

**New Mexico is one of several states that are classified as an open range state. In Timberlake if you want to keep wandering livestock from your gardens or land, you will need to fence it and there are definite specifications on the different kinds of fences.**

States' Fence Laws  
STATE OF NEW MEXICO  
N.M. Stat. §§77-16-1 to 77- 16-18

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 13

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. 14

#### § 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 15 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.