.

§ 77-14-17. Delivery of animals to magistrate for sale
In the event the party claiming damages and the owner of the property, cannot agree as to the
damages, or in the event said parties do not agree to arbitrate the same, or in the event said
parties do agree as to the damages, and the owner fails or refuses to immediately pay the same,
or in the event said parties agree to arbitrate and the owner of said animals fails to immediately
pay the amount adjudged to be due by said arbitrators, if said animals have not already been
delivered to the justice of the peace [magistrate] the same shall be immediately delivered to
said justice of the peace [magistrate] to be by him sold, and said justice of the peace
[magistrate] shall immediately proceed to sell as hereinafter provided.

§ 77-14-18. Notice of sale

In the event that it becomes the duty of said justice of the peace [magistrate] to sell any of said
animals under the terms of this chapter, he shall give notice of said sale by posting notice
thereof in six public places within said political subdivision, and also to [sic] give notice to the
owner of said property by mailing a copy of said posted notice to said owner at his last and
ordinary place of address. Said notice shall state the purpose of said sale, describe the number
and kind of animals, give their brands and marks, if any, the amount of costs, fees and damages
for which said animals are to be sold and shall state the hour and day of sale, which time shall
not be less than five nor more than twenty days from the time of posting said notice.

In case the damages are awarded by judgment in court in an action brought for that purpose,
said animals shall be sold under execution, as in other cases.

§ 77-14-19. Sale of animals; entries on docket; owner to be summoned

Should the party claiming damages deliver said animals to the said justice of the peace
[magistrate] to be held and impounded for damages, it shall be the duty of said justice of the
peace [magistrate] to note on his docket at the time of delivery the number and kind of such
animals, the marks and brands thereon, the time of delivery thereof and the name of the owner,
if known, and of the person delivering the same and the amount of his claim for damages. The
justice of the peace [magistrate] shall then summon the owner of said animals, if known, or his
whereabouts can be ascertained, to appear forthwith before him and show cause, if any, why
said animals should not be sold to pay said claim for damages and costs of court.

§ 77-14-20. Fees; appointment of poundkeeper

A. The magistrate shall receive as fees for entering orders and issuing papers and performing
other duties relating to Sections 77-14-8 through 77-14-24 NMSA 1978 the same as are
provided by law in civil cases for similar services, and all persons serving papers pursuant to
those sections shall be allowed the same fees as are allowed in civil cases for similar services.
Arbitrators selected under the terms of those sections shall be allowed a reasonable fee for their
services.

B. The magistrate shall set a reasonable charge per day for caring for the livestock. He shall
feed and care for them while held by him. The magistrate may appoint some other person to act
as poundkeeper. The poundkeeper shall hold the livestock subject to the orders of the
magistrate and shall receive the same fees and costs as are provided in this section for the magistrate in caring for and feeding the livestock.

§ 77-14-21. Owners of animals unknown; appraisers; report

If the owner of said animals is unknown and cannot be ascertained by reasonable investigation, and a claim for damages is made, the justice of the peace [magistrate] shall appoint three disinterested appraisers to appraise the amount of damages, who shall take the oath of office and perform the duties and proceed as prescribed for arbitrators in this act, and when said appraisers have assessed the amount of damages the claimant for damages shall be bound thereby.

§ 77-14-22. Sale of livestock; surplus funds; costs and expenses

The magistrate, after paying all costs, fees and claims from the proceeds of a sale that is made under his direction as provided in Sections 77-14-8 through 77-14-24 NMSA 1978, shall pay the remainder to the owner of the livestock. If the owner is unknown, the magistrate shall deposit the proceeds of the sale, after paying all costs and claims, with the board, which shall handle the proceeds in accordance with the provisions of Chapter 77, Article 13 NMSA 1978. Provided, however, that in case the sale is made under execution, as provided in Section 77-14-18 NMSA 1978, the magistrate shall file with the officer making the sale a certified statement of all costs and expenses that may have accrued, which shall be paid by the officer selling the livestock under execution as other costs are paid.

§ 77-14-23. Rescinding order to permit impounding of animals; petition

At any time after said order made by the board of county commissioners has been in effect for a period of two years it shall be the duty of the county commissioners to rescind the same upon petition of a majority of the landowners of said subdivision who are qualified voters therein, asking that said order be rescinded, and notice of said order shall be given as provided for the original order made by the board of county commissioners.

§ 77-14-24. Application of act

This chapter shall not apply to any incorporated city or town within said subdivision.

