

1 HOUSE BILL 390

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Nathan P. Small

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10 AN ACT

11 RELATING TO ANIMALS; PROVIDING A REGISTERED EQUINE RESCUE OR
12 RETIREMENT FACILITY WITH THE RIGHT OF FIRST REFUSAL TO PURCHASE
13 ESTRAY, CRUELLY TREATED OR TRESPASSING EQUINES; DEFINING
14 "EQUINE"; MAKING CONFORMING CHANGES.

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

17 SECTION 1. Section 7-2-30.7 NMSA 1978 (being Laws 2013,
18 Chapter 49, Section 2) is amended to read:

19 "7-2-30.7. OPTIONAL DESIGNATION OF TAX REFUND
20 CONTRIBUTION--~~[HORSE]~~ EQUINE SHELTER RESCUE FUND.--

21 A. Any individual whose state income tax liability
22 after application of allowable credits and tax rebates in any
23 year is lower than the amount of money held by the department
24 to the credit of such individual for that tax year may
25 designate any portion of the income tax refund due to the

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1 individual to be paid to the [~~horse~~] equine shelter rescue
2 fund. In the case of a joint return, both individuals must
3 make such a designation.

4 B. The department shall revise the state income tax
5 form to allow the designation of such contributions in the
6 following form:

7 "[~~Horse~~] Equine Shelter Rescue Fund - Check [] if
8 you wish to contribute a part or all of your tax
9 refund to the [~~horse~~] equine shelter rescue fund.
10 Enter here \$ _____ the amount of your
11 contribution."

12 C. The provisions of this section do not apply to
13 income tax refunds subject to interception under the provisions
14 of the Tax Refund Intercept Program Act, and any designation
15 made under the provisions of this section to such refunds is
16 void."

17 SECTION 2. Section 30-18-1.2 NMSA 1978 (being Laws 1999,
18 Chapter 107, Section 3, as amended) is amended to read:

19 "30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

20 A. If the court finds that a seized animal is not
21 being cruelly treated and that the animal's owner is able to
22 provide for the animal adequately, the court shall return the
23 animal to its owner.

24 B. If the court finds that a seized animal is being
25 cruelly treated or that the animal's owner is unable to provide

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1 for the animal adequately, the court shall hold a hearing to
2 determine the disposition of the animal.

3 C. An agent of the New Mexico livestock board, an
4 animal control agency operated by the state, a county or a
5 municipality, ~~[or]~~ an animal shelter or other animal welfare
6 organization designated by an animal control agency or an
7 animal shelter, in the custody of which an animal that has been
8 cruelly treated has been placed may petition the court to
9 request that the animal's owner may be ordered to post security
10 with the court to indemnify the costs incurred to care and
11 provide for the seized animal pending the disposition of any
12 criminal charges of committing cruelty to animals pending
13 against the animal's owner.

14 D. The court shall determine the amount of security
15 while taking into consideration all of the circumstances of the
16 case, including the owner's ability to pay, and may conduct
17 periodic reviews of its order. If the posting of security is
18 ordered, the animal control agency, animal shelter or animal
19 welfare organization may, with permission of the court, draw
20 from the security to indemnify the costs incurred to care and
21 provide for the seized animal pending disposition of the
22 criminal charges.

23 E. If the owner of the animal does not post
24 security within fifteen days after the issuance of the order,
25 or if, after reasonable and diligent attempts the owner cannot

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1 be located, the animal may be deemed abandoned and relinquished
2 to the animal control agency, animal shelter or animal welfare
3 organization for adoption or humane destruction; provided that
4 if the animal is livestock other than poultry associated with
5 cockfighting, the animal may be sold pursuant to the procedures
6 set forth in Section 77-18-2 NMSA 1978.

7 F. Nothing in this section shall prohibit an owner
8 from voluntarily relinquishing an animal to an animal control
9 agency or shelter in lieu of posting security. A voluntary
10 relinquishment shall not preclude further prosecution of any
11 criminal charges alleging that the owner has committed felony
12 cruelty to animals.

13 G. Upon conviction, the court shall place the
14 animal with an animal shelter or animal welfare organization
15 for placement or for humane destruction.

