

# CHAPTER 77

## Animals and Livestock

### ARTICLE 1

#### Dogs and Domesticated Animals

##### 77-1-1. [Dogs, cats, domesticated fowls and birds are personal property.]

That dogs, cats and domesticated fowls and birds shall be deemed and considered as personal property, and all remedies given for the recovery of personal property and of damages for injuries thereto are hereby extended to them.

**History:** Laws 1912, ch. 38, § 1; Code 1915, § 26; C.S. 1929, § 4-101; 1941 Comp., § 49-101; 1953 Comp., § 47-1-1.

#### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For cruelty to animals, see 30-18-1 NMSA 1978.

For replevin, see 42-8-1 to 42-8-22 NMSA 1978.

**No state law preemption of ordinance.** — The test for preemption is not whether the municipality misstates the law in its findings or whether some overlap exists between an ordinance and a statute. The test is whether the ordinance permits an act the statute prohibits, or vice versa. The legislature's silence regarding other related activities is not an intent to preempt local government action in that area. The city's finding that certain animals are chattel property rather than personal property is not such a conflict. *Rio Grande Kennel Club v. City of Albuquerque*, 2008-NMCA-093, 144 N.M. 636, 190 P.3d 1131.

**Ordinance banning pit bulls.** — Village ordinance banning American pit bull terriers, being a proper exercise of the village's police power, was not a deprivation of property without due process even though it allowed for the destruction of private property. *Garcia v. Vill. of Tijeras*, 108 N.M. 116, 767 P.2d 355 (Ct. App.), cert. denied, 107 N.M. 785, 765 P.2d 758 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 5.

Liability for killing dog to protect domestic animal or fowl, 10 A.L.R. 689.

Dogs as within contemplation of statutes as to duty of railroads as regards livestock, 46 A.L.R. 1536.

Contributory negligence as a defense to a cause of action based upon violation of statute imposing duty upon keeper of animals, 10 A.L.R.2d 853.

Civil liability of landowner for killing or injuring trespassing dog, 15 A.L.R.2d 578.

Liability of owner or operator of place of public resort, other than animal exhibitor, to patron injured by animal or insect, 17 A.L.R.2d 459, 64 A.L.R.4th 963.

Law as to cats, 73 A.L.R.2d 1032, 8 A.L.R.4th 1287, 55 A.L.R.4th 1080, 68 A.L.R.4th 823.

Privilege to kill or injure nontrespassing licensed dog to defend third person from harm or attack by animal, 74 A.L.R.2d 770.

Persons entitled to recovery for injury inflicted by horse or other domestic animal exhibited at show, 80 A.L.R.2d 886.

Liability of owner of horse to person injured or killed when kicked, bitten, knocked down, and the like, 85 A.L.R.2d 1161.

Liability for injury or death of child social guest, 20 A.L.R.3d 1127.

Liability for injury to trespassing animals and bees as result of spraying or dusting crop, 37 A.L.R.3d 833.

Liability of owner or bailor of horse for injuries by horse to hirer or bailee thereof, 6 A.L.R.4th 358.

Liability to adult social guest injured otherwise than by condition of premises, 38 A.L.R.4th 200.

Liability for killing or injuring, by motor vehicle, livestock or fowl on highway, 55 A.L.R.4th 822.

Cat as subject of larceny, 55 A.L.R.4th 1080.

Liability of owner or operator of business premises for injury to patron by dog or cat, 67 A.L.R.4th 976.

Landlord's liability to third person for injury resulting from attack on leased premises by dangerous or vicious animal kept by tenant, 87 A.L.R.4th 1004.

Landlord's liability to third person for injury resulting from attack off leased premises by dangerous or vicious animal kept by tenant, 89 A.L.R.4th 374.

Intentional provocation, contributory or comparative negligence, or assumption of risk as defense to action for injury by dog, 11 A.L.R.5th 127.

3A C.J.S. Animals § 3.

### **77-1-2. Dog killing or injuring livestock; damages; dog to be killed.**

If any dog shall kill or injure any livestock, the owner or keeper of such dog shall be liable for all damages that may be sustained thereby, to be recovered by the party so injured before any court having competent jurisdiction, and it shall be unlawful to keep such dog after it is known that the dog is liable to kill livestock, and it shall be the duty of the owner to kill, or have killed, the dog upon order of the court after a finding that the dog has killed or injured livestock, and provided further, that it shall be the right of any owner of livestock so killed or injured by the actions of any dog to kill the dog while it is upon property controlled by the owner of the livestock.

**History:** Laws 1901, ch. 105, § 2; Code 1915, § 219; C.S. 1929, § 4-2002; 1941 Comp., § 49-103; 1953 Comp., § 47-1-2; Laws 1957, ch. 131, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 118.

Constitutionality of "dog" laws, 49 A.L.R. 847.

Validity of statute or ordinance providing for destruction of dogs, 56 A.L.R.2d 1024.

Who "harbors" or "keeps" dog under animal liability statute, 64 A.L.R.4th 963.

3A C.J.S. Animals § 202.

### **77-1-3. Vaccination of dogs and cats required.**

Any person who owns or keeps a dog or cat over the age of three months in this state shall have the dog or cat vaccinated against rabies as prescribed by regulation of the health and environment department [department of health]. All antirabies vaccine shall be administered by or under the supervision of a licensed veterinarian who shall issue a serially numbered certificate and tag for each such administration.

**History:** 1953 Comp., § 47-1-2.1, enacted by Laws 1959, ch. 176, § 1; 1973, ch. 170, § 1; 1977, ch. 253, § 55; 1979, ch. 194, § 1.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department, and enacted a new 9-7-4 NMSA 1978, creating the department of health.

**The 1979 amendment** substituted "as prescribed by regulation of the health and environment department" for "annually with a vaccine approved by the director of the health services division of the health and environment department" at the end of the first sentence and added "who shall issue a serially numbered certificate and tag for each such administration" at the end of the second sentence.

**The 1977 amendment** substituted "health services division of the health and environment department" for "health and social services department" in the first sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for injuries caused by cat, 68 A.L.R.4th 823.

## **77-1-4. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 194, § 9, repealed 77-1-4 NMSA 1978, as enacted by Laws 1959, ch. 176, § 2, relating to vaccination certificates and tags. For present provisions, see 77-1-3 NMSA 1978.

## **77-1-5. Vaccination of dogs and cats brought into state.**

Any dog or cat brought into the state shall be securely confined by the owner or keeper until vaccinated against rabies, which vaccination shall be administered within one week after entry into the state unless the owner or keeper has a certificate of vaccination issued by a veterinarian in another state or foreign country and such vaccination conforms to the requirements of this state.

**History:** 1953 Comp., § 47-1-2.3, enacted by Laws 1959, ch. 176, § 3; 1973, ch. 170, § 3.

## **77-1-6. Notice to health officer of animal bite; confinement; animal contact with rabid animals; animal rabies quarantine; procedure following death from rabies.**

The health and environment department [department of health] shall prescribe regulations for the reporting of animal bites, confinement and disposition of rabies-

suspect animals, rabies quarantine and the disposition of dogs and cats exposed to rabies, in the interest of public health and safety.

**History:** 1978 Comp., § 77-1-6, enacted by Laws 1979, ch. 194, § 2.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1979, ch. 194, § 2, repealed former 77-1-6 NMSA 1978 and enacted a new section.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department, and enacted a new 9-7-4 NMSA 1978, creating the department of health.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52 et seq.

Validity of statute or ordinance providing for destruction of dogs, 56 A.L.R. 1024.

Right to and measure of compensation for animals destroyed to prevent spread of disease or infection, 67 A.L.R. 208.

3A C.J.S. Animals §§ 73, 76.

### **77-1-7, 77-1-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 194, § 9, repealed 77-1-7 and 77-1-8 NMSA 1978, as enacted by Laws 1959, ch. 176, §§ 5 and 6 respectively, relating to the disposition of dogs or cats bitten by rabid animals and the declaration of a quarantine against rabies within a health district. For present provisions, see 77-1-6 NMSA 1978.

### **77-1-9. Dogs; destruction.**

A. Any peace officer may impound any dog found running at large unaccompanied by and not under the control of the owner or handler, and further, the peace officer shall destroy the dog if it is in the act of pursuing or wounding livestock or wounding and killing poultry or attacking humans.

B. Any peace officer may kill any dog in the act of pursuing or wounding any livestock or wounding or killing poultry or attacking humans whether or not the dog wears a rabies tag required by Section 77-1-3 NMSA 1978. There shall be no liability of the peace officer in damages or otherwise for such killing.

**History:** 1953 Comp., § 47-1-2.7, enacted by Laws 1975, ch. 352, § 1.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 58 et seq.

Constitutionality of statute for control of diseases of livestock, 65 A.L.R. 525.

Right to kill dog dangerous to other animals as nuisance, 79 A.L.R. 1064.

Validity of statute or ordinance providing for destruction of dogs, 56 A.L.R.2d 1024.

Liability of public officers for killing or injuring animals, while acting, or professing to act, under a statute in relation to the inspection or destruction of livestock, 2 A.L.R.3d 822.

Construction of provisions of statute or ordinance governing occasion, time, or manner of summary destruction of domestic animals by public authorities, 42 A.L.R.4th 839.

3A C.J.S. Animals §§ 137, 138, 157, 158.

### **77-1-10. Vicious animals; rabid or unvaccinated dogs and cats; failure to destroy.**

A. It is unlawful for any person to keep any animal known to be vicious and liable to attack or injure human beings unless such animal is securely kept to prevent injury to any person.

B. It is unlawful to keep any unvaccinated dog or cat or any animal with any symptom of rabies.

C. It is unlawful to fail or to refuse to destroy vicious animals or unvaccinated dogs or cats with symptoms of rabies as prescribed by regulation of the health and environment department [department of health] for the protection of public health and safety.

**History:** Laws 1901, ch. 105, § 3; Code 1915, § 220; C.S. 1929, § 4-2003; 1941 Comp., § 49-104; 1953 Comp., § 47-1-3; Laws 1959, ch. 176, § 7; 1973, ch. 170, § 7; 1977, ch. 253, § 56; 1979, ch. 194, § 3.

### ANNOTATIONS

**Bracketed material.** — The bracketed was inserted by the compiler and is not part of the law.

Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department, and enacted a new 9-7-4 NMSA 1978, creating the department of health.

**The 1979 amendment** substituted "failure to destroy" for "procedure following death from rabies" in the catchline, designated the first sentence of the previously undesignated first paragraph as Subsection A and the second sentence of the previously undesignated first paragraph as Subsection B, substituted "vicious" for "vicous" following "known to be" and "or" for "and" following "to attack" in Subsection A, substituted "with any symptom" for "which has shown any symptom" in Subsection B, deleted "except that, if such animal has bitten a human being, it shall be confined for a ten-day period" from the end of Subsection B, deleted the last sentence of the previously undesignated first paragraph and the second undesignated paragraph, relating to the sending of the head of any animal suspected of having died of rabies to a laboratory, added Subsection C and made other minor changes.

**The 1977 amendment** substituted "health services division of the health and environment department" for "health and social services department" and "division" for "department" in the second paragraph.

**Common law deemed test of liability for dog bite.** — There is no statute in New Mexico making the owner of a dog an insurer against damages inflicted by it. The only statute on the subject is this section, making it unlawful to keep a dog known to be vicious. Thus, common law is the test of liability in an action for injuries to a minor child who was severely bitten by a dog while on the premises of the defendant. *Perkins v. Drury*, 57 N.M. 269, 258 P.2d 379 (1953).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Personal injuries inflicted by animal as within homeowner's or personal liability policy, 96 A.L.R.3d 891.

Modern status of rule of absolute or strict liability for dogbite, 51 A.L.R.4th 446.

Who "harbors" or "keeps" dog under animal liability statute, 64 A.L.R.4th 963.

Liability of owner or operator of business premises for injury to patron by dog or cat, 67 A.L.R.4th 976.

Liability for injuries caused by cat, 68 A.L.R.4th 823.

Liability for injuries inflicted by dog on public officer or employee, 74 A.L.R.4th 1120.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers," 80 A.L.R.4th 70.

Landlord's liability to third person for injury resulting from attack on leased premises by dangerous or vicious animal kept by tenant, 87 A.L.R.4th 1004.

Landlord's liability to third person for injury resulting from attack off leased premises by dangerous or vicious animal kept by tenant, 89 A.L.R.4th 374.

Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show, 68 A.L.R.5th 599.

## **77-1-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 194, § 9, repealed 77-1-11 NMSA 1978, as enacted by Laws 1901, ch. 105, § 4, relating to the killing of any animal the keeping of which is unlawful.

## **77-1-12. Local control by ordinance; dogs and cats running at large.**

Each municipality and each county shall make provision by ordinance for the seizure and disposition of dogs and cats running at large and not kept or claimed by any person on the person's premises; provided, however, that the ordinance does not conflict with the provisions of Chapter 77, Article 1B NMSA 1978.

History: Laws 1901, ch. 105, § 5; Code 1915, § 222; C.S. 1929, § 4-2005; 1941 Comp., § 49-106; 1953 Comp., § 47-1-5; Laws 1973, ch. 170, § 9; 1979, ch. 194, § 4; 2009, ch. 103, § 1.

### **ANNOTATIONS**

**The 2009 amendment**, effective June 19, 2009, changed the reference of the act from "Animal Sheltering Services Act" to "Chapter 77, Article 1B NMSA 1978"; and added the exceptions at the end of the sentence.

**The 1979 amendment** substituted the present catchline for "Running at large in municipalities," substituted "municipality and each county" for "municipal corporation" near the beginning of the section, substituted "disposition of dogs" for "killing of all dogs" near the middle of the section and substituted "kept or claimed" for "claimed or harbored" near the end of the section.

**Section not part of maintenance of roadways.** — Compliance with this section and Section 77-1-15.1B NMSA 1978 is not part of maintenance of a roadway, highway or street within the meaning of the legislative waiver of governmental immunity found in Section 41-4-11A NMSA 1978, relating to negligent maintenance of highways, roadways, and streets. *Smith v. Vill. of Corrales*, 103 N.M. 734, 713 P.2d 4 (Ct. App. 1985), cert. denied, 103 N.M. 740, 713 P.2d 556 (1986).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals, 1 A.L.R.4th 994.

Liability of person, other than owner of animal or owner or operator of motor vehicle, for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 132.

Liability of owner or operator of vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 159.

Construction of provisions of statute or ordinance governing occasion, time, or manner of summary destruction of domestic animals by public authorities, 42 A.L.R.4th 839.

Liability for injuries caused by cat, 68 A.L.R.4th 823.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers," 80 A.L.R.4th 70.

Landlord's liability to third person for injury resulting from attack on leased premises by dangerous or vicious animal kept by tenant, 87 A.L.R.4th 1004.

### **77-1-13. Penalty.**

Violation of Sections 77-1-3 and 77-1-10 NMSA 1978 and Section 6 [77-18-1 NMSA 1978] of this act or regulations or orders issued pursuant thereto shall be a misdemeanor.

**History:** 1978 Comp., § 77-1-13, enacted by Laws 1979, ch. 194, § 5.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1979, ch. 194, § 5, repealed former 77-1-13 NMSA 1978, relating to the enforcement of animal control ordinances, and enacted a new section.

### **77-1-14, 77-1-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 242, § 5 repealed 77-1-14 NMSA 1978, as enacted by Laws 1943, ch. 57, § 1, relating to guide dogs leading the blind, effective June 16, 1989.

Laws 1979, ch. 194, § 9, repealed 77-1-15 NMSA 1978, as enacted by Laws 1943, ch. 62, § 1, relating to municipal licensing of dogs and the exemption of guide dogs from such. For present provisions, see 77-1-15.1 NMSA 1978.

### **77-1-15.1. Regulation and licensure of dogs; impoundment of animals; qualified service animals exempt.**

A. Every municipality and each county may provide by ordinance for the mandatory licensure of dogs over the age of three months. License fees shall be fixed by the responsible municipality or county. Proof of vaccination against rabies shall be provided by the owner or keeper before a license is issued. A combined rabies vaccination certificate and license may be provided by ordinance.

B. Every municipality and each county shall provide for the impoundment of rabies-suspect animals and shall designate a part-time or full-time animal control officer who shall be deputized to enforce animal control laws, orders, ordinances and regulations.

C. No fee shall be charged for the licensure of qualified service animals who are trained to lead partially or totally blind persons, aid hearing impaired persons or assist mobility impaired persons.

**History:** Laws 1979, ch. 194, § 7; 1989, ch. 242, § 4.

#### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, substituted "qualified service animals" for "guidedogs" in the catchline and the present provisions of Subsection C for "No fee for the licensure of dogs trained to assist the blind or deaf shall be charged".

**Section not part of maintenance of roadways.** — Compliance with this section and Section 77-1-12 NMSA 1978 is not part of maintenance of a roadway, highway or street within the meaning of the legislative waiver of governmental immunity found in Section 41-4-11A NMSA 1978, relating to negligent maintenance of highways, roadways, and streets. *Smith v. Vill. of Corrales*, 103 N.M. 734, 713 P.2d 4 (Ct. App. 1985), cert. denied, 103 N.M. 740, 713 P.2d 556 (1986).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 26 et seq.

3A C.J.S. Animals § 11; 62 C.J.S. Municipal Corporations § 218.

### **77-1-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 194, § 9, repealed 77-1-16 NMSA 1978, as enacted by Laws 1977, ch. 332, § 2, relating to municipal licensing of dogs and the exemption of hearing ear aid dogs from such. For present provisions, see 77-1-15.1 NMSA 1978.

### **77-1-17. Abandoned dogs and cats; notice to owner; disposal without liability.**

A. As used in this act [section], "custodian" means the owner or operator of a veterinary clinic or hospital, a doctor of veterinary medicine, a kennel, grooming parlor or other animal care facility.

B. Any dog or cat placed in the custody of a veterinarian, kennel, animal clinic or hospital, grooming parlor or other animal care facility shall be deemed to be abandoned if, after the term of any agreement for board or other care has expired, the dog or cat has not been reclaimed within ten days after written notice has been given the owner or his agent by registered or certified mail.

C. Any dog or cat deemed abandoned under the provisions of Subsection B of this section, may be disposed of by the custodian if not reclaimed. Notice of the intent to dispose of a dog or cat shall be given to the owner or his agent by registered or certified mail. Such notice, when sent to the address given to the custodian by the owner, shall relieve the custodian from all liability to the owner or his agent for the disposal of the dog or cat.

D. The custodian may turn over an abandoned dog or cat to the municipal or county animal control center, pound or shelter for disposal by them. Nothing in this act [section] shall affect the holding time or notice procedures regarding any municipal or county control facility which is owned or operated by, or is under contract or franchise to, a municipality or county.

E. Nothing in this act [section] shall relieve the owner of a dog or cat for the payment of all reasonable charges for medical or care services rendered to the dog or cat while in the custody of a veterinarian, kennel, animal clinic or hospital, grooming parlor or other animal care facility.

**History:** 1953 Comp., § 47-1-9, enacted by Laws 1973, ch. 94, § 1.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-1-18. Short title.**

This act [77-1-18 through 77-1-20 NMSA 1978] may be cited as the "Pet Sterilization Act".

**History:** Laws 1993, ch. 43, § 1.

### **77-1-19. Definitions.**

As used in the Pet Sterilization Act:

A. "animal" means a cat or dog;

B. "animal shelter" means any animal facility operated privately or by or for a municipality or county, in which stray, lost or unwanted animals are kept and released for adoption;

C. "sterilization" means rendering an animal unable to reproduce, either by the spaying of a female animal or by the neutering of a male animal; and

D. "sterilization deposit" means that portion of the adoption fee charged by the animal shelter when a person adopts an unsterilized animal; the "sterilization deposit" is refunded when the animal is sterilized.

**History:** Laws 1993, ch. 43, § 2.

### **77-1-20. Sterilization agreement and sterilization deposit required.**

A. No animal shall be released from an animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been paid, as provided in Subsections C and D of this section.

B. In addition to any adoption fee charged, a sterilization deposit of at least twenty-five dollars (\$25.00) shall be imposed on the adoption of each animal from an animal shelter.

C. Animals less than six months of age shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the adopted animal sterilized when it is no older than six months of age.

D. Adult animals over the age of six months shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the animal sterilized within thirty days of the date of adoption.

E. The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized.

F. An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the twenty-five dollars (\$25.00) for the sterilization deposit

and impoundment fees imposed by the shelter, and the owner shall sign an agreement stating he will sterilize the animal within thirty days after release or will obtain a breeder permit or its equivalent. The sterilization deposit shall be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized.

**History:** Laws 1993, ch. 43, § 3.

## **ARTICLE 1A**

### **Dangerous Dog**

#### **77-1A-1. Short title.**

This act [77-1A-1 through 77-1A-6 NMSA 1978] may be cited as the "Dangerous Dog Act".

**History:** Laws 2005, ch. 61, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### **77-1A-2. Definitions.**

As used in the Dangerous Dog Act:

A. "animal control authority" means an entity authorized to enforce the animal control laws of a city, county or state, whether acting alone or in concert with other governmental authorities. In those areas not served by an animal control authority, the sheriff or municipal law enforcement shall carry out the duties of the animal control authority under the Dangerous Dog Act;

B. "dangerous dog" means a dog that caused a serious injury to a person or domestic animal;

C. "owner" means a person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of eighteen, that person's parent or guardian;

D. "potentially dangerous dog" means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

(1) causing an injury to a person or domestic animal that is less severe than a serious injury;

(2) chasing or menacing a person or domestic animal in an aggressive manner and without provocation; or

(3) acting in a highly aggressively [aggressive] manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure;

E. "proper enclosure" means secure confinement indoors or outdoors, such as in a fenced yard, locked pen or other structure, that is designed to prevent the animal from escaping the confined area and young children from entering the confined area but does not include chaining, restraining or otherwise affixing the animal to a stationary object; and

F. "serious injury" means a physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.

History: Laws 2005, ch. 61, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **77-1A-3. Exceptions.**

A dog shall not be declared a dangerous or potentially dangerous dog if:

A. the dog was used by a law enforcement official for legitimate law enforcement purposes;

B. the threat, injury or damage was sustained by a person or domestic animal who was:

(1) trespassing upon premises occupied by the owner or the dog;

(2) provoking, tormenting, abusing or assaulting the dog or had repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or

(3) committing or attempting to commit a crime; or

C. the dog was:

(1) responding to pain or injury;

(2) protecting itself or its offspring; or

(3) protecting or defending a human being or domestic animal from attack or assault.

History: Laws 2005, ch. 61, § 3.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **77-1A-4. Seizure of dog; petition to court.**

A. If an animal control authority has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the animal control authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.

B. If an animal control authority has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the animal control authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.

C. After seizure, the animal control authority shall impound the dog pending disposition of the case or until the owner has fulfilled the requirements for a certificate of registration pursuant to the provisions of Section 5 [77-1A-5 NMSA 1978] of the Dangerous Dog Act .

D. After seizure:

(1) the owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for a certificate of registration pursuant to Section 5 of the Dangerous Dog Act; or

(2) the animal control authority may, within fourteen days after seizure of the dog, bring a petition in court seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by clear and convincing evidence, that the dog is dangerous and poses an imminent threat to public safety or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a certificate of registration within thirty days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to its owner.

E. If the owner does not admit that the dog is dangerous or potentially dangerous and the animal control authority does not bring a petition in court within fourteen days of seizure of the dog, the court shall immediately order the release of the dog to its owner.

F. If the owner admits that the dog is dangerous and transfers ownership of the dog to the animal control authority, the animal control authority may humanely destroy the dog.

G. A determination that a dog is not dangerous or potentially dangerous shall not prevent an animal control authority from making a subsequent application for seizure based on the dog's subsequent behavior.

History: Laws 2005, ch. 61, § 4.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **77-1A-5. Registration and handling requirements for dangerous and potentially dangerous dogs.**

A. An animal control authority shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner establishes that:

- (1) the owner is able to keep the dog under control at all times;
- (2) a license, if applicable, has been issued pursuant to the requirements of the jurisdiction;
- (3) the dog has a current rabies vaccination;
- (4) the owner has a proper enclosure for the dog;
- (5) the owner has paid an annual fee, if applicable, established by the animal control authority to register a potentially dangerous dog;
- (6) the dog has been spayed or neutered;
- (7) the dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority; and
- (8) the owner has entered the dog in a socialization and behavior program approved or offered by the animal control authority.

B. If a dog previously determined to be potentially dangerous has not exhibited any of the behaviors specified in Subsection D of Section 2 [77-1A-2 NMSA 1978] of the Dangerous Dog Act for thirty-six consecutive months, the owner may request the animal control authority in the jurisdiction to lift the requirements for registration pursuant to this section. If the animal control authority has no reasonable basis to believe that the dog has exhibited the behaviors specified, it shall relieve the owner of the requirements of this section.

C. An animal control authority shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of Subsection A of this section, establishes that:

(1) the owner has paid an annual fee, if applicable, established by the animal control authority to register a dangerous dog;

(2) the owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable;

(3) the dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination;

(4) when the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four feet, and the dog shall be under complete control at all times;

(5) the dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and

(6) a clearly visible warning sign with a conspicuous warning symbol indicating that there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from fifty feet, whichever is less.

D. An animal control authority may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to abide by the conditions for registration, confinement or handling set forth in this section.

History: Laws 2005, ch. 61, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**77-1A-6. Prohibited acts; penalties.**

A. It is unlawful for an owner of a dangerous or potentially dangerous dog to:

- (1) keep the dog without a valid certificate of registration;
- (2) violate the registration and handling requirements for the dog;
- (3) fail to notify the animal control authority immediately upon:
  - (a) the escape of the dog; or
  - (b) an attack by the dog upon a human being or a domestic animal;
- (4) fail to notify the animal control authority of the dog's death within five business days;
- (5) fail to notify the animal control authority within twenty-four hours if the dog has been sold or given away and provide the name, address and telephone number of the new owner of the dog;
- (6) fail to surrender the dog to an animal control authority for safe confinement pending a determination of the case when there is reason to believe that the dog poses an imminent threat to public safety; or
- (7) fail to comply with special handling or care requirements for the dog that a court has ordered.

B. Whoever violates a provision of Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 and, for a second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

C. An owner of a dangerous or potentially dangerous dog that causes serious injury or death to a domestic animal, without provocation, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

D. An owner of a dangerous or potentially dangerous dog that causes serious injury to a human being, without provocation, is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

E. An owner of a dangerous or potentially dangerous dog that causes the death of a human being, without provocation, is guilty of a third degree felony resulting in the death of a human being and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

F. Prosecution pursuant to this section requires a showing that:

- (1) an owner knew of the propensity of a dog to inflict serious injury; or
- (2) the dog had previously been found by a court to be a dangerous or potentially dangerous dog.

History: Laws 2005, ch. 61, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **ARTICLE 1B**

### **Animal Sheltering**

#### **77-1B-1. Short title. (Repealed effective July 1, 2020.)**

Chapter 77, Article 1B NMSA 1978 may be cited as the "Animal Sheltering Act".

History: Laws 2007, ch. 60, § 1; 2009, ch. 102, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, changed the reference to the act to the Chapter and Article of NMSA 1978 and changed the name of the act from the "Animal Sheltering Services Act" to the "Animal Sheltering Act".

#### **77-1B-2. Definitions. (Repealed effective July 1, 2020.)**

As used in the Animal Sheltering Act:

A. "animal" means any animal, except humans, not defined as "livestock" in Subsection L of this section;

B. "animal shelter":

(1) means:

(a) a county or municipal facility that provides shelter to animals on a regular basis, including a dog pound; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(2) does not include a municipal zoological park;

C. "board" means the animal sheltering board;

D. "department" means the regulation and licensing department;

E. "disposition" means adoption of an animal; return of an animal to the owner; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal;

F. "emergency field euthanasia" means the process defined by rule of the board to cause the death of an animal in an emergency situation when safe and humane transport of the animal is not possible;

G. "euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;

H. "euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a dog pound, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;

I. "euthanasia drugs" means non-narcotic schedule II or schedule III substances and chemicals as set forth in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] that are used for the purposes of euthanasia and pre-euthanasia of animals;

J. "euthanasia instructor" means a veterinarian or a euthanasia technician certified by the board to instruct other individuals in euthanasia techniques;

K. "euthanasia technician" means a person licensed by the board to euthanize animals for a euthanasia agency;

L. "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals;

M. "rescue organization" means an organization that rescues animals and is not involved in the breeding of animals;

N. "supervising veterinarian" means a person who is a veterinarian, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals; and

O. "veterinarian" means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act [Chapter 61, Article 14 NMSA 1978].

History: Laws 2007, ch. 60, § 2; 2009, ch. 102, § 4.

## ANNOTATIONS

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection C, changed the name of the board from "animal sheltering services board" to "animal sheltering board"; in Subsection E, after "animal shelter", deleted "licensed pursuant to the Animal Sheltering Services Act"; in Subsection J, after "means a", added "veterinarian or a" and after "euthanasia", deleted "provider licensed and" and added "technician"; and in Subsection K, changed the term defined from "euthanasia provider" to "euthanasia technician".

### **77-1B-3. Animal sheltering board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2020.)**

A. The "animal sheltering board" is created. The board shall consist of nine members as follows:

- (1) one euthanasia agency employee with training and education in euthanasia;
- (2) one veterinarian who has provided paid or unpaid services to an animal shelter;
- (3) one representative from a nonprofit animal advocacy group;
- (4) one member of the public;
- (5) a manager or director of a New Mexico facility that provides shelter to animals on a regular basis, provided that the manager or director selected is trained in animal shelter standards;
- (6) one representative of the New Mexico association of counties;
- (7) one representative of the New Mexico municipal league;

- (8) one member of a rescue organization; and
- (9) one member of the domestic pet breeder community.

B. No more than two board members shall be appointed from any one county within the state. Appointments shall be made in such manner that the terms of no more than three board members expire on July 1 of each year.

C. The board is administratively attached to the department.

D. The board and its operations are governed by the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]. If the provisions of the Uniform Licensing Act conflict with the provisions of the Animal Sheltering Act, the provisions of the Animal Sheltering Act shall prevail.

E. The governor shall appoint board members for terms of four years, except in the first year of the enactment of the Animal Sheltering Act, when board members shall be appointed for staggered terms. Of the first appointments, three board members shall be appointed for four-year terms, two board members shall be appointed for three-year terms, two board members shall be appointed for two-year terms and two board members shall be appointed for one-year terms. Subsequent appointments shall be made to fill vacancies created in unexpired terms, but only until the term ends or for a full four-year term when the term of a board member expires. Board members shall hold office until their successors are duly qualified and appointed. Vacancies shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy to maintain the required composition of the board.

F. Members of the board shall be reimbursed for per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance, but shall be permitted to attend at least one conference or seminar per year relevant to their board positions as the board's budget will allow.

G. A simple majority of the appointed board members constitutes a quorum.

H. The board shall hold at least one regular meeting each year and may meet at such other times as it deems necessary.

I. A board member shall not serve more than two full or partial terms, consecutive or otherwise.

J. A board member failing to attend three duly noticed meetings, regular or special, within a twelve-month period, without an excuse acceptable to the board, may be removed as a board member.

K. The board shall elect a chair and other officers as it deems necessary to administer its duties.

L. The department shall hire employees to execute the daily operations of the board.

History: Laws 2007, ch. 60, § 3; 2009, ch. 102, § 5.

## ANNOTATIONS

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, changed the name of the board from "animal sheltering services board" to "animal sheltering board"; in Paragraph (2) of Subsection A, before "veterinarian", deleted "licensed"; in Subsections D and E, changed the name of the act from the "Animal Sheltering Services Act" to the "Animal Sheltering Act"; in Subsection H, changed the number of meetings from four to one; and in Subsection L, deleted the last sentence which provided that one employee will be a veterinarian who holds state and federal licenses and who will be responsible for euthanasia drugs in accordance with law.

### **77-1B-4. Animal care and facility fund created; administration. (Repealed effective July 1, 2020.)**

A. The "animal care and facility fund" is created in the state treasury. All fees collected pursuant to the Animal Sheltering Services Act [Animal Sheltering Act] shall be deposited in the fund.

B. The animal care and facility fund shall consist of money collected by the board pursuant to the Animal Sheltering Services Act [Animal Sheltering Act]; income from investment of the fund; and money appropriated to the fund or accruing to it through fees or administrative penalties, cooperative research agreements, income, gifts, grants, donations, bequests, sales of promotional items, handbooks or educational materials or any other source. Money in the fund shall not be transferred to another fund or encumbered or expended except for expenditures authorized pursuant to the Animal Sheltering Services Act [Animal Sheltering Act].