§ 77-14-35. Livestock not to run at large in municipalities; trespass; damages; penalty

Livestock shall not be permitted to run at large within the limits of any city, town or village, incorporated or unincorporated, or to trespass upon the cultivated fields and gardens of any person. The owner of any livestock allowing the livestock to run at large within the limits of any city, town or village, incorporated or unincorporated, or to trespass upon the property of another is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 and may be liable for treble the damage occasioned by such trespass. No owners of any property trespassed upon as mentioned in this section shall be liable for the injury, death or loss of any livestock resulting during expulsion from or impounding upon his property of the livestock actually trespassing.
§ 77-14-36. Impoundment of trespass livestock

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

B. Any livestock impounded under the provisions of this section will be released to the owner or his representative upon the payment by the owner of a fee set by regulation of the New Mexico livestock board not to exceed amounts prescribed by law for impounding if any incurred.

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

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

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

Article 16. Fences

§ 77-16-1. Necessity for fence

Every gardener, farmer, planter or other person having lands or crops that would be injured by trespassing animals, shall make a sufficient fence about his land in cultivation, or other lands that may be so injured, the same to correspond with the requirements of the laws of this state prescribing and defining a legal fence.

§ 77-16-2. Definition

As used in Article 16 of Chapter 77, “livestock” shall include domestic animals such as cattle, horses, sheep, hogs, goats and buffaloes.

§ 77-16-3. Damages on fenced lands; right of action; lien on animals

When any trespassing shall have been done by any cattle, horses, sheep, goats, hogs or other livestock upon the cultivated or enclosed ground of any other person, when the same is fenced as provided by Section 77-16-1 NMSA 1978, but not otherwise, such person may recover any
damage that he may sustain by reason thereof by suit in any court having jurisdiction and a person so damaged is hereby given a lien on all livestock of the same kind and brand, belonging to the owner of such trespassing animal or animals for security of his damages and costs; but in no case shall he have such lien nor shall he be entitled to recover any damages, under any circumstances, for such trespass, unless he has such lands and crops enclosed by a legal fence as provided by the preceding section.

§ 77-16-4. Barbed wire fence; specifications

When fences are constructed of barbed wire and posts they shall be built substantially as follows: posts set firmly in the ground and projecting above the ground not less than four feet, said posts to be not less than two inches in diameter at the smaller end, and to be set not over thirty-three feet apart; four barbed wires to be strung firmly and securely fastened to said posts, the bottom wire to be placed approximately twelve inches from the ground, the second wire to be approximately twelve inches above the bottom wire, the third wire to be approximately twelve inches above the second wire and the fourth wire to be approximately twelve inches above the third wire; and between each two posts there shall be placed approximately equidistant apart three stays to be securely fastened to said wires for the purpose of holding the wires in position. Any four-wire fence greater or equivalent to said fence in strength and resisting power shall be considered a legal fence.

§ 77-16-5. Applicability of act

This act shall not apply to territory within an incorporated city, town or village nor shall it be construed to repeal, amend or in anywise affect the provisions of Chapter 88 of the Session Laws of 1919, as amended by Chapter 70 of the Session Laws of 1921.

§ 77-16-6. Board fence; specifications

When the fence is constructed of lumber and posts the boards shall be at least one inch thick and six inches wide with posts as described in the preceding section not over eight feet apart and firmly set in the ground as described in said section. The boards are to be firmly nailed to the posts. The space between the boards is not to be more than six inches.

§ 77-16-7. Pole and post fence; specifications

When the fence is constructed of poles and posts the posts shall not be more than twelve feet apart and of the same size and set in the ground as described in Section 77-16-4 NMSA 1978. The poles are to be at least two inches in diameter at the smaller end and are to be at least four in number firmly fastened to the posts with nails or wire, the top pole at least four feet from the ground and the bottom pole not more than one foot from the ground and the poles are not to be more than one foot apart.

§ 77-16-8. Stone, adobe, or woven wire fence; specifications
When the fence is constructed of stone, adobe, woven wire or any other material it shall be at least four feet in height and equal in strength to the fence described in Section 77-16-4 NMSA 1978.

§ 77-16-9. Legal protection of fences against damage or destruction

All fences shall be considered as under the care and protection of the law, for damages done, or destruction committed thereon.

§ 77-16-10. Injuring fence

Any person who is found guilty of wilfully cutting or otherwise destroying a fence or any part thereof is guilty of a petty misdemeanor.