16 H. As used in this section:

17 (1) "livestock" means all domestic or
18 domesticated animals that are used or raised on a farm or ranch
19 and exotic animals in captivity and includes [~~horses, asses,~~
20 ~~mules~~] equines, cattle, sheep, goats, swine, bison, poultry,
21 ostriches, emus, rheas, camelids and farmed cervidae but does
22 not include canine or feline animals; and

23 (2) "equine" means a horse, pony, mule, donkey
24 or hinny."

25 SECTION 3. Section 77-2-1.1 NMSA 1978 (being Laws 1993,

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1 Chapter 248, Section 2, as amended) is amended to read:

2 "77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

3 A. "animals" or "livestock" means all domestic or
4 domesticated animals that are used or raised on a farm or
5 ranch, including the carcasses thereof, and exotic animals in
6 captivity and includes [~~horses, asses, mules~~] equines, cattle,
7 sheep, goats, swine, bison, poultry, ostriches, emus, rheas,
8 camelids and farmed cervidae upon any land in New Mexico.

9 "Animals" or "livestock" does not include canine or feline
10 animals;

11 B. "bill of sale" means an instrument in
12 substantially the form specified in The Livestock Code by which
13 the owner or the owner's authorized agent transfers to the
14 buyer the title to animals described in the bill of sale;

15 C. "bison" or "buffalo" means a bovine animal of
16 the species bison;

17 D. "board" means the New Mexico livestock board;

18 E. "bond" means cash or an insurance agreement from
19 a New Mexico licensed surety or insurance corporation pledging
20 surety for financial loss caused to another, including
21 certificate of deposit, letter of credit or other surety as may
22 be approved by the grain inspection, packers and stockyards
23 administration of the United States department of agriculture
24 or the board;

25 F. "brand" means a symbol or device in a form

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1 approved by and recorded with the board as may be sufficient to
2 readily distinguish livestock should they become intermixed
3 with other livestock;

4 G. "brand inspector" means an inspector who is not
5 certified as a peace officer;

6 H. "carcasses" means dead or dressed bodies of
7 livestock or parts thereof;

8 I. "cattle" means animals of the genus bos,
9 including dairy cattle, and does not include any other kind of
10 livestock;

11 J. "dairy cattle" means animals of the genus bos
12 raised not for consumption but for dairy products and
13 distinguished from meat breed cattle;

14 K. "director" means the executive director of the
15 board;

16 L. "disease" means a communicable, infectious or
17 contagious disease;

18 M. "district" means a livestock inspection
19 district;

20 N. "equine" means a horse, pony, mule, donkey or
21 hinny;

22 [~~N.~~] O. "estray" means livestock found running at
23 large upon public or private lands, either fenced or unfenced,
24 whose owner is unknown, or that is branded with a brand that is
25 not on record in the office of the board or is a freshly

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1 branded or marked offspring not with its branded or marked
2 mother, unless other proof of ownership is produced;

3 P. "hinny" means the offspring of a male horse and
4 a female donkey;

5 [Θ-] Q. "inspector" means a livestock or brand
6 inspector;

7 [P-] R. "livestock inspector" means a certified
8 inspector who is granted full law enforcement powers for
9 enforcement of The Livestock Code and other criminal laws
10 relating to livestock;

11 [Q-] S. "mark" means an ear tag or ownership mark
12 that is not a brand;

13 [R-] T. "meat" means the edible flesh of poultry,
14 birds or animals sold for human consumption and includes
15 livestock, poultry and livestock and poultry products;

16 [S-] U. "mule" means [~~a hybrid resulting from the~~
17 ~~cross~~] the offspring of a female horse and [an ass] a male
18 donkey; and

19 [F-] V. "person" means an individual, firm,
20 partnership, association, corporation or similar legal entity."