C. Money in the fund is subject to appropriation by the legislature to the department to be used to help animal shelters and communities defray the cost of implementing the board's initiatives conducted pursuant to the Animal Sheltering Services Act [Animal Sheltering Act]. The fund shall be administered by the department to carry out the purposes of the Animal Sheltering Services Act [Animal Sheltering Act].

D. Each fiscal year, an amount of money in the fund appropriated pursuant to this section that is equal to the total amount of money credited to the fund for that fiscal year from special registration plates issued pursuant to Section 66-3-424.3 NMSA 1978 shall

be administered so that spay and neuter programs in a county receive money attributable to the number of those special registration plates issued in that county.

E. A disbursement from the fund shall be made only upon a warrant drawn by the secretary of finance and administration pursuant to a voucher signed by the superintendent of regulation and licensing or the superintendent's designee.

F. Unexpended and unencumbered balances in the fund at the end of a fiscal year shall not revert to the general fund.

History: Laws 2007, ch. 60, § 4; 2009, ch. 102, § 6; 2009, ch. 192, § 2.

### ANNOTATIONS

**Delayed repeals.** — For delayed repeal of this section, see 77-1B-12 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**2009 Multiple Amendments.** — Laws 2009, ch. 102, § 6 and Laws 2009, ch. 192, § 2 both enacted amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2009, ch. 192, § 2, as the last act signed by the governor, has been compiled into the NMSA as set out above, and Laws 2009, ch. 102, § 6, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

**Laws 2009, ch. 192, § 2 [set out above],** effective July 1, 2009, in the title added "Animal care and facility"; and added Subsection D.

**Laws 2009, ch. 102, § 6 [set out below],** effective June 19, 2009, changed the name of the act from the "Animal Sheltering Services Act" to the "Animal Sheltering Act" in Subsections A, B and C, and provided:

"77-1B-4. Animal care and facility fund created; administration.

A. The "animal care and facility fund" is created in the state treasury. All fees collected pursuant to the Animal Sheltering Act shall be deposited in the fund.

B. The animal care and facility fund shall consist of money collected by the board pursuant to the Animal Sheltering Act; income from investment of the fund; and money appropriated to the fund or accruing to it through fees or administrative penalties, cooperative research agreements, income, gifts, grants, donations, bequests, sales of promotional items, handbooks or educational materials or any other source. Money in the fund shall not be transferred to another fund or encumbered or expended except for expenditures authorized pursuant to the Animal Sheltering Act.

C. Money in the fund is subject to appropriation by the legislature to the department to be used to help animal shelters and communities defray the cost of implementing the board's initiatives conducted pursuant to the Animal Sheltering Act. The fund shall be administered by the department to carry out the purposes of the Animal Sheltering Act.

D. A disbursement from the fund shall be made only upon a warrant drawn by the secretary of finance and administration pursuant to a voucher signed by the superintendent of regulation and licensing or the superintendent's designee.

E. Unexpended and unencumbered balances in the fund at the end of a fiscal year shall not revert to the general fund."

**77-1B-5. Board powers and duties. (Repealed effective July 1, 2020.)**

The board shall:

A. provide board-recommended standards regarding the infrastructure for all animal shelters;

B. provide board-recommended operating standards for all animal shelters;

C. adopt methods and procedures acceptable for conducting emergency field euthanasia;

D. adopt, promulgate and revise rules necessary to carry out the provisions of the Animal Sheltering Act;

E. have authority to issue licenses and certificates pursuant to the Animal Sheltering Act;

F. establish the types of licenses and certificates that may be issued pursuant to the Animal Sheltering Act and establish criteria for issuing the licenses and certificates;

G. prescribe standards and approve curricula for educational programs that will be used to train and prepare persons for licensure or certification pursuant to the Animal Sheltering Act;

H. implement continuing education requirements for licensees and certificate holders pursuant to the Animal Sheltering Act;

I. conduct administrative hearings upon charges relating to violations of provisions of the Animal Sheltering Act or rules adopted pursuant to that act in accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978];

- J. provide for all examinations and for issuance and renewal of licenses and certificates;
- K. establish fees not to exceed one hundred fifty dollars (\$150) for licenses and certificates pursuant to the Animal Sheltering Act;
- L. establish committees as the board deems necessary to effect the provisions of the Animal Sheltering Act;
- M. apply for injunctive relief to enforce the provisions of the Animal Sheltering Act;
- N. conduct national criminal background checks on applicants seeking licensure or certification under the Animal Sheltering Act;
- O. keep a record of all proceedings;
- P. make an annual report to the legislature and to the governor;
- Q. provide for the inspection of animal shelters and euthanasia agencies;
- R. develop mechanisms to address complaints of misconduct at animal shelters and euthanasia agencies and noncompliance with the provisions of the Animal Sheltering Act or rules adopted pursuant to that act;
- S. develop mechanisms to address complaints of licensee and certificate holder misconduct and noncompliance;
- T. develop and recommend dog and cat spay and neuter plans and community outreach plans in support of and in conjunction with animal shelters and euthanasia agencies;
- U. disburse money from the animal care and facility fund;
- V. provide board-recommended standards for maintaining records concerning health care and disposition of animals; and
- W. refer to national animal control association standards in determining its regulations.

History: Laws 2007, ch. 60, § 5; 2009, ch. 102, § 7.

### **ANNOTATIONS**

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, changed the name of the act from "Animal Sheltering Services Act" to "Animal Sheltering Act"; and in Subsection T, after "develop and", deleted "implement comprehensive" and added "recommend".

**77-1B-6. Euthanasia technician; license. (Repealed effective July 1, 2020.)**

A. The board shall have authority to license euthanasia technicians.

B. A person, other than a veterinarian licensed to practice in New Mexico, who engages in euthanasia for a euthanasia agency in this state shall be licensed by the board.

C. Applicants for licensure by examination as a euthanasia technician shall be required to pass a euthanasia technician examination approved by the board and shall be required to complete a training course approved by the board in euthanasia practices.

D. A person licensed to practice as a euthanasia technician shall:

- (1) have passed the examination to qualify as a euthanasia technician;
- (2) hold a certificate of completion in a training course in euthanasia issued within three years of the date that the euthanasia technician examination is successfully completed;
- (3) have attained an age of at least eighteen years;
- (4) not be guilty of fraud or deceit in procuring or attempting to procure a license;
- (5) pay the required fee to be determined by the board, but not to exceed fifty dollars (\$50.00); and
- (6) comply with all other requirements established by the board.

E. The board may issue a license to practice as a euthanasia technician without examination to an applicant who meets the qualifications required for euthanasia technicians in this state as set forth in Paragraphs (3) through (6) of Subsection D of this section. The application for a license as a euthanasia technician shall be accompanied by proof of completion of training in euthanasia practices, as approved by the board.

F. A person whose euthanasia technician license expires while the person is on active duty with a branch of the armed forces of the United States, called into service or training with the state militia or in training or education under the supervision of the

United States government prior to induction into military service may have the license restored without paying renewal fees, if within two years after the termination of that service, training or education, except under conditions other than honorable, the board is furnished with satisfactory evidence that the person had been engaged in the service, training or education.

History: Laws 2007, ch. 60, § 6; 2009, ch. 102, § 8.

### ANNOTATIONS

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsections A, C, D, E and F, changed "euthanasia provider" to "euthanasia technician" and deleted former Subsection D, which provided that the board shall adopt rules to provide for interim placements for euthanasia agencies that have no permanent employees who are euthanasia providers.

### **77-1B-6.1. Euthanasia technician authority defined. (Repealed effective July 1, 2020.)**

A euthanasia technician may purchase, possess and administer euthanasia drugs for the purpose of performing euthanasia and pre-euthanasia on animals for a euthanasia agency. A formulary shall be developed by the board and be approved by the board of pharmacy.

History: Laws 2009, ch. 102, § 9.

### ANNOTATIONS

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**Effective dates.** — Laws 2009, ch. 102 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

### **77-1B-7. Euthanasia instructors; certification. (Repealed effective July 1, 2020.)**

A. The board shall have authority over the certification of euthanasia instructors.

B. A person certified to practice as a euthanasia instructor shall:

(1) have passed the examination approved by the board to qualify as a euthanasia instructor;

(2) have completed training in euthanasia practices, as defined by the board, within one year preceding the date the application for certification is submitted;

(3) have participated in the euthanasia of animals for a minimum of three years preceding the date of application;

(4) not have been found guilty of fraud or deceit in procuring or attempting to procure any type of certification; and

(5) pay the required fee.

C. The board may certify an applicant as a euthanasia instructor without an examination if the applicant has been certified or licensed under the laws of another state and the applicant meets the qualifications set forth in Paragraphs (3) through (5) of Subsection B of this section.

D. A person whose euthanasia instructor certification expires while on active duty with the armed forces of the United States, called into service or training with the state militia or in training or education under the supervision of the United States government prior to induction into military service may have the certification restored without paying renewal fees, if within two years after the termination of that service, training or education, except under conditions other than honorable, the board is furnished with satisfactory evidence that the person has been engaged in such service, training or education.

History: Laws 2007, ch. 60, § 7; 2009, ch. 102, § 10.

### **ANNOTATIONS**

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Paragraph (1) of Subsection B, after "examination", deleted "administered" and added "approved"; in Paragraph (2) of Subsection B, after "completed", deleted "instructor"; and in Subsection C, deleted the last sentence which provided that an application for certification must be accompanied by proof of completion of instructor training in euthanasia practices.

### **77-1B-8. Euthanasia agencies; inspections; exemptions. (Repealed effective July 1, 2020.)**

A. The board shall have authority over the licensing of euthanasia agencies. All euthanasia agencies shall be licensed by the board prior to euthanasia being performed by that agency.

B. The board shall adopt rules governing the procedures for administering euthanasia; provided that the use of carbon monoxide gas chambers shall be prohibited for the euthanasia of cats and dogs.

C. The board shall establish rules for inspecting a facility holding or claiming to hold a license as a euthanasia agency in this state.

D. The board shall establish policies and procedures for record keeping and for securing, using and disposing of euthanasia drugs in accordance with requirements of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], the United States drug enforcement administration's Controlled Substances Act and the rules of the board of pharmacy.

E. Euthanasia agencies using controlled substances shall have on staff or under contract a consulting pharmacist as that position is defined in the Pharmacy Act [Chapter 61, Article 11 NMSA 1978].

F. A supervising veterinarian is not required to be on the premises of a euthanasia agency when euthanasia is performed.

G. Nothing in Chapter 77, Article 1B NMSA 1978 shall be construed as allowing a euthanasia technician or a euthanasia instructor to engage in the practice of veterinary medicine when performing the duties set forth in that act.

H. Nothing in Chapter 77, Article 1B NMSA 1978 shall be construed as preventing a euthanasia instructor from euthanizing animals during a board-approved course on euthanasia instruction.

I. Nothing in Chapter 77, Article 1B NMSA 1978 affects wildlife rehabilitators working under the auspices of the department of game and fish.

J. A veterinary clinic serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of Chapter 77, Article 1B NMSA 1978; provided that the veterinary clinic is subject to licensure and rules adopted pursuant to the Veterinary Practice Act [Chapter 61, Article 14 NMSA 1978].

K. A municipal facility that is a zoological park is exempt from the provisions of Chapter 77, Article 1B NMSA 1978.

History: Laws 2007, ch. 60, § 8; 2009, ch. 102, § 11; 2009, ch. 103, § 2.

## **ANNOTATIONS**

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**2009 Multiple Amendments.** — Laws 2009, ch. 102, § 11 and Laws 2009, ch. 103, § 2 both enacted amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2009, ch. 103, § 2, as the last act signed by the governor, has been compiled into the NMSA as set out above, and Laws 2009, ch. 102, § 11, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

**Laws 2009, ch. 103, § 2 [set out above],** effective June 19, 2009, changed the reference of the act from "Animal Sheltering Services Act" to "Chapter 77, Article 1B NMSA 1978"; in Subsection B, added the exception at the end of the sentence; and in Subsections G and H, before "euthanasia", deleted "certified".

**Laws 2009, ch. 102, § 11 [set out below],** effective June 19, 2009, in Subsection D, changed "federal" to "United States" and "agency" to "administration's"; in Subsection G, deleted "Services" from the name of the act, changed "licensed euthanasia provider" to "euthanasia technician" and deleted "certified" before "euthanasia instructor"; in Subsection H, deleted "Services" from the name of the act and deleted "certified" before "euthanasia instructor"; and in Subsections I, J and K, deleted "Services" from the name of the act, and provided:

"77-1B-8. Euthanasia agencies; inspections; exemptions.

- A. The board shall have authority over the licensing of euthanasia agencies. All euthanasia agencies shall be licensed by the board prior to euthanasia being performed by that agency.
- B. The board shall adopt rules governing the procedures for administering euthanasia.
- C. The board shall establish rules for inspecting a facility holding or claiming to hold a license as a euthanasia agency in this state.
- D. The board shall establish policies and procedures for record keeping and for securing, using and disposing of euthanasia drugs in accordance with requirements of the Controlled Substances Act, the United States drug enforcement administration's Controlled Substances Act and the rules of the board of pharmacy.
- E. Euthanasia agencies using controlled substances shall have on staff or under contract a consulting pharmacist as that position is defined in the Pharmacy Act.
- F. A supervising veterinarian is not required to be on the premises of a euthanasia agency when euthanasia is performed.
- G. Nothing in the Animal Sheltering Act shall be construed as allowing a euthanasia technician or a euthanasia instructor to engage in the practice of veterinary medicine when performing the duties set forth in that act.

H. Nothing in the Animal Sheltering Act shall be construed as preventing a euthanasia instructor from euthanizing animals during a board-approved course on euthanasia instruction.

I. Nothing in the Animal Sheltering Act affects wildlife rehabilitators working under the auspices of the department of game and fish.

J. A veterinary clinic serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of the Animal Sheltering Act; provided that the veterinary clinic is subject to licensure and rules adopted pursuant to the Veterinary Practice Act.

K. A municipal facility that is a zoological park is exempt from the provisions of the Animal Sheltering Act."

### **77-1B-9. Violations. (Repealed effective July 1, 2020.)**

A. Unless otherwise provided in the Animal Sheltering Act, it is a violation of that act for a person to:

(1) perform euthanasia for a euthanasia agency or an animal shelter in this state without possessing a valid license pursuant to the Animal Sheltering Act;

(2) solicit, advertise or offer to perform an act for which licensure or certification is required pursuant to the Animal Sheltering Act, unless the person holds a license or certification;

(3) refuse to comply with a cease and desist order issued by the board;

(4) refuse or fail to comply with the provisions of the Animal Sheltering Act;

(5) make a material misstatement in an application for licensure or certification;

(6) intentionally make a material misstatement to the department during an official investigation;

(7) impersonate an official or inspector;

(8) refuse or fail to comply with rules adopted by the board or with a lawful order issued by the board;

(9) aid or abet another in violating provisions of the Animal Sheltering Act, or a rule adopted by the board;

(10) alter or falsify a certificate of inspection, license or certification issued by the board;

(11) fail to carry out the duties of a euthanasia technician in a professional manner;

(12) abuse the use of a chemical substance or be guilty of habitual or excessive use of intoxicants or drugs;

(13) sell or give chemical substances used in euthanasia procedures to an unlicensed person; and

(14) assist an unlicensed or unauthorized person in euthanizing animals, except during a board-approved course in euthanasia.

B. It is a violation of the Animal Sheltering Act for a euthanasia agency or an animal shelter to:

(1) refuse to permit entry or inspection of its facilities by the board or its designees;

(2) sell, offer for sale, barter, exchange or otherwise transfer animals that are prohibited by the department of game and fish, the United States department of agriculture or any other regulatory agency to be kept unless the sale, offer for sale, bartering, exchanging or transferring of the animal is to a facility employing permitted rehabilitators or an individual that is a permitted rehabilitator pursuant to the rules adopted by the department of game and fish or another agency that has authority over people who are permitted to receive and provide care for such animals;

(3) allow a license or certificate issued pursuant to the Animal Sheltering Act to be used by an unlicensed or uncertified person; or

(4) make a misrepresentation or false promise through advertisements, employees, agents or other mechanisms in connection with the euthanasia of an animal.

C. It is a violation of the Animal Sheltering Act for an employee or official of the board or a person in the department to disclose or use for that person's own advantage information derived from reports or records submitted to the department or the board pursuant to that act.

History: Laws 2007, ch. 60, § 9; 2009, ch. 102, § 12.

## **ANNOTATIONS**

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, changed the name of the act from "Animal Sheltering Services Act" to "Animal Sheltering Act".

### **77-1B-10. Enforcement and injunctions. (Repealed effective July 1, 2020.)**

A. The board or the board's designees shall enforce the provisions of the Animal Sheltering Act.

B. Whenever the board has reasonable cause to believe a violation of a provision of the Animal Sheltering Act or a rule adopted pursuant to that act has occurred that creates a health risk for the animals or the community and immediate enforcement is deemed necessary, the board may issue a cease and desist order to require a person to cease violations. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a cease and desist order within twenty-four hours, the board may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

C. Whenever the board possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the Animal Sheltering Act or a rule adopted pursuant to that act, the board may seek temporarily or permanently to restrain or enjoin the act or practice. The board shall not be required to post a bond when seeking a temporary or permanent injunction.

History: Laws 2007, ch. 60, § 10; 2009, ch. 102, § 13.

### **ANNOTATIONS**

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, changed the name of the act from "Animal Sheltering Services Act" to "Animal Sheltering Act".

### **77-1B-11. Disciplinary actions; euthanasia technicians, euthanasia agencies and euthanasia instructors; hearings; penalties. (Repealed effective July 1, 2020.)**

A. The provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] apply to all disciplinary procedures and hearings of the board.

B. The board may:

(1) deny, suspend, revoke, reprimand, place on probation or take other action against a license or certificate held or applied for pursuant to the Animal Sheltering Act,

including imposing an administrative penalty, upon a finding by the board that the licensee, certificate holder or applicant has performed acts in violation of the Animal Sheltering Act or a rule adopted pursuant to that act; and

(2) impose an administrative penalty on a person who makes a false representation as being a licensed euthanasia technician, a certified euthanasia instructor or a licensed euthanasia agency.

C. The board may issue letters of admonition or deny, suspend, refuse to renew, restrict or revoke a license or certification authorized pursuant to the Animal Sheltering Act if the applicant or licensee:

(1) has refused or failed to comply with a provision of the Animal Sheltering Act, a rule adopted pursuant to that act or an order of the board;

(2) is guilty of cruelty to animals pursuant to a statute of this state or another state;

(3) has had an equivalent license or certificate denied, revoked or suspended by an authority;

(4) has refused to provide the board with reasonable, complete and accurate information regarding the care or euthanasia of animals when requested by the board; or

(5) has falsified information requested by the board or the board's designee.

D. In a proceeding held pursuant to this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction, if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action pursuant to this section.

E. Disciplinary proceedings may be instituted by the board or by a complaint to the board.

F. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint or that it begins an investigation without a filed complaint.

G. The board may administer oaths, take statements and compel disclosure by the witnesses of all facts known to them relative to matters under investigation.

H. The board may impose an administrative penalty in an amount not to exceed five hundred dollars (\$500) on a holder of a license or certificate for violations of the Animal Sheltering Act.

I. A person or euthanasia agency whose license or certificate is suspended or revoked by the board pursuant to the provisions of this section may, at the discretion of the board, obtain a license or certificate at any time without examination upon written application to the board showing cause to justify reinstatement or renewal of the license or certificate.

J. The board shall adopt other rules pertaining to hearings, appeals and rehearings as it deems necessary.

K. The board shall not be required to certify a record to the court of appeals of a decision of the board until the proper fee has been paid to the board for a copy and certification of the record.

L. A person engaging in acts without a license or certificate issued by the board is guilty of a misdemeanor.

M. A person who practices, offers to practice, attempts to practice or makes any representation as being a euthanasia technician, a euthanasia instructor or a licensed euthanasia agency without holding a license or certificate issued by the board shall, in addition to any other penalty provided in this section or any other law, pay an administrative penalty to the board in an amount not to exceed five hundred dollars (\$500) for each offense.

History: Laws 2007, ch. 60, § 11; 2009, ch. 102, § 14.

### ANNOTATIONS

**Delayed repeals.** — For the delayed repeal of this section, see 77-1B-12 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, changed the name of the act from "Animal Sheltering Services Act" to "Animal Sheltering Act" and in Paragraph (2) of Subsection B and in Subsection M, changed "licensed euthanasia provider" to "euthanasia technician".

### **77-1B-12. Termination of agency life; delayed repeal.**

The animal sheltering board is terminated on July 1, 2019 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Animal Sheltering Act until July 1, 2020. Effective July 1, 2020, the Animal Sheltering Act is repealed.

History: Laws 2007, ch. 60, § 12; 2009, ch. 102, § 15; 2011, ch. 172, § 1; 2013, ch. 166, § 9.

### ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, changed the agency termination date from 2013 to 2019, the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

**The 2011 amendment**, effective June 17, 2011, extended the life of the board from July 1, 2011 to July 1, 2013 and changed the sunset date from July 1, 2012 to July 1, 2014.

**The 2009 amendment**, effective June 19, 2009, changed the reference of the act from "Animal Sheltering Services Act" to "Chapter 77, Article 1B NMSA 1978"; and added the exceptions at the end of the sentence.

## **ARTICLE 2**

### **Livestock Board**

#### **77-2-1. Short title; purpose.**

Chapter 77, Articles 2 through 18 NMSA 1978 may be cited as "The Livestock Code". The Livestock Code shall be liberally construed to carry out its purposes, which are to promote greater economy, service and efficiency in the administration of the laws relating to the livestock industry of New Mexico, to control disease, to prevent the theft or illegal movement of livestock and to oversee the New Mexico meat inspection program.

**History:** 1953 Comp., § 47-23-1, enacted by Laws 1967, ch. 213, § 1; 1993, ch. 248, § 1; 1999, ch. 282, § 1.

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 208, § 27 repealed 77-2-28 NMSA 1978, which would have repealed the Livestock Code, effective July 1, 2006.

**The 1999 amendment**, effective July 1, 1999, inserted "Articles 2 through 18" near the beginning of the section.

**The 1993 amendment**, effective June 18, 1993, substituted "Chapter 77 NMSA 1978" for "This act"; substituted "The Livestock Code" for "The Livestock Board Act" in two places; and added the language beginning "to control disease" at the end of this section.

**Because Livestock and Property Tax Codes have different broad purposes** does not mean that they do not concern the same subject matter. *Jicarilla Apache Nation v. Rio Arriba County Assessor*, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, rev'd on other grounds, *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 49 et seq.

3 C.J.S. Agriculture §§ 16, 50, 69, 73.

### **77-2-1.1. Definitions.**

As used in The Livestock Code:

A. "animals" or "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock";

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

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

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

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

F. "brand" means a symbol or device in a form approved by and recorded with the board as may be sufficient to readily distinguish livestock should they become intermixed with other livestock;

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

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

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

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

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

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

M. "district" means a livestock inspection district;

N. "estrays" means livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown, or that is branded with a brand that is not on record in the office of the board or is a freshly branded or marked offspring not with its branded or marked mother, unless other proof of ownership is produced;

O. "inspector" means a livestock or brand inspector;

P. "livestock inspector" means a certified inspector who is granted full law enforcement powers for enforcement of The Livestock Code and other criminal laws relating to livestock;

Q. "mark" means an ear tag or ownership mark that is not a brand;

R. "meat" means the edible flesh of poultry, birds or animals sold for human consumption and includes livestock, poultry and livestock and poultry products;

S. "mule" means a hybrid resulting from the cross of a horse and an ass; and

T. "person" means an individual, firm, partnership, association, corporation or similar legal entity.

**History:** 1978 Comp., § 77-2-1.1, enacted by Laws 1993, ch. 248, § 2; 1995, ch. 111, § 1; 1999, ch. 282, § 2; 2001, ch. 8, § 2; 2001, ch. 341, § 2.

## ANNOTATIONS

**Cross references.** — For definition of "livestock" for property tax purposes, see 7-35-2 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "in the bill of sale" for "therein" in Subsection B; deleted "animals or" preceding "livestock" in the last line of Subsection F; and added "and other criminal laws relating to livestock" in Subsection P.

Laws 2001, ch. 8, § 2 and Laws 2001, ch. 341, § 2 enacted identical amendments to this section, both effective June 15, 2001. The section was set out as amended by Laws 2001, ch. 341, § 2. See 12-1-8 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, added Subsections C, G, K, M, O, P, S and deleted former Subsections F, I, and O, which defined "bureau", "commissioned livestock inspector", and "noncommissioned brand inspector", respectively;

redesignated former Subsections C to E, G, H, K to N, and P as Subsections D to F, H, I, L, N, Q, R, and T, respectively; deleted "unless the context clearly indicates otherwise" at the end of the introductory paragraph; in Subsection A, substituted the language beginning "horses, asses, mules" for "all horses and cattle" at the end of the first sentence, and deleted "and regulations" following "rules" in the last sentence; deleted "but not limited to" preceding "certificate of deposit" in Subsection E; in Subsection F, substituted "symbol or device" for "mark, notch or device", and deleted "No animal shall be branded at any location more than once such that no subsequent brand shall be placed upon an existing brand, thus altering the prior placed brand" at the end; substituted "of livestock or parts thereof" for "or parts thereof; not less than one quarter of a carcass" in Subsection H; substituted "including dairy cattle, and does not include any other kind of livestock" for "only, and does not include any other kind of domestic animals" in Subsection I; substituted the present language for "'mark' refers to a sheep ear tag or ownership mark" in Subsection Q; and inserted "or similar legal entity" in Subsection T.

**The 1995 amendment**, effective April 5, 1995, inserted "and includes all horses and cattle" in the first sentence in Subsection A, added the second sentence in Subsection E, deleted "raised for consumption only" following "genus bos" in Subsection H, added Subsection I, redesignated former Subsections I through M as Subsections J through N, deleted "or diseases" following "disease" in two places in Subsection K, added Subsection O, redesignated former Subsection N as Subsection P, and made a minor stylistic change in Subsection N.

**Elk are not livestock.** — Definitions of livestock in Livestock Code and Property Tax Code include different animals in their enumerated lists and each provides different blanket definition for animals not listed. *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

**Wild horses are not livestock.** — The wild horses on the White Sands Missile Range do not fit within the definition of "livestock" and, therefore, the Livestock Board does not have the authority to take possession of and sell them as estrays. 1994 Op. Att'y Gen. No. 94-06.

## **77-2-2. New Mexico livestock board created; transfer of powers; transfer of property.**

A. In order to achieve the purposes set forth in Section 1 [77-2-1 NMSA 1978], there is hereby created a board to be known as the "New Mexico livestock board." The New Mexico livestock board shall have all powers which have heretofore been held by the cattle sanitary board or the sheep sanitary board and those powers are hereby transferred to the New Mexico livestock board.

B. Wherever in the NMSA 1978 the term "board" or "sanitary board" is used in relation to the sheep sanitary board or the cattle sanitary board, it shall mean the New Mexico livestock board. Wherever in the NMSA 1978 the terms [term] "sheep sanitary

board" or "cattle sanitary board" are [is] used it shall mean the New Mexico livestock board.

C. Wherever in the NMSA 1978 the term "secretary," "secretary of the board," "secretary of the sheep sanitary board," "secretary of the cattle sanitary board" or any similar term is used in relation to the secretary of the sheep sanitary board or the secretary of the cattle sanitary board, it shall mean the executive director of the New Mexico livestock board.

D. All books, records, property and equipment of the sheep sanitary board and the cattle sanitary board are transferred to the New Mexico livestock board.

**History:** 1953 Comp., § 47-23-2, enacted by Laws 1967, ch. 213, § 2.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law.

**Memorandum of understanding is not a joint powers agreement** where it was not executed by the livestock board in an open meeting, it did not violate the Joint Powers Agreement Act, Sections 11-1-1 to 11-1-7 NMSA 1978, and it did not have to be approved by the secretary of the department of finance and administration. *Paragon Found., Inc. v. N.M. Livestock Bd.*, 2006-NMCA-004, 138 N.M. 761, 126 P.3d 577, cert. denied, 2006-NMCERT-001, 139 N.M. 272, 131 P.3d 659.

**Regulation of cattle in interstate commerce.** — The cattle sanitary board (now New Mexico livestock board) can control, by regulation, feed, rest and water yards for cattle in interstate commerce, transported by trucks through New Mexico. 1959-60 Op. Att'y Gen. No. 60-100.

### **77-2-3. New Mexico livestock board; scope; composition; qualifications; terms; meetings.**

A. The New Mexico livestock board is established to govern the livestock industry of the state in the manner required by law.

B. The New Mexico livestock board shall be composed of nine members appointed by the governor and adequately representing the state livestock industry. Seven of the nine members must raise and own cattle or raise and own sheep in this state and be residents of this state. Two members of the board shall not raise or own cattle or sheep but shall be appointed to represent the general public. The two public members also shall be residents of New Mexico. The majority of the members of the board at any given time shall, however, be primarily engaged in the business of raising and owning cattle in this state. The board shall be bipartisan, but no more than five members of the board shall belong to the same political party.

C. The term of office of each member of the New Mexico livestock board shall be six years; provided, that of the members of the board to be appointed after the passage and approval of this act, two shall be appointed for a term of two years, two for a term of four years and three for a term of six years and, upon the expiration of the terms of such appointments, the successors shall be appointed for the full term of six years.

D. The New Mexico livestock board shall elect from their number a chairman, vice-chairman and secretary. The board shall hold two regular meetings in each year, one in June and the other in December. Special meetings may be called by the chairman or by the vice-chairman in the event that the chairman is absent from the state or because the chairman is physically incapacitated or by a majority of the members of the board.

**History:** 1953 Comp., § 47-23-3, enacted by Laws 1967, ch. 213, § 3; 1983, ch. 229, § 1; 1993, ch. 248, § 3.

### ANNOTATIONS

**Compiler's notes.** — The phrase "this act" in Subsection C refers to Laws 1967, ch. 213, which enacted sections presently compiled as 77-2-1 to 77-2-5, 77-2-7, 77-2-9, and 77-2-22 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, in Subsection B, substituted "nine members" for "seven members" in the first sentence, deleted the former second sentence which read "Each member must be a raiser and owner of cattle or a raiser and owner of sheep in this state and resident of New Mexico", inserted the current second, third and fourth sentences, and substituted "five members" for "four members" in the final sentence.

**The 1983 amendment** added "New Mexico" at the beginning of the catchline, inserted "New Mexico livestock" in the first sentence in Subsection B, in Subsection C and in the first sentence in Subsection D and deleted "at its principal office" following "board shall hold" in the second sentence in Subsection D.

**Members of legislature may not serve on following boards and commissions:** (1) cattle or sheep sanitary board (now New Mexico livestock board); (2) state police board; (3) capitol buildings improvement commission; (4) board of regents - El Rito normal; (5) state fair commission; (6) miners' hospital of New Mexico. 1959-60 Op. Att'y Gen. No. 59-140.

**Officers required to receive certification.** — The [New Mexico] livestock board in its capacity of enforcing the law is a "law enforcement agency" and its officers are "police officers" for purposes of 29-7-7 NMSA 1978, and livestock inspectors have 12 months after employment in which to receive their certification from the law enforcement academy or forfeit their positions. 1987 Op. Att'y Gen. No. 87-34.

**Authority over wild horses.** — The wild horses on the white sands missile range do not fit within the definition of "livestock" and, therefore, the New Mexico livestock board does not have the authority to take possession of and sell them as estrays. 1994 Op. Att'y Gen. No. 94-06.

#### **77-2-4. Compensation of members.**

The members of the New Mexico livestock board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 47-23-4, enacted by Laws 1967, ch. 213, § 4.

#### **ANNOTATIONS**

#### **77-2-5. Report of board.**

It shall be the duty of the board during the first week in December of each year to transmit to the governor a report of its activities for the previous calendar year. This report shall contain a detailed account of all of the receipts and expenditures of money by the board, together with other facts relating to the livestock industry in New Mexico which may be of public interest. The report of the board shall be transmitted by the governor to the legislature.

**History:** 1953 Comp., § 47-23-5, enacted by Laws 1967, ch. 213, § 5.

#### **ANNOTATIONS**

#### **77-2-6. Livestock board attached to New Mexico department of agriculture.**

The board is attached for coordinative purposes to the New Mexico department of agriculture. The board shall execute a memorandum of understanding with the director of the New Mexico department of agriculture, identifying areas for cooperation and coordination of the activities of the board with those of the department of agriculture. Administrative and other services may be provided the board by the department pursuant to the terms of the memorandum of understanding. The board shall submit an annual report on its activities to the director. This section shall not be construed to affect the exercise of any board power or duty.