§ 77-16-11. Injuries by animals; liability; minors

When any animal, of whatsoever class or species it may be, shall break, obstruct or injure any rail, post, stake or any material of which a fence is constructed, the owner of such animal shall be compelled to pay the damages occasioned to the owner of the fence, according to the damages sustained and suffered: provided, that if any animal be taken near any fence, and it shall result in his injuring it, then the person who ordered the animal to be placed there shall pay the damage, and if the herder who has the care of the animal, shall take them there without order from the owner of them, in such case, the father, mother or guardian of him who drove the animals there, if the herder be a minor, shall pay the damages, and if he be of age, he himself shall pay it when he does it without the express order of the owner.

§ 77-16-12. Damages for injuries

The person who shall violate the provisions of Section 77-16-11 NMSA 1978 shall be obliged at the time of his punishment, to indemnify the owner of any fence, for the damage that has followed therefrom, for the repairing of his fence, valued according to the gravity of the offense.

§ 77-16-13. Opening private fence to use road prohibited

That it shall be illegal for any person or persons in the state of New Mexico, to open any fence or fences of any private individual or individuals, for the purpose of using the road, or roads, passing through the private property of any person or persons.

§ 77-16-14. Failure to close gate; liability for damages

That any person, or persons, who open the gate of any fence, or fences, of any person or persons, the same being private property, for the purpose of passing as aforesaid, and shall neglect to close the gate of any fence or fences after having opened the same, shall be subject to and responsible for the damage to the land, crop or grass of the owner, or owners, of such land, through such neglect; and such damage shall be appraised as provided by law.
§ 77-16-15. Penalty for leaving gate open

That in addition to the damage as provided for in the preceding section, such person, or persons, violating the provisions thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof before any justice of the peace [magistrate], shall be fined in a sum not less than five ($5.00), nor more than ten dollars ($10.00).

§ 77-16-16. Railroads; fencing of lines; damages for injury to livestock

Every railroad in this state whose lines of road, or any part thereof, are open for use, and every railroad company formed or to be formed, shall, within six months after the lines of such railroad or any part thereof are open, erect and thereafter maintain fences on the sides of their said railroad, or the part thereof so open for use, suitably and amply sufficient to prevent cattle, horses, sheep, mules, burros and hogs from getting on the said railroad, except at the crossings of public roads and highways, and within the limits of towns, cities and villages, and shall also construct, where the same has not already been done, and maintain, at all public road crossings, now existing or hereafter established, cattle guards suitable and sufficient to prevent cattle, horses, sheep, burros, mules and hogs from getting onto said railroad. If any railroad shall fail to construct and maintain such fences and cattle guards as herein directed, such railroad shall be liable to the owner for all damages resulting from injury or death caused to any such livestock, including a reasonable attorney's fee on order of the court should legal proceedings be commenced by such owner; provided, further, that should the cattle sanitary board [New Mexico livestock board] be unable to determine ownership of livestock crippled or killed by the railroad within thirty (30) days of the date it first receives notice of such injury or death, by report or otherwise, then the board may institute legal proceedings in the name of such unknown owner in any court of competent jurisdiction and recover damages as herein provided, and the proceeds disposed of as provided for under the laws pertaining to estrays.

§ 77-16-17. Requirements of railroad fence

That for the purposes of the preceding two sections a sufficient and suitable fence is defined and declared to be a fence at least four and one-half feet high, constructed of posts and wire, the top wire to be four and one-half feet above the ground and shall have at least four wires upon posts not exceeding twenty feet apart.

§ 77-16-18. Report of killed or crippled livestock; inspection and removal

A. Every railroad in this state, upon discovery of livestock killed or crippled upon a section of the railroad right-of-way, shall immediately make a report thereof to an inspector of the cattle sanitary board [New Mexico livestock board] or to any other person designated by the board for the purpose of receiving the report.

B. The report required by Subsection A shall designate the place where the crippled or killed livestock is located and the brand on the livestock. The board, or a person designated by it, shall promptly inspect the stock, notify the owner and make a report of the inspection, including therein the age, color, sex, approximate weight, marks and brand of the stock. One
copy of the report shall be transmitted by the inspector to the board, one to the owner of the stock and one to the railroad.

C. Dead livestock shall not be destroyed by the railroad until the inspection required by this section is made, but if the inspection is not made within twenty-four hours after transmittal of the report by the railroad, the railroad may bury the dead stock and shall thereupon promptly notify the board, or the person designated by it, of the place of burial so that inspection may be made.

D. A railroad which fails to make any report required by this section is guilty of a petty misdemeanor.

E. “Railroad” as used in this section includes any person, firm or corporation.