21 SECTION 4. Section 77-2-30 NMSA 1978 (being Laws 2005,
22 Chapter 236, Section 1) is amended to read:

23 "77-2-30. [~~HORSE~~] EQUINE RESCUE OR RETIREMENT FACILITY--
24 REGISTRATION--BOARD POWERS AND DUTIES--FEES.--

25 A. As used in this section, "facility" means [a

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1 ~~horse~~] an equine rescue or retirement facility, including a
2 private reserve or private preserve, that advertises [~~of~~] or
3 solicits for [~~horses~~] equines and provides lifelong care or
4 finds new owners for [~~horses~~] equines that are unwanted or have
5 been neglected or abused or captured wild [~~horses~~] equines that
6 cannot be returned to their range.

7 B. A facility shall not operate in New Mexico
8 unless registered by the board.

9 C. The board shall:

10 (1) register facilities that meet the
11 requirements of this section;

12 (2) annually consult with representatives from
13 the equine industry, equine rescue organizations and
14 veterinarians on facility standards; and

15 (3) after consideration of recommendations by
16 facilities and national organizations for the care of unwanted
17 [~~horses~~] equines [~~and equine rescue and retirement facilities~~],
18 promulgate rules for facilities, including:

19 (a) health and sanitary requirements;

20 (b) standards for barns, paddocks,
21 pastures and ranges;

22 (c) qualifications of the facility
23 staff;

24 (d) provision of veterinary care;

25 (e) feeding and watering requirements;

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(f) transportation; and
(g) other requirements necessary to ensure the humane care of ~~[horses]~~ equines.

D. The board may charge the following fees:

- (1) an initial inspection and registration fee of not more than two hundred fifty dollars (\$250);
- (2) an annual inspection and registration fee of not more than one hundred dollars (\$100); and
- (3) reinspection fees of not more than one hundred dollars (\$100).

E. Fees collected pursuant to this section shall be deposited in the New Mexico livestock board general fund and may be used to carry out the provisions of ~~[Sections 1 and 2 of this act]~~ this section and Section 77-2-31 NMSA 1978."

SECTION 5. Section 77-2-31 NMSA 1978 (being Laws 2005, Chapter 236, Section 2) is amended to read:

"77-2-31. ~~[HORSE]~~ EQUINE RESCUE OR RETIREMENT FACILITIES--INSPECTIONS--REINSPECTION.--

- A. Prior to annual registration, each facility shall be inspected in accordance with board rules.
- B. The board or its agents may enter the premises of a facility to conduct unannounced inspections.
- C. If, following an inspection, the board determines that the facility does not meet the board's minimum facility requirements, it shall give the registrant written

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1 notice of the deficiencies and schedule a reinspection,
2 allowing a reasonable time for the registrant to correct the
3 deficiencies.

4 D. The registrant shall remedy the deficiencies and
5 submit evidence to the board demonstrating compliance with
6 board rules for the facility.

7 E. If on reinspection the board determines that the
8 facility is still deficient in those areas for which it has
9 been given written notice, the [~~horses~~] equines may be
10 impounded in accordance with the provisions of Section 77-18-2
11 NMSA 1978 and the board shall hold a hearing as provided in the
12 Uniform Licensing Act to determine if the registration should
13 be suspended or revoked.

14 F. If a facility's registration is suspended or
15 revoked, the board shall place the [~~horses~~] equines in another
16 facility."

17 SECTION 6. Section 77-2-32 NMSA 1978 (being Laws 2013,
18 Chapter 49, Section 1) is amended to read:

19 "77-2-32. [~~HORSE~~] EQUINE SHELTER RESCUE FUND--CREATED.--

20 A. The "[~~horse~~] equine shelter rescue fund" is
21 created as a nonreverting fund in the state treasury. The fund
22 consists of appropriations, gifts, grants, donations and
23 amounts designated pursuant to Section [~~2 of this 2013 act~~]
24 7-2-30.7 NMSA 1978. The board shall administer the fund, and
25 money in the fund is appropriated to the board to carry out the

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1 intent of aiding [~~horse~~] equine rescues and homeless [~~horses~~]
2 equines in the state.

3 B. The board shall establish by rule the
4 distribution of funds from the [~~horse~~] equine shelter rescue
5 fund to [~~horse~~] equine rescue and retirement facilities
6 registered by the board pursuant to Section 77-2-30 NMSA 1978,
7 taking into consideration the number of [~~horses~~] equines being
8 cared for in each facility and the need of each facility."