**History:** 1953 Comp., § 47-23-5.1, enacted by Laws 1977, ch. 256, § 3.

#### **ANNOTATIONS**

#### **77-2-7. Additional powers of the board.**

In addition to the powers transferred from the cattle and sheep sanitary boards, the board may:

A. exercise general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and diseases and in order to protect the public from diseased or unwholesome meat or meat products;

B. appoint and fix the salary of an executive director who shall file an oath and be bonded in an amount fixed by the board. The director shall manage the affairs of the board under the direction of the board. He shall be chosen solely on qualifications and fitness for the office. He shall devote his entire time to the duties of the office;

C. employ clerical help, provide office space and purchase equipment, including vehicles;

D. employ livestock inspectors and brand inspectors and other personnel necessary to carry out the purposes of The Livestock Code. All livestock inspectors appointed by the board shall have the same powers as any other peace officer in the enforcement of that code;

E. appoint a state veterinarian and subordinate veterinarians as are necessary to carry out the duties of the board;

F. adopt and promulgate rules to control the importation and exportation of animals;

G. establish livestock inspection districts;

H. establish quarantine, provide its boundaries and give notice of the quarantine and do all other things necessary to effect the object of the quarantine and to protect the livestock industry of this state from disease and prevent the spread of disease;

I. adopt and promulgate rules for meat inspection, including the slaughter and disposition of the carcasses of livestock affected with diseases when the action appears necessary to prevent the spread of any contagion or infection among livestock;

J. adopt and promulgate rules governing the importation, manufacture, sale, distribution or use within the state of serums, vaccine and other biologicals intended for diagnostic or therapeutic uses with livestock and regulate the importation, manufacture or use of virulent blood or living virus of any diseases affecting livestock;

K. set fees or charges, not to exceed one hundred dollars (\$100) per call, for any services rendered by the board or its employees that are deemed necessary by the board and for which no fee has been set by statute;

L. consider the views of the livestock industry in the administration of The Livestock Code;

M. adopt and promulgate rules to otherwise carry out the purposes of The Livestock Code;

N. hold hearings and subpoena witnesses for the purpose of investigating or enforcing The Livestock Code or rules established pursuant to that code; and

O. enter into joint powers agreements with Indian nations, tribes or pueblos to promote cooperation in carrying out the provisions of The Livestock Code.

**History:** 1953 Comp., § 47-23-6, enacted by Laws 1967, ch. 213, § 6; 1973, ch. 234, § 5; 1983, ch. 229, § 2; 1993, ch. 248, § 4; 1995, ch. 111, § 2; 1999, ch. 282, § 3.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, deleted "contagious or infectious" preceding "disease" or "diseases" in Subsections A, H, and I; deleted "executive" preceding "director" in the first sentence of Subsection B; substituted "employ clerical help, provide office space and purchase equipment, including vehicle" for "employ clerical help and purchase equipment" in Subsection C; deleted "commissioned" preceding "livestock" twice, and deleted "noncommissioned" preceding "brand inspectors" in Subsection D; deleted "All veterinarians employed by the board shall be licensed by the board of veterinary examiners" at the end of Subsection E; substituted "importation and exportation of animals" for "importation of animals into this state" in Subsection F; added Subsection G; substituted "one hundred dollars (\$100)" for "twenty dollars (\$20.00)" in Subsection K; and added Subsection O.

**The 1995 amendment**, effective April 5, 1995, deleted "New Mexico Livestock" preceding "Board" in the section heading, inserted "commissioned livestock inspectors and noncommissioned brand" in the first sentence and inserted "commissioned livestock" in the second sentence in Paragraph (4) of Subsection A, and substituted "shall" for "must" in the second sentence of Paragraph (5) in Subsection A.

**The 1993 amendment**, effective June 18, 1993, substituted "The Livestock Code" for "The Livestock Board Act" throughout the section; deleted "New Mexico livestock" preceding "board" in the introductory paragraph of Subsection A; substituted "licensed by the board of veterinary examiners" for "graduates in good standing of approved veterinary colleges" in Paragraph (5) of Subsection A; substituted "twenty dollars (\$20.00)" for "ten dollars (\$10.00)" in Paragraph (10) of Subsection A; deleted former Subsection B, defining "'livestock' or 'animals' ", and added current Subsection B.

**The 1983 amendment** inserted "New Mexico Livestock" in the catchline and made the following substitutions: "has" for "shall have" in the introductory paragraph of Subsection A, "ten dollars (\$10.00) per call" for "two dollars and fifty cents (\$2.50) per head" in Subsection A(10) and "are also" for "shall also be" in the second sentence in Subsection B.

**[New Mexico] Livestock board authorized to cooperate with department of agriculture.** — Because common powers do exist between the two agencies, the [New Mexico] livestock board is authorized to enter into cooperative agreements with the United States department of agriculture respecting meat inspection. 1968 Op. Att'y Gen. No. 68-46.

**Board may adopt federal regulations.** — Although the [New Mexico] livestock board is without power to enforce federal regulations respecting meat inspection, the board may adopt the federal regulations as a part of the rules and regulations of the board. 1968 Op. Att'y Gen. No. 68-46.

**Board may not adopt some rules and regulations.** — The [New Mexico] livestock board may not adopt rules and regulations involving: (1) control of ingredients of meat and meat products, unless such ingredients affect the wholesomeness of the meat; (2) labeling or misbranding of meat and meat products; (3) adulteration of meat and meat products, unless the adulteration affects the meat wholesomeness; (4) weights and measures for meat and meat products; (5) fraudulent advertising of meat and meat products or (6) deceptive fill of containers for meat and meat products. The above matters are within the purview of the powers granted to the state health department (now department of health). 1968 Op. Att'y Gen. No. 68-46.

**Board may not require approval of slaughterhouse construction.** — The design and construction of slaughterhouses and meat establishments is not sufficiently related to protecting the public from unwholesome meat so as to allow the [New Mexico] livestock board to require approval of plans of construction of slaughterhouses and meat establishments without specific statutory power. 1967 Op. Att'y Gen. No. 67-115.

**Although some regulations reasonably related to power of board.** — The health of slaughterhouse employees, the sanitation of slaughterhouses, meat establishments and transportation vehicles and the maintenance of slaughterhouses and meat establishments are all reasonably related to powers of the [New Mexico] livestock board. 1967 Op. Att'y Gen. No. 67-115.

**Health department also to determine wholesomeness of meat.** — The fact that the [New Mexico] livestock board may be inspecting meats to determine if they are unwholesome in no way limits the powers of the health department to independently determine whether the meat is unwholesome. 1967 Op. Att'y Gen. No. 67-115.

### **77-2-7.1. Brands; subject to change in ownership; fees for transfer.**

Brands recorded in accordance with the provisions of Section 77-9-10 [77-2-7.4] NMSA 1978 are personal property of the person in whose name they are recorded. Ownership may be transferred in the same manner as other personal property. The fee for recording a transfer of ownership with the director of the New Mexico livestock board shall be a sum fixed by the board not to exceed the amount prescribed by law.

**History:** Laws 1895, ch. 6, § 3; C.L. 1897, § 108; Code 1915, § 119; C.S. 1929, § 4-1405; 1941 Comp., § 49-905; 1953 Comp., § 47-9-5; Laws 1959, ch. 249, § 1; 1971, ch. 50, § 1; 1975, ch. 91, § 1; 1981, ch. 357, § 5; 1978 Comp., § 77-9-7, recompiled as 1978 Comp., § 77-2-7.1 by Laws 1999, ch. 282, § 103.

## ANNOTATIONS

**Recompilations.** — Laws 1999, ch. 282, § 103 recompiled former 77-9-7 NMSA 1978, relating to change in ownership of brands and fees for transfer, as 77-2-7.1 NMSA 1978, effective July 1, 1999.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1999, ch. 282, § 13, recompiled former 77-9-10 NMSA 1978 as 77-2-7.4 NMSA 1978, effective July 1, 1999.

**The 1999 amendment,** effective July 1, 1999, recompiled former 77-9-7 NMSA 1978, which was assigned as this section.

**The 1981 amendment** substituted "the amount prescribed by law" for "fifteen dollars (\$15.00)" in the last sentence.

**A brand is personal property, and may be sold and transferred** as other personal property. *Chavez v. Territory*, 6 N.M. 455, 30 P. 903 (1892).

### **77-2-7.2. Registration of brands and marks; board.**

Except as otherwise authorized by the board, the board is the sole authority for the registration of brands, marks or electronic identification on livestock in this state.

**History:** Laws 1895, ch. 6, § 4; C.L. 1897, § 109; Code 1915, § 120; C.S. 1929, § 4-1406; 1941 Comp., § 49-906; 1953 Comp., § 47-9-6; Laws 1971, ch. 50, § 2; 1978 Comp., § 77-9-8, amended and recompiled as 1978 Comp., § 77-2-7.2 by Laws 1999, ch. 282, § 11.

## ANNOTATIONS

**The 1999 amendment,** effective July 1, 1999, recompiled this section which was formerly 77-9-8 NMSA 1978 and deleted "livestock" preceding "board" in the section heading, and rewrote the section, which formerly read "The livestock board is the sole board for the registration of brands and marks on horses, mules, asses, cattle and sheep in this state."

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

### **77-2-7.3. Brand books.**

The board shall keep a suitable record of all registered brands, marks and electronic identification used for the identification of livestock in this state.

**History:** Laws 1895, ch. 6, § 5; C.L. 1897, § 110; Code 1915, § 121; C.S. 1929, § 4-1407; 1941 Comp., § 49-907; 1953 Comp., § 47-9-7; Laws 1983, ch. 229, § 7; 1993, ch. 248, § 45; 1978 Comp., § 77-9-9, amended and recompiled as 1978 Comp., § 77-2-7.3 by Laws 1999, ch. 282, § 12.

#### **ANNOTATIONS**

**Cross references.** — For certified copy of registration as prima facie proof of ownership, see 31-7-1 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, recompiled this section which was formerly 77-9-9 NMSA 1978 and rewrote the section, which formerly read: "It is the duty of the New Mexico livestock board to keep a suitable record of all the brands used for the branding of horses, mules, asses and any cattle in this state."

**The 1993 amendment,** effective June 18, 1993, substituted "any cattle" for "neat cattle".

**The 1983 amendment** added the catchline and substituted "is the duty of the New Mexico livestock board to keep a suitable record of all" for "shall be the duty of the cattle sanitary board to keep a suitable book, to be known as the state brand book, in which shall be recorded."

### **77-2-7.4. Recording before use; recording fee; conflicting brands.**

A. A brand shall not be used until recorded. A facsimile of the brand and a recording fee fixed by the board shall be forwarded to the director. One certified copy of the recorded brand shall be furnished to the owner of the brand by the director when the brand is recorded.

B. The director shall immediately record the brand unless it has been recorded previously or conflicts with a prior recorded brand. In that event, the director shall return the facsimile unrecorded and charge a fee for the research.

C. Additional certified copies of brands recorded may be obtained from the director by the payment of a fee to be fixed by the board in a sum not to exceed the amount prescribed by law.

**History:** Laws 1895, ch. 6, § 9; C.L. 1897, § 113; Code 1915, § 123; C.S. 1929, § 4-1409; 1941 Comp., § 49-908; Laws 1949, ch. 49, § 1; 1953 Comp., § 47-9-8; Laws 1959, ch. 249, § 2; 1971, ch. 50, § 3; 1975, ch. 91, § 2; 1981, ch. 357, § 6; 1978 Comp.,

§ 77-9-10, amended and recompiled as 1978 Comp., § 77-2-7.4 by Laws 1999, ch. 282, § 13.

## ANNOTATIONS

**Cross references.** — For more than one brand prohibited, see 77-2-7.7 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-10 NMSA 1978 and added the subsection designations; in Subsection A, deleted "in a sum not to exceed the amount prescribed by law" following "by the board" in the second sentence, and substituted "when the brand is recorded" for "immediately upon the brand being recorded" in the third sentence; in the last sentence of Subsection B, substituted "and charge a fee for the research" for "together with the fee"; and made stylistic changes throughout the section.

**The 1981 amendment** substituted "the amount prescribed by law" for "fifteen dollars (\$15.00)" in the second sentence and "a fee to be fixed by the board in a sum not to exceed the amount prescribed by law" for "three dollars (\$3.00) a copy" in the last sentence.

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 20.

### 77-2-7.5. Fees; disposition.

The fees for recording or researching brands and for furnishing certified copies of the recording or research shall be placed to the credit of the New Mexico livestock board interim receipts and disbursements fund.

**History:** Laws 1905, ch. 30, § 1; Code 1915, § 124; C.S. 1929, § 4-1410; 1941 Comp., § 49-909; 1953 Comp., § 47-9-9; Laws 1993, ch. 248, § 46; 1978 Comp., § 77-9-11, amended and recompiled as 1978 Comp., § 77-2-7.5 by Laws 1999, ch. 282, § 14.

## ANNOTATIONS

**Cross references.** — For levy for livestock fund, see 77-2-15 and 77-2-16 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-11 NMSA 1978 and rewrote the section, which formerly read: "The fees to be paid to the director of the board for recording brands and for furnishing certified copies thereof shall remain as fixed by law. The fees when received by the director shall be placed to the credit of the New Mexico livestock board general fund."

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "director of the board" for "secretary of the cattle sanitary board" in the first sentence; substituted "the director" for "said secretary"; deleted a provision pertaining to transmittal of fees and other moneys to the state treasurer; substituted "New Mexico livestock board general fund" for "cattle indemnity fund"; and made minor stylistic changes.

### **77-2-7.6. Brand book.**

The director shall publish a brand book in which shall be given a facsimile or copy of all brands recorded in the office of the board, together with the owner's name and address. The board may publish if it deems best to do so a limited number of brand books in addition to the number required by the provisions of this section and to sell them for such price as the board considers reasonable and proper. The price shall not be less than the actual cost.

**History:** Laws 1895, ch. 6, § 12; C.L. 1897, § 116; Code 1915, § 127; C.S. 1929, § 4-1413; 1941 Comp., § 49-912; 1953 Comp., § 47-9-11; Laws 1983, ch. 229, § 8; 1993, ch. 248, § 48; 1978 Comp., § 77-9-13, amended and recompiled as 1978 Comp., § 77-2-7.6 by Laws 1999, ch. 282, § 15.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-13 NMSA 1978 and substituted "The director shall publish" for "It is the duty of the executive director of the New Mexico livestock board to publish" at the beginning of the first sentence, substituted "may publish" for "is authorized to publish" in the last sentence, and deleted the former last sentence, which read "The board is authorized to revise from time to time the state record of brands by the cancellation of obsolete and unused brands and to provide by regulation for due notice of such revision."

**The 1993 amendment**, effective June 18, 1993, substituted "the office of the board" for "his office" in the first sentence and deleted "New Mexico livestock" preceding "board" near the beginning of the second sentence.

**The 1983 amendment** added the catchline and, in the first sentence, substituted "is the duty of the executive director of the New Mexico livestock" for "shall be the duty of the secretary of the cattle sanitary" and "address" for the language which began with "the county wherein he resides" and which included a sample of the form of the brand book, all as set out in the original pamphlet. The 1983 amendment also deleted the former second and third sentences, as set out in the original pamphlet, divided the former last sentence into the present last three sentences and substituted "New Mexico livestock" for "cattle sanitary" in the present second sentence and "The board is authorized to revise from time to time the" for "and from time to time revise said" in the last sentence.

## **77-2-7.7. More than one brand unlawful; exceptions; penalty.**

A. It is unlawful for an owner of livestock in originally marking or branding livestock to make use of or keep up more than one mark or brand; provided that an owner may own and possess livestock in different marks or brands if they were acquired by him by purchase or other lawful manner and evidenced by a bill of sale from the previous owner of the livestock having such brands or from the heirs, executors, administrators or legal representatives of the owner. Livestock so acquired shall be branded or marked as provided in The Livestock Code by and with the recorded brand or mark of the person acquiring the livestock. It is lawful for the purpose of identification during the pendency of a mortgage or lien to brand the increase of the branded livestock in the recorded brand designated in the mortgage or lien.

B. A brand shall not be altered by placing another brand on it or in the same location.

C. A person who unlawfully brands livestock contrary to the provisions of The Livestock Code 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.

**History:** Laws 1895, ch. 6, § 13; C.L. 1897, § 117; Code 1915, § 128; Laws 1919, ch. 54, § 1; C.S. 1929, § 4-1414; 1941 Comp., § 49-913; 1953 Comp., § 47-9-12; Laws 1975, ch. 139, § 4; 1993, ch. 248, § 49; 1978 Comp., § 77-9-14, amended and recompiled as 1978 Comp., § 77-2-7.7 by Laws 1999, ch. 282, § 16.

### **ANNOTATIONS**

**Cross references.** — For recording of holding brands, see 77-2-7.9 NMSA 1978.

For unlawful branding of animals, see 30-18-3 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-14 NMSA 1978 and, in Subsection A, deleted "in writing, properly acknowledged" following "bill of sale", substituted "brand or mark of the person acquiring the livestock" for "kept-up or running brand and mark of the person acquiring the animal within thirty days from the acquisition unless the present owner is given a written statement by the New Mexico livestock board or by the former owner granting permission and filed with the board for the present owner to use the recorded brand appearing on the livestock. In cases where animals having upon them a duly recorded brand may have had established against them a mortgage or other lien duly recorded in this state", inserted "a mortgage or" preceding "lien to brand", and substituted "branded livestock" for "animals"; added Subsection B; substituted "in accordance with the provisions of Section 31-19-1 NMSA 1978" for "by confinement in the county jail not to exceed twelve months or fined an amount not to exceed five hundred dollars (\$500), or both" in Subsection C; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, inserted the subdivision designations "A" and "B"; inserted "and filed with the board" in the second sentence of Subsection A; substituted "is guilty of a misdemeanor and shall upon conviction" for "upon conviction thereof shall" and "or both, for each offense" for "or suffer both such fine and imprisonment in the discretion of the court" in Subsection B; and made minor stylistic changes.

### **77-2-7.8. Brands of minors.**

Minors owning livestock separate from that of the parent or guardian may have a mark or brand, which shall be recorded in accordance with the requirement of The Livestock Code, but the parent or guardian shall be responsible for the proper use of the mark or brand by any minor.

**History:** Laws 1895, ch. 6, § 14; C.L. 1897, § 118; Code 1915, § 129; C.S. 1929, § 4-1415; 1941 Comp., § 49-914; 1953 Comp., § 47-9-13; 1993, ch. 248, § 50; 1978 Comp., § 77-9-15, amended and recompiled as § 77-2-7.8 by Laws 1999, ch. 282, § 17.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-15 NMSA 1978 and substituted "owning livestock" for "owning horses, mules, asses or any cattle", substituted "mark or brand" for "mark and brand" two times, and substituted "The Livestock Code" for "this article".

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "any cattle" for "neat cattle"; and made minor stylistic changes.

### **77-2-7.9. Filing of facsimile; designation of brands; holding brand renewal and fee; branding increase; offenses; penalty.**

An owner of livestock desiring to use in branding a brand not already recorded in the office of the board shall file with the director a facsimile of the desired brand. The owner may record the desired brands as holding brands upon livestock so owned upon furnishing to the director a full description as to the number, class and locality of all livestock branded with the holding brand. A recorded holding brand may be used also on a show animal. A fee shall be charged for the recording of a holding brand, which recording shall be valid for a period of one year or until the described livestock depart the state, whichever comes first. The recording may be renewed for additional years by the payment of a fee at each yearly renewal; provided that it is unlawful for the owner to brand the increase of such livestock in any other brand than the recorded brand of the owner except in the case of mortgaged livestock as provided in Section 77-9-14 NMSA 1978, as recompiled [77-2-7.7 NMSA 1978]. A person who violates the provisions of this section 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.

**History:** Laws 1912, ch. 55, § 2; Code 1915, § 138; Laws 1919, ch. 55, § 1; C.S. 1929, § 4-1424; 1941 Comp., § 49-915; 1953 Comp., § 47-9-14; Laws 1977, ch. 148, § 1; 1981, ch. 357, § 7; 1993, ch. 248, § 51; 1978 Comp., § 77-9-16, amended and recompiled as 1978 Comp., § 77-2-7.9 by Laws 1999, ch. 282, § 18.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1999, ch. 282, § 16, recompiled former 77-9-14 NMSA 1978 as 77-2-7.7 NMSA 1978, effective July 1, 1999.

**The 1999 amendment,** effective July 1, 1999, recompiled this section which was formerly 77-9-16 NMSA 1978 and deleted "in an amount prescribed by law" following "A fee" in the fourth and fifth sentences; inserted "desired" preceding "brand" at the end of the first sentence; substituted "may record the desired brands" for "shall designate his kept-up or running brand and may record other brands" in the second sentence; inserted the third sentence; substituted "or until the described livestock depart the state, whichever comes first" for "after which time" at the end of the fourth sentence; in the next-to-last sentence, deleted "kept-up or running" preceding "brand", and inserted "as recompiled"; and substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "confined in the county jail for a period not to exceed twelve months or fined an amount not to exceed five hundred dollars (\$500), or both" in the last sentence; and made stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, substituted "any cattle" for "neat cattle" in the first sentence; substituted "is guilty of a misdemeanor and shall upon conviction" for "upon conviction thereof" in the final sentence; added "for each offense" at the end of the final sentence; and made minor stylistic changes.

**The 1981 amendment** substituted "the" for "such" preceding "brand" in the first sentence and, in the next-to-last sentence, substituted "in an amount prescribed by law" for "of fifty dollars (\$50.00)" near the beginning and middle and "the" for "such" following "of" in the proviso clause and deleted "such" following "for any" in the proviso clause.

**The 1977 amendment** rewrote this section, substituting the New Mexico livestock board and its director for the cattle sanitary board and its secretary, adding the fee for recording holding brands, adding the provisions for renewal of recordings and making other minor changes.

### **77-2-7.10. Brands; board may reject.**

The board shall have the power to reject any brand offered for record under the provisions of Section 77-9-16 [77-2-7.9] NMSA 1978 when upon satisfactory evidence it is shown to the board that the same is offered for or is of such character that may be

used for malicious or deceptive purposes or is not in conformity with the provisions of Section 77-9-16 [77-2-7.9] NMSA 1978.

**History:** Laws 1912, ch. 55, § 5; Code 1915, § 141; C.S. 1929, § 4-1427; 1941 Comp., § 49-917; 1953 Comp., § 47-9-16; 1993, ch. 248, § 52; 1978 Comp., § 77-9-18, recompiled as 1978 Comp., § 77-2-7.10 by Laws 1999, ch. 282, § 103.

### ANNOTATIONS

**Recompilations.** — Laws 1999, ch. 282, § 103 recompiled 77-9-18 NMSA 1978 as 77-2-7.10 NMSA 1978, effective July 1, 1999.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1999, ch. 282, § 18, recompiled former 77-9-16 NMSA 1978 as 77-2-7.9 NMSA 1978, effective July 1, 1999.

**The 1999 amendment,** effective July 1, 1999, recompiled former 77-9-18 NMSA 1978, which was assigned as this section.

**The 1993 amendment,** effective June 18, 1993, added the present catchline; deleted "Cattle Sanitary" preceding "board" near the beginning of the section; substituted "Section 77-9-16 NMSA 1978" for "Section 138 and 140" and for "Section 138" at the end of the section; and made minor stylistic changes.

### 77-2-7.11. Brand; priority of right to.

The time of record of any brand by the owner in the county wherein the brand was originally recorded before the creation of the board shall determine the priority of right and property in the brand and not the time of filing with the board, provided the brand has been continuously used from the date of original record.

**History:** Laws 1912, ch. 55, § 6; Code 1915, § 142; C.S. 1929, § 4-1428; 1941 Comp., § 49-918; 1953 Comp., § 47-9-17; Laws 1993, ch. 248, § 53; 1978 Comp., § 77-9-19, recompiled as 1978 Comp., § 77-2-7.11 by Laws 1999, ch. 282, § 103.

### ANNOTATIONS

**Recompilations.** — Laws 1999, ch. 282, § 103 recompiled 77-9-19 NMSA 1978 as 77-2-7.11 NMSA 1978, effective July 1, 1999.

**The 1999 amendment,** effective July 1, 1999, recompiled former 77-9-7 NMSA 1978, which was assigned as this section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "cattle sanitary" preceding "board" in two places; and made minor stylistic changes.

## **77-2-7.12. Re-recording of brands; notice; publication; fees.**

A. The board shall cause all brands now on record to be re-recorded whenever the board deems necessary to clear records of unused brands. For this purpose, the board shall mail a notice, addressed to each owner of a brand now of record with the board at the current address shown on the brand record, requiring the owners of brands to file with the director any brand being on record to the owners. In addition to this notice, the board shall publish in either English or Spanish or both in at least one newspaper in each county in this state where there is a newspaper a copy of the notice to re-record. The publication shall continue for at least four consecutive weeks.

B. Within three months from the date of the first publication of the notice to re-record, owners of brands of record in the office of the board shall file with the director the brands in actual use and recorded by them and pay the re-recording fee. The fees shall be deposited in the proper fund of the board. Re-recording shall not be required more often than once in a three-year period.

**History:** Laws 1923, ch. 146, § 1; C.S. 1929, § 4-1445; 1941 Comp., § 49-919; Laws 1949, ch. 47, § 1; 1953 Comp., § 47-9-18; Laws 1971, ch. 50, § 4; 1975, ch. 91, § 3; 1981, ch. 357, § 8; 1993, ch. 248, § 54; 1978 Comp., § 77-9-20, amended and recompiled as 1978 Comp., § 77-2-7.12 by Laws 1999, ch. 282, § 19.

### **ANNOTATIONS**

**Cross references.** — For "legal newspaper," see 14-11-2 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-20 NMSA 1978 and, in Subsection A, substituted "current address" for "post office address" and deleted "of the board an exact facsimile of" preceding "any brand" in the second sentence; in Subsection B, in the first sentence, deleted "of the board a facsimile of" preceding "the brands", and substituted "and pay the re-recording fee" for "fee for the rerecording of brands shall be fixed by the board in a sum not to exceed the amount prescribed by law for each brand rerecorded the fee to include one certified copy of the rerecording of the brand to be furnished the owner by the board with the proceeds to be used for the cost of notice given as provided in this section; provided that any excess of money from these"; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, inserted the subsection designations "A" and "B"; deleted "New Mexico livestock" preceding "board" in five places; substituted "proper fund" for "indemnity fund" near the end of the next to last sentence; and made minor stylistic changes.

**The 1981 amendment**, near the beginning of the second sentence in the second paragraph, substituted "the amount prescribed by law" for "fifteen dollars (\$15.00)" and "shall" for "to" following "fee" and deleted "thereof" following "owner."

## **77-2-8. Research and promotion of meat and meat products.**

The board may enter into contracts for research into and promotion of meat and meat products. The contracts shall carry provisions for financing, and the board may accept and expend voluntary contributions from any source to finance the contracts. The provisions of this section shall not apply to or include cattle coming out of feed lots.

**History:** 1953 Comp., § 47-23-6.1, enacted by Laws 1969, ch. 177, § 1; 1999, ch. 282, § 4.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, deleted "New Mexico livestock" preceding "board" in the first sentence, and deleted the former third sentence, which read "Every contract for research or promotion shall contain provisions for financing the cost of the work and must be approved by the state board of finance."

## **77-2-9. Reports of inspectors; prosecution of violations of livestock laws.**

A. The board shall keep reports of its veterinarians and inspectors in accordance with the Public Records Act [Chapter 14, Article 3 NMSA 1978].

B. The board shall assist in the prosecution of persons charged with the violation of the livestock laws, including criminal laws relating to livestock, and may call upon a livestock inspector or other peace officer to execute its orders, and when it does, the peace officer shall obey the order of the board.

C. Livestock inspectors may arrest persons found in the act or whom they have probable cause to believe to be guilty of driving, holding or slaughtering stolen livestock; of violating the inspection laws of the state; or of violating any provision of Chapter 30, Article 18 NMSA 1978 relating to livestock or other criminal law relating to livestock.

**History:** 1953 Comp., § 47-23-7, enacted by Laws 1967, ch. 213, § 8; 1983, ch. 229, § 3; 2001, ch. 8, § 3; 2001, ch. 341, § 3.

### **ANNOTATIONS**

**Cross references.** — For penalty for violating rule or regulation of New Mexico livestock board, see 77-2-22 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, deleted "New Mexico livestock" preceding "board" in Subsections A and B; in Subsection B, inserted "including criminal laws relating to livestock", substituted "a livestock" for "any" preceding "inspector", inserted "peace" preceding "officer", deleted "or inspector" preceding "shall obey"; and added Subsection C.

Laws 2001, ch. 8, § 3 and Laws 2001, ch. 341, § 3, both effective June 15, 2001, enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 341, § 3. See 12-1-8 NMSA 1978.

**The 1983 amendment**, in Subsection A, deleted "a permanent record of its acts and of the acts and" following "board shall keep" and added "in accordance with the Public Records Act" at the end.

## **77-2-10. Receipts; deposit of funds.**

A. The board shall designate banks where its money is to be deposited.

B. Notwithstanding the provisions of Section 6-10-3 NMSA 1978, the board may establish rules governing the receipt and deposit of fees collected by its inspectors requiring remittance to the board in not more than ten days.

**History:** 1953 Comp., § 47-23-8, enacted by Laws 1973, ch. 84, § 1; 1993, ch. 248, § 5; 2003, ch. 273, § 24.

### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, deleted former Subsections A and B, concerning collection of fees and issuance of warrants, and redesignated former Subsections C and D as present Subsection A and B.

**The 1993 amendment**, effective June 18, 1993, substituted "money" and "money is" for "moneys" and "moneys are" in Subsections A and C; deleted "New Mexico livestock" preceding "board" in the first sentence of Subsection A; substituted "6-5-3 NMSA 1978" for "11-2-65 NMSA 1953" at the end of the second sentence of Subsection A; and added Subsection D.

## **77-2-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-2-11 NMSA 1978, as enacted by Laws 1889, ch. 106, § 1, defining "cattle", effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 77-2-1.1 NMSA 1978.

## **77-2-12. Executive director; duties, oath and bond.**

The executive director of the board shall keep records of inspections of brands and earmarks as deemed necessary by the board and shall perform such other duties as are prescribed by the board. He shall take and subscribe an oath faithfully to perform all of his duties as executive director of the board and shall enter into bond in an amount to be fixed by the board, with good and sufficient sureties, to be approved by the board, conditioned for the faithful performance of his duties.

**History:** Laws 1891, ch. 34, § 11; C.L. 1897, § 217; Code 1915, § 72; C.S. 1929, § 4-807; Laws 1933, ch. 53, § 3; 1941 Comp., § 49-206; 1953 Comp., § 47-2-6; Laws 1983, ch. 229, § 4; 1993, ch. 248, § 6.

### **ANNOTATIONS**

**Cross references.** — For oath of office, see N.M. Const., art. XX, § 1.

**The 1993 amendment**, effective June 18, 1993, deleted "New Mexico livestock" preceding "board" in the first sentence and deleted the former third sentence pertaining to actions on the director's bond by persons injured by misfeasance or nonfeasance of the director.

**The 1983 amendment** added the catchline, rewrote the first sentence, substituted "as executive director of the board" for "of secretary of such board" and deleted "said sanitary" following "to be approved by the" in the second sentence and, in the last sentence, substituted "executive director" for "secretary" deleted "of New Mexico" following "of the state" and substituted "has" for "shall have" near the end.

**Board's executive director's largely unilateral action is non-binding and meaningless**, as he can only act pursuant to those powers delimited in the Livestock Code. *Paragon Found., Inc. v. N.M. Livestock Bd.*, 2006-NMCA-004, 138 N.M. 761, 126 P.3d 577, cert. denied, 2006-NMCERT-001, 139 N.M. 272, 131 P.3d 659.

## **77-2-13. Records; certified copy evidence.**

The records required to be kept by the director, including inspector reports, shall be maintained by the board in a readily available manner, and a certified copy of any such records under the hand and seal of the director or the verified oath of an inspector shall be prima facie evidence in all courts of this state of the truth of any fact required to be recorded therein.

**History:** Laws 1891, ch. 34, § 9; C.L. 1897, § 215; Code 1915, § 73; C.S. 1929, § 4-808; 1941 Comp., § 49-207; 1953 Comp., § 47-2-7; Laws 1983, ch. 229, § 5; 1999, ch. 282, § 5.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, substituted "director, including inspector reports" for "executive director of the New Mexico livestock board" near the beginning of the section, and "director or the verified oath of an inspector" for "executive director of the board" near the end.

**The 1983 amendment** added the catchline and substituted "executive director of the New Mexico livestock board shall be maintained by the board in a readily available manner" for "secretary of the said sanitary board shall be kept in a well bound book, to be provided by the board for that purpose" and "executive director of the board" for "secretary of said board."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 29.

### **77-2-14. Attorney; duties.**

The board may employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to livestock. The board shall fix the compensation to be paid to such attorney.

