

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 316

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO RAILROADS; AMENDING A SECTION OF THE LIVESTOCK CODE  
TO PROVIDE BETTER ENFORCEMENT OF FENCING LAWS REQUIRED OF  
RAILROADS.

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

SECTION 1. Section 77-16-16 NMSA 1978 (being Laws 1889,  
Chapter 75, Section 1, as amended) is amended to read:

"77-16-16. RAILROADS--FENCING OF LINES--LIVESTOCK  
DAMAGE.--

A. 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~~] the railroad or any part thereof are open,  
erect and thereafter maintain fences on the sides of [~~their~~  
~~said~~] the railroad or the part thereof so open for use,

.186410.2

underscored material = new  
[bracketed material] = delete

1 suitably and amply sufficient to prevent cattle, horses, sheep,  
2 mules, burros and hogs from getting on the [~~said~~] railroad,  
3 except at the crossings of public roads and highways and within  
4 the limits of [~~towns, cities and villages~~] municipalities and  
5 shall also construct, where [~~the same has~~] not already [~~been~~]  
6 done, and maintain at all public road crossings now existing or  
7 hereafter established cattle guards suitable and sufficient to  
8 prevent cattle, horses, sheep, burros, mules and hogs from  
9 getting onto [~~said~~] the railroad. If any railroad [~~shall fail~~]  
10 fails to construct and maintain [~~such~~] fences and cattle guards  
11 as [~~herein~~] directed [~~such~~] in this section, the railroad shall  
12 be liable to the owner for all damages resulting from injury or  
13 death caused to any [~~such~~] livestock, including [~~a~~] reasonable  
14 attorney fees, on order of the court should legal proceedings  
15 be commenced by [~~such~~] the owner. [~~Provided, further, that~~]  
16 Should the [~~cattle sanitary~~] New Mexico livestock board be  
17 unable to determine ownership of livestock crippled or killed  
18 by the railroad within thirty [~~(30)~~] days of the date it first  
19 receives notice of such injury or death, by report or  
20 otherwise, then the board may institute legal proceedings in  
21 the name of [~~such~~] the unknown owner in any court of competent  
22 jurisdiction and recover damages as [~~herein~~] provided in this  
23 section, and the proceeds shall be disposed of as provided for  
24 under the laws pertaining to estrays.

25 B. In the event that a fence is in a condition of

1 neglect, disrepair or nonexistence, the adjacent landowner may  
2 contact the railroad supervisor of the owner of the right of  
3 way by certified mail, return receipt requested, and demand  
4 repair or construction to the legal standard provided in  
5 Section 77-16-17 NMSA 1978. Within ten days thereafter, the  
6 railroad shall commence construction or provide proof of intent  
7 to comply, and after ten more days, if the railroad has failed  
8 to commence construction or to comply with agreed-upon terms of  
9 construction or repair, the adjacent landowner may repair,  
10 construct or cause to be repaired or constructed the fence at  
11 the expense of the railroad calculated at the cost of  
12 commercial rates common to the area. If the railroad fails to  
13 comply within thirty days of presentation of proof of cost, the  
14 landowner shall be compensated an amount equal to three times  
15 the amount of the presented proof plus any cost of litigation,  
16 including attorney fees.

17 C. Narrow-gauge and recreational railroads are  
18 exempt from the provisions of this section."

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