9 SECTION 7. Section 77-13-4 NMSA 1978 (being Laws 1907,
10 Chapter 80, Section 4, as amended) is amended to read:

11 "77-13-4. OWNER UNKNOWN--PUBLICATION AND POSTING OF
12 NOTICE.--

13 A. If the director of the [~~New Mexico livestock~~]
14 board is unable to determine from the records and description
15 who is the owner or probable owner of [~~such~~] an estray, [~~or~~
16 ~~estrays, he~~] the director shall publish at least once in some
17 publication in general circulation in the county in which the
18 estray animal was picked up, [~~said~~] the publication to be
19 designated by the [~~New Mexico livestock~~] board, a notice of
20 [~~such~~] the estray [~~which~~].

21 B. For an estray that is not an equine, the notice
22 shall give a description of the animal [~~or animals~~], shall
23 state when and where [~~the same were~~] it was impounded and shall
24 give notice that unless the animal [~~or animals are~~] is claimed
25 by the legal owner within five days after the publication of

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1 the notice, the [~~same~~] animal shall be sold by the [~~New Mexico~~
2 ~~livestock~~] board for the benefit of the owner when found.

3 C. For an estray that is an equine, the notice
4 shall give a description of the equine, shall state when and
5 where it was impounded and shall give notice that, unless the
6 equine is claimed by the legal owner within five days after
7 publication of the notice, a registered equine rescue or
8 retirement facility shall be given the right of first refusal
9 to purchase the equine for an ownership transfer fee not to
10 exceed one hundred dollars (\$100), and that if a registered
11 equine rescue or retirement facility is unable or unwilling to
12 purchase the equine, the board shall have the equine humanely
13 euthanized by a licensed veterinarian."

14 SECTION 8. Section 77-13-5 NMSA 1978 (being Laws 1907,
15 Chapter 80, Section 5, as amended) is amended to read:

16 "77-13-5. [~~SALE~~] DISPOSITION OF UNCLAIMED ESTRAYS--BILL
17 OF SALE--EFFECT--SALE WITHOUT ADVERTISEMENT--CONDITIONS.--

18 A. If an estray, other than an equine, is not
19 claimed within five days after the last publication of notice,
20 it may be sold by the board through an inspector in such manner
21 as the board may direct. The inspector making the sale shall
22 give a bill of sale to the purchaser from the board, signed by
23 [~~himself as~~] the inspector. The bill of sale shall be legal
24 evidence of the ownership of the livestock by the purchaser and
25 shall be a legal title to the livestock. Where the director

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1 determines that it is impractical to publish notice, the estray
2 may be sold immediately without notice. In such case, the
3 board shall publish notice of the proceeds from the sale of the
4 estray in the same manner and for the same length of time as
5 provided for the notice of the sale and shall hold and
6 distribute the proceeds from the sale in the same manner as if
7 the sale were made after notice.

8 B. If the estray is an equine and the equine is not
9 claimed within five days after the last publication of notice,
10 the board shall give a registered equine rescue or retirement
11 facility the right of first refusal to purchase the equine for
12 an ownership transfer fee not to exceed one hundred dollars
13 (\$100) per equine. The board shall provide a bill of sale to
14 the registered equine rescue or retirement facility that
15 purchases the equine. The bill of sale shall be legal evidence
16 of the ownership of the equine by the registered equine rescue
17 or retirement facility and shall be legal title to the equine.
18 If a registered equine rescue or retirement facility is unable
19 or unwilling to purchase the equine, the board shall have the
20 equine humanely euthanized by a licensed veterinarian."

21 SECTION 9. Section 77-13-6 NMSA 1978 (being Laws 1907,
22 Chapter 80, Section 6, as amended) is amended to read:

23 "77-13-6. DISPOSITION OF PROCEEDS--RECORD OF SALE--
24 PAYMENTS TO OWNER.--~~[The inspector making the sale of an estray~~
25 ~~shall return the]~~ Proceeds ~~[of]~~ from the sale of an estray

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1 pursuant to Section 77-13-5 NMSA 1978 shall be returned to the
2 board. The board shall pay the expenses incurred in the
3 impounding, publishing of notice and selling of the animal and
4 place the balance in the fund of the board, making a record of
5 the same showing the marks and brands and other means of
6 identification of the livestock and giving the amount realized
7 from the sale. The record shall be open to [~~the~~] inspection
8 [~~of~~] by the public. Should the lawful owner of an estray that
9 has been sold be found within two years after the sale of the
10 livestock, the net amount received from the sale of the estray
11 less the sum prescribed by law for office handling fees shall
12 be paid to the owner upon [~~his~~] the owner's proving ownership
13 to the satisfaction of the board."