**History:** Laws 1937, ch. 205, § 1; 1941 Comp., § 49-210; 1953 Comp., § 47-2-10; Laws 1986, ch. 32, § 41; 1999, ch. 282, § 6.

## **ANNOTATIONS**

**Cross references.** — For use of livestock fund, see 77-2-17 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, deleted "special tax" at the end of the section heading, substituted "The board may" for "The New Mexico livestock board has authority to" at the beginning of the first sentence, and deleted the former last sentence, which related to a special tax levied upon all cattle, horses, mules and asses in every county of the state.

**The 1986 amendment** added the present catchline, substituted "The New Mexico livestock board has authority" for "The Cattle Sanitary Board of New Mexico shall have authority" in the first sentence, substituted "every county" for "the several counties" and "Section 77-2-15 NMSA 1978" for "Section 2 of this act", and made minor stylistic changes in the second sentence.

### **77-2-15. Special taxes; levy; collection.**

A. Each year the board of county commissioners of each county shall at its first meeting after the return of the assessment of the property for taxation by the county assessors of each county, levy a special tax at a rate to be fixed each year by the New Mexico livestock board. Subject to the provisions of Section 7-37-7.1 NMSA 1978, the New Mexico livestock board shall, in each year, order the levy of a tax on livestock at a

rate not to exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of the livestock. The New Mexico livestock board may set different rates for individual classes of livestock.

B. The order imposing the levy of the tax shall be made on or before June 30 in each year and shall be certified to the department of finance and administration by the director. The department of finance and administration shall certify the amount of the levy to the board of county commissioners of each county, and the board of county commissioners shall include the levy in its annual levy of taxes. The special tax shall be collected in each county and paid to the state treasurer in the manner provided by law for the collection and payment of other state taxes. Such funds shall be remitted to the New Mexico livestock board for deposit in the interim receipts and disbursements fund.

**History:** Laws 1937, ch. 205, § 2; 1939, ch. 15, § 1; 1941, ch. 151, § 1; 1941 Comp., § 49-211; 1953 Comp., § 47-2-11; Laws 1961, ch. 142, § 1; 1986, ch. 32, § 42; 1993, ch. 248, § 7; 1999, ch. 282, § 7.

## ANNOTATIONS

**Cross references.** — For brand fees to be placed to credit of fund, see 77-2-7.5 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, deleted "indemnity funds" preceding "collection" in the section heading; in Subsection A, substituted the levy of a tax on livestock in general, and allowing the board to set different rates for individual classes of livestock, for Paragraphs (1) to (3), which set forth the levy of a tax for beef cattle, horses, mules, asses and buffalo, for dairy cattle, and for sheep and goats, respectively; and in Subsection B, deleted "executive" preceding "director" in the first sentence, and inserted "New Mexico livestock" preceding "board" in the last sentence.

**The 1993 amendment,** effective June 18, 1993, inserted the subsection designation "A"; rewrote Subsection A; and added Subsection B.

**The 1986 amendment** added the present catchline; substituted references to the New Mexico livestock board for references to the cattle sanitary board in three places in the section; in the first sentence, substituted "ten dollars (\$10.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the special tax, on each one thousand dollars (\$1,000) of net taxable value" for "ten mills on each dollar of the appraised value" in two places and inserted "as that term is defined in the Property Tax Code"; and made minor stylistic changes throughout the section.

**Soldier not subject to special tax.** — Owner of livestock who is a soldier and head of a family and thus exempt from taxation is not subject to special tax levied under this section. 1937-38 Op. Att'y Gen. No. 37-1821.

## **77-2-16. Financial report and tax estimate; state levy; maximum rate.**

It is the duty of the board on or before June 30 of each year to make and file with the department of finance and administration a report and estimate showing the amount of money in the custody or under the control of the treasurer of the board, the estimated receipts from all sources and the actual and estimated expenditures for the current fiscal year. The department of finance and administration shall annually, at the time and in the manner of certifying rates under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], certify a rate and impose a levy upon all cattle, horses, mules, asses, sheep, goats and buffalo in every county in the state, provided that such levy shall not exceed the amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** Laws 1915, ch. 85, § 1; 1929, ch. 157, § 2; C.S. 1929, § 4-815; 1941 Comp., § 49-212; 1953 Comp., § 47-2-12; Laws 1977, ch. 249, § 29; 1986, ch. 32, § 43; 1993, ch. 248, § 8.

### **ANNOTATIONS**

**Cross references.** — For county levy for fund, see 77-2-15 NMSA 1978.

For brand fees to be placed to credit of fund, see 77-2-7.5 NMSA 1978.

For fees from rerecording of brands, see 77-2-7.12 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1986 amendment** substituted "the New Mexico livestock board" for "said board" in the first sentence, substituted the language following "any one year" for "five and one-half mills upon each dollar of the assessed valuation of such animals" in the second sentence, and made minor stylistic changes.

**The 1977 amendment** substituted in the first sentence, "New Mexico livestock board" for "cattle sanitary board," "June 30" for "the first day of September," "department of finance and administration" for "state auditor" and "money" for "moneys" near the middle of the sentence and, in the second sentence, "department of finance and administration" for "state auditor" and "certifying rates under the Property Tax Code, certify a rate" for "levying other state taxes, levy a special tax."

## **77-2-17. Payment of tax collections to state treasurer; disbursement.**

The special tax provided by Section 77-2-16 NMSA 1978 shall be assessed and collected in every county and paid over to the state treasurer as provided by law for the assessment, collection and payment of other state taxes, and all money so collected and paid over on account of such special tax levies shall be transferred each month to the board for deposit in the interim receipts and disbursements fund and shall be used for fees, salaries, wages, costs and expenses as provided for by laws relating to the powers, duties and expenditures of the board.

**History:** Laws 1915, ch. 85, § 2; C.S. 1929, § 4-816; Laws 1933, ch. 53, § 6; 1941 Comp., § 49-213; 1953 Comp., § 47-2-13; Laws 1993, ch. 248, § 9.

### ANNOTATIONS

**Cross references.** — For payments for destruction of diseased cattle, see 77-3-8 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**Funds of the cattle sanitary board (now New Mexico livestock board) are state moneys** and the state treasurer is required to accept the same for safekeeping, or to accept bonds to secure such funds. 1925-26 Op. Att'y Gen. No. 25-3809.

### 77-2-18. Compensation of employees.

The compensation of all employees by or under the board and, in the first instance, all other expenses incurred by or under that board shall be paid by the board or, upon its order, out of the funds provided for in The Livestock Code, such board taking or causing to be taken proper vouchers for all money so expended by them.

**History:** Laws 1889, ch. 106, § 21; C.L. 1897, § 201; Code 1915, § 80; C.S. 1929, § 4-817; 1941 Comp., § 49-214; 1953 Comp., § 47-2-14; Laws 1993, ch. 248, § 10.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "all employees" for "said veterinary surgeon and of all other employees"; inserted "in The Livestock Code"; and made minor stylistic changes.

### 77-2-19. Limitation on expenditures.

The amount of money to be expended by the board in any one year, is limited to the amount set forth in a budget approved by the department of finance and administration.

**History:** Laws 1889, ch. 106, § 22; C.L. 1897, § 202; Code 1915, § 81; C.S. 1929, § 4-818; 1941 Comp., § 49-215; 1953 Comp., § 47-2-15; Laws 1981, ch. 357, § 1; 1993, ch. 248, § 11.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1981 amendment** added the catchline and the second sentence and, in the first sentence, substituted "it is" for "they are" and "it" for "they" following "as."

### 77-2-20. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-2-20 NMSA 1978, as amended by Laws 1903, ch. 1, § 2, relating to livestock epidemics and issuance of bonds, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### 77-2-21. Fees.

All fees and charges collected pursuant to the provisions of The Livestock Code shall be paid to the executive director of the board to be deposited in the New Mexico livestock board general fund, hereby created. All fees and charges deposited in the New Mexico livestock board general fund may be expended in accordance with a budget approved by the department of finance and administration.

**History:** Laws 1893, ch. 67, § 3; C.L. 1897, § 222; Code 1915, § 83; C.S. 1929, § 4-820; Laws 1933, ch. 53, § 7; 1941 Comp., § 49-217; 1953 Comp., § 47-2-17; Laws 1993, ch. 248, § 12.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline and rewrote this section which read "All inspection fees and charges shall be paid to the Secretary of the said board to be placed to the credit of the cattle indemnity fund".

### 77-2-22. Penalty for violating rule.

Any person who violates a rule adopted under the power granted to the board unless the penalty has been fixed by law is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1933, ch. 53, § 2; 1941 Comp., § 49-219; 1953 Comp., § 47-2-19; Laws 1967, ch. 213, § 7; 1999, ch. 282, § 8.

## ANNOTATIONS

**Cross references.** — For prosecution of violation of livestock laws by New Mexico livestock board, see 77-2-9 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, deleted "or regulation" at the end of the section heading, and rewrote the section, which formerly read: "Any person, firm or corporation violating any rule or regulation adopted under the power granted to the New Mexico livestock board unless penalty thereof has been heretofore fixed by law or may hereafter be fixed by law, shall upon conviction be guilty of a petty misdemeanor."

**Liability exceeds actual illegal slaughtering or selling.** — Although there was an absence of evidence that defendant personally slaughtered sheep or sold uninspected mutton on the dates in question, there was substantial evidence as to defendant's personal participation in the violation of the regulations: defendant was a licensee and as a licensee, defendant permitted the illegal slaughtering and selling to occur; thus defendant was held liable for his own actions and not for actions of others. *State v. Pina*, 90 N.M. 181, 561 P.2d 43 (Ct. App. 1977).

**Wrongful administrative act no defense to violation of law.** — Assuming the curtailment of inspections at defendant's plant was unauthorized, defendant had the choice of complying with the curtailment and thus not slaughtering and selling contrary to the statute, or petitioning the district court to require the inspections to continue, and when he did neither, but proceeded to violate the law, his violation will not be excused on the basis that an administrative official proceeded improperly. *State v. Pina*, 90 N.M. 181, 561 P.2d 43 (Ct. App. 1977).

**The trial court's sentencing authority for these offenses** is Section 31-19-1 NMSA 1978. *State v. Pina*, 90 N.M. 181, 561 P.2d 43 (Ct. App. 1977).

**77-2-23, 77-2-24. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1994, ch. 119, § 15 repealed 77-2-23 and 77-2-24 NMSA 1978, as enacted by Laws 1945, ch. 22, §§ 1 and 2, concerning vehicles of the New Mexico livestock board, effective May 18, 1994. For provisions of former sections, see the 1993 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions concerning state-owned vehicles generally, see Chapter 15, Article 8 NMSA 1978.

**77-2-25. Interim receipts and disbursements fund created.**

There is created the "interim receipts and disbursements fund". All money received by the board from tax levies authorized by this article shall be credited to this fund and deposited in a designated bank in the name of the board. Money shall be disbursed from this fund only upon a warrant issued by the executive director in the name of the board. Disbursements may be made to pay necessary expenses and obligations of the board, which include expenses for salaries, supplies, equipment, rent on office space or other goods and services in accordance with a budget approved by the department of finance and administration. The board shall prescribe any additional administrative procedure necessary to administer this fund.

**History:** 1953 Comp., § 47-2-23, enacted by Laws 1959, ch. 291, § 2; 1993, ch. 248, § 14.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, deleted "within the cattle sanitary board" following "created" in the first sentence; substituted "tax levies authorized by this article" for "any source" in the second sentence; deleted "cattle sanitary" preceding "board" at the end of the second sentence; substituted "executive director" for "secretary of the board" in the third sentence; added the language beginning "in accordance with" at the end of the fourth sentence; and made minor stylistic changes.

### **77-2-26. Board not to be assessed for general administrative overhead.**

No appropriation for the board shall include an item for general administrative overhead. No charge for general administrative overhead shall be assessed against or appropriated out of the interim receipts and disbursement fund or from any other fund or money administered by the board. No fees or money collected by the board shall be subject to assessment for any charge for general administrative overhead.

**History:** 1953 Comp., § 47-2-24, enacted by Laws 1959, ch. 291, § 3; 1993, ch. 248, § 15.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, deleted "cattle sanitary" preceding "board" in the first sentence and made minor stylistic changes.

### **77-2-27. Repealed.**

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 248, § 80 repealed 77-2-27 NMSA 1978, as enacted by Laws 1959, ch. 291, § 5, relating to the earmarking of moneys collected by the cattle

sanitary board for an interim receipts and disbursements fund, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

## **77-2-28. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 208, § 27 repealed 77-2-28 NMSA 1978, as enacted by Laws 1981, ch. 5, § 1, relating to termination of the livestock board and repeal of Article 2 of Chapter 77, effective June 17, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMONESOURCE.COM*.

## **77-2-29. Fees.**

The following fees shall be fixed by the board for services rendered pursuant to the provisions of The Livestock Code:

A. an inspection or permit fee not to exceed sixteen cents (\$.16) per head to be charged for the importation or exportation of sheep and goats pursuant to Section 77-8-3 NMSA 1978 and a service charge in an amount not to exceed ten dollars (\$10.00) for each inspection request; provided that the board shall not increase the inspection fee more than four cents (\$.04) in any one fiscal year;

B. a fee for recording a transfer of a brand pursuant to Section 77-2-7.1 NMSA 1978 in an amount not to exceed one hundred dollars (\$100);

C. a fee for recording a brand or researching a brand pursuant to Section 77-2-7.4 NMSA 1978 in an amount not to exceed one hundred dollars (\$100);

D. a fee for additional copies of certified copies of brands pursuant to Section 77-2-7.4 NMSA 1978 in an amount not to exceed ten dollars (\$10.00) per copy;

E. a fee for the recording of a holding brand pursuant to Section 77-2-7.9 NMSA 1978 in an amount not to exceed one hundred dollars (\$100), which recording shall be valid for one year from the date of recording, and an additional fee in an amount not to exceed one hundred dollars (\$100) for each annual renewal;

F. a fee for the rerecording of brands pursuant to Section 77-2-7.12 NMSA 1978 in an amount not to exceed one hundred dollars (\$100);

G. a fee for the inspection of livestock pursuant to Section 77-9-38 or 77-10-4 NMSA 1978 in an amount not to exceed fifty cents (\$.50) per head and a service charge in an amount not to exceed ten dollars (\$10.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents (\$.10) in any one fiscal year;

H. a fee for the inspection of hides pursuant to Section 77-9-54 NMSA 1978 in an amount not to exceed fifty cents (\$.50) per hide and a service charge in an amount not to exceed ten dollars (\$10.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents (\$.10) in any one fiscal year;

I. a fee for the handling of the proceeds of the sale of an estray pursuant to Section 77-13-6 NMSA 1978 in an amount not to exceed ten dollars (\$10.00);

J. a fee for the impoundment of trespass livestock pursuant to Section 77-14-36 NMSA 1978 in an amount not to exceed ten dollars (\$10.00) per head per day and a reasonable charge for the moving of trespass livestock pursuant to Section 77-14-36 NMSA 1978 to be set by the board;

K. a fee for the licensing of a livestock auction market pursuant to Section 77-10-2 NMSA 1978 in an amount not to exceed twenty-five dollars (\$25.00);

L. a fee for issuing a transportation permit pursuant to Section 77-9-42 NMSA 1978 in an amount not to exceed fifty dollars (\$50.00);

M. a fee for the licensing of a cattle or sheep rest station pursuant to Section 77-9A-2 NMSA 1978 in an amount not to exceed twenty-five dollars (\$25.00); and

N. a fee for issuing a certificate of brand exemption pursuant to Section 77-8-22 or 77-9-3 NMSA 1978 in an amount not to exceed one hundred dollars (\$100).

History: 1978 Comp., § 77-2-28, enacted by Laws 1981, ch. 357, § 2; 1982, ch. 61, § 1; 1993, ch. 248, § 17; 1999, ch. 282, § 10; 2004, ch. 26, § 1.

## ANNOTATIONS

**Compiler's notes.** — Laws 1981, ch. 357, § 2, enacted this section as 77-2-28 NMSA 1978, but since Laws 1981, ch. 5, already enacted the present 77-2-28 NMSA 1978, this section was compiled as 77-2-29 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, amended Subsections B, C, F and N to increase the fees from \$50.00 to \$100.00, Subsection D to increase the fee from \$5.00 to \$10.00 and Subsection F to change the statutory reference from 77-9-20 NMSA 1978 to 77-2-7.12 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, substituted "The Livestock Code" for "Chapter 77 NMSA 1978" in the introductory language; in Subsection A, substituted "importation or exportation of sheep and goats pursuant to Section 77-8-3 NMSA 1978 and a service charge in an amount not to exceed ten dollars (\$10.00) for each inspection request" for "importation of sheep pursuant to Section 77-8-3 NMSA 1978" and deleted "starting at the fee of eight cents (\$.08)" at the end; deleted former Subsection B, which read "an inspection fee not to exceed sixteen cents (\$.16) per head

to be charged for the exportation of sheep pursuant to Section 77-8-7 NMSA 1978; provided that the board shall not increase the fee more than four cents (\$.04) in one any fiscal year starting at the fee of eight cents (\$.08)", and redesignated subsequent subsections accordingly; inserted "or researching a brand" in Subsection C; inserted "or 77-10-4" and substituted "and a service charge in an amount not to exceed ten dollars (\$10.00)" for "with a minimum charge of two dollars (\$2.00)" in Subsections G and H; deleted former Subsection J, which read "a payment in lieu of fees on the receipt of livestock at a sales ring pursuant to Section 77-10-4 NMSA 1978 in an amount not to exceed fifty cents (\$.50) per head for cattle, horses, mules or asses and not to exceed sixteen cents (\$.16) per head for sheep and goats; provided that the board may not increase any payment in lieu of fees more than ten cents (\$.10) in any one fiscal year for cattle, nor more than four cents (\$.04) in any one fiscal year for sheep and goats"; substituted "ten dollars (\$10.00) per head per day" for "twenty-five dollars (\$25.00) per head" in Subsection J; and added Subsections K to N.

**The 1993 amendment**, effective June 18, 1993, deleted "New Mexico livestock" preceding "board" throughout the section; substituted "not to exceed fifty dollars (\$50.00)" for "not to exceed thirty dollars (\$30.00) until June 30, 1982 and not to exceed fifty dollars (\$50.00) on and after July 1, 1982" in Subsections C, D and current G; deleted former Subsection F pertaining to the fee for filing a facsimile brand; redesignated former Subsections G to M as Subsections F to L; substituted the language beginning "amount set by the board" for "amount not to exceed five dollars fifty cents (\$5.50) per head and a charge for the moving of trespass livestock or buffalo pursuant to Section 77-14-36 NMSA 1978 of nineteen cents (\$.19) per mile" in Subsection L; and made minor stylistic changes.

**The 1982 amendment** substituted "four cents (\$.04)" for "two cents (\$.02)" in Subsections A, B and K, "ten cents (\$.10)" for "five cents (\$.05)" in Subsections I, J and K and "dollars" for "dollar" in Subsection I and made minor punctuation changes throughout the section.

## **77-2-30. Horse rescue or retirement facility; registration; board powers and duties; fees.**

A. As used in this section, "facility" means a horse rescue or retirement facility, including a private reserve or private preserve, that advertises of [or] solicits for horses and provides lifelong care or finds new owners for horses that are unwanted or have been neglected or abused or captured wild horses that cannot be returned to their range.

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

C. The board shall:

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

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

(3) after consideration of recommendations by national organizations for the care of unwanted horses and equine rescue and retirement facilities, promulgate rules for facilities, including:

(a) health and sanitary requirements;

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

(c) qualifications of the facility staff;

(d) provision of veterinary care;

(e) feeding and watering requirements;

(f) transportation; and

(g) other requirements necessary to ensure the humane care of horses.

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 [77-2-30 and 77-2-31 NMSA 1978].

History: Laws 2005, ch. 236, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2005, ch. 236 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **77-2-31. Horse 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 notice of the deficiencies and schedule a reinspection, allowing a reasonable time for the registrant to correct the deficiencies.

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

E. If on reinspection the board determines that the facility is still deficient in those areas for which it has been given written notice, the horses may be impounded in accordance with the provisions of Section 77-18-2 NMSA 1978 and the board shall hold a hearing as provided in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] to determine if the registration should be suspended or revoked.

F. If a facility's registration is suspended or revoked, the board shall place the horses in another facility.

History: Laws 2005, ch. 236, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 236 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **77-2-32. Horse shelter rescue fund; created.**

A. The "horse shelter rescue fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and amounts designated pursuant to Section 2 [7-2-30.7 NMSA 1978] of this 2013 act. The board shall administer the fund, and money in the fund is appropriated to the board to carry out the intent of aiding horse rescues and homeless horses in the state.

B. The board shall establish by rule the distribution of funds from the horse shelter rescue fund to horse rescue and retirement facilities registered by the board pursuant to Section 77-2-30 NMSA 1978, taking into consideration the number of horses being cared for in each facility and the need of each facility.

History: Laws 2013, ch. 49, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 49 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2013, ch. 49, § 3 provided that the provisions of Laws 2013, ch. 49, § 1 apply to taxable years beginning on or after January 1, 2013.

## ARTICLE 2A Beef Council

### 77-2A-1. Short title.

Chapter 77, Article 2A NMSA 1978 may be cited as the "New Mexico Beef Council Act".

**History:** Laws 1979, ch. 197, § 1; 1997, ch. 18, § 1.

## ANNOTATIONS

**The 1997 amendment,** effective June 20, 1997, substituted "Chapter 77, Article 2A NMSA 1978" for "This act" at the beginning of the section.

### 77-2A-2. Definitions.

As used in the New Mexico Beef Council Act:

- A. "board" means the New Mexico livestock board;
- B. "council" means the New Mexico beef council;
- C. "director" means the director of the New Mexico department of agriculture;
- D. "department" means the New Mexico department of agriculture; and
- E. "producer" means any person engaged in the business of raising, breeding, feeding or growing cattle or calves for beef production or for dairy production.

**History:** Laws 1979, ch. 197, § 2; 1983, ch. 228, § 1.

## ANNOTATIONS

**The 1983 amendment** inserted present Subsection A and designated former Subsections A to D as present Subsections B to E.

### **77-2A-3. Beef council created; terms; vacancies.**

There is created the "New Mexico beef council", consisting of nine members appointed by the director with the approval of the governor for terms of three years or less so that the terms of three members expire on June 30 of each year. Vacancies shall be filled by the director for the unexpired term. The director shall serve as an ex-officio, nonvoting member of the council.

**History:** Laws 1979, ch. 197, § 3; 1991, ch. 128, § 1.

#### **ANNOTATIONS**

**The 1991 amendment**, effective April 3, 1991, inserted "nonvoting" in the final sentence.

### **77-2A-4. Members' qualifications.**

All members of the council shall be producers, citizens of the United States and bona fide residents of New Mexico. Each member shall at the time of his appointment and during his entire term receive a substantial portion of his income from the branch of the business he represents on the council. In making his appointments, the director shall appoint one member to represent fluid milk producers, five to represent beef producers, one to represent breeders of registered purebreds and two to represent commercial cattle feeders. Appointments of council members are to be made from lists of individuals recommended by farm organizations, producer associations and individual producers.

**History:** Laws 1979, ch. 197, § 4; 1991, ch. 128, § 2; 1997, ch. 18, § 2.

#### **ANNOTATIONS**

**The 1997 amendment**, effective June 20, 1997, in the first sentence, inserted "producers" following "shall be", deleted "and in some branch of the bovine cattle business" following "New Mexico", and made a minor stylistic change.

**The 1991 amendment**, effective April 3, 1991, substituted "individual producers" for "individuals representing or engaged in the same branch of the industry as the individual recommended" at the end of the section.

### **77-2A-5. Officers; meetings; expenses.**

The council shall elect annually a chairman, vice chairman and such other officers as it deems necessary from among its members. The council shall meet at least once

each six months, and at such other times as it may be called by the chairman. The council may provide rules for reimbursement of members' expenses while on official business of the council, but such reimbursement shall in no case exceed the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. Council members shall receive no other compensation, perquisite or allowance.

**History:** Laws 1979, ch. 197, § 5.

### **77-2A-6. Duties; powers.**

A. The council shall:

(1) conduct marketing programs, including promotion, education and research programs relating to cattle and beef products;

(2) submit to the director a detailed annual budget for the council on a fiscal year basis;

(3) bond officers and employees of the council who receive and disburse council funds;

(4) keep detailed and accurate records of all receipts and disbursements, have those records audited annually and keep the audit available for inspection in the council office;

(5) establish procedures for the adoption of regulations that will provide for input from producers;

(6) determine and publish each year the assessment rates to be collected by the board; and

(7) employ staff not to exceed four persons.

B. The council may:

(1) contract for scientific research to discover and improve the commercial value of beef and products thereof;

(2) disseminate reliable information showing the value of beef and its products for any purpose for which they may be found useful and profitable;

(3) make grants to research agencies for financing studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the council as authorized by the New Mexico Beef Council Act;

(4) cooperate with any local, state or national organizations or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the council and enter into contracts with those organizations or agencies and expend funds in connection therewith for carrying on joint programs;

(5) study legislation, state and federal, with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the effect on the beef industry and represent and protect the interests of the beef industry with respect to any legislation or proposed legislation or executive action that may affect that industry;

(6) enter into contracts that it deems appropriate to the carrying out of the purposes of the council as authorized by that act;

(7) sue and be sued as a council without individual liability for acts of the council within the scope of the powers conferred upon it by that act;

(8) appoint subordinate officers and employees of the council, prescribe their duties and fix their compensation;

(9) adopt regulations for the exercise of its powers and duties. A copy of all council regulations shall be filed with the department; and

(10) cooperate with other state beef councils or agencies in the collection of assessments.

**History:** Laws 1979, ch. 197, § 6; 1983, ch. 228, § 2; 1991, ch. 128, § 3; 1997, ch. 18, § 3.

## ANNOTATIONS

**The 1997 amendment,** effective June 20, 1997, in Paragraph A(1), substituted "conduct marketing programs, including promotion, education and research programs relating to" for "conduct public relations programs promoting", in Paragraph A(2), deleted the language providing a copy of the budget to persons who have paid or contributed to the council, and made a stylistic change in Paragraph B(6). L

**The 1991 amendment,** effective April 3, 1991, in Subsection A, deleted "for approval" following "director" in Paragraph (2) and substituted "four persons" for "three persons" in Paragraph (7); and made minor stylistic changes throughout the section.

**The 1983 amendment,** in Subsection A, deleted "bovine" preceding "cattle and beef products" in Paragraph (1) and added Paragraphs (6) and (7).

**Budget process.** — Although it requires budget approval by the director of the department of agriculture, the New Mexico beef council remains a separate entity, and, after approval by the director, the council should submit its budget to the state budget

division as the law requires all state agencies to do. 1987 Op. Att'y Gen. No. 87-44 (rendered under prior law).

## **77-2A-7. Funding.**

In order to accomplish the purposes of the New Mexico Beef Council Act, the council is empowered to:

A. receive any funds which may be returned to the New Mexico cattle industry as its share of assessments collected by a national beef industry research council or any similar entity;

B. accept grants, donations, contributions or gifts from any source for expenditure for any purpose consistent with the powers and duties conferred on the council; and

C. receive any other funds that may be authorized by law.

**History:** Laws 1979, ch. 197, § 7.

### **ANNOTATIONS**

**Council to submit budget to budget division.** — The legislature has approved a special source for the council's funds, separate and apart from the state's general funds, and has established the council's method of disbursal. The council nevertheless must submit its budget to the budget division for approval. This provision insures that the legislature is apprised accurately of council expenditures even though separate action on the council budget is not required at each session. 1987 Op. Att'y Gen. No. 87-44.

## **77-2A-7.1. Assessments.**

There is levied and imposed upon all cattle involved in a transfer of ownership in this state an assessment to be called the "council assessment". The council assessment is to be fixed by the council at a rate of not more than one dollar (\$1.00) per head. The board shall collect this council assessment or the federal domestic assessment imposed pursuant to the Beef Promotion and Research Act of 1985 at the same time and in the same manner as the fee charged for the state brand inspection required upon the movement of those cattle. The board shall not deliver the certificate of inspection or permit the cattle to move until all fees have been paid. The proceeds of the council assessment shall be remitted by the board to the council at the end of each month, along with information that will allow the council to make necessary refunds. At the request of the board, the council shall reimburse the board for the responsible and necessary expenses incurred for such collections and information at not more than four cents (\$.04) per head on only those cattle involved in a transfer of ownership.

**History:** Laws 1983, ch. 228, § 3; 1991, ch. 128, § 4; 1997, ch. 18, § 4.

## ANNOTATIONS

**Compiler's notes.** — The reference to "board" throughout this section apparently means the New Mexico livestock board. See 77-2-1.1 NMSA 1978.

**Cross references.** — For the federal Beef Promotion and Research Act, see 7 U.S.C. § 2901 et seq.

**The 1997 amendment**, effective June 20, 1997, in the first sentence, substituted "cattle involved in a transfer of ownership in this state an assessment" for "cattle inspected by the board an additional assessment", in the second sentence substituted "one dollar (\$1.00)" for "twenty-five cents (\$.25) and deleted "on only those cattle involved in a transfer of ownership" at the end, added "At the request of the board" at the beginning of the last sentence, and made minor stylistic changes.

**The 1991 amendment**, effective April 3, 1991, inserted "or the federal domestic assessment imposed pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. 1601" in the third sentence; added "and not less than four cents (\$.04) per head on only those cattle involved in a transfer of ownership" at the end of the section; and made a minor stylistic change.

**Council to submit budget to budget division.** — The legislature has approved a special source for the council's funds, separate and apart from the state's general funds, and has established the council's method of disbursal. The council nevertheless must submit its budget to the budget division for approval. This provision insures that the legislature is apprised accurately of council expenditures even though separate action on the council budget is not required at each session. 1987 Op. Att'y Gen. No. 87-44.

### **77-2A-7.2. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1997, ch. 18, § 5 repealed § 77-2A-7.2 NMSA 1978, as enacted by Laws 1983, ch. 228, § 4, relating to termination of council assessment, effective June 20, 1997. For provisions of former section, see the 1996 NMSA 1978 on *NMONESOURCE.COM*.

### **77-2A-7.3. Refunds.**

Any person who has paid a council assessment is entitled to a refund of the amount paid by making written application therefor to the council. The application form shall be returned within thirty days after the inspection was made giving rise to the council assessment and shall contain enough detail to enable the council to find the record of payment. Refunds shall be made within thirty days of the date of the application unless the proceeds and the necessary information have not been received by the council, in which case the refund shall be made within fifteen days after receipt of the proceeds

and necessary information. The form shall be provided by the [New Mexico livestock] board at the time of inspection.

**History:** Laws 1983, ch. 228, § 5.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For meaning of "board", see 77-2-1.1 NMSA 1978.

### 77-2A-8. Disposition of funds.

A. All funds received by the council shall be received and disbursed directly by the council. Such funds shall be audited in accordance with the provisions of the Audit Act [12-6-1 through 12-6-14 NMSA 1978]. The council is not required to submit vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The council shall issue warrants against funds of the council in payment of its lawful obligations. The council shall provide its own warrants, purchase orders and contract forms as well as other supplies and equipment. All warrants shall be signed by a council member and one other person designated by the council.

C. The council shall designate banks where its funds are to be deposited, provided such banks have been qualified as depository banks for state funds.

**History:** Laws 1979, ch. 197, § 8; 1991, ch. 128, § 6.

### ANNOTATIONS

**The 1991 amendment**, effective April 3, 1991, deleted "according to procedures approved by the director and subject to audit by the director in his discretion" at the end of the first sentence and inserted the second sentence in Subsection A and substituted "a council member and one other person" for "two officers or employees" in the third sentence in Subsection B.

**Council to submit budget to budget division.** — The legislature has approved a special source for the council's funds, separate and apart from the state's general funds, and has established the council's method of disbursement. The council nevertheless must submit its budget to the budget division for approval. This provision insures that the legislature is apprised accurately of council expenditures even though separate action on the council budget is not required at each session. 1987 Op. Att'y Gen. No. 87-44.

## **77-2A-9. Procurement Code; Personnel Act; exemption; Tort Claims Act.**

The council is exempt from the operation of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978] and the Personnel Act [Chapter 10, Article 9 NMSA 1978]. The council members and employees shall be subject to the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978] and shall be provided all insurance and self-insurance coverage provided by the risk management division, general services department, state of New Mexico.

**History:** Laws 1979, ch. 197, § 9; 1991, ch. 128, § 7.

### **ANNOTATIONS**

**The 1991 amendment**, effective April 3, 1991, substituted "Procurement Code" for "Public Purchases Act" in the first sentence and rewrote the second sentence, which read "The council members and their employees are public employees for the purposes of the Tort Claims Act".

