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States' Fence Statutes: *New Mexico*



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

States' Fence Statutes: New Mexico

N.M. Stat. §§ 66-7-363, N.M. Stat. §§ 77-12-1 to 77-12-12, N.M. Stat. §§ 77-13-1 to 77-13-10, N.M. Stat. §§ 77-14-2 to 77-14-36, N.M. Stat. §§ 77-16-1 to 77-16-18

Current with emergency legislation through Ch. 140 (End) of the 1st Regular Session and Ch. 4 (End) of the 1st Special Session of the 55th Legislature (2021).

§66-7-363. Animals on highway; highway fencing.

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

B. It is unlawful for any person negligently to permit livestock to wander or graze upon any fenced highway at any time or, during the hours of darkness, to drive livestock along or upon any highway that is normally used by motor vehicles.

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

D. As the department of transportation's annual budget permits, the department of transportation shall:

(1) construct, inspect regularly and maintain fences along all highways under its jurisdiction and provide cattle underpasses, water pipelines and cattle guards as the department of transportation may deem necessary, unless it makes a fact determination that no livestock can enter the highway from a portion left unfenced; and

(2) post proper signs along all highways under its jurisdiction that are not fenced on both sides and that are located adjacent to property containing livestock. The signs shall be located at intervals of not more than two miles along such unfenced highways; provided that sign intervals and postings shall be consistent with the department of transportation's specifications for a uniform system of traffic-control devices, subject to traffic safety engineering discretion, and shall warn motorists that loose livestock may be encountered and that caution should be used.

E. A person who violates the provisions of Subsection A or B of this section is guilty of a penalty assessment misdemeanor.

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. Detain 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 detain.

§ 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 13. Estrays.

§ 77-13-1. Possession of Estray Unlawful.

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.

§ 77-13-2. Impoundment of estray animals.

A. A person shall not impound an estray except when the estray is found on property the person owns or controls. When a person impounds an estray, he shall, within five days of the impoundment, notify the director or an inspector of the impoundment.

B. A person having knowledge of an estray upon any public or private range, fenced or unfenced, may notify the director or an inspector, giving description of the estray, and upon instructions from the board or inspector the estray shall be turned over to an inspector for disposition as the board may direct according to law.

C. It is lawful for a person having knowledge of an estray grazing on public land, public highways or other lands used for grazing purposes in conjunction with public land and who has the prior approval of or is acting in cooperation with an agent of the board to impound and detain the estray for the purpose of ascertaining ownership by brand or other means of identification. The owner of the estray found to be in trespass shall be allowed forty-eight hours from receipt of notice of impoundment within which to claim the animal and make settlement for trespass damage. If the owner fails to claim the animal and effect a settlement for trespass damages within the time allowed, the estray detained shall be turned over to an inspector or other agent of the board for disposition in the same manner as provided for other estrays under Chapter 77, Article 13 NMSA 1978.

§ 77-13-3. Examination of brand records; notice to owner; charge for care; limitation.

Upon receiving notice of the impoundment of an estray the director shall make or cause to be made an examination of the brand records. If from this record the name of the owner or probable owner can be determined, the director shall notify the owner of the impoundment of the estray and, upon the owner proving to the satisfaction of the board that the estray is lawfully his, the board shall issue to him an order to receive the estray upon payment of any reasonable charges that may have been incurred in the care of the estray impounded.

§ 77-13-4. Owner unknown; publication and posting of notice.

If the director of the New Mexico livestock board is unable to determine from the records and description who is the owner or probable owner of such estray or estrays, he shall publish at least once in some publication in general circulation in the county in which the estray animal was picked up, said publication to be designated by the New Mexico livestock board, a notice of such estray, which notice shall give a description of the animal or animals, shall state when and where the same were impounded and shall give notice that unless the animal or animals are claimed by the legal owner within five days after the publication of the notice, the same shall be sold by the New Mexico livestock board for the benefit of the owner when found.



§ 77-13-5. Sale of unclaimed estrays; bill of sale; effect; sale without advertisement; conditions.

If an estray is not claimed within five days after the last publication of notice, it may be sold by the board through an inspector in such manner as the board may direct. The inspector making the sale shall give a bill of sale to the purchaser from the board, signed by himself as inspector. The bill of sale shall be legal evidence of the ownership of the livestock by the purchaser and shall be a legal title to the livestock. Where the director determines that it is impractical to publish notice, the estray may be sold immediately without notice. In such case, the board shall publish notice of the proceeds from the sale of the estray in the same manner and for the same length of time as provided for the notice of the sale and shall hold and distribute the proceeds from the sale in the same manner as if the sale were made after notice.

§ 77-13-6. Disposition of proceeds; record of sale; payments to owner.

The inspector making the sale of an estray shall return the proceeds of the sale to the board. The board shall pay the expenses incurred in the impounding, publishing of notice and selling of the animal and place the balance in the fund of the board, making a record of the same showing the marks and brands and other means of identification of the livestock and giving the amount realized from the sale. The record shall be open to the inspection of the public. Should the lawful owner of an estray that has been sold be found within two years after the sale of the livestock, the net amount received from the sale of the estray less the sum prescribed by law for office handling fees shall be paid to the owner upon his proving ownership to the satisfaction of the board.

§ 77-13-7. Rights of impounder; charges; determination by board.

Upon the impoundment of any estray animal or animals as provided in Section 77-13-2 NMSA 1978, the impounder shall be entitled to hold same lawfully until relieved of their custody by the New Mexico livestock board. Should a claimant for the animal or animals apply to the impounder for possession of the same, the impounder shall at once notify the New Mexico livestock board in writing of such application. Should the board be satisfied that the applicant is the lawful owner, it shall forthwith issue an order by the director authorizing the impounder to deliver said estray or estrays to the owner, who may be required to pay any reasonable charges incurred by the impounder; provided, that in case of a controversy as to what shall constitute a reasonable charge, the New Mexico livestock board shall fix the amount, the time of service for which the impounder may claim remuneration, commencing on the date of notification made by the impounder to the New Mexico livestock board.

§ 77-13-8. Impounding estray; failure to notify board; penalty.

It is unlawful for a person other than an inspector to impound or retain possession of an estray except as provided in Sections 77-13-2 and 77-13-7 NMSA 1978. A person who impounds an estray contrary to the provisions of Chapter 77, Article 13 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

§ 77-13-9. Escape or removal of estray; possessory right of person impounding.

If any animal, after having been impounded by any person under the provisions of this article, shall escape or be taken from the possession or custody of such person before the same shall have been disposed of under the provisions of the [this] article, then such person or



the New Mexico livestock board or its authorized inspector shall have the right to recover the animal wherever the same may be found, to be held until disposed of as provided for in this article.

§ 77-13-10. Rights of municipalities not affected.

Nothing in this article shall amend, alter, change or interfere with the rights of any incorporated municipality in this state to prevent the running at large of any stock within the corporate limits of said municipality, and the impounding of the same as is now provided by law.

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.

§ 77-14-7. Livestock running at large; when unlawful; impounding; sale; suit for damages

A. It is unlawful for the owners of livestock to willfully 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 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 or the board 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 ten dollars (\$10.00) 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.

§ 77-14-36. 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 willfully 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.

In addition to the damage as provided for in Section 77-16-14 NMSA 1978, the person violating the provisions of that section is guilty of a misdemeanor, and upon conviction before any magistrate shall be fined in a sum not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

§ 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.