14 SECTION 10. Section 77-14-7 NMSA 1978 (being Laws 1909,
15 Chapter 146, Section 4, as amended) is amended to read:

16 "77-14-7. LIVESTOCK RUNNING AT LARGE--WHEN UNLAWFUL--
17 IMPOUNDING--~~[SALE]~~ DISPOSITION--SUIT FOR DAMAGES.--

18 A. After the publication and posting of an order
19 pursuant to Section 77-14-6 NMSA 1978, it is unlawful for the
20 owners of livestock to allow the livestock to run at large
21 within the town, conservancy district, irrigation district or
22 military reservation or enclave. An owner who willfully allows
23 livestock to run at large in violation of the order is guilty
24 of a misdemeanor and upon conviction shall be punished in
25 accordance with the provisions of Section 31-19-1 NMSA 1978 for

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1 each offense.

2 B. If the livestock is not an equine, the sheriff
3 or other peace officer or proper military authority shall
4 impound livestock found running at large and sell the livestock
5 at public auction to the highest bidder for cash after giving
6 notice of the time and place of sale in some newspaper
7 published in the county where the violation occurred three days
8 prior to the day of sale; provided that in the case of a
9 military reservation or enclave, the sale shall be conducted by
10 the board pursuant to the procedure set forth in Section
11 77-14-36 NMSA 1978. The proceeds up to five dollars (\$5.00)
12 per day for each animal shall be retained by the impounding
13 authority to cover its expense and fees. The balance, if any,
14 shall be paid to the general fund.

15 C. If the livestock is an equine, the sheriff,
16 other peace officer, proper military authority or the board
17 shall impound the equine running at large and give notice in
18 some newspaper published in the county where the violation
19 occurred that unless the equine is redeemed by the legal owner
20 within three days after publication of the notice, a registered
21 equine rescue or retirement facility shall be given the right
22 of first refusal to purchase the equine for an ownership
23 transfer fee not to exceed one hundred dollars (\$100), and that
24 if a registered equine rescue or retirement facility is unable
25 or unwilling to purchase the equine, the board shall have the

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1 equine humanely euthanized by a licensed veterinarian. The
2 notice shall additionally give a description of the equine and
3 state when and where it was impounded.

4 ~~[G-]~~ D. The owner of livestock impounded may redeem
5 the livestock at any time prior to sale by paying the impound
6 fees and costs incurred for each day or portion of a day that
7 the livestock has been in custody; provided that in the case of
8 a military reservation or enclave, redemption shall be allowed
9 pursuant to Section 77-14-36 NMSA 1978. If the livestock is an
10 equine and ownership of the equine has transferred to a
11 registered equine rescue or retirement facility, the former
12 owner may recover from the impounding authority the amount of
13 the ownership transfer fee paid by the registered equine rescue
14 or retirement facility for ownership of the equine, less fees
15 and costs incurred by the impounding authority for each day or
16 portion of a day that the equine was in the authority's
17 custody.

18 ~~[D-]~~ E. A person claiming damages for violation of
19 the order may file suit to recover damages as in other civil
20 cases; provided that such damages, in the case of a violation
21 involving a military reservation or enclave, shall include
22 direct, indirect, incidental and consequential damages."