## **ARTICLE 3 Control of Contagious Diseases**

### **77-3-1. Diseases; inspection; quarantine.**

A. The board may use all proper means to prevent the spreading of dangerous and fatal diseases among livestock and for the extirpation of such diseases. If a disease breaks out in the state, it is the duty of all persons owning or having in their charge livestock infected to immediately notify the board of the existence of such disease. The board shall cause proper examination to be made by a veterinarian and, if the disease is found to be a dangerously contagious or infectious malady, the board shall order the diseased livestock that have been exposed to be strictly quarantined and shall order any premises or farms where such disease exists or has recently existed to be put in quarantine so that no livestock subject to the disease is removed from or brought to the premises or places so quarantined. The board shall prescribe such rules as it deems necessary to prevent the disease from being communicated in any way from the premises so quarantined.

B. The board may expend funds to prevent, suppress, control or eradicate any disease or parasite of livestock that the board has by rule declared to be a disease or pest of significant economic impact to any segment of the livestock industry. This power shall include the right to purchase and destroy or sell infected or exposed livestock.

C. Whenever the board finds any livestock infested with a disease or pest declared by the board to be of significant economic impact, the board may request the governor to declare an emergency as provided in Section 6-7-3 NMSA 1978.

**History:** Laws 1909, ch. 9, § 1; Code 1915, § 106; C.S. 1929, § 4-1009; 1941 Comp., § 49-301; 1953 Comp., § 47-3-1; Laws 1983, ch. 229, § 6; 1999, ch. 282, § 20.

## ANNOTATIONS

**Cross references.** — For eradication of scabies, see 77-4-1 to 77-4-8 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, in Subsection A, substituted "If a disease breaks out" for "In the event of any contagious or infectious diseases breaking out" in the second sentence, deleted "licensed" preceding "veterinarian" in the third sentence, and substituted "disease" for "contagion" in the last sentence; substituted "a disease" for "an exotic pest" in the first sentence of Subsection B; substituted "a disease" for "any exotic pest" in Subsection C; and made stylistic changes throughout the section.

**The 1983 amendment** added the catchline, designated the formerly undesignated provisions as Subsection A, added Subsections B and C and, in Subsection A, divided the former one sentence into the present three sentences, substituted "New Mexico livestock" for "cattle sanitary" in the first sentence, inserted "sheep, hogs," also in the first sentence, deleted "thereupon" preceding "it shall be the duty" and substituted "licensed" for "competent" in the second sentence and substituted "New Mexico livestock" for "cattle sanitary" in the third sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 50 et seq.

3A C.J.S. Animals §§ 66 to 69, 73.

### **77-3-2. Report of diseased livestock; offenses; expense recovery; duties of sheriffs; penalty.**

A. A person who has in his possession or under his care any livestock that he knows or has reason to believe is affected with a disease shall without unnecessary delay tell the board or some member of the board or the sheriff of the county in which the livestock is situate. The sheriff shall immediately notify the director.

B. A person shall not bring into this state or sell or dispose of any livestock known to be affected or exposed to disease or move diseased or exposed livestock from quarantine or move any livestock to or from a district in the state declared to be infected with a disease or bring into this state any diseased livestock from a district outside the state that may at any time be legally declared to be affected with such disease without the consent of the board.

C. A person who violates a provision of Subsection A or B of this section 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 head illegally moved.

D. Any guard or other proper expenses incurred in the quarantining of the livestock shall be paid by the owner, and if the same is refused, after demand made by order of the board, an action may be brought to recover the same with costs of suit, which action may be brought in the name of the state for the use of the board. It is the duty of all sheriffs to execute all lawful orders of the board.

**History:** Laws 1909, ch. 9, § 2; Code 1915, § 107; Laws 1927, ch. 25, § 2; C.S. 1929, § 4-1010; 1941 Comp., § 49-302; 1953 Comp., § 47-3-2; Laws 1993, ch. 248, § 18; 1999, ch. 282, § 21.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1993 amendment**, effective June 18, 1993, deleted "or Constable" and "and Constables" following "sheriff" and "sheriffs" in the first sentence and in the second paragraph; substituted "Sections 77-3-1 through 77-3-4, 77-3-9 and 77-3-10 NMSA 1978" for "Sections 106 to 111" in the second sentence; deleted "Cattle Sanitary" preceding "board" at the end of the second sentence; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 50 et seq.

3A C.J.S. Animals §§ 91 to 98.

### 77-3-3. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 248, § 80 repealed 77-3-3 NMSA 1978, as enacted by Laws 1909, ch. 9, § 6, relating to the isolation of animals with glanders or farcy, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

### 77-3-4. Dead animals; disposal.

The bodies of all dead animals shall be buried, burned or disposed of by the owners as provided by regulations of the board.

**History:** Laws 1909, ch. 9, § 3; Code 1915, § 108; C.S. 1929, § 4-1011; 1941 Comp., § 49-304; 1953 Comp., § 47-3-4; Laws 1993, ch. 248, § 19.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; inserted "or disposed of"; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 24.

Validity of statutes, ordinances, and other regulations relating to transportation or disposal of carcasses of dead animals not slaughtered for food, 121 A.L.R. 732.

### **77-3-5. Infected pastures and buildings; notices.**

A. If a pasture, building, corral, yard or enclosure where livestock have been or may be pastured or confined is infected with or has become dangerous on account of a disease or poisonous weed or plant, the board may post danger or quarantine notices in not less than two conspicuous places in or upon such pasture, building, corral, yard or enclosure sufficient to warn all owners and others in charge of livestock of the danger or quarantine. When the danger has passed or the quarantine is lifted, the board shall require the posted notices to be removed.

B. Except as authorized by the director, a person who removes a posted notice of danger or quarantine is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA [1978].

**History:** Laws 1917, ch. 30, § 1; C.S. 1929, § 4-915; 1941 Comp., § 49-305; 1953 Comp., § 47-3-5; Laws 1993, ch. 248, § 20; 1999, ch. 282, § 22.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**The 1999 amendment,** effective July 1, 1999, designated the formerly undesignated paragraph as Subsection A; in Subsection A, substituted "a disease" for "any infectious disease" and inserted "danger or quarantine" preceding "notices" in the first sentence, added the last sentence, and made several stylistic changes throughout the subsection; added Subsection B.

**The 1993 amendment,** effective June 18, 1993, substituted "If a" for "That whenever it shall become known to the Sheep Sanitary Board or the Cattle Sanitary board of this state or any inspector thereof that any enclosed" at the beginning of the section; substituted "the board may" for "it shall be the duty of such Boards, by their inspectors and of such inspectors, to at once" near the middle; and made a minor stylistic change.

### **77-3-6, 77-3-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-3-6 and 77-3-7 NMSA 1978, as enacted by Laws 1917, ch. 30, §§ 2 and 3, relating to posting of notice of infection,

effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 77-3-5 NMSA 1978.

### **77-3-8. Destruction of diseased livestock; payment to the owner; appraisal.**

In cases where the board deems it necessary to destroy any diseased, infected or exposed livestock in order to prevent the spread of dangerous and fatal diseases such as glanders, farcy, tuberculosis, pleuro-pneumonia, rinderpest, foot and mouth disease or any other dangerous and fatal disease, foreign or other, which according to the rules, regulations and standards adopted by the United States department of agriculture animal and plant health inspection service cannot be extirpated by means other than the destroying of the diseased, infected or exposed livestock, the board may have the livestock killed and burned or buried under such rules as the board may prescribe. The board shall cooperate with the United States department of agriculture in paying to the owners of the slaughtered livestock the allowed indemnity determined by the United States department of agriculture animal and plant health inspection service and the board.

**History:** Laws 1909, ch. 9, § 8; 1909, ch. 75, § 2; Code 1915, § 113; C.S. 1929, § 4-1016; Laws 1933, ch. 53, § 13; 1941 Comp., § 49-308; 1953 Comp., § 47-3-8; Laws 1993, ch. 248, § 21; 1999, ch. 282, § 23.

#### **ANNOTATIONS**

**Cross references.** — For use of livestock fund, see 77-2-17 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, deleted "dipping or" following "extirpated by" in the first sentence, and made stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, added the current catchline; deleted "Cattle Sanitary" preceding "board", inserted "foreign or other", and substituted "department of agriculture animal and plant health inspection service" for "bureau of animal industry" in the first sentence; substituted "the allowed indemnity determined by the United States department of agriculture animal and plant health inspection service and the board" for "two-thirds (2/3) of the appraised value thereof determined by three appraisers selected as follows; one representing the bureau of animal industry, one representing the Cattle Sanitary board and the other selected by the owner of the animal or animals" at the end of the section; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 53; 16A Am. Jur. 2d Constitutional Law § 417.

Constitutionality of statute or ordinance providing for destruction of animals, 8 A.L.R. 67, 56 A.L.R.2d 1024.

Constitutionality of statute for control of diseases of livestock, 65 A.L.R. 525.

Right to and measure of compensation for animals destroyed to prevent spread of disease or infection, 67 A.L.R. 208.

Liability of public officers for killing or injuring animals, while acting, or professing to act, under a statute in relation to the inspection or destruction of livestock, 2 A.L.R.3d 822.

Extent of liability of seller of livestock infected with communicable disease, 14 A.L.R.4th 1096.

Construction of provisions of statute or ordinance governing occasion, time, or manner of summary destruction of domestic animals by public authorities, 42 A.L.R.4th 839.

3A C.J.S. Animals § 76.

### **77-3-9. Acceptance of federal rules and regulations; cooperation.**

The board may accept on behalf of the state the rules and regulations prepared by the secretary of the United States department of agriculture relating to the control of diseases of livestock and to cooperate with the authorities of the United States in the enforcement of the provisions of all acts and regulations relating to diseased livestock.

**History:** Laws 1909, ch. 9, § 4; Code 1915, § 109; C.S. 1929, § 4-1012; Laws 1933, ch. 53, § 12; 1941 Comp., § 49-309; 1953 Comp., § 47-3-9; Laws 1993, ch. 248, § 22; 1999, ch. 282, § 24.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, substituted "relating to the control of diseases of livestock" for "under and in pursuance of Section 3 of an act of congress, approved May 29, 1884, which stated 'An act for the establishment of a bureau of animal industry for the extirpation of diseased cattle and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals'", and made stylistic changes.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "Cattle Sanitary" preceding "board"; inserted "the United States department of"; and substituted "which stated" for "entitled".

### **77-3-10. Federal officers; powers.**

The representatives of the United States department of agriculture animal and plant health inspection service under the specific authorization of the board may inspect, quarantine and condemn livestock affected with a disease or suspected of being affected with a disease or that have been exposed to a disease and for these purposes

may enter any grounds or premises in the state. The representatives may call upon peace officers to assist them in the discharge of their duties as specified by the board in carrying out federal laws and regulations as provided in Section 77-3-9 NMSA 1978. The peace officers shall assist the representatives when so requested and authorized by the board.

**History:** Laws 1909, ch. 9, § 5; Code 1915, § 110; C.S. 1929, § 4-1013; 1941 Comp., § 49-310; 1953 Comp., § 47-3-10; Laws 1993, ch. 248, § 23; 1999, ch. 282, § 25.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, inserted "as specified by the board" following "discharge of their duties" and substituted "federal laws and regulations" for "the provisions of the act of congress" in the second sentence; substituted the last sentence for "and it is the duty of the officers to assist them when so requested. The inspectors of the board shall have the same powers and protection as peace officers while engaged in the discharge of their duties", and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, substituted "The representatives of the United States department of agriculture animal and plant health inspection service under the specific authorization of the board" for "The inspector of the bureau of animal industry of the United States or duly authorized qualified veterinarian of the cattle sanitary board" at the beginning of the first sentence; deleted "constables and" preceding "peace officers" and inserted "as provided in Section 77-3-9 NMSA 1978" in the second sentence; deleted "cattle sanitary" preceding "board" in the third sentence; and made minor stylistic changes.

### **77-3-11. Marking or branding of cattle and bison found infected with tuberculosis or Bang's disease.**

Whenever cattle or bison within this state are tested for tuberculosis or Bang's disease by the board or its agents or employees or by an authorized agent or employee of the United States department of agriculture animal and plant health inspection service, if an animal so tested is found to have a positive reaction to such tests, it shall be permanently marked or branded according to the requirements of the board by the owner or his agent. The type of mark or brand to be used shall be designated by the board, and an animal shall be marked or branded immediately upon instructions from the board.

**History:** 1941 Comp., § 49-318, enacted by Laws 1949, ch. 48, § 1; 1953 Comp., § 47-3-11; Laws 1993, ch. 248, § 24; 1999, ch. 282, § 26.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, in the first sentence, inserted "or bison" following "cattle" near the beginning, inserted "United States" preceding "department of agriculture" near the middle, and inserted "or his agent" following "owner" at the end, and inserted "mark or" preceding "brand" in the second sentence.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "board" for "cattle sanitary board of New Mexico" in three places; substituted "the department of agriculture animal and plant health inspection service" for "the bureau of animal industry of the United States" in the first sentence; deleted "said cattle sanitary" preceding "board" at the end of the section; and made minor stylistic changes.

### **77-3-12. Penalty.**

A person who fails to identify his animals as required by Section 77-3-11 NMSA 1978 is guilty of a misdemeanor for each head in violation and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** 1941 Comp., § 49-319, enacted by Laws 1949, ch. 48, § 2; 1953 Comp., § 47-3-12; Laws 1993, ch. 248, § 25; 1999, ch. 282, § 27.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, rewrote the section, which formerly read: "Any person, firm, company or corporation violating the provisions of Section 77-3-11 NMSA 1978 is guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each animal in violation."

**The 1993 amendment**, effective June 18, 1993, substituted "of Section 77-3-11 NMSA 1978 is" for "of this Section shall be deemed"; and added "for each animal in violation" at the end of the section.

### **77-3-13. Dangerous epidemics; emergency rules; imports prohibited; penalty.**

A. When the board or any of its authorized representatives finds that a disease, the nature of which is known to be fatal or highly injurious to livestock, pigeons or fowl of any kind, has become epidemic or exists in a locality in a country, state or territory beyond the limits of this state, the board shall immediately adopt and promulgate emergency rules to prohibit the importation into this state of any animals, including livestock, subject to the disease that may be so reported.

B. The board shall specify such restrictions and safeguards as it deems proper and shall specify for the protection of livestock in this state and may also prohibit the importation into this state of any hoofs, hides, skins or meat of any animals or any hay,

straw fodder, cottonseed or other products or material calculated to carry the infection of such disease.

C. Emergency rules may be adopted and promulgated without the notice and hearing required of other rules and shall take effect immediately. If the board contemplates that an emergency rule will be in effect for longer than ninety days, it shall give notice and hold a hearing to adopt the emergency rule as a rule.

D. Any person who violates any provision of this section or an emergency rule issued in accordance with this section 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 head and is also liable in a civil action for any damages and loss sustained by reason of such importation of the livestock or of any of the products provided for in this section.

**History:** Laws 1889, ch. 106, § 8; C.L. 1897, § 188; Code 1915, § 86; Laws 1915, ch. 35, § 1; C.S. 1929, § 4-903; Laws 1933, ch. 53, § 8; 1941 Comp., § 49-311; 1953 Comp., § 47-3-13; Laws 1993, ch. 248, § 26; 1999, ch. 282, § 28.

## ANNOTATIONS

**Cross references.** — For posting of notices on infected pastures and buildings, see 77-3-5 NMSA 1978.

For importation of cattle for dairy purposes, see 77-5-4 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1993 amendment,** effective June 18, 1993, added the current catchline; substituted "the board or any of its authorized representatives" for "said Cattle Sanitary board or of its authorized representatives or to the knowledge of the Sheep Sanitary Board or of any veterinarian, inspector or officer of said Sheep Sanitary Board"; substituted "livestock" for "cattle, horses, burros, mules, sheep, goats, hogs"; and made related and other minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

3A C.J.S. Animals § 74.

### **77-3-14. Health certificate; inspection; permit; penalty.**

A. After the issuance of an emergency rule pursuant to the provisions of Section 77-3-13 NMSA 1978 and while the emergency rule continues in force, it is unlawful for a person to drive or transport or cause to be driven or transported into this state any livestock that by any direct or circuitous route might have come from any place or

district covered by the emergency rule without first having obtained a certificate of health from a veterinarian or a permit in writing from the board under such rules as the board prescribes.

B. A person failing to comply with this provision is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 and is also personally liable for all loss and damages sustained by any persons by reason of the introduction of a disease from the livestock unlawfully imported into this state.

C. During the time covered by the emergency rule, all livestock desiring to enter the state shall submit to an inspection and shall not be permitted to enter the state until a written or printed permit is issued by the board. A livestock inspector or other agent of the board may require the person in charge of the livestock to produce the permit for his inspection, and any person refusing to produce the permit at any time within a year from the time the livestock were driven in is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1889, ch. 106, § 9; C.L. 1897, § 189; Code 1915, § 87; C.S. 1929, § 4-904; Laws 1933, ch. 53, § 9; 1941 Comp., § 49-312; 1953 Comp., § 47-3-14; Laws 1993, ch. 248, § 27; 1999, ch. 282, § 29.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, added the subsection designations; in Subsection A, substituted "of an emergency rule pursuant to the provisions of Section 77-3-13 NMSA 1978" for "and publication of such proclamation by the governor", and thereafter throughout the section made related substitutions, deleted "or while the prohibition against the importation of livestock from any other state or country is in force" following "continues in force", and deleted "and publishes for the information of the public" at the end of the subsection; substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)" in Subsection B; in the last sentence of Subsection C, substituted "A livestock inspector or other agent of the board" for "Any person" and "a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "the violation of this law and is subject to all the penalties provided by this section"; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle" throughout the section; deleted "Cattle Sanitary" preceding "board" at the end of the third sentence; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

**77-3-14.1. AGID tests required.**

The board shall adopt rules prohibiting the driving or transporting into this state of any horses or other equidae that have not tested negative to the AGID, or Coggins, test or a United States department of agriculture-approved equivalent test for equine infectious anemia within twelve months prior to the date of entry, the evidence of which test result shall be shown on a health certificate; excepting from regulation only those foals accompanied in shipment by a negative-tested dam, those horses or other equidae consigned directly to slaughter.

**History:** 1978 Comp., § 77-3-14.1, enacted by Laws 1993, ch. 248, § 28; 1999, ch. 282, § 30.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "adopt rules" for "adopt regulations" near the beginning of the section, and deleted "or cattle or sheep" at the end.

### **77-3-15. Investigation of suspected illegal imports; oaths; health certificate of [or] permit.**

Whenever the board, during the continuance in force of any prohibition against the importation into this state of livestock has good reason to believe or suspect that any such livestock against the importation of which prohibition then exists have been or are about to be driven, conveyed or transported into this state in violation of any such prohibition then existing and then in force, it is the duty of the board, either by its own members or through a veterinarian or through one or more of such persons then in their employ as circumstances shall seem to require, to thoroughly investigate the same. They may examine, under oath or affirmation, any person in charge of the livestock or any person cognizant of any facts or circumstances material to the investigations and all facts connected with the driving or transportation of the livestock, including the place or places from which the livestock have been driven or transported; the places or districts through which they have been driven or transported; the length of time and where they have remained, fed or grazed at any designated place or district; what contagious or infectious disease of livestock, if any, they have been exposed to and when and where; and any other facts or circumstances material to the investigation and reduce such testimony to writing in all cases where the certificate of health or the permit in writing provided for in this section shall be refused. The members of the board, a veterinarian and all other persons as aforesaid so in the employ of the board through whom any such investigation shall be made hereby are authorized to administer all oaths and affirmations required in any such investigation. If any such investigation is made by such veterinarian and he is satisfied that the livestock are free from all contagious and infectious disease and will not communicate any disease to any livestock in this state, he shall deliver to the person in charge of the livestock a certificate of health to the effect that the livestock are healthy and entitled to pass into the state, otherwise he shall refuse the same. If such investigation is made by any other persons authorized as specified in this section to make the investigation and they are satisfied that the

livestock will not transmit to the livestock in this state any livestock disease and that the facts and circumstances attending their transportation warrant the presumption that such livestock are not from any prohibited areas, a recommendation that the importation of the livestock shall then be permitted, shall be communicated to the board and the board shall upon concurrence give the person in charge of the livestock a written permit to pass the same into the state, otherwise such permit shall be refused.

**History:** Laws 1889, ch. 106, § 11; C.L. 1897, § 191; Code 1915, § 88; C.S. 1929, § 4-905; Laws 1933, ch. 53, § 10; 1941 Comp., § 49-313; 1953 Comp., § 47-3-15; Laws 1993, ch. 248, § 29.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**The 1993 amendment,** effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle" throughout the section; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

### 77-3-16. Rules and regulations.

It is the duty of the board to make all useful rules and regulations respecting examinations and investigations for the granting or refusing of certificates of health and permits provided for in the next succeeding section and give ample publicity thereto so that all persons, companies and corporations who may desire to drive or transport any livestock into the state may be conveniently advised of what will be required to obtain any such certificate or permit during the existence of any prohibition to the importation of livestock into the state and of when, where and to whom application therefor may be made.

**History:** Laws 1889, ch. 106, § 12; C.L. 1897, § 192; Code 1915, § 89; C.S. 1929, § 4-906; 1941 Comp., § 49-314; 1953 Comp., § 47-3-16; Laws 1993, ch. 248, § 30.

### ANNOTATIONS

**Compiler's notes.** — The words "provided for in the next succeeding section" refer to Laws 1889, ch. 106, § 13, which was repealed by Laws 1933, ch. 53, § 21.

**The 1993 amendment,** effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle" in two places; and made minor stylistic changes.

### 77-3-17. Quarantine; seizure of cattle.

Whenever any livestock are driven or transported into the state without obtaining a certificate of health or permit by the person in charge thereof, in any case where a certificate or permit is required and if such livestock have been inspected and an investigation had in relation thereto and the certificate or permit refused, then the livestock may be seized and securely held in quarantine under such reasonable rules and regulations as shall be prescribed therefor by the board and as they may deem necessary to guard against other livestock becoming affected with any such livestock diseases. They shall be held in quarantine for such length of time as the board shall in their opinion deem necessary for the sanitary protection of livestock in this state. If such livestock shall not have been so inspected and an investigation had, then the same shall take place wherever the livestock may be found, and they may be seized and held for that purpose and a certificate of health or permit granted or refused, as the case may require. If refused, the livestock may in like manner be held in quarantine. All the necessary expenses of quarantine and inspection under the provisions of this section shall be paid by the owners of the livestock.

**History:** Laws 1889, ch. 106, § 14; C.L. 1897, § 194; Code 1915, § 91; C.S. 1929, § 4-908; 1941 Comp., § 49-315; 1953 Comp., § 47-3-17; Laws 1993, ch. 248, § 31.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle" throughout the section; and made minor stylistic changes.

**Cattle shipped by rail deemed subject to inspection.** — Cattle offered for shipment by rail in New Mexico, although driven into the state from old Mexico, are subject to inspection. 1912-13 Op. Att'y Gen. No. 13-1087.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

### **77-3-18. Liens for expenses and for damages for communicating disease.**

All expenses incurred in and by the inspection and quarantine of livestock under Section 77-3-17 NMSA 1978 shall be a lien on such livestock to secure the payment thereof in favor of the board, as an indemnity for the expenses so incurred. All loss and damages incurred and suffered by any person, company or corporation of any of the provisions of this chapter shall be lien on the livestock so unlawfully imported in favor of the person, company or corporation so incurring or suffering such loss or damage. All liens covered by this section shall take precedence and priority over any other lien or encumbrance on any such livestock existing at the time of their unlawful importation as aforesaid or at any time subsequent thereto. All such liens shall subsist and become effective as security for ultimate payment without any other act or proceeding whatever and after judgment any such lien may be foreclosed by sale of the livestock on execution.

**History:** Laws 1889, ch. 106, § 15; C.L. 1897, § 195; Code 1915, § 92; C.S. 1929, § 4-909; 1941 Comp., § 49-316; 1953 Comp., § 47-3-18; Laws 1993, ch. 248, § 32.

## ANNOTATIONS

**Compiler's notes.** — The words "this chapter" refer to Laws 1889, ch. 106, the present provisions of which are compiled as 77-2-18, 77-2-19, and 77-3-13 to 77-3-18 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle" throughout the section; substituted "Section 77-3-17 NMSA 1978" for "the preceding Section"; and made minor stylistic changes.

### 77-3-19. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-3-19 NMSA 1978, as enacted by Laws 1889, ch. 106, § 16, relating to seizure of livestock, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

## ARTICLE 4 Eradication of Scabies

### 77-4-1. Disease eradication; rules.

The board shall determine the existence of and employ the most efficient and practical means to prevent, suppress, control and eradicate the disease known as mange or scabies or any other disease among livestock and to direct and regulate the handling or treating of any livestock when infected or that it may have good reason to believe has been exposed to any of the diseases; to make and adopt quarantine and sanitary rules that, so far as practicable, conform to the regulations of the United States department of agriculture as they may be from time to time promulgated; and to create and define districts within which such disease exists. In determining the districts within this state in which such disease from time to time exists, the board shall cooperate with the United States department of agriculture. The costs of treatment of livestock pursuant to this section are the responsibility of the owner of the livestock.

**History:** Laws 1905, ch. 31, § 1; Code 1915, § 98; Laws 1927, ch. 36, § 1; C.S. 1929, § 4-1001; 1941 Comp., § 49-401; 1953 Comp., § 47-4-1; Laws 1993, ch. 248, § 34; 1999, ch. 282, § 31.

## ANNOTATIONS

**Cross references.** — For posting notices on infected pastures and buildings, see 77-3-5 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, substituted the section heading for "Infectious disease eradication; regulations"; in the first sentence, deleted "has the power and it is its duty to" following "The board" at the beginning, near the middle, substituted "other disease" for "contagious or infectious disease", deleted "dipping" preceding "or treating", and substituted "rules that" for "regulations, provided that all such regulations shall"; and substituted the last sentence for the former last sentence, which read "A majority of the board shall constitute a quorum and the board may exercise any of the powers conferred upon it by Sections 77-4-1 through 77-4-8 NMSA 1978 inclusive through committees of its own members specially empowered by resolution."

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "Cattle Sanitary" preceding "board" and substituted "livestock" for "horses, mules, asses and cattle" in the first paragraph; substituted "Sections 77-4-1 through 77-4-8 NMSA 1978" for "Sections 98 to 105" in the second paragraph; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 50.

3A C.J.S. Animals §§ 66 to 69.

**77-4-2, 77-4-3. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-4-2 and 77-4-3 NMSA 1978, as enacted by Laws 1905, ch. 31, §§ 2 and 3, relating to infected districts and dipping of livestock therein, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

**77-4-4. [Inspectors; employment; compensation; duties; reports; powers.]**

To aid in the enforcement of Sections 77-4-1 to 77-4-8 NMSA 1978, it shall be the duty of the board, and they are hereby authorized to employ for that service, and to be known as inspector, as many competent and discreet persons from time to time as emergencies may arise, as in their judgment they may deem necessary for the purpose, and shall fix their compensation, while in actual service, and their actual and necessary expenses, while in performance of their duties and as to where, when and how to perform them. Such persons [are] to make full reports to said board in writing of all their acts and doings under said instructions. And in the performance of their duties, whenever necessary, they may enter upon and examine any car, yard, stable, corral or any building or premises to examine any said livestock therein or thereon, and

otherwise do whatever may be necessary and proper therein or thereon to the effectual discharge of their said powers and duties.

**History:** Laws 1905, ch. 31, § 4; Code 1915, § 101; C.S. 1929, § 4-1004; Laws 1933, ch. 53, § 11; 1941 Comp., § 49-404; 1953 Comp., § 47-4-4.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **77-4-5. [Inspectors of department of agriculture; appointment by board.]**

Subject to the approval of the department of agriculture of the United States, the inspectors appointed by it, may also be appointed by the said board, for the services set forth in Section 77-4-4 NMSA 1978, and they shall hold said appointment at the pleasure of said board so long as they remain inspectors of said department and as such are stationed in this state and they shall act as such inspectors without bond or compensation from the state and shall possess all the powers and duties of state inspectors as needed for the purpose of said section.

**History:** Laws 1905, ch. 31, § 5; Code 1915, § 102; C.S. 1929, § 4-1005; 1941 Comp., § 49-405; 1953 Comp., § 47-4-5.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **77-4-6, 77-4-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-4-6 and 77-4-7 NMSA 1978, as enacted by Laws 1905, ch. 31, §§ 6 and 7, relating to dipping regulations, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

#### **77-4-8. Offenses; penalty.**

A person who willfully violates any provisions of Sections 77-4-1 through 77-4-8 NMSA 1978 or rules promulgated in conformity with those sections or who in any manner hinders, obstructs or resists the execution of a rule or hinders, obstructs or resists an officer or employee of the board in the discharge of his duty or in the exercise

of his lawful powers or who willfully or negligently breaks any quarantine or willfully or negligently suffers any quarantined livestock to escape from any quarantine is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1905, ch. 31, § 8; Code 1915, § 105; Laws 1927, ch. 25, § 1; C.S. 1929, § 4-1008; 1941 Comp., § 49-408; 1953 Comp., § 47-4-8; Laws 1999, ch. 282, § 32.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "Sections 77-4-1 through 77-4-8 NMSA 1978" for "Sections 98 to 105"; deleted "or the state veterinarian or any inspector" preceding "in the discharge of his duty"; substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned for not less than thirty (30) days nor more than six (6) months or both" at the end of the section; and made numerous stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals §§ 96, 97.

## ARTICLE 5 Eradication of Tuberculosis

### 77-5-1. Tuberculosis; examinations.

The board may make tests and examinations for the purpose of ascertaining whether any domestic livestock in the state are affected with tuberculosis. The tests or examinations shall be made by veterinarians of the board, inspectors of the United States department of agriculture animal and plant health inspection service or other veterinarians authorized by the board to perform the tests and examinations.

**History:** Laws 1929, ch. 159, § 1; C.S. 1929, § 4-1101; 1941 Comp., § 49-501; 1953 Comp., § 47-5-1; Laws 1993, ch. 248, § 35; 1999, ch. 282, § 33.

## ANNOTATIONS

**Cross references.** — For marking or branding of cattle infected with tuberculosis or Bang's disease, see 77-3-11 and 77-3-12 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "New Mexico Cattle Sanitary" preceding "board" in three places; substituted

"department of agriculture animal and plant health inspection service" for "bureau of animal industry"; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of regulations as to tuberculin tests, 18 A.L.R. 238, 42 A.L.R. 556, 58 A.L.R. 672, 80 A.L.R. 1225, 101 A.L.R. 64, 110 A.L.R. 644, 119 A.L.R. 243, 155 A.L.R. 1383.

3A C.J.S. Animals § 70.

## **77-5-2. Infected livestock; destruction.**

If, upon making any tests or examinations as provided for in Chapter 77, Article 5 NMSA 1978, it appears that any livestock are infected with tuberculosis and that the public interest would be best served through the destruction of the livestock, the board shall cause the destruction of the livestock in a manner deemed most expedient.

**History:** Laws 1929, ch. 159, § 2; C.S. 1929, § 4-1102; 1941 Comp., § 49-502; 1953 Comp., § 47-5-2; Laws 1993, ch. 248, § 36; 1999, ch. 282, § 34.

### **ANNOTATIONS**

**Cross references.** — For marking or branding of cattle infected with tuberculosis or Bang's disease, see 77-3-11 and 77-3-12 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "Chapter 77, Article 5 NMSA 1978" for "this article", and made stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, added the current catchline; substituted "article" for "Act"; deleted "New Mexico Cattle Sanitary" preceding "board"; and made a minor stylistic change.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 44.

Constitutionality of statute or ordinance providing for destruction of animals, 8 A.L.R. 67, 56 A.L.R.2d 1024.

Constitutionality of statute for control of diseases of livestock, 65 A.L.R. 525.

Right to compensation for animals destroyed to prevent spread of disease or infection, 67 A.L.R. 208.

Liability of public officers for killing or injuring animals, while acting, or professing to act, under a statute in relation to the inspection or destruction of livestock, 2 A.L.R.3d 822.

3A C.J.S. Animals § 76.

### **77-5-3. Special areas; cooperation; regulations.**

The board is hereby authorized to create and supervise tuberculosis-free areas, modified accredited areas and accredited areas and to cooperate with and arrange for such assistance from the United States department of agriculture in carrying out the provisions of this article as it may deem best and just. The board is authorized to adopt and promulgate such rules and regulations which it may deem necessary and proper for the enforcement of the provisions of this article; and such rules and regulations when so adopted and promulgated shall have the same force and effect as if they were an integral part of this article.

**History:** Laws 1929, ch. 159, § 3; C.S. 1929, § 4-1103; 1941 Comp., § 49-503; 1953 Comp., § 47-5-3; Laws 1993, ch. 248, § 37.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "article" for "Act" in three places; deleted "New Mexico Cattle Sanitary" preceding "board" and substituted "department of agriculture" for "bureau of animal industry" in the first sentence; and made a minor stylistic change.

### **77-5-4. Dairy cattle; importation; tests.**

All cattle intended for dairy or milking purposes or for the breeding of dairy cattle brought into this state in any manner must be tagged for identification and must be accompanied by a permit from the board and a certificate signed by some duly qualified veterinarian of the United States department of agriculture or of some state or territory showing record of tuberculin test made immediately prior to shipment and showing that they are free from infection, except in cases where cattle are from accredited herds, modified accredited areas, accredited areas or free areas created and supervised by the United States department of agriculture and state cooperating agency, in which event such cattle must be accompanied by a certificate from a duly qualified veterinarian of the United States department of agriculture or a state recognized veterinarian. Copies of such certificates shall be mailed by the officer making same to the director of the board. Such cattle after coming into the state, if deemed necessary, shall be held for a period of sixty to ninety days or until retested and released in quarantine under such rules as may be provided by the board and shall not be allowed to mingle with nor occupy the same range, pasture, lots, corrals, pens, barns or sheds with other animals. Such cattle shall be tested again before the expiration of the ninety days but no sooner than sixty days by a qualified veterinarian duly authorized by the board and the report of the test filed with the board. Provided, that if any such cattle when retested for tuberculosis shall react and shall be destroyed in accordance with the provisions of this article, the owners of the cattle shall not be reimbursed for the loss of any such imported cattle.

**History:** Laws 1929, ch. 159, § 4; C.S. 1929, § 4-1104; 1941 Comp., § 49-504; 1953 Comp., § 47-5-4; Laws 1993, ch. 248, § 38.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "board" for "Cattle Sanitary Board of the State of New Mexico" in two places; substituted "department of agriculture" for "bureau of animal industry" in three places; inserted "agency" following "state cooperating" near the end of the first sentence; substituted "sixty to ninety days" for "three months" in the third sentence; substituted "ninety days but no sooner than sixty days" for "said three months" in the fourth sentence; substituted "article" for "Act" in the final sentence; and made related and other minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

Constitutionality of regulations as to milk, 155 A.L.R. 1383.

3A C.J.S. Animals § 74.

### **77-5-5. Offenses; penalty.**

A person, whether acting as a common carrier or otherwise, who brings into New Mexico any dairy cattle of the kind described in Section 77-5-4 NMSA 1978 in violation of the provisions of Chapter 77, Article 5 NMSA 1978 or of any of the rules promulgated by the board for the enforcement of that article is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1929, ch. 159, § 5; C.S. 1929, § 4-1105; 1941 Comp., § 49-505; 1953 Comp., § 47-5-5; Laws 1999, ch. 282, § 35.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, inserted "dairy" preceding "cattle", updated statutory references, deleted "New Mexico Cattle Sanitary" preceding "board for the enforcement", substituted "shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "be punished by a fine of not less than \$25.00 nor more than \$100.00 or by imprisonment in the county jail for not less than thirty days nor more than six months" at the end; and made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 93.

## ARTICLE 6

### **Dairy Industry Indemnity**

(Repealed by Laws 1999, ch. 282, § 104.)

## **77-6-1 to 77-6-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-6-1 to 77-6-10 NMSA 1978, as enacted by Laws 1941, ch. 150, §§ 1 to 4, 6 to 8, and 10, and as amended by Laws 1945, ch. 96, § 1 and Laws 1977, ch. 247, § 157, relating to dairy industry indemnity, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 7**

### **Feeding of Hogs**

## **77-7-1 to 77-7-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 229, § 9, repealed 77-7-1 to 77-7-15 NMSA 1978, as enacted by Laws 1917, ch. 32, §§ 1 through 14, and Laws 1957, ch. 150, § 1, respectively, relating to eradication of hog cholera.

## **77-7-16. Definitions.**

As used in this act [77-7-16 through 77-7-19 NMSA 1978]:

A. "garbage" means waste consisting in whole or in part of animal waste resulting from handling, preparing, cooking and consuming of food, including the offal from animal carcasses or parts thereof, but excluding such waste obtained by an individual from his own household operations and fed to his own swine on the same premises;

B. "special processing" means handling swine and subjecting swine products to heat treatment in accordance with current requirements of the board;

C. "permit for special processing" means a permit by the board for the handling, slaughtering and special processing of swine, and which shall be limited to a point or points designated by the board; and

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

**History:** 1953 Comp., § 47-7-23, enacted by Laws 1970, ch. 79, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 66 et seq.

**77-7-17. Feeding of garbage unlawful; registration required; movement of swine fed on garbage unlawful except by permit; penalty.**

A. It is unlawful for any person, firm, partnership or corporation not registered with the livestock board, as provided by this act [77-7-16 through 77-7-19 NMSA 1978], to feed garbage to any swine in this state.

B. It is unlawful to slaughter or transport within the state any swine which have been fed garbage except under the appropriate permit for either special processing or for the transportation of swine fed with garbage as issued by the livestock board.

C. Any person, firm, partnership or corporation violating the provisions of this section is guilty of a petty misdemeanor and each day the provisions of this section are violated shall be a separate offense.

**History:** 1953 Comp., § 47-7-24, enacted by Laws 1970, ch. 79, § 2; 1971, ch. 152, § 1.

**77-7-18. Garbage feeders; slaughterers of garbage-fed swine; registration; garbage cooking; penalty.**

A. All persons feeding garbage to or slaughtering swine which have been fed garbage shall first obtain a certificate of registration or a permit for special processing from the livestock board. Application for registration or a permit shall be made to the office of the livestock board on forms which may be obtained from the board. The board shall be notified when such operation is discontinued or upon sale of equipment, transfer of ownership or change of location. Such rights and privileges as are granted by the registration may be revoked for cause by the director of the livestock board, subject to review by the livestock board.

B. All garbage fed in New Mexico shall be cooked and brought to the boiling point or equivalent temperature for a period of not less than thirty minutes.

C. A recording thermometer shall be used and maintained with dated charts for examination by a representative of the board, and be kept on file for a period of not less than ninety days. Each such chart shall bear therein the name and address of the person for whom the garbage was cooked. There shall be no retracing of charts.

D. Cooking facilities shall be approved by the board before certificate of registration is issued.

E. Periodic inspections shall be made of cooking facilities and premises. Premises shall be open for inspection, including cooking operations, equipment and animals, at any reasonable time by designated representatives of the board.

F. The livestock board shall promulgate and adopt, in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978], regulations setting standards for the maintenance and operation of swine feeding and slaughtering facilities, and providing for the regulation of the movement of garbage-fed swine.

G. Any person, firm or corporation failing to meet the standards set by the regulations of the livestock board for the maintenance and operation of facilities for the feeding or slaughtering of swine or failing to obtain a permit or to meet the requirements of the board for moving garbage-fed swine, may be denied registration or if registered, may have such registration revoked, and shall be guilty of a petty misdemeanor.

H. The board may by regulation set an inspection fee for the permit to transport swine fed on garbage in an amount not to exceed twenty-five cents [(\$.25)] per animal.

**History:** 1953 Comp., § 47-7-25, enacted by Laws 1970, ch. 79, § 3; 1971, ch. 152, § 2.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **77-7-19. Fees for registration; renewal.**

For each certificate of registration issued under Section 77-7-18 NMSA 1978, the livestock board may charge and receive a fee not to exceed ten dollars (\$10.00) at the time of issuance and, in addition, on the anniversary date of each such certificate of registration an annual renewal fee in an amount not to exceed ten dollars (\$10.00).

**History:** 1953 Comp., § 47-7-26, enacted by Laws 1970, ch. 79, § 4.

## **ARTICLE 8**

### **Sheep**

#### **77-8-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 248, § 80 repealed 77-8-1 NMSA 1978, as enacted by Laws 1951, ch. 188, § 1, relating to definitions, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

## **77-8-2. Quarantine; treatment.**

Sheep or goats afflicted with or exposed to a disease shall be immediately placed under quarantine under the supervision of a veterinarian or inspector in conformity with the rules of the board. The sheep or goats shall not be moved from the quarantine area except under the supervision of a veterinarian or inspector until a veterinarian declares them to be free of disease or until the board otherwise grants permission for the moving of the sheep or goats. The sheep or goats shall be treated under the direction of a veterinarian or inspector at once and thereafter as often as necessary until they are declared free of the disease by a veterinarian or inspector.

**History:** 1941 Comp., § 49-872, enacted by Laws 1951, ch. 188, § 11; 1953 Comp., § 47-8-11; Laws 1999, ch. 282, § 36.

### **ANNOTATIONS**

**Cross references.** — For New Mexico Sheep and Goat Act, see Chapter 77, Article 8A NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, deleted "dipping" preceding "treatment" in the section heading; inserted "or goats" throughout the section; deleted "scabies or other infectious or contagious" preceding "disease" in the first sentence; deleted "to dipping vats" following "quarantine area except" and deleted "or inspector" following "veterinarian" in the second sentence; deleted "dipped or" preceding "treated" in the last sentence; and deleted the former last sentence, which read "Provided, however, that no sheep shall be required to be dipped during such inclement weather as would endanger their health or lives except at the request of the owner."

**No presumption that board negligent.** — Court will not presume that sheep sanitary board (now New Mexico livestock board) was negligent in issuing permit and in ordering sheep dipped at time of cold and inclement weather, but evidence supported judgment for plaintiff in particular case. *Miera v. State*, 46 N.M. 369, 129 P.2d 334 (1942) (decided under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 50 et seq.

3A C.J.S. Animals §§ 73, 75.

## **77-8-3. Importation; notice; inspection; fees.**

A. A person intending to bring sheep or goats into the state from another country or state shall give notice of his intention to the director by certified letter or delivery in person or by telephone to the director or other authorized official of the board so that the notice is received prior to the proposed day of entry. The notice shall state the number of head, the date and place the sheep or goats will be loaded and their destination. The director shall then issue a permit for entry of the sheep or goats into the state, stating in

the permit the applicable board rules to be complied with before or after entry into the state.

B. The shipment shall be accompanied by a health certificate issued by a federal or state inspector or authorized veterinarian that the sheep or goats are healthy and free from disease. On arrival, the owner or person in charge of the sheep or goats shall not commingle the imported sheep or goats or release them to pasture until the inspector examines the sheep or goats as to their sanitary condition and inspects and makes a record of all the marks and brands on the sheep or goats, which record shall be forwarded to the board office and used for future reference. The inspector shall issue the owner or person in charge of the sheep or goats a copy of the brand inspection certificate if the inspector is satisfied all requirements have been met.

C. An inspection fee to be fixed by the board shall be charged and paid by the owner or person in charge of the sheep or goats to the board and received by the inspector for the inspection and certificates. If the inspector suspects that the sheep or goats are infected with a disease or finds that the owner or person in charge has not met the entry requirements, the inspector shall require the owner or the person in charge to comply with the provisions of Section 77-8-2 NMSA 1978 or other applicable statutes and rules. The provisions of this section shall not apply to sheep or goats loaded on transport vehicles that are being transported from some country or state to another country or state through New Mexico if the sheep or goats are not to be unloaded in this state except in approved rest stations or other quarantine pens for the purpose of feeding and watering the sheep or goats for a period of time not to exceed twenty-four hours.

**History:** 1941 Comp., § 49-873, enacted by Laws 1951, ch. 188, § 12; 1953 Comp., § 47-8-12; Laws 1963, ch. 129, § 1; 1981, ch. 357, § 3; 1993, ch. 248, § 39; 1999, ch. 282, § 37.

## ANNOTATIONS

**Cross references.** — For certificate necessary for transportation of animals or carcasses, *see* 77-9-41 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, inserted "or goats" and deleted "scabies or other contagious or infectious" preceding "disease" throughout the section; deleted "telegraph" preceding "certified letter" in the first sentence of Subsection A; in Subsection B, rewrote the second sentence, which formerly read "On arrival, the inspector shall examine the sheep as to their sanitary condition and inspect and make a record of all the marks and brands on the sheep, which record shall be forwarded to the board office and used for future reference", and substituted "owner or person in charge of the sheep or goats" for "shipper or owner" in the third sentence; deleted "quarantine dipping and treating" preceding "provisions" in the second sentence of Subsection C; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, deleted "New Mexico livestock" preceding "board" in three places; deleted "in writing" preceding "of his intention" and substituted "prior to" for "at least forty-eight hours previous to" in the first sentence of Subsection A; inserted "or authorized veterinarian" in the first sentence of Subsection B; rewrote the third sentence of Subsection B which read "He shall then issue the shipper a health certificate if he is satisfied that the sheep are free from scabies or other contagious or infectious disease and a copy of the brand inspection certificate"; rewrote Subsection C; and made minor stylistic changes.

**The 1981 amendment**, in Subsection A, substituted "director of the New Mexico livestock board" for "secretary" in the first sentence and "director" for "secretary" in the first sentence preceding "or" and in the last sentence and deleted "or" following "letter" and "by" preceding "telephone" in the first sentence, inserted "New Mexico livestock" in the second sentence in Subsection B and, in Subsection C, inserted "New Mexico livestock" in the first sentence and substituted "the amount prescribed by law" for "eight cents (\$.08) a head" in the first sentence and "or" for "and" following "feeding" and "sheep" for "same" preceding "for" in the last sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

3A C.J.S. Animals §§ 73 to 75.

#### **77-8-4. Sheep imported without inspection; inspection.**

When any inspector learns that sheep have been brought into the state without first having been inspected as provided in Section 12 [77-8-3 NMSA 1978], he shall immediately inspect the sheep as provided in said section.

**History:** 1941 Comp., § 49-874, enacted by Laws 1951, ch. 188, § 13; 1953 Comp., § 47-8-13.

#### **77-8-5. Infected sheep or goats; notice to board.**

A person who owns or has under his control sheep or goats that have been exposed to or infected with a reportable disease shall forthwith report such fact to the director. A veterinarian shall be immediately dispatched to examine the sheep or goats and, if found to be so exposed or infected, the veterinarian or inspector shall follow the quarantine and treating provisions set forth in Section 77-8-2 NMSA 1978.

**History:** 1941 Comp., § 49-875, enacted by Laws 1951, ch. 188, § 14; 1953 Comp., § 47-8-14; Laws 1999, ch. 282, § 38.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, inserted "or goats" following "sheep" throughout the section, substituted "a reportable disease" for "scabies or any other

contagious or infectious disease" and substituted "director" for "secretary" in the first sentence, and deleted "or inspector" following "A veterinarian" and "dipping" following "quarantine" in the last sentence.

### **77-8-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 229, § 9, repealed 77-8-6 NMSA 1978, as enacted by Laws 1951, ch. 188, § 15, relating to yearly inspection of sheep.

### **77-8-7. Exportation; notice; inspection and permit fees; penalty.**

A. A person intending to ship sheep or goats beyond the limits of the district or the limits of the state shall give notice of his intention to the director or to the inspector for his district by certified letter or by delivery in person or by telephone to the director or inspector so that the notice is received in a reasonable time previous to the proposed date of shipment. The notice shall state the date and place that the sheep or goats will be loaded and destination of the sheep or goats. The board may require an inspector to inspect the sheep or goats as to their sanitary conditions and make a record of all the marks and brands upon the sheep or goats or the board may provide by rule an alternate means of allowing the movement of sheep or goats. The inspector shall not allow sheep or goats bearing any of the marks declared by the law of this state to be unlawful to be shipped except under express authority of the board. The inspector shall also require each person shipping sheep or goats to exhibit a bill of sale executed as provided by Section 77-8-15 NMSA 1978 or authority in writing to ship the sheep or goats from the recorded owner of all marks and brands upon the sheep or goats unless the person is himself the recorded owner of the marks and brands.

B. The inspector shall issue to the shipper a New Mexico livestock board form-1 certificate of inspection or other document or permit approved by the board if he is fully satisfied that the sheep or goats are free from disease and that the person shipping has rightful ownership of the sheep or goats as evidenced by the brands or marks and bill of sale or has complied with the board's alternative method as provided for in this section and all other applicable rules of the board. This certificate or permit shall authorize the shipping of the sheep and goats out of the state.

C. A fee to be fixed by the board in a sum not to exceed the amount prescribed by law shall be charged for the inspection and certificates, and the inspector shall refuse to issue the certificates until he has been paid the fee. The board shall charge a fee not to exceed the amount prescribed by law for issuing the permits allowed in this section in lieu of inspection. The inspector shall make a report to the director after each inspection of any matters contained in this section that may be required of him by the director.

D. A person who knowingly ships sheep or goats from one district to another district without an inspection certificate is guilty of a misdemeanor and shall be sentenced in

accordance with the provisions of Section 31-19-1 NMSA 1978. A person who knowingly ships sheep or goats outside the state without an inspection certificate is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

**History:** 1941 Comp., § 49-877, enacted by Laws 1951, ch. 188, § 16; 1953 Comp., § 47-8-16; Laws 1957, ch. 191, § 1; 1959, ch. 246, § 1; 1963, ch. 129, § 2; 1981, ch. 357, § 4; 1993, ch. 248, § 40; 1999, ch. 282, § 39.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, inserted "or goats" throughout the section; in Subsection A, substituted "sheep or goats beyond the limits of the district or the limits of the state" for "sheep out of the state", deleted "telegraph" preceding "certified letter, and substituted "in a reasonable time" for "at least forty-eight hours" in the first sentence, and inserted "board may require" and "or the board may provide by rule an alternate means of allowing the movement of sheep or goats" in the second sentence; in Subsection B, inserted "or other document or permit approved by the board" and "or has complied with the board's alternative method as"; in Subsection C, inserted the next-to-last sentence; added Subsection D; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, deleted "New Mexico livestock" preceding "board" in three places; deleted "in writing" following "notice" in the first sentence of Subsection A; rewrote Subsection B to the extent that a detailed analysis is impracticable; and made minor stylistic changes.

**The 1981 amendment**, in Subsection A, substituted "director of the New Mexico livestock board" for "secretary" and "director" for "secretary" preceding "or" in the first sentence and "the sheep" for "same" at the end of the second sentence, deleted "or by" following "letter" and "by" preceding "telephone" in the first sentence and inserted "the" preceding "destination" in the second sentence, substituted "or" for "of" in the first sentence and "certificate" for "certificates" following "which" in the second sentence and inserted "New Mexico livestock" in the second sentence in Subsection B and, in Subsection C, inserted "New Mexico livestock" in the first sentence and substituted "the amount prescribed by law" for "eight cents (\$.08) a head" and "the" for "said" following "paid" in the first sentence and "director" for "secretary" twice in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 74.

**77-8-8, 77-8-9. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-8-8 and 77-8-9 NMSA 1978, as enacted by Laws 1951, ch. 188, §§ 17 and 21, relating to unlawful transportation of, and

special brands for, sheep, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **77-8-10. Recording or rerecording by person with lien or interest.**

Any person having a lien or interest in any sheep may cause the mark or brand appearing on said sheep to be recorded or rerecorded in the name of the owner provided he follows the recording or rerecording procedure set forth in this act [77-8-1 through 77-8-19 NMSA 1978]. The secretary [executive director] shall mail a certificate of mark to the owner and a duplicate copy of the certificate to the person having a lien or interest in the sheep.

**History:** 1941 Comp., § 49-883, enacted by Laws 1951, ch. 188, § 22; 1953 Comp., § 47-8-22.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For references to "secretary" being deemed as "executive director", see 77-2-2 NMSA 1978.

### **77-8-11. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-8-11 NMSA 1978, as enacted by Laws 1951, ch. 188, § 23, relating to cancellation and reinstatement of marks and brands, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **77-8-12. Effect of cancellation or new award to one claiming interest; amending original instrument.**

The cancellation of an existing mark or brand of a sheep owner shall in no way affect a lien on or interest in any sheep claimed by a third person, and as to such third person a cancellation shall not be deemed to have taken place. Where a new or different brand is awarded the owner, such interested third person or lien holder may have the instrument on which he bases his lien amended so as to show the date the new mark or brand was awarded, a description or facsimile of such new mark or brand and the sheep affected by such new mark or brand. Such amended instrument must be signed and acknowledged in the same manner as the original instrument to give it the force and effect of the original instrument, and recorded, where required by law, in order to give constructive notice.

**History:** 1941 Comp., § 49-885, enacted by Laws 1951, ch. 188, § 24; 1953 Comp., § 47-8-24.

### **77-8-13. Evidential value of mark or brand records.**

A certified copy of the records of the board relating to any mark or brand shall be accepted in all courts of this state as prima facie evidence of the ownership of sheep bearing the same.

**History:** 1941 Comp., § 49-886, enacted by Laws 1951, ch. 188, § 25; 1953 Comp., § 47-8-25.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 9.

3A C.J.S. Animals § 18.

### **77-8-14. Altering marks or brands.**

No person shall alter the mark or brand on his or any other sheep or goats, without first having secured written permission from the director and unless an inspector is present to supervise the alteration.

**History:** 1941 Comp., § 49-887, enacted by Laws 1951, ch. 188, § 26; 1953 Comp., § 47-8-26; Laws 1999, ch. 282, § 40.

#### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, substituted the section heading for "Altering marks; notice; supervision", and rewrote the section, which formerly read: "No person shall alter the mark on his or any other sheep, irrespective of whether such person desires to place his recorded mark on such sheep without first having secured permission from the secretary or an inspector and unless an inspector is present to supervise the alteration."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 25.

### **77-8-15. Bills of sale; evidence of larceny.**

A. A duly executed bill of sale is an instrument in writing by which the owner or his authorized agent transfers to the buyer the title to the sheep or goat described in the bill of sale and guarantees to defend the title against all lawful claims. It shall fully describe in detail the sheep or goat, and such description shall include marks, brands and all other identification. The bill of sale shall be executed the day of the transaction.

B. A purchase sheet properly executed by a licensed livestock auction market constitutes a valid bill of sale.

C. A registration certificate issued by a recognized pure-bred association, properly identifying the animal and properly acknowledged by the secretary of the association, may be used as proof of ownership.

D. An inspection certificate executed as a bill of sale and certified by inspector may be used as proof of ownership.

E. A person shall not sell or buy sheep or goats unless a bill of sale is provided. The possession by a person of sheep or goats having any mark or brand not his recorded mark or brand unless he has a bill of sale or authority in writing to possess or sell such sheep or goats shall be taken as prima facie evidence that he committed larceny of the sheep or goats and shall be sufficient for his conviction of larceny unless the evidence shows his innocence.

**History:** 1941 Comp., § 49-888, enacted by Laws 1951, ch. 188, § 27; 1953 Comp., § 47-8-27; Laws 1999, ch. 282, § 41.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, added Subsections A to D; designated the formerly undesignated paragraph as Subsection E, and in that Subsection, rewrote the first sentence, which formerly read "No person shall sell, nor shall any person buy, sheep, unless the seller gives to the purchaser and the purchaser receives from the seller a bill of sale which fully describes the sheep by their marks, brands, number and class and is duly acknowledged before some officer authorized by law to take acknowledgements", and inserted "or goats" following "sheep" throughout the second sentence.

### **77-8-16. Report of estray sheep or goats; sale.**

A person finding estray sheep or goats shall immediately report them to an inspector or the director and deliver them to an inspector upon demand. If the mark or brand on the sheep or goat is recorded in the board office, the director shall notify the owner of record and make arrangements to deliver the sheep or goats to the owner of record if he is the actual owner. If the owner of record no longer owns the sheep or goats, the director shall deliver them to the subsequent purchaser who can prove ownership with a valid bill of sale. In either case, delivery shall be conditioned upon payment by the claimant of all costs incurred in keeping the sheep or goats and such other expenses as may have been necessarily incurred. If the owner cannot be ascertained after diligent inquiry, the director shall order an inspector to sell them to the person paying the highest cash price for them after giving general or special notice or advertising as the director deems necessary under the circumstances. The money arising from the sale shall be used first to defray the costs and expenses in keeping and advertising the

sheep or goats and those incurred in the sale. The residue, if any, shall be placed in the board fund; provided, however, that if at any time within two years after the sale any person shall prove ownership of the sheep or goats at the time they became lost, the residue shall be paid to him.

**History:** 1941 Comp., § 49-889, enacted by Laws 1951, ch. 188, § 28; 1953 Comp., § 47-8-28; Laws 1999, ch. 282, § 42.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, inserted "or goats" and substituted "director" for "secretary" throughout the section, and substituted "two years" for "one (1) year" in the last sentence.

### **77-8-17. Enforcement of provisions; recovery of costs and expenses.**

Upon the failure or refusal of any owner or person in charge of sheep to comply with the provisions of Sections 11, 12, 14, 16, or 18 [77-8-2, 77-8-3, 77-8-5, 77-8-7 NMSA 1978] of this act or rules and regulations made in pursuance thereof, the inspector shall summarily take custody of and hold the sheep involved in the violation of said sections or rules and regulations until said provisions are complied with or until there is a determination of any legal proceedings brought under said sections. The board shall bring legal proceedings against any violator who after reasonable notice still refuses to comply with these provisions for the enforcement of these provisions or for the costs and expenses incurred in holding the sheep and of bringing said legal proceedings, or for both purposes. In these proceedings no bond shall be required from the board.

**History:** 1941 Comp., § 49-890, enacted by Laws 1951, ch. 188, § 29; 1953 Comp., § 47-8-29.

### ANNOTATIONS

**Compiler's notes.** — Section 18, referred to in this section, is Laws 1951, ch. 188, § 18, which was repealed by Laws 1971, ch. 50, § 5.

### **77-8-18. Penalties.**

A person who violates the provisions of Section 77-8-2, 77-8-3, 77-8-14 or 77-8-22 NMSA 1978 or rules adopted pursuant to any of those sections is guilty of a misdemeanor for each head and, upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** 1941 Comp., § 49-891, enacted by Laws 1951, ch. 188, § 30; 1953 Comp., § 47-8-30; Laws 1999, ch. 282, § 43.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, rewrote the section, which formerly read: "Any person who violates the provisions of Sections 11, 12, 16, or 26 of this act or rules and regulations made in pursuance thereof, upon his conviction before any justice of the peace or district court in this state, shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) and in addition thereto may at the discretion of the court trying the case be imprisoned in jail for any period of time not to exceed six (6) months."

### **77-8-19. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1993, ch. 248, § 80 repealed 77-8-19 NMSA 1978, as enacted by Laws 1951, ch. 188, § 31, relating to tax levies, effective June 18, 1993. For provisions of former section, see the the 1992 NMSA 1978 on *NMONESOURCE.COM*.

### **77-8-20. Commuting sheep or goats; fees.**

A. For the purpose of this section, "commuting sheep or goats" means sheep or goats that are transferred from New Mexico to some other state with which New Mexico shares a common boundary and back again or from some other state that shares a common boundary with New Mexico, to New Mexico and back again:

- (1) during any twelve-month period;
- (2) by one owner; and
- (3) for the purpose of seasonal grazing, breeding, lambing or kidding on lands owned or leased by that owner in the course of his normal operations in each of the two states.

B. Owners of commuting sheep or goats shall have them inspected for each movement but shall pay the inspection fees for transporting commuting sheep or goats only once in any twelve-month period. For subsequent movements in a twelve-month period, the owner shall pay the inspection fees on those sheep or goats over the number involved in the first movement. If the owner of commuting sheep or goats transports them for a purpose other than regular commuting they shall, at that time, lose their special character of commuting sheep or goats and be subject to the fees normally required by law.

**History:** 1953 Comp., § 47-8-41, enacted by Laws 1963, ch. 129, § 6; 1999, ch. 282, § 44; 2001, ch. 38, § 1.

## ANNOTATIONS

**The 2001 amendment**, effective July 1, 2001, rewrote Subsection B, which formerly read "Owners of commuting sheep or goats shall have them inspected for each movement and shall pay the inspection fees for the sheep or goats normally required by law."

**The 1999 amendment**, effective July 1, 1999, inserted "or goats" throughout the section; in Subsection A, deleted the former Paragraph (1) and (2) designations, redesignated former Paragraphs (3) to (5) as Paragraphs (1) to (3), and in Paragraph (3), inserted "or kidding"; and in Subsection B, substituted "the sheep or goats normally required by law" for "transporting commuting sheep only once in any twelve-month period. For the second movement in any twelve-month period, the owner shall pay the inspection fees on any sheep over the number involved in the first movement. If at any time the owner of commuting sheep transports them for any purpose other than their regular commuting, they shall at that time lose their special character of commuting sheep and be subject to the fees normally required by law".

## **77-8-21. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-8-21 NMSA 1978, as enacted by Laws 1963, ch. 129, § 7, relating to sheep dipping fees, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

## **77-8-22. Necessity of branding or marking sheep and goats.**

A. A person owning sheep or goats shall have and adopt a brand for them except for registered sheep or goats that are properly identified by legible tattoos and whose owner has been issued a certificate of brand exemption for his flock by the board. The brand shall be applied by any method approved by the board. Each brand shall be recorded in the office of the board. The board may provide for the use of a mark in lieu of the owner's brand if the mark is recorded in conjunction with the brand.

B. Unbranded or unmarked sheep or goats, except offspring with a branded or marked mother, shall be subject to seizure by a peace officer or inspector and shall be handled and disposed of in the same manner as is provided for the handling and disposal of estrays.

C. Sheep or goats that are purchased shall be rebranded or remarked by the new owner with his recorded brand or mark within thirty days of the purchase date unless he is given special permission by the board or the former owner to use the former owner's recorded brand or mark on the sheep or goats.

**History:** 1978 Comp., § 77-8-22, enacted by Laws 1999, ch. 282, § 45.

### **ANNOTATIONS**

**Effective dates.** — Laws 1999, ch. 282, § 105, made the act effective July 1, 1999.

## **ARTICLE 8A**

### **Sheep and Goats**

#### **77-8A-1. Short title.**

This act [77-8A-1 through 77-8A-11 NMSA 1978] may be cited as the "New Mexico Sheep and Goat Act".

**History:** Laws 1997, ch. 99, § 1 and Laws 1997, ch. 147, § 1.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 1 and Laws 1997, ch. 147, § 1 enacted identical new sections of law. Both were compiled as 77-8A-1 NMSA 1978.

#### **77-8A-2. Definitions.**

As used in the New Mexico Sheep and Goat Act:

- A. "board" means the New Mexico livestock board;
- B. "council" means the New Mexico sheep and goat council;
- C. "department" means the New Mexico department of agriculture;
- D. "director" means the director of the New Mexico department of agriculture;
- E. "handler" means any producer, processor, distributor or other person engaged in handling, marketing or dealing in sheep or haired goats or their products; and
- F. "producer" means any person engaged in the business of raising, breeding, feeding or growing sheep or haired goats.

**History:** Laws 1997, ch. 99, § 2 and Laws 1997, ch. 147, § 2.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 2 and Laws 1997, ch. 147, § 2 enacted identical new sections of law. Both were compiled as 77-8A-2 NMSA 1978.

#### **77-8A-3. Sheep and goat council created; election; vacancies; ex-officio members.**

A. There is created the "New Mexico sheep and goat council", consisting of seven members. Members shall be elected by producers from nominations made to the director by producers or producer organizations.

B. The initial members of the council shall be elected as follows:

- (1) two members for one-year terms;
- (2) two members for two-year terms; and
- (3) three members for three-year terms.

C. Thereafter, each member shall be elected for a term ending three years from the date of expiration of the term for which his predecessor was elected, except in case of a vacancy, when the appointee shall serve the unexpired part of the term of the member whom he replaces. Vacancies shall be filled by appointment by the director from nominations made by producers and producer organizations. The director shall serve as an ex-officio, nonvoting member of the council.

**History:** Laws 1997, ch. 99, § 3 and Laws 1997, ch. 147, § 3.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 3 and Laws 1997, ch. 147, § 3 enacted identical new sections of law. Both were compiled as 77-8A-3 NMSA 1978.

#### **77-8A-4. Council member qualifications.**

A. Each member of the council shall have the following qualifications, which shall continue during his term of office:

- (1) be actively engaged in sheep or goat production; or
- (2) be in some branch of the sheep or haired goat business and during his entire term receive a substantial portion of his income from the sheep or haired goat business.

B. Members of the council shall be elected according to the following plan: two producers from northern New Mexico in areas north of interstate 40, four producers from southern New Mexico in areas south of interstate 40 and one handler of sheep or haired goats or their products.

**History:** Laws 1997, ch. 99, § 4 and Laws 1997, ch. 147, § 4.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 4 and Laws 1997, ch. 147, § 4 enacted identical new sections of law. Both were compiled as 77-8A-4 NMSA 1978.

### **77-8A-5. Officers; meetings; expenses.**

The council shall elect annually a chairman, vice chairman and such other officers as it deems necessary from among its members. The council shall meet at least once each six months and at such other times as it may be called by the chairman. The council may provide rules for reimbursement of members' expenses while on official business of the council, but such reimbursement shall in no case exceed the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. Council members shall receive no other compensation, perquisite or allowance.