23 **SECTION 11.** Section 77-14-15 NMSA 1978 (being Laws 1919,
24 Chapter 88, Section 9) is amended to read:

25 "77-14-15. DISPOSITION OF LIVESTOCK BEFORE JUDGMENT--

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1 PROCEEDS--LIABILITY.--

2 A. In the event suit is filed and [~~said animals~~
3 ~~are~~] the livestock is not replevined and the [~~justice of the~~
4 ~~peace~~] magistrate is of the opinion that the cost of caring for
5 [~~said animals~~] the livestock until final judgment [~~and~~] will
6 [~~ascertain~~] exceed the value of [~~said animals, he may~~] the
7 livestock, the magistrate:

8 (1) if the livestock is not an equine, may
9 sell the [~~same as hereinafter~~] livestock as provided in Section
10 77-14-16 NMSA 1978 and after deducting from the proceeds of
11 [~~said~~] the sale all costs to date, [~~he~~] the magistrate shall
12 deposit the remainder [~~thereof~~] of the proceeds with the county
13 clerk to be held by [~~him~~] the county clerk to await final
14 determination of [~~said~~] the matter. The county clerk receiving
15 any [~~moneys~~] money under the provisions of [~~this act~~] Sections
16 77-14-8 through 77-14-24 NMSA 1978 shall be liable on [~~his~~] the
17 county clerk's official bond for the [~~same~~] money; and

18 (2) if the livestock is an equine, shall give
19 a registered equine rescue or retirement facility the right of
20 first refusal to purchase the equine for an ownership transfer
21 fee not to exceed one hundred dollars (\$100) per equine. The
22 magistrate shall provide a bill of sale to the registered
23 equine rescue or retirement facility that purchases the equine.
24 The bill of sale shall be legal evidence of the ownership of
25 the equine by the registered equine rescue or retirement

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1 facility and shall be legal title to the equine. After
2 deducting from the ownership transfer fee all costs to date,
3 the magistrate shall deposit the remainder of the fee with the
4 county clerk to be held by the county clerk pending a final
5 determination of the matter.

6 B. If a registered equine rescue or retirement
7 facility is unable or unwilling to purchase the equine, the
8 equine shall remain in the custody of the magistrate or board
9 pending the disposition of the case."

10 SECTION 12. Section 77-14-17 NMSA 1978 (being Laws 1919,
11 Chapter 88, Section 11) is amended to read:

12 "77-14-17. DELIVERY OF LIVESTOCK TO MAGISTRATE.--

13 A. In the event the party claiming damages and the
14 owner of the property cannot agree as to the damages or in the
15 event [~~said~~] the parties do not agree to arbitrate [the same]
16 or in the event [~~said~~] the parties do agree as to the damages
17 and the owner fails or refuses to immediately pay the [~~same~~]
18 damages or in the event [~~said~~] the parties agree to arbitrate
19 and the owner of [~~said animals~~] the livestock fails to
20 immediately pay the amount adjudged to be due by [~~said~~]
21 arbitrators, if [~~said animals have~~] the livestock has not
22 already been delivered to the [~~justice of the peace~~]
23 magistrate, the [same] livestock shall be immediately delivered
24 to [~~said justice of the peace to be by him sold, and said~~
25 justice of the peace] the magistrate.

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1 B. If the livestock is not an equine, the
2 magistrate shall immediately proceed to sell the livestock as
3 [hereinafter] provided in Section 77-14-18 NMSA 1978.

4 C. If the livestock is an equine, the magistrate
5 shall give a registered equine rescue or retirement facility
6 the right of first refusal to purchase the equine for an
7 ownership transfer fee not to exceed one hundred dollars (\$100)
8 per equine. The magistrate shall provide a bill of sale to the
9 registered equine rescue or retirement facility that purchases
10 the equine. The bill of sale shall be legal evidence of the
11 ownership of the equine by the registered equine rescue or
12 retirement facility and shall be legal title to the equine.
13 After deducting from the ownership transfer fee all costs to
14 date, the magistrate shall deposit the remainder of the fee
15 with the county clerk to be held by the county clerk pending a
16 final determination of the matter.

17 D. If the livestock is an equine and a registered
18 equine rescue or retirement facility is unable or unwilling to
19 purchase the equine, the equine shall remain in the custody of
20 the magistrate or board pending an agreement by the owner to
21 the satisfaction of the magistrate that the damages will be
22 paid or pending the disposition of the matter. In no case
23 shall the magistrate sell the equine to pay damages or any
24 amount due; provided, however, that the magistrate may order
25 the owner to sell the equine to satisfy a judgment."