**History:** Laws 1997, ch. 99, § 5 and Laws 1997, ch. 147, § 5.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 5 and Laws 1997, ch. 147, § 5 enacted identical new sections of law. Both were compiled as 77-8A-5 NMSA 1978.

### **77-8A-6. Duties; powers.**

A. The council shall:

- (1) conduct marketing programs, including promotion, education and research, promoting sheep and haired goat products;
- (2) submit to the director a detailed annual budget for the council on a fiscal-year basis and provide a copy of the budget upon request to any person who has paid an assessment or made a contribution under the New Mexico Sheep and Goat Act;
- (3) bond officers and employees of the council who receive and disburse council funds;
- (4) keep detailed and accurate records for all receipts and disbursements, have those records audited annually and keep the audit available for inspection in the council office;
- (5) establish procedures for the adoption of regulations that will provide for input from producers;
- (6) determine and publish each year the assessment rates to be collected by the board; and
- (7) employ staff not to exceed three persons.

B. The council may:

- (1) contract for scientific research to discover and improve the commercial value of sheep and haired goats and products thereof;
- (2) disseminate information showing the value of sheep and haired goats and products for any purpose for which they may be found useful and profitable;
- (3) fund programs to enhance the efficiencies of sheep and haired goat production;
- (4) make grants to research agencies for financing studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the council as authorized by the New Mexico Sheep and Goat Act;
- (5) cooperate with any local, state or national organizations or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the council, and enter into contracts with those organizations or agencies and expend funds in connection therewith for carrying on joint programs;
- (6) study federal and state legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the effect on the sheep and haired goat industry and represent and protect the interests of the industry with respect to any legislation or proposed legislation or executive action that may affect that industry;
- (7) enter into contracts that it deems appropriate to the carrying out of the purposes of the council as authorized by the New Mexico Sheep and Goat Act;
- (8) sue and be sued as a council without individual liability for acts of the council within the scope of the powers conferred upon it by the New Mexico Sheep and Goat Act;
- (9) appoint subordinate officers and employees of the council and prescribe their duties and fix their compensation;
- (10) adopt regulations for the exercise of its powers and duties. A copy of all council regulations shall be filed with the department; and
- (11) cooperate with other state councils or agencies in the collection of assessments.

**History:** Laws 1997, ch. 99, § 6 and Laws 1997, ch. 147, § 6.

**ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 6 and Laws 1997, ch. 147, § 6 enacted identical new sections of law. Both were compiled as 77-8A-6 NMSA 1978.

### **77-8A-7. Funding.**

In order to accomplish the purposes of the New Mexico Sheep and Goat Act, the council is empowered to:

A. receive any funds that may be returned to the New Mexico sheep and haired goat industry as its share of assessments collected by a national sheep promotion research and information board or any similar entity;

B. accept grants, donations, contributions or gifts from any source for expenditure for any purpose consistent with the powers and duties conferred on the council; and

C. receive any other funds that may be authorized by law.

**History:** Laws 1997, ch. 99, § 7 and Laws 1997, ch. 147, § 7.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 7 and Laws 1997, ch. 147, § 7 enacted identical new sections of law. Both were compiled as 77-8A-7 NMSA 1978.

### **77-8A-8. Assessments.**

There is levied and imposed upon all sheep and haired goats involved in a transfer of ownership in the state an assessment to be called the "council assessment". The council assessment is to be fixed by the council at a rate not more than seventy-five cents (\$.75) per head. The board shall collect this council assessment at the same time and in the same manner as the fee charged for the state inspection required upon the movement of those sheep and haired goats. The board shall not deliver the certificate of inspection or permit the sheep or haired goats to move until all fees have been paid. The proceeds of the council assessment shall be remitted by the board to the council at the end of each month along with information that will allow the council to make necessary refunds. At the request of the board, the council shall reimburse the board for the reasonable and necessary expenses incurred for such collections and information not to exceed four percent of collections on those sheep and haired goats involved in a transfer of ownership.

**History:** Laws 1997, ch. 99, § 8 and Laws 1997, ch. 147, § 8.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 8 and Laws 1997, ch. 147, § 8 enacted identical new sections of law. Both were compiled as 77-8A-8 NMSA 1978.

## **77-8A-9. Refunds.**

Any person who has paid a council assessment is entitled to a refund of the amount paid by making written application for the refund to the council. The application form shall be returned within thirty days after the inspection was made giving rise to the council assessment and shall contain enough detail to enable the council to find the record of payment. Refunds shall be made within thirty days of the date of the application unless the proceeds and the necessary information have not been received by the council, in which case the refund shall be made within fifteen days after receipt of the proceeds and necessary information. The form shall be provided by the board at the time of inspection.

**History:** Laws 1997, ch. 99, § 9 and Laws 1997, ch. 147, § 9.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 9 and Laws 1997, ch. 147, § 9 enacted identical new sections of law. Both were compiled as 77-8A-9 NMSA 1978.

## **77-8A-10. Disposition of funds.**

A. All funds received by the council shall be received and disbursed directly by the council. Such funds shall be audited in accordance with the provisions of the Audit Act [12-6-1 through 12-6-14 NMSA 1978]. The council is not required to submit vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The council shall issue warrants against funds of the council in payment of its lawful obligations. The council shall provide its own warrants, purchase orders and contract forms as well as other supplies and equipment. All warrants shall be signed by a council member and one other person designated by the council.

C. The council shall designate banks where its funds are to be deposited, provided such banks have been qualified as depository banks for state funds.

**History:** Laws 1997, ch. 99, § 10 and Laws 1997, ch. 147, § 10.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 10 and Laws 1997, ch. 147, § 10 enacted identical new sections of law. Both were compiled as 77-8A-10 NMSA 1978.

## **77-8A-11. Procurement Code; Personnel Act; exemptions; Tort Claims Act.**

The council is exempt from the provisions of the Procurement Code and the Personnel Act. The council members and employees shall be subject to the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978] and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department.

**History:** Laws 1997, ch. 99, § 11 and Laws 1997, ch. 147, § 11.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1997, ch. 99, § 11 and Laws 1997, ch. 147, § 11 enacted identical new sections of law. Both were compiled as 77-8A-11 NMSA 1978.

**Cross references.** — For the Procurement Code, see 13-1-28 NMSA 1978 et seq.

For the Personnel Act, see 10-9-1 NMSA 1978 et seq.

## **ARTICLE 9**

### **Brands, Ownership, Transportation and Sale of Animals**

#### **77-9-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-9-1 NMSA 1978, as enacted by Laws 1884, ch. 47, § 1, relating to branding and marking of cattle and sheep, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 77-9-4 NMSA 1978.

#### **77-9-1.1. Definition.**

As used in Chapter 77, Article 9 NMSA 1978, "livestock" means horses, asses, mules, cattle or bison.

**History:** Laws 1999, ch. 282, § 46.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1999, ch. 282, § 105, made 1999, ch. 282, § 46 effective July 1, 1999.

#### **77-9-2. [Earmarks; cutting; penalty.]**

Any person, firm or corporation of this state may adopt and use an earmark, and such earmark shall be taken in evidence in connection with owner's recorded brand in all suits at law or in equity in which the title to stock is involved. Such earmark shall be made by cutting and shaping the ear or ears of the animal so marked, but in no case shall the person so marking the animal cut off more than one-half of the ear so marked, neither shall anyone mark by cutting an ear on both sides to a point. Any person, firm or corporation who violates this section shall be guilty of a petty misdemeanor.

**History:** Laws 1884, ch. 47, § 3; C.L. 1884, § 56; C.L. 1897, § 66; Code 1915, § 116; C.S. 1929, § 4-1402; 1941 Comp., § 49-902; 1953 Comp., § 47-9-2; Laws 1965, ch. 4, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 24.

### **77-9-3. Necessity of brand; rebranding required; exceptions.**

A. A person who owns livestock shall have and adopt a brand for them. The brand shall be applied with a hot iron on each animal except registered livestock that are properly identified by a legible tattoo and whose owner has been issued a certificate of brand exemption for his herd by the board. Each brand shall be recorded in the office of the board.

B. Unbranded livestock, except offspring with a branded mother or offspring with a mother properly identified as provided in Subsection F of this section, shall be subject to seizure by a peace officer or livestock inspector and shall be handled and disposed of in the same manner as is provided for the handling and disposal of estrays.

C. Livestock that is purchased shall be rebranded by the new owner with his recorded brand within thirty days, except as provided in Section 77-9-4 NMSA 1978.

D. Subsection A of this section shall not apply to a person owning horses, mules or asses who has been issued a transportation permit as provided in Section 77-9-42 NMSA 1978 or who has a registration certificate for an animal from a recognized breed association or to any person owning horses, mules or asses that have been identified by a freeze mark or a freeze brand recorded with the board. Freeze branding or freeze mark identification requires an iron, first submerged in a bath of liquid nitrogen, to be applied on each animal, resulting in a permanent loss of color in the hair or cessation of hair growth where the brand or mark has been applied.

E. This section does not apply to bison.

F. This section does not apply to a person who owns cattle in confinement at a dairy or feedlot and who has elected to identify his cattle by an alternative means approved by the board for cattle held in those facilities. If cattle held in confinement and identified in accordance with this subsection are removed from confinement and otherwise held in the state, the provisions of Subsection A of this section shall be met prior to removal, unless the cattle are being delivered to an approved auction.

**History:** Laws 1895, ch. 6, § 1; C.L. 1897, § 106; Code 1915, § 117; C.S. 1929, § 4-1403; Laws 1941, ch. 40, § 1; 1941 Comp., § 49-903; Laws 1951, ch. 67, § 1; 1953 Comp., § 47-9-3; Laws 1975, ch. 139, § 2; 1985, ch. 60, § 1; 1993, ch. 248, § 43; 1999, ch. 282, § 47.

## ANNOTATIONS

**Cross references.** — For the New Mexico livestock board, see 77-2-2 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, inserted "by a legible tattoo" in the second sentence of Subsection A; inserted "or offspring with a mother properly identified as provided in Subsection E of this section" and substituted "livestock inspector" for "any duly authorized livestock inspector appointed by the board" in Subsection B; substituted "except as provided in Section 77-9-44 NMSA 1978" for "of the purchase date unless he is given special permission by the board or by the former owner to use the recorded brand of the seller appearing on the livestock" in Subsection C; added "Subsection A of" at the beginning of Subsection D; added Subsections E and F; and made stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, deleted "New Mexico livestock" preceding "board" in four places; deleted "neat cattle or" preceding "any cattle" in the first sentence of Subsection A; deleted "now or may hereafter be" following "as is" in Subsection B; and added "recorded with the board" at the end of the first sentence of Subsection D.

**The 1985 amendment** divided the former first sentence in Subsection A into two sentences deleting "said" following "animals" at the end of the present first sentence and substituting "The brand shall be" for "brand to be" at the beginning of the present second sentence, substituted "Each brand" for "Each such brand" at the beginning of the last sentence in Subsection A, substituted "Section 77-9-42 NMSA 1978" for "Section 47-9-38.1 NMSA 1953" near the beginning of Subsection D and added the material following "recognized breed association" near the middle of Subsection D.

**Owners must adopt mark and brand.** — This section requires that every person owning animals of the classes enumerated in the section, which are allowed to range at large, shall have and adopt a mark and brand for such animals. *Barnett v. Wedgewood*, 28 N.M. 312, 211 P. 601 (1922).

**A cattle brand used in Colorado may be used in this state**, if the New Mexico laws are complied with as to recording. 1914 Op. Att'y Gen. No. 14-1181.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 8.

3A C.J.S. Animals §§ 15 to 17, 22, 25.

### **77-9-4. Penalty for failure to brand or rebrand; certain sales prohibited.**

A. All livestock required to be branded pursuant to the provisions of Section 77-9-3 NMSA 1978 shall bear the identical and complete brand recorded in the name of the present owner with the board or, in the alternative, the livestock shall bear the identical and complete brand of a former owner as recorded with the board, in which case, the livestock shall be accompanied by a bill of sale from the former owner to the person claiming to be the present owner, which bill of sale meets the requirements of Section 77-9-22 NMSA 1978.

B. The bill of sale shall contain a written statement by the former owner granting permission to the present owner to use the recorded brand appearing on the livestock, listed in the bill of sale and filed with the board; otherwise the livestock shall be rebranded within thirty days from the date of purchase.

C. A person shall not sell, buy or receive any livestock in the state unless the livestock is branded or has other means of identification acceptable to the board except livestock directly imported from another state. Except as provided in Section 77-9-16 NMSA 1978, as recompiled [77-2-7.9 NMSA 1978], all livestock shall be branded with a New Mexico brand within thirty days of entry into the state.

D. A person who violates the provisions of either Section 77-9-3 NMSA 1978 or this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with Section 31-19-1 NMSA 1978 for each head.

**History:** 1953 Comp., § 47-9-3.1, enacted by Laws 1961, ch. 4, § 1; 1975, ch. 139, § 3; 1993, ch. 248, § 44; 1999, ch. 282, § 48.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Former Section 77-9-16 NMSA 1978 was recompiled as 77-2-7.9 NMSA 1978 by Laws 1999, ch. 282, § 18.

**The 1999 amendment**, effective July 1, 1999, added the last sentence in Subsection C; substituted "misdemeanor and upon conviction shall be sentenced in accordance with

Section 31-19-1 NMSA 1978 for each head" for "petty misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300) upon conviction for each offense" in Subsection D; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, deleted "New Mexico livestock" preceding "board" in three places; substituted "77-9-3 NMSA 1978" and "77-9-22 NMSA 1978" for "47-9-3 NMSA 1953" and "47-9-19.1 NMSA 1953" in Subsection A; substituted "owner to use" for "owner to sue" and inserted "and filed with the board" in Subsection B; and, in Subsection D, substituted "77-9-3 NMSA 1978" for "47-9-3 NMSA 1953", inserted "is guilty of a petty misdemeanor and upon conviction", and added "for each offense" at the end of the subsection.

**Penalty provided in this section is not penalty for identical act prohibited by Section 30-18-3 NMSA 1978**; this section applies to branding requirements generally while Section 30-18-3 NMSA 1978 applies specifically to the use of an unrecorded brand. *State v. Vickery*, 85 N.M. 389, 512 P.2d 962 (Ct. App.), cert. denied, 85 N.M. 380, 512 P.2d 953 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 23.

### **77-9-5. Brands of livestock; recording; evidence of ownership.**

No brands of livestock except those recorded pursuant to the provisions of The Livestock Code [Chapter 77, Articles 2 through 18 NMSA 1978] and are peeled shall be recognized in law as evidence of ownership of the livestock upon which the brand is used unless the owner has other means of identification, including freeze brands and freeze mark identification, that is recognized as evidence of ownership for horses, mules or asses.

**History:** Laws 1895, ch. 6, § 2; C.L. 1897, § 107; Code 1915, § 118; C.S. 1929, § 4-1404; 1941 Comp., § 49-904; 1953 Comp., § 47-9-4; Laws 1975, ch. 50, § 1; 1985, ch. 60, § 2; 1999, ch. 282, § 49.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, substituted "The Livestock Code" for "this article", deleted "and fully healed" following "are peeled", and made stylistic changes throughout the section.

**The 1985 amendment** added "including freeze brands and freeze mark identification, which shall be recognized as evidence of ownership for horses, mules or asses."

**Proof of recorded brand is sufficient to establish prima facie ownership** of all animals bearing such brand. *Gale & Farr v. Salas*, 11 N.M. 211, 66 P. 520 (1901);

Chavez v. Territory, 6 N.M. 455, 30 P. 903 (1892); Pryor v. Portsmouth Cattle Co., Ltd., 6 N.M. 44, 27 P. 327 (1891).

**It is only necessary to introduce certified copy** of the recorded brand in evidence, where evidence of ownership depends upon the brand on the animal. State v. Analla, 18 N.M. 294, 136 P. 600 (1913); Gale & Farr v. Salas, 11 N.M. 211, 66 P. 520 (1901).

**Proving ownership without recorded brand.** — In a prosecution for larceny of livestock, testimony as to certain brands on the cattle, without proof that the brands have been recorded, was admissible to establish the identity of the cattle. State v. Curry, 27 N.M. 205, 199 P. 367 (1921); State v. Crosby, 23 N.M. 461, 169 P. 303 (1917); Territory v. Harrington, 17 N.M. 62, 121 P. 613 (1912); Territory v. Valles, 15 N.M. 228, 103 P. 984 (1909); Territory v. Meredith, 14 N.M. 288, 91 P. 731 (1907); Gale & Farr v. Salas, 11 N.M. 211, 66 P. 520 (1901).

**Legal brand needed if sole proof.** — Where a person depends solely upon a brand found upon an animal to establish title thereto, it must appear that he has a legal brand, and that fact must be established in the legal way. Territory v. Smith, 12 N.M. 229, 78 P. 42 (1904).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 8 et seq.

3A C.J.S. Animals §§ 18 to 20.

## **77-9-6 to 77-9-20. Repealed and Recompiled.**

### **ANNOTATIONS**

**Compiler's notes.** — Laws 1999, ch. 282, § 104 repealed 77-9-6 NMSA 1978, as enacted by Laws 1975, ch. 50, § 2, relating to certified copies of brands, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 77-9-5 NMSA 1978.

Laws 1999, ch. 282, § 103 recompiled 77-9-7 NMSA 1978, relating to change in ownership of brands and fees for transfer, as 77-2-7.1 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 11 recompiled and amended 77-9-8 NMSA 1978, relating to registration of brands and marks of livestock, as 77-2-7.2 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 12 recompiled and amended 77-9-9 NMSA 1978, relating to brand books, as 77-2-7.3 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 13 recompiled and amended 77-9-10 NMSA 1978, relating to recording brands before use, recording fees, and conflicting brands, as 77-2-7.4 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 14 recompiled and amended 77-9-11 NMSA 1978, relating to disposition of fees for the recording of brands, as 77-2-7.5 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 104 repealed 77-9-12 NMSA 1978, as amended by Laws 1993, ch. 248, § 47, requiring that certified brands be recorded by county clerks, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 77-9-5 NMSA 1978.

Laws 1999, ch. 282, § 15 recompiled and amended 77-9-13 NMSA 1978, relating to brand book, as 77-2-7.6 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 16 recompiled and amended 77-9-14 NMSA 1978, relating to more than one brand being unlawful, exceptions and penalty, as 77-2-7.7 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 17 recompiled and amended 77-9-15 NMSA 1978, relating brands of minors, as 77-2-7.8 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 18 recompiled and amended 77-9-16 NMSA 1978, relating to filing of facsimile, designation of brands, holding brand renewal and fee, branding increase, offenses and penalty, as 77-2-7.9 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 104 repealed 77-9-17 NMSA 1978, as enacted by Laws 1912, ch. 55, § 3, relating to recording of improper brands, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

Laws 1999, ch. 282, § 103 recompiled 77-9-18 NMSA 1978, relating to brands, board may reject, as 77-2-7.10 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 103 recompiled 77-9-19 NMSA 1978, relating to brand, priority of right to, as 77-2-7.11 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 19 recompiled and amended 77-9-20 NMSA 1978, relating to rerecording of brands, notice, publication and fees, as 77-2-7.12 NMSA 1978, effective July 1, 1999.

## **77-9-21. Bills of sale; necessity and presumptions; definition of livestock.**

A. No person shall buy, receive, sell, dispose of or have in his possession any livestock in this state unless the person selling or disposing of such livestock gives and

the person buying or receiving such livestock takes a written bill of sale giving the number, kind, marks and brand of each animal sold which meets the requirements of Section 77-9-22 NMSA 1978.

B. The possession of livestock without having a written bill of sale meeting the requirements of Section 77-9-22 NMSA 1978 is prima facie evidence of illegal possession against any person charged with theft, unlawful possession, handling, driving or killing any livestock.

**History:** 1953 Comp., § 47-9-19, enacted by Laws 1971, ch. 196, § 1; 1993, ch. 248, § 55.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1971, ch. 196, § 1, repealed 47-9-19, 1953 Comp., relating to sales of animals, bills of sale and prima facie evidence where person charged with theft, and enacted the above section.

**Cross references.** — For larceny of animals, see 30-16-1 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "Section 77-9-22 NMSA 1978" for "Section 47-9-19.1 NMSA 1953" in Subsections A and B; deleted former Subsection C defining "livestock"; and made minor stylistic changes.

### **77-9-22. Bills of sale; requirements; evidence of larceny.**

A. A duly executed bill of sale is an instrument in writing by which the owner or his authorized agent transfers to the buyer the title to livestock described in the bill of sale and guarantees to defend the title against all lawful claims. It shall fully describe in detail the livestock, and such description shall include marks, brands and all other identification.

B. The bill of sale shall be executed the day of the transaction.

C. A purchase sheet properly executed by a licensed livestock auction market constitutes a valid bill of sale.

D. A registration certificate issued by a recognized pure-bred association, properly identifying the animal and properly acknowledged by the secretary of the association, may be used as proof of ownership.

E. An inspection certificate executed as a bill of sale and certified by an inspector may be used as proof of ownership.

F. The possession by any person of livestock having a brand not his recorded brand unless he has a bill of sale or authority in writing to possess or sell the livestock shall be

take [taken] as prima facie evidence that he committed larceny of the livestock except in instances where stray or injured animals are inadvertently impounded and shall be sufficient for his conviction of larceny unless the evidence shows his innocence.

**History:** 1953 Comp., § 47-9-19.1, enacted by Laws 1971, ch. 196, § 2; 1999, ch. 282, § 50.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For animals transferred without bill of sale as estrays, see 77-9-40 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, deleted the first two sentences of Subsection B, which read "The seller shall sign his name to and write in the bill of sale his social security or driver's license number and his post-office address in the presence of two witnesses who are legal residents of the county where the transfer of the described animals takes place. The witnesses shall sign their names and indicate their post-office addresses on the bill of sale"; substituted the language of Subsection C, which formerly read "In lieu of the signatures of two witnesses, the bill of sale may be acknowledged by a notary public or other officer authorized to take acknowledgments, or may be witnessed and certified by an inspector of the livestock board"; substituted "an inspector may be used" for "a duly authorized livestock inspector of the New Mexico livestock board may be used" in Subsection E; and added Subsection F.

### **77-9-23. Bill of sale of livestock; duty to exhibit; violation; penalty.**

A. A person who has purchased or received or has in his possession any livestock either for himself or another shall exhibit the bill of sale for the livestock at the reasonable request of an inspector or other peace officer. A person who fails to produce the bill of sale required in Section 77-9-21 NMSA 1978 or who is unable to exhibit other written evidence of ownership or legal possession is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. A person who has purchased or received or has in his possession any livestock either for himself or another and who cannot produce proof of ownership as required by Subsection A of this section shall have the livestock impounded. If sufficient proof of ownership has not been established to the satisfaction of the board within fifteen days of the impoundment, the impounded livestock will be handled and disposed of in the same manner as provided for the handling and disposal of estrays.

**History:** Laws 1884, ch. 47, § 13; C.L. 1884, § 66; C.L. 1897, § 77; Code 1915, § 44; C.S. 1929, § 4-318; 1941 Comp., § 49-921; 1953 Comp., § 47-9-20; Laws 1963, ch. 252, § 1; 1971, ch. 196, § 3; 1975, ch. 139, § 5; 1999, ch. 282, § 51.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, in the last sentence of Subsection A, updated a statutory reference, and added "and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" at the end; and made stylistic changes throughout the section.

### **77-9-24. [Failure to exhibit; knowledge, intent, purpose and motive to be presumed.]**

The provisions of the last two sections shall be liberally construed in favor of the people, and in order to convict of any offense made punishable in said sections it shall not be necessary for the prosecution to prove knowledge, intent, purpose or motive on the part of the accused, but such knowledge, intent, purpose and motive may be presumed when the wrongful act of the accused has been shown, and shall justify a conviction, unless the testimony in the case shall satisfactorily show the good faith and innocent purpose of the accused.

**History:** Laws 1884, ch. 47, § 14; C.L. 1884, § 67; C.L. 1897, § 78; Code 1915, § 45; C.S. 1929, § 4-319; 1941 Comp., § 49-922; 1953 Comp., § 47-9-21.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "last two sections," referring to Laws 1884, ch. 47, § 13, and Laws 1895, ch. 6, § 15, for the words "last three sections," referring to Laws 1884, ch. 47, §§ 11 to 13. Laws 1884, ch. 47, § 13, compiled as 77-9-23 NMSA 1978, is the only one of these sections presently compiled.

### **77-9-25. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-9-25 NMSA 1978, as enacted by Laws 1895, ch. 6, § 19, relating to sale by range delivery, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **77-9-26. Sale by person not brand owner; bill of sale.**

A person in this state who sells, transfers or delivers to another person in this state any livestock that is not branded or marked with the brand or mark of the person selling, transferring or delivering the livestock shall deliver to the person buying or receiving the

livestock a bill of sale showing from whom the livestock was received as provided in Section 77-9-22 NMSA 1978.

**History:** Laws 1921, ch. 159, § 1; C.S. 1929, § 4-321; 1941 Comp., § 49-924; 1953 Comp., § 47-9-23; Laws 1993, ch. 248, § 57; 1999, ch. 282, § 52.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted the language beginning "a bill of sale showing from whom" for "a bill of sale duly acknowledged. The bill of sale shall contain a full description of the animal sold, transferred or delivered, giving the brands and marks on the animal and showing from whom the animal was received together with the post office address of the person, firm or corporation from whom the animal was received or obtained", and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "neat" preceding "cattle" in the first sentence; and made minor stylistic changes.

### **77-9-27. Violation; penalty.**

A person who violates the provisions of Section 77-9-26 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 head in offense.

**History:** Laws 1921, ch. 159, § 2; C.S. 1929, § 4-322; 1941 Comp., § 49-925; 1953 Comp., § 47-9-24; Laws 1993, ch. 248, § 58; 1999, ch. 282, § 53.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each head in offense" for "fined in a sum not less than twenty-five dollars (\$25) and not more than five hundred dollars (\$500) or by imprisonment not less than thirty days nor more than six months or by both such fine and imprisonment in the discretion of the court", and made a stylistic change at the beginning of the section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "Section 77-9-26 NMSA 1978 is" for "the preceding Section shall be deemed"; and made minor stylistic changes.

### **77-9-28. Importation of livestock; permit required; penalty.**

A. A person who brings livestock into this state by any manner or causing them to be brought in shall, before doing so, obtain a permit from the board or its authorized representative. The permit shall contain a list of all the requirements of the board to be complied with before the livestock can be brought into the state and shall also stipulate

any requirements of further tests of the livestock for disease after the livestock are within the state if required by the board. The permit shall accompany the livestock at the time they enter the state, and the requirements set forth in the permit as to tests for diseases or otherwise shall be complied with in every particular before the livestock are permitted to enter. The owner or his agent shall make application to the proper inspector to inspect the imported livestock. The imported livestock shall not be commingled or released to pasture without inspection, except as authorized by the inspector.

B. No prior permits are required for livestock transported directly to international import receiving facilities that are inspected for health of livestock contained in the facilities by the United States department of agriculture or other agency of the United States. Livestock entering at these facilities from a foreign country shall be inspected by an inspector.

C. A person who violates the provisions of this section 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 head in offense.

**History:** 1941 Comp., § 49-955, enacted by Laws 1943, ch. 11, § 1; 1951, ch. 43, § 1; 1953 Comp., § 47-9-25; Laws 1963, ch. 252, § 2; 1993, ch. 248, § 59; 1999, ch. 282, § 54.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, in Subsection A, deleted "in writing or by wire" preceding "from the board" in the first sentence, deleted "as set forth in this section" preceding "after the livestock" in the second sentence, deleted "contagious" preceding "diseases" in the third sentence, and added the last two sentences; in Subsection B, inserted "prior" following "No" and substituted "international import receiving facilities that" for "sales rings or yards which" in the first sentence, and added the last sentence; in Subsection C, substituted the language beginning "upon conviction shall be punished" for "shall be punished by a fine of not less than fifteen dollars (\$15.00) nor more than one hundred dollars (\$100)" at the end of the section; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, inserted "buffalo" and substituted "swine" for "hogs" and "board" for "cattle sanitary board of New Mexico" in the first sentence of Subsection A; substituted "the livestock for disease as set forth in this section" for "breeding cattle only for tuberculosis or Bang's disease or both" in the second sentence of Subsection A; deleted "cattle sanitary" preceding "board" at the end of the second sentence in Subsection A; and made a minor stylistic change.

**Permit does not preclude inspection of imported animals.** — A permit to import animals under this section does not preclude the cattle sanitary board (New Mexico livestock board) or sheep sanitary board (New Mexico livestock board) from performing

such inspection duties required of them under 77-9-41 NMSA 1978 as they deem necessary in the public interest. 1953-54 Op. Att'y Gen. No. 53-5716.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

3A C.J.S. Animals §§ 53, 74.

### **77-9-29. Inspection rules.**

In the exercise of the powers and performance of the duties conferred and prescribed by Sections 77-9-30 through 77-9-36 NMSA 1978 [repealed], the board shall make all necessary rules respecting the inspection of livestock intended for shipment or to be driven from a district or beyond the limits of this state and also respecting the inspection of hides and slaughterhouses in this state.

**History:** Laws 1891, ch. 34, § 2; C.L. 1897, § 208; Code 1915, § 143; C.S. 1929, § 4-1429; 1941 Comp., § 49-926; 1953 Comp., § 47-9-26; Laws 1993, ch. 248, § 60; 1999, ch. 282, § 55.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Section 77-9-36 NMSA 1978, referred to in this section, was repealed by Laws 1999, ch. 282, § 104.

**Cross references.** — For inspection of slaughterhouses, see 77-9-33 NMSA 1978.

For inspection of hides, see 77-9-54 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, deleted "and regulations" following "rules" in the section heading and within the section text, inserted "from a district or", deleted "and for the government of all employees of the board" at the end of the section, and made a minor stylistic change.

**The 1993 amendment,** effective June 18, 1993, added the present catchline; substituted "Sections 77-9-30 through 77-9-36 NMSA 1978, the board" for "Sections 144 to 150, the said sanitary board"; substituted "employees of the board" for "employees of said sanitary board"; and made a minor stylistic change.

### **77-9-30. Exported livestock; inspection of brands and ear marks; record.**

The board shall cause the brands and ear marks upon livestock shipped or driven from a district or out of this state to be inspected and a true and correct record of the

result of such inspections to be kept in the office of the director for three years. The record shall set forth the date of the inspection; the place where and the person by whom made; the name and current address of the owner, shipper or claimant of the livestock inspected or the names and current addresses of all persons in charge of the livestock at the time of the inspection; the destination of the livestock; a list of all brands and ear marks upon the livestock inspected; and the number and classification of the livestock.

**History:** Laws 1891, ch. 34, § 3; C.L. 1897, § 209; Code 1915, § 144; C.S. 1929, § 4-1430; 1941 Comp., § 49-927; 1953 Comp., § 47-9-27; Laws 1993, ch. 248, § 61; 1999, ch. 282, § 56.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, inserted "from a district or" and "for three years" in the first sentence; substituted "current address" and "current addresses" for "post office addresses" in the second sentence; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; in the first sentence, deleted "sanitary" preceding "board" and substituted "director of the board" for "secretary of said sanitary board" at the end; and made minor stylistic changes.

### **77-9-31. Export livestock to be inspected; penalties.**

A. A person shipping or driving or receiving for shipment or driving any livestock from a district or out of this state shall hold the livestock for inspection as provided by law, and it is unlawful for any person to ship, drive or in any manner remove beyond the boundaries of the district or this state any livestock until they have been inspected except as provided in Section 77-9-42 NMSA 1978.

B. A person who knowingly ships, drives or receives for shipment or driving livestock from one district to another without an inspection is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. A person who knowingly ships or drives or receives for shipment or driving livestock out of state without an inspection is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1891, ch. 34, § 4; C.L. 1897, § 210; Code 1915, § 145; C.S. 1929, § 4-1431; 1941 Comp., § 49-928; 1953 Comp., § 47-9-28; Laws 1993, ch. 248, § 62; 1999, ch. 282, § 57.

### ANNOTATIONS

**Cross references.** — For larceny of livestock, see 30-16-1 NMSA 1978.

For notice to inspector of desire to transport, see 77-9-43 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, substituted "livestock" for "cattle" in the section heading; designated the formerly undesignated paragraph as Subsection A, which paragraph formerly read: "It is the duty of every person shipping or driving any cattle out of this state to hold the cattle for inspection as provided by law, and it is unlawful for any person to ship, drive or in any manner remove beyond the boundaries of this state any herd or band of cattle until they have been inspected", and added Subsections B and C.