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1 SECTION 13. Section 77-14-18 NMSA 1978 (being Laws 1919,
2 Chapter 88, Section 12) is amended to read:

3 "77-14-18. NOTICE OF SALE.--

4 A. In the event that it becomes the duty of [~~said~~
5 ~~justice of the peace~~] the magistrate to sell any [~~of said~~
6 ~~animals~~] livestock that is not equine under the terms of [~~this~~
7 ~~chapter, he~~] Sections 77-14-8 through 77-14-24 NMSA 1978, the
8 magistrate shall give notice of [~~said~~] the sale by posting
9 notices [~~thereof~~] in six public places within [~~said~~] the
10 political subdivision and also [~~to~~] give notice to the owner of
11 [~~said~~] the property by mailing a copy of [~~said~~] the posted
12 notice to [~~said~~] the owner at [~~his~~] the owner's last and
13 ordinary place of address. [~~Said~~] The notice shall state the
14 purpose of [~~said~~] the sale, describe the number and kind of
15 animals, give their brands and marks, if any, state the amount
16 of costs, fees and damages for which [~~said animals are~~] the
17 livestock is to be sold and shall state the hour and day of
18 sale, which time shall not be less than five nor more than
19 twenty days from the time of posting [~~said~~] the notice.

20 B. In case the damages are awarded by judgment in
21 court in an action brought for that purpose, [~~said animals~~]
22 livestock that is not equine shall be sold under execution as
23 in other cases."

24 SECTION 14. Section 77-14-19 NMSA 1978 (being Laws 1919,
25 Chapter 88, Section 13) is amended to read:

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1 "77-14-19. SALE OF LIVESTOCK--DOCKET ENTRY--OWNER

2 SUMMONED.--

3 A. Should the party claiming damages deliver [~~said~~
4 ~~animals~~] the livestock to the [~~said justice of the peace~~
5 magistrate to be held and impounded for damages, it [~~shall be~~
6 is the duty of [~~said justice of the peace~~] the magistrate to
7 note on [~~his~~] the magistrate's docket at the time of delivery
8 the number and kind of [~~such~~] animals, the marks and brands
9 thereon, the time of delivery [~~thereof and~~], the name of the
10 owner if known and of the person delivering the [~~same~~]
11 livestock and the amount of [~~his~~] the person's claim for
12 damages. [~~The justice of the peace~~]

13 B. The magistrate shall [~~then~~] summon the owner of
14 [~~said animals~~] the livestock, if known or [~~his~~] the owner's
15 whereabouts can be ascertained, to appear [~~forthwith~~] before
16 [~~him~~] the magistrate and show cause [~~if any~~] why [~~said~~
17 ~~animals~~]:

18 (1) if the livestock are not equine, the
19 livestock should not be sold to pay [~~said~~] the claim for
20 damages and costs of court; and

21 (2) if the livestock are equine, a registered
22 equine rescue or retirement facility should not be given the
23 right of first refusal to purchase the livestock for an
24 ownership transfer fee not to exceed one hundred dollars (\$100)
25 per equine."

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1 SECTION 15. Section 77-14-36 NMSA 1978 (being Laws 1975,
2 Chapter 329, Section 1, as amended) is amended to read:

3 "77-14-36. IMPOUNDMENT OF TRESPASS LIVESTOCK.--

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

13 B. Any livestock impounded under the provisions of
14 this section [~~will~~] shall be released to the owner or [~~his~~] the
15 owner's representative upon the payment by the owner of a fee
16 set by regulation of the [~~New Mexico livestock~~] board not to
17 exceed amounts prescribed by law for impounding [~~if any~~
18 ~~incurred~~].

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

25 D. This section shall not be construed to affect

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1 the obligation of a property owner of meeting the requirements
2 of Section 77-16-1 NMSA 1978 for fencing against such
3 trespasses.

4 E. Any cost charged against trespass livestock will
5 be a lien on the livestock. If the owner does not pay the
6 charges and reclaim possession of the livestock within five
7 days after receipt of notification by the owner, the livestock
8 shall be considered unclaimed estrays and may be [~~sold~~]
9 disposed of in accordance with the provisions of Section
10 77-13-5 NMSA 1978."

11 SECTION 16. Section 77-18-2 NMSA 1978 (being Laws 1987,
12 Chapter 151, Section 1, as amended) is amended to read:

13 "77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED
14 LIVESTOCK.--

15 A. If a livestock inspector or other peace officer
16 has reason to believe that livestock [~~is~~] are being cruelly
17 treated, the inspector or peace officer may apply to a court in
18 the county where the livestock [~~is~~] are located for a warrant
19 to seize the allegedly cruelly treated livestock.

20 B. On a showing of probable cause to believe that
21 the livestock [~~is~~] are being cruelly treated, the court shall
22 issue a warrant for the seizure of the livestock and set the
23 matter for hearing as expeditiously as possible within thirty
24 days unless good cause for a later time is demonstrated by the
25 state. Seizure as authorized by this section shall be

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1 restricted to only those livestock allegedly being cruelly
2 treated. The board by rule shall establish procedures for
3 preserving evidence of alleged cruel treatment of livestock.

4 C. If criminal charges are filed against the owner,
5 the court shall, upon proper petition, proceed to determine if
6 security is required to be posted pursuant to Section 30-18-1.2
7 NMSA 1978. Otherwise, the judge or magistrate executing the
8 warrant shall notify the board, have the livestock impounded
9 and give written notice to the owner of the livestock of the
10 time and place of a hearing to determine disposition of the
11 livestock. [~~D.~~] All interested parties, including the district
12 attorney, shall be given an opportunity to present evidence at
13 the hearing. [~~and~~]

14 D. For livestock that are not equine:

15 (1) if the court finds that the owner has
16 cruelly treated the livestock, the court shall order the sale
17 of the livestock at fair market value or order humane
18 destruction. If the livestock [~~is~~] are ordered sold, the sale
19 shall occur within ten days of the order. If the court does
20 not find that the owner has cruelly treated the livestock, the
21 court shall order the livestock returned to the owner;

22 [~~E.~~] (2) if the court orders the sale of the
23 livestock, the board shall take proper action to ensure that
24 the livestock [~~is~~] are sold at fair market value, including
25 acceptance of reasonable bids or sale at auction. A bid by the

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1 owner of the livestock or the owner's representative shall not
2 be accepted; and

3 ~~[F.]~~ (3) proceeds from the sale of the
4 livestock shall be forwarded to the court ordering the sale.
5 From these proceeds, the court shall pay all expenses incurred
6 in caring for the livestock while ~~[it was]~~ they were impounded
7 and any expenses involved in ~~[its]~~ their sale. Any excess
8 proceeds of the sale shall be forwarded to the former owner.
9 If the expenses incurred in caring for and selling the
10 livestock exceed the amount received from the sale, the court
11 shall order the former owner to pay the additional cost.

12 E. For livestock that are equine:

13 (1) if the court finds that the owner has
14 cruelly treated the equine, the court shall give a registered
15 equine rescue or retirement facility the right of first refusal
16 to purchase the equine for an ownership transfer fee not to
17 exceed one hundred dollars (\$100) per equine. The board shall
18 provide a bill of sale to the registered equine rescue or
19 retirement facility that purchases the equine. The bill of
20 sale shall be legal evidence of the ownership of the equine by
21 the registered equine rescue or retirement facility and shall
22 be legal title to the equine. From the ownership transfer fee,
23 the court shall pay all expenses incurred in caring for the
24 equine while it was impounded, and any excess proceeds shall be
25 forwarded to the former owner. If the expenses incurred in

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1 caring for the equine exceed the ownership transfer fee, the
2 court shall order the former owner to pay the additional cost;

3 (2) if the court finds that the owner has
4 cruelly treated the equine and a registered equine rescue or
5 retirement facility has been given the right of first refusal
6 but the registered equine rescue or retirement facility is
7 unable or unwilling to purchase the equine, the board shall
8 have the equine humanely euthanized by a licensed veterinarian;
9 and

10 (3) if the court does not find that the owner
11 cruelly treated the equine, the court shall order the equine
12 returned to the owner."

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