**The 1993 amendment**, effective June 18, 1993, added the current catchline and made minor stylistic changes.

### **77-9-32. Inspection of livestock for export; application; place; payment for delay.**

A person or his agent having in his charge livestock destined for transportation or to be driven beyond the limits of the district or out of this state shall make application to the proper inspector to inspect the livestock, stating in the application the time the livestock will be ready for inspection. An inspector shall inspect the livestock at a location to be designated by the board, make the record and give the certificate required by law to the owner of the livestock; provided that in the case of livestock transported out of this state, the place of inspection shall be at some stockyards or other convenient place near the proposed point of shipment of the livestock from the state. If the owner or person in charge of the livestock causes any unreasonable delay or loss of time to an inspector, the owner or person in charge of the livestock shall pay the expenses and salary of the inspector during the delay or loss of time.

**History:** Laws 1891, ch. 34, § 6; C.L. 1897, § 212; Code 1915, § 146; C.S. 1929, § 4-1432; 1941 Comp., § 49-929; 1953 Comp., § 47-9-29; Laws 1969, ch. 174, § 1; 1999, ch. 282, § 58.

### **ANNOTATIONS**

**Cross references.** — For inspection fees, see 77-9-38 NMSA 1978.

For certificate necessary to transport cattle or carcasses outside of state, see 77-9-41 NMSA 1978.

For notice to inspector of desire to transport, see 77-9-43 NMSA 1978.

For when certificate should be refused, see 77-9-45 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, inserted "or his agent" and "the district or out of" in the first sentence, and made stylistic changes throughout the section.

**This section applies only to inspection of brands and earmarks** of cattle destined for transportation by rail or driven beyond the limits of this state. 1953-54 Op. Att'y Gen. No. 53-5842.

**Board may charge owner or shipper for inspector's salary.** — The cattle sanitary board (New Mexico livestock board), or its duly authorized agent, has the power to assess expenses and salary of its inspector against any owner or person in charge of cattle being shipped or driven without this state who shall cause any unreasonable delay or loss of time to such inspector in the performance of his duty as brand and earmark inspector of such cattle. 1953-54 Op. Att'y Gen. No. 53-S5842.

### **77-9-33. Inspection of exported livestock; report; inspection of slaughterhouses; penalty.**

Every inspector shall be an inspector of brands and ear marks and also an inspector of hides and slaughterhouses, and it is the duty of the inspectors to inspect the brands and ear marks of all livestock transported or driven from a district or out of this state and to make a sworn report to the director of the result of such inspection at least once every thirty days and more often if, in the opinion of the board, it is necessary. Every slaughterhouse in this state shall be carefully inspected by the inspectors, and all hides found in slaughterhouses shall be carefully compared with the records of the slaughterhouses and a report in writing setting forth the number of livestock killed at the slaughterhouse since the last inspection, the names of the persons for whom each of the livestock were slaughtered, the brands and marks upon each hide and any information that may be obtained touching the violation by the owner of any slaughterhouse, or any other person, of any of the provisions of Sections 77-17-9 and 77-17-10 NMSA 1978. For the purpose of making an inspection, an inspector has the right to enter in the day or night any slaughterhouse or other place where livestock are killed in this state and to carefully examine the premises and all books and records required by law to be kept on the premises and to compare the hides found with the records. A person who hinders or obstructs or attempts to hinder or obstruct an inspector in the performance of any of the duties required of him by law is guilty of a misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

**History:** Laws 1891, ch. 34, § 7; C.L. 1897, § 213; Laws 1909, ch. 75, § 4; Code 1915, § 147; C.S. 1929, § 4-1433; 1941 Comp., § 49-930; 1953 Comp., § 47-9-30; Laws 1993, ch. 248, § 63; 1999, ch. 282, § 59; 2001, ch. 8, § 4; 2001, ch. 341, § 4.

### **ANNOTATIONS**

**Cross references.** — For inspection of hides before shipment, see 77-9-54 NMSA 1978.

For inspection of records, hides and ears kept by slaughterhouses, see 77-17-10 NMSA 1978.

For inspection of hides and ears of slaughtered cattle and sheep, see 77-17-12 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "and 77-17-10 NMSA 1978" for "through 77-17-11 NMSA 1978"; and deleted former Subsection B, concerning arrest by livestock inspectors and authority to carry arms.

Laws 2001, ch. 8, § 4 and Laws 2001, ch. 341, § 4, both effective June 15, 2001, enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 341, § 4. See 12-1-8 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, inserted "penalty" in the section heading; deleted "employed by the board under the provisions of Section 77-2-7 NMSA 1978" following "Every inspector", and inserted "from a district or" in the first sentence; substituted "for whom each of the livestock were slaughtered" for "from whom each of the cattle was bought" in the second sentence; substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense" for "fined in any sum not exceeding one hundred dollars (\$100), at the discretion of the court trying the case" in the last sentence; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; inserted the subsection designations "A" and "B"; deleted "sanitary" preceding "board" throughout the section; substituted "Section 77-2-7 NMSA 1978" for "Section 77" in the first sentence of Subsection A; substituted "Sections 77-17-9 through 77-17-11 NMSA 1978" for "Sections 544 to 548" at the end of the second sentence of Subsection A; deleted "cattle sanitary" preceding "board" in the first sentence and substituted "livestock" for "cattle, horses, mules or asses" in the first sentence of Subsection B; deleted "provided, that person so arrested shall be turned over to the local officers as soon as possible and [such] inspectors shall not receive any fees or mileage therefor" at the end of Subsection B; and made minor stylistic changes.

## **77-9-34. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 248, § 80 repealed 77-9-34 NMSA 1978, as enacted by Laws 1891, ch. 34, § 8, relating to notice of export cattle inspection to the owner of a brand, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

## **77-9-35. Offense by inspectors; penalty.**

Any inspector employed by the board who knowingly makes any false certificate or who knowingly swears falsely as to the truth of any report made by him to the executive director of the board or who accepts any bribe or compensation for the performance or failure to perform any of the duties prescribed by law, except such compensation as may be paid him by the board, shall upon conviction thereof be fined in any sum not exceeding one thousand dollars (\$1,000) or imprisoned in the state penitentiary not exceeding five years at the discretion of the court.

**History:** Laws 1891, ch. 34, § 10; C.L. 1897, § 216; Code 1915, § 149; C.S. 1929, § 4-1435; 1941 Comp., § 49-932; 1953 Comp., § 47-9-32; Laws 1993, ch. 248, § 64.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "sanitary" preceding "board" in three places; substituted "executive director" for "secretary"; and made minor stylistic changes.

### **77-9-36, 77-9-37. Repealed.**

### ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-9-36 and 77-9-37 NMSA 1978, as enacted by Laws 1891, ch. 34, § 13 and Laws 1899, ch. 53, § 1, respectively, relating to exportation of livestock, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **77-9-38. Inspection fees; lien; record.**

There shall be a fee for the inspection of livestock to be fixed by the board not to exceed the amount prescribed by law for each inspection request, and the fee shall be a lien upon the livestock of the owner until paid. Each inspector shall keep a complete record of all livestock inspected by him, listing all brands and marks and the names of the shippers, and a copy of the record shall be preserved by the board.

**History:** Laws 1899, ch. 53, § 2; Code 1915, § 152; C.S. 1929, § 4-1438; Laws 1933, ch. 53, § 14; 1941 Comp., § 49-935; Laws 1951, ch. 31, § 1; 1953 Comp., § 47-9-35; Laws 1959, ch. 249, § 3; 1973, ch. 234, § 1; 1981, ch. 357, § 9; 1999, ch. 282, § 60.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "livestock of the owner" for "animals inspected" in the first sentence, and made stylistic changes throughout the section.

**The 1981 amendment** substituted "the amount prescribed by law" for "twenty cents (\$.20)" for the period ending January 1, 1975 and not to exceed twenty-five cents (\$.25)

per head, thereafter with a minimum charge not to exceed one dollar (\$1.00)" and "the" for "such" following "and" in the first sentence.

**Cattle sanitary board (New Mexico livestock board) may charge regular inspection fee** on both intrastate and interstate shipments. 1947-48 Op. Att'y Gen. No. 47-4979.

## **77-9-39. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-9-39 NMSA 1978, as enacted by , relating to penalties for violation of inspection and fee requirements, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 77-9-31 NMSA 1978.

## **77-9-40. Exporting of livestock without brand of shipper or bill of sale; inspection; definition of estrays.**

A. For the purposes of this section, an estray is any livestock being driven or shipped from a district or from this state that is not properly identified as required by The Livestock Code [Chapter 77, Articles 2 through 18 NMSA 1978]; or not accompanied by a duly executed authority in writing by the owner of the recorded brand on the livestock authorizing the driving and handling of the livestock by the person in possession of the livestock.

B. If an inspector finds in or with the livestock he is inspecting an estray, he may seize and sequester the estray and hold and dispose of it in the manner provided by law for the disposition of unclaimed livestock by inspectors.

**History:** Laws 1895, ch. 6, § 16; C.L. 1897, § 120; Code 1915, § 130; C.S. 1929, § 4-1416; 1941 Comp., § 49-937; 1953 Comp., § 47-9-37; Laws 1993, ch. 248, § 66; 1999, ch. 282, § 61.

### **ANNOTATIONS**

**Cross references.** — For place of inspection, see 77-9-32 NMSA 1978.

For seizure of livestock or carcasses intended for transport when without bill of sale or proof of ownership, see 77-9-45 NMSA 1978.

For disposition of unclaimed animals, see 77-13-4 and 77-13-5 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, added the subsection designations; in Subsection A, substituted "being driven or shipped from a district or from this state that is not properly identified as required by The Livestock Code" for "being driven from this

state or of any county of this state for shipment, sale or slaughter not branded with the duly recorded brand of the person, company or corporation driving the animal or causing it to be driven; or not accompanied by a duly executed and acknowledged bill of sale or transfer in writing from the owner of the recorded brand on the animal", and substituted "in possession of the livestock" for "found driving the same"; in Subsection B, deleted the last two sentences, which read "The person having charge of and found driving the estray shall, in addition to any criminal prosecution to which the driving may make him liable, forfeit as damages to the owner of the brand on the estray a sum set by the court for each estray found in his possession, to be recovered by the owner in an action of debt before any magistrate in the county in which the animal is found or the county in which the owner resides. All reports of inspection made by any duly authorized inspector and verified by his oath or a duly certified copy of the reports by the director of the board and under his seal shall be taken as prima facie proof of the matters in any of the courts of this state; provided, that cattle being driven from this state for sale or shipment shall be inspected, if driven, at the state line and if shipped, at the place of shipment"; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, substituted "any cattle" for "any animal of the neat cattle kind" in the first sentence; substituted "a sum set by the court" for "the sum of twenty-five dollars" and "magistrate" for "justice of the peace" in the third sentence; substituted "director of the board" for "secretary of the cattle sanitary board" in the fourth sentence; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals §§ 123 to 136.

### **77-9-41. Transportation of horses, mules, asses, cattle, sheep or goats or carcasses thereof; inspection certificate.**

It shall be unlawful for any person, firm or corporation to move, transport or cause to be transported from the state of New Mexico to any point beyond the limits thereof or within the state except as provided under Section 77-9-42 NMSA 1978, any horses, mules, asses, cattle, sheep or goats, or the carcasses thereof, by driving or in any motor or other vehicle or conveyance, unless such animal, animals or carcasses shall first have been inspected by an inspector of the New Mexico livestock board and unless, upon satisfactory showing of the ownership of said animals or carcasses, said inspector shall have issued inspection certificates in the form to be prescribed by the New Mexico livestock board and unless such certificate shall at all times accompany the animals or carcasses so being driven or transported in such motor or other vehicle; provided that no inspection shall be required where the transportation or movement from one point to another within the state is entirely upon lands exclusively within the control of the party moving or transporting or procuring the transporting of such animals or carcasses or is done under the provisions of Section 77-9-42 NMSA 1978 or when such transportation is authorized by the board to a location within the state.

**History:** Laws 1929, ch. 87, § 1; C.S. 1929, § 4-2101; 1941 Comp., § 49-939; Laws 1953, ch. 88, § 1; 1953 Comp., § 47-9-38; Laws 1969, ch. 174, § 3.

## ANNOTATIONS

**Cross references.** — For inspection certificate from New Mexico livestock board, see 77-9-32 NMSA 1978.

**Inspections to include animals shipped into state.** — Under this section any movement of neat cattle, sheep or goats or the carcasses thereof accomplished within this state is subject to such inspections as are required by law; and when neat cattle, sheep or goats are shipped from points without the state to points within the state they become New Mexico cattle upon entering the boundaries of this state, and the sheep sanitary board (New Mexico livestock board) or the cattle sanitary board (New Mexico livestock board) are acting within the letter and the spirit of the law in inspecting these animals at such points and places as are convenient and where such board reasonably finds it necessary to protect the public interest. 1953-54 Op. Att'y Gen. No. 53-5716.

**Hauling permit deemed insufficient.** — A rancher must have his cattle inspected before he ships them. It makes no difference whether the shipment and sale occurs entirely within the state or not. A proposed livestock hauling permit which would require the rancher to swear that he was in legal possession of the cattle being transported and to further attest that such cattle were free from contagious disease, and which would act as board authorization for the rancher to ship the cattle to the sales ring, would not enable board to sufficiently fulfill its duties under the law. 1966 Op. Att'y Gen. No. 66-127.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 74.

### **77-9-42. Transportation permits for horses, mules and asses; brand and health certificate good for length of time of ownership.**

A. A person who owns horses, mules or asses and desires to transport them within the state for a purpose other than their sale or trade may, upon request to an inspector, be issued an owner's transportation permit in lieu of the required brand certificate for each horse, mule or ass to be transported.

B. The owner's transportation permit issued in lieu of a brand certificate is valid as long as the horse, mule or ass described in the certificate remains under the ownership of the person to whom the permit was issued.

C. The owner's transportation permit or the brand certificate shall accompany the animal for which it was issued at all times while the animal is in transit, and each shall identify the horse, mule or ass by brand, color, markings, sex, age and, where applicable, by registration number, tattoo or other mark as provided by rules of the board.

D. There shall be a fee in an amount set by the board for each owner's transportation permit.

**History:** 1953 Comp., § 47-9-38.1, enacted by Laws 1969, ch. 174, § 4; 1973, ch. 234, § 2; 1981, ch. 357, § 10; 1993, ch. 248, § 67; 1999, ch. 282, § 62.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, deleted "and health inspection" following "brand" throughout the section; substituted "rules" for "regulations" in Subsection C; deleted "which shall be in addition to any inspection fee for the issuance of a brand and health inspection certificate" at the end of Subsection D; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, deleted "New Mexico livestock" preceding "board" in three places; substituted "tattoo" for "tatoo" in Subsection C; deleted "not to exceed five dollars (\$5.00)" following "board" in Subsection D; and made minor stylistic changes.

**The 1981 amendment** inserted "inspection" in Subsections A and B, deleted former Subsection C, which dealt with transference of a transportation permit, redesignated former Subsections D and E as present Subsections C and D, substituted "the" for "such" following "while" and inserted "New Mexico livestock" in Subsection C and inserted "New Mexico livestock" in Subsection D.

### **77-9-43. Notice of transport; inspection date and place.**

Before a person transports any livestock or carcasses from a district or out of state, the person shall notify the nearest inspector that it is desired that the livestock or carcasses be inspected, fixing the date, place and time of the inspection. The person requesting the inspection shall give a reasonable time prior to the proposed shipment date.

**History:** Laws 1929, ch. 87, § 2; C.S. 1929, § 4-2102; 1941 Comp., § 49-940; 1953 Comp., § 47-9-39; Laws 1999, ch. 282, § 63.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, rewrote the section, which formerly read: "That, before any person or persons, firm or corporation shall transport said livestock or carcasses as herein set out, such person or persons, firm or corporation shall notify the nearest inspector that it is desired that said livestock or carcasses be inspected, fixing the date, place and time thereof and giving reasonable time for said inspector so notified to reach said place on the date designated."

**Hauling permit deemed insufficient.** — A rancher must have his cattle inspected before he ships them. It makes no difference whether the shipment and sale occurs entirely within the state or not. A proposed livestock hauling permit which would require the rancher to swear that he was in legal possession of the cattle being transported and

to further attest that such cattle were free from contagious disease, and which would act as board authorization for the rancher to ship the cattle to the sales ring, would not enable board to sufficiently fulfill its duties under the law. 1966 Op. Att'y Gen. No. 66-127.

#### **77-9-44. Hides and pelts; exhibiting, tagging and marking.**

The hides or pelts from all carcasses shall be exhibited to the inspector at the time of the inspection required under Sections 77-9-41 and 77-9-43 NMSA 1978, and the inspector, in addition to furnishing the certificate provided for in Section 77-9-41 NMSA 1978, shall tag or mark the carcasses and hides or pelts in a manner to be designated by the board as evidence that the hides or pelts have been inspected.

**History:** Laws 1929, ch. 87, § 3; C.S. 1929, § 4-2103; 1941 Comp., § 49-941; 1953 Comp., § 47-9-40; Laws 1993, ch. 248, § 68.

#### **ANNOTATIONS**

**Cross references.** — For inspection of hides, see 77-9-54 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; inserted "required under Sections 77-9-41 and 77-9-43 NMSA 1978" and "in Section 77-9-41 NMSA 1978"; deleted "Sheep Sanitary Board or the Cattle Sanitary" preceding "board"; and made minor stylistic changes.

#### **77-9-45. Ownership; possession; transportation; seizure; disposition of livestock; refusal of certificate.**

If any duly authorized inspector should find any livestock or carcasses in the possession of any person, firm or corporation for use, sale or transporting by any means, and said person, firm or corporation in charge of said livestock or carcasses is not in possession of a bill of sale, duly acknowledged, or cannot furnish other satisfactory proof of lawful ownership or said inspector has good reason to believe that said livestock or carcasses, are stolen, said inspector shall refuse to issue a certificate authorizing the transportation of said livestock or carcasses, and shall seize and take possession of same.

**History:** Laws 1929, ch. 87, § 4; C.S. 1929, § 4-2104; 1941 Comp., § 49-942; 1953 Comp., § 47-9-41; Laws 1965, ch. 8, § 1.

#### **ANNOTATIONS**

**Cross references.** — For seizure of cattle being driven without bill of sale or proof of ownership, see 77-9-40 NMSA 1978.

**Conditions warranting seizure of livestock not declared criminal.** — Under certain conditions the inspector is directed by the statute to refuse to issue an inspection certificate and directed to seize and possess livestock or carcasses. The statute does not, however, declare the existence of those conditions to be criminal. *State v. Ticknor*, 81 N.M. 118, 464 P.2d 408 (Ct. App. 1970).

**Possession of carcass for use without bill of sale is not prohibited** by the statute. *State v. Ticknor*, 81 N.M. 118, 464 P.2d 408 (Ct. App. 1970).

### **77-9-46. [Officers may stop vehicles; failure to have certificate; arrest and seizure.]**

Any duly authorized inspector or peace officer of any county in said state shall be authorized to stop any motor or other vehicle transporting livestock or the carcasses thereof in their respective counties, and demand from the person or persons operating said motor or other vehicle to show the certificate provided for and issued under the terms of Section 1 [77-9-41 NMSA 1978] of this act; and should any person or persons transporting said livestock or the carcasses thereof be unable to exhibit to such inspector or peace officer said certificate, said inspector or officer is authorized and empowered to arrest, without warrant, any person or persons operating said motor or other vehicle and take possession of same and the livestock or carcasses therein, and shall retain such possession until the person or persons operating such motor or other vehicle can produce satisfactory evidence that he or they, or the person or persons, firm or corporation for whom the same is being transported, is the lawful owner thereof, or until such livestock or carcasses are disposed of as hereinafter provided.

**History:** Laws 1929, ch. 87, § 5; C.S. 1929, § 4-2105; 1941 Comp., § 49-943; 1953 Comp., § 47-9-42.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For search of vehicles suspected to be transporting stolen livestock, see 77-9-51 NMSA 1978.

**Importation permit not preclusive to inspection by board.** — A permit to import animals permits the importation into the state and the designation by the importer of the place within the state to which the cattle or animals are to be shipped. This does not preclude the New Mexico cattle sanitary board (New Mexico livestock board) or the sheep sanitary board (New Mexico livestock board), or authorized representatives, from performing such inspection duties as they deem necessary in the public interest. 1953-54 Op. Att'y Gen. No. 53-5716.

**77-9-47, 77-9-48. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-9-47 and 77-9-48 NMSA 1978, as enacted by Laws 1929, ch. 87, §§ 6 and 7, relating to sale of carcasses and disposition of proceeds, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **77-9-49. Penalty.**

Any person, firm or corporation violating any provision of Sections 77-9-41 through 77-9-50 NMSA 1978 is guilty of a misdemeanor and shall be punished as prescribed by law.

**History:** Laws 1929, ch. 87, § 8; C.S. 1929, § 4-2108; 1941 Comp., § 49-946; 1953 Comp., § 47-9-45; Laws 1963, ch. 252, § 3; 1993, ch. 248, § 70.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, substituted "Sections 77-9-41 through 77-9-50 NMSA 1978" for "Sections 47-9-38 through 47-9-46 New Mexico Statutes Annotated, 1953 Compilation" and substituted "as prescribed by law" for "by a fine of not less than fifteen dollars (\$15.00) nor more than one hundred dollars (\$100) or by imprisonment for not less than thirty days nor more than ninety days or both".

### **77-9-50. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1993, ch. 248, § 80 repealed 77-9-50 NMSA 1978, as enacted by Laws 1929, ch. 87, § 9, relating to the definition of "carcasses", effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

### **77-9-51. [Suspected transportation of stolen livestock; search of vehicles; requiring proof of ownership; arrest; seizure.]**

Any duly authorized inspector or peace officer of any county in this state is hereby authorized to stop and search, without warrant, any motor or other vehicle which they may have reason to believe is transporting stolen livestock or the carcasses thereof, in their respective counties, and if any be found, demand from the person or persons operating said motor or other vehicle, that they produce proof of ownership, and should any person or persons transporting said livestock or the carcasses thereof be unable to produce proof of ownership to such inspector or peace officer, said inspector or officer is hereby authorized and empowered to arrest, without warrant, any person or persons operating said motor or other vehicle and take possession of the same and the livestock or carcasses therein, and shall retain such possession until the person or persons

operating such motor or other vehicle can produce satisfactory evidence that he or they, or the person or persons, firm or corporation for whom the same is being transported, is the lawful owner of such livestock or the carcasses, or until such livestock or carcasses are disposed of as hereinafter provided.

**History:** Laws 1933, ch. 43, § 1; 1941 Comp., § 49-948; 1953 Comp., § 47-9-47.

#### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For stopping vehicles to demand inspection certificate, see 77-9-46 NMSA 1978.

#### **77-9-52, 77-9-53. Repealed.**

#### ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-9-52 NMSA 1978, as enacted by Laws 1933, ch. 43, § 2, relating to sale of seized stolen carcasses, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

Laws 1993, ch. 248, § 80 repealed 77-9-53 NMSA 1978, as enacted by Laws 1933, ch. 43, § 3, relating to the disposition of seized animals or carcasses, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

#### **77-9-54. Transportation of hides.**

A. It is unlawful for any person to transport or cause to be transported from a district or out of this state any hides that have not been inspected by an inspector and tagged or marked as prescribed by rule of the board. The board may provide by rule for collection of an inspection fee not to exceed the amount prescribed by law, and the fee is a lien upon the hides inspected until paid.

B. Each inspector shall keep a complete record of all inspections made by him and immediately forward to the director on blanks furnished him for that purpose, a complete report of each inspection, giving the names of the purchaser and shipper of the hides and all the brands on the hides. The report shall be preserved by the director as records of his office.

**History:** Laws 1901, ch. 45, § 3; Code 1915, § 155; Laws 1929, ch. 104, § 1; C.S. 1929, § 4-1441; Laws 1933, ch. 53, § 17; 1941 Comp., § 49-951; 1953 Comp., § 47-9-

50; Laws 1963, ch. 252, § 4; 1973, ch. 234, § 3; 1977, ch. 142, § 1; 1981, ch. 357, § 11; 1999, ch. 282, § 64.

## ANNOTATIONS

**Cross references.** — For tagging and marking carcasses, hides, and pelts upon inspection, see 77-9-44 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, in Subsection A, substituted "from a district or out of this state" for "within or beyond the limits of this state" and substituted "rule" for "regulation" twice, and made stylistic changes throughout the section.

**The 1981 amendment** substituted "the amount prescribed by law" for "twenty cents (\$.20) for each hide inspected, with a minimum charge not to exceed one dollar (\$1.00) for each inspection request" and "the" for "such" following "and" in the second sentence in Subsection A.

**The 1977 amendment** increased the inspection fee in the second sentence of Subsection A from fifteen cents to twenty cents and substituted "director" for "secretary" in two places in Subsection B.

**This section does not violate U.S. Const.**, art. I, § 10, insofar as it applies to the shipment of hides within the United States. Territory ex rel. E.J. McLean & Co. v. Denver & Rio Grande R.R. Co., 12 N.M. 425, 78 P. 74, 79 P. 295 (1904), aff'd, 203 U.S. 38, 27 S. Ct. 1, 51 L. Ed. 78 (1906).

**This section is not invalid** on ground that fees provided are beyond requirements of inspection. Territory ex rel. E.J. McLean & Co. v. Denver & Rio Grande R.R. Co., 12 N.M. 425, 78 P. 74, 79 P. 295 (1904), aff'd, 203 U.S. 38, 27 S. Ct. 1, 51 L. Ed. 78 (1906).

**This section does not apply to pelts and skins.** Territory ex rel. E.J. McLean & Co. v. Denver & Rio Grande R.R. Co., 12 N.M. 425, 78 P. 74, 79 P. 295 (1904), aff'd, 203 U.S. 38, 27 S. Ct. 1, 51 L. Ed. 78 (1906).

**Hides originate in district where offered for shipment.** 1909-12 Op. Att'y Gen. No. 188.

**Inspectors not authorized to make arrests.** — Inspectors of the sanitary board (New Mexico livestock board) are authorized to make examination of any hides which they may find in the possession of parties transporting the same by wagon out of the state, but there is no authority for the arrest or punishment of such persons, even though it be found that such hides do not bear inspection tags. 1919-20 Op. Att'y Gen. No. 19-2267.

**77-9-55. [Inspection of hides; butchers; offenses; penalty.]**

Any person, firm or corporation, common carrier, railroad company or agent thereof, violating any of the provisions of Sections 77-9-54 and 25-4-1 NMSA 1978, or refusing to permit the inspection of any hides as therein provided, shall upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding one thousand dollars [(\$1,000)] for each and every such violation.

**History:** Laws 1901, ch. 45, § 4; Code 1915, § 156; C.S. 1929, § 4-1442; 1941 Comp., § 49-952; 1953 Comp., § 47-9-51.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For penalty for interfering with inspector, see 77-9-39 NMSA 1978.

For transportation of hides, see 77-9-54 NMSA 1978.

### **77-9-56. Hide purchases; bill of sale; contents; penalty.**

A person in this state who purchases a hide from livestock is required to secure from the person from whom the hide is purchased, at the time of purchase, a bill of sale showing the brands and the marks, if any, on the hide. A person who violates the provisions of this section 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.

**History:** Laws 1921, ch. 26, § 1; C.S. 1929, § 4-1443; 1941 Comp., § 49-953; 1953 Comp., § 47-9-52; Laws 1999, ch. 282, § 65.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, deleted "witnessed by two witnesses" preceding "showing the brands" in the first sentence; substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense" for "fined in a sum not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500.00) dollars or be imprisoned not less than thirty (30) days nor more than six (6) months or both such fine and imprisonment in the discretion of the court" in the last sentence; and made stylistic changes throughout the section.

### **77-9-57. Magistrate jurisdiction.**

Magistrates are given jurisdiction over all persons, firms or corporations charged with a violation of The Livestock Code [Chapter 77, Articles 2 to 18 NMSA 1978].

**History:** Laws 1921, ch. 26, § 2; C.S. 1929, § 4-1444; 1941 Comp., § 49-954; 1953 Comp., § 47-9-53; Laws 1993, ch. 248, § 71.

#### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the section heading ; substituted "Magistrates" for "Justices of the Peace"; substituted "The Livestock Code" for "this Act"; and made minor stylistic changes.

#### **77-9-58 to 77-9-63. Recompiled and Repealed.**

#### ANNOTATIONS

**Compiler's notes.** — Laws 1999, ch. 282, §§ 66 to 69 recompiled 77-9-58 to 77-9-61 NMSA 1978, relating to cattle rest stations, as 77-9A-1 to 77-9A-4 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 282, § 104 repealed 77-9-62 NMSA 1978, as enacted by Laws 1969, ch. 124, § 1, relating to truckers hauling livestock, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

Laws 1999, ch. 282, § 70 recompiled 77-9-63 NMSA 1978, relating to the unloading of livestock for feed, rest and water, as 77-9A-5 NMSA 1978, effective July 1, 1999.

## **ARTICLE 9A**

### **Cattle and Sheep Rest Stations**

#### **77-9A-1. Interstate cattle or sheep transportation; cattle or sheep rest stations.**

It is unlawful for any person to unload cattle or sheep in interstate transit by truck for feed, rest and water except at cattle or sheep rest stations licensed by the board except in emergency situations. In emergency situations, cattle or sheep in transit shall be inspected by an inspector before being reloaded.

**History:** 1953 Comp., § 47-9-54, enacted by Laws 1961, ch. 3, § 1; 1993, ch. 248, § 72; 1978 Comp., § 77-9-58 recompiled and amended as 1978 Comp., § 77-9A-1 by Laws 1999, ch. 282, § 66.

#### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-58 NMSA and inserted "or sheep" following "cattle" throughout the section.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "cattle sanitary" preceding "board " in two places; and made minor stylistic changes.

### **77-9A-2. Cattle or sheep rest stations; licensing.**

The board shall license all cattle and sheep rest stations, which shall meet minimum rules of the board, and shall collect a license fee set by the board for each station licensed. No applicant shall be licensed until he has posted a bond in a form and amount approved by the board covering the faithful compliance by the licensee with all laws and rules of the board pertaining to cattle or sheep rest stations.

**History:** 1953 Comp., § 47-9-55, enacted by Laws 1961, ch. 3, § 2; 1993, ch. 248, § 73; 1978 Comp., § 77-9-59, recompiled and amended as 1978 Comp., § 77-9A-2 by Laws 1999, ch. 282, § 67.

#### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-59 NMSA 1978, inserted "or sheep" following "cattle" throughout the section, substituted "rules" for "regulations" in the first and last sentences, and substituted "form and amount approved by the board" for "form approved by the attorney general in the amount of one thousand dollars (\$1,000)" in the last sentence.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; deleted "cattle sanitary" preceding "board" in three places; substituted "set by the board" for "of ten dollars (\$10.00)" in the first sentence; and made minor stylistic changes.

### **77-9A-3. Rest stations; rules.**

The board may prescribe rules covering the operation of rest stations for cattle or sheep in transit by truck.

**History:** 1953 Comp., § 47-9-56, enacted by Laws 1961, ch. 3, § 3; 1993, ch. 248, § 74; 1978 Comp., § 77-9-60, recompiled and amended as 1978 Comp., § 77-9A-3 by Laws 1999, ch. 282, § 68.

#### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-60 NMSA 1978, substituted the present section heading for "Regulations", and inserted "or sheep" following "cattle" in the section text.

**The 1993 amendment**, effective June 18, 1993, added the current catchline and deleted "cattle sanitary" preceding "board".

### **77-9A-4. Violations; penalty.**

A person who violates any of the provisions of Chapter 77, Article 9A NMSA 1978 or any rule of the board pertaining to rest stations is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** 1953 Comp., § 47-9-57, enacted by Laws 1961, ch. 3, § 4; 1978 Comp., § 77-9-61, recompiled and amended as 1978 Comp., § 77-9A-4 by Laws 1999, ch. 282, § 69.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-61 NMSA 1978, substituted "Chapter 77, Article 9A NMSA 1978" for "this 1961 act", and substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "punished by a fine of not more than two hundred dollars (\$200) nor less than fifty dollars (\$50.00) or by imprisonment in the county jail for not more than six months nor less than thirty days or by both such fine and imprisonment in the discretion of the court".

### **77-9A-5. Unloading livestock for feed, rest and water; dumping carcasses; penalty.**

A. All livestock that has been confined to a truck for a continuous period of twenty-four hours without feed, rest and water shall be unloaded at the nearest licensed cattle or sheep rest station or other facility providing feed and water for livestock. The livestock shall receive adequate feed and water and a minimum of five hours rest before reloading.

B. A livestock inspector or other peace officer may require a person moving livestock within the state by truck to unload the livestock for feed, rest and water when the logbook of the operator indicates the livestock has been confined for twenty-four hours. If a livestock inspector determines a truck moving livestock to be unsafe or overloaded or if the conditions for the livestock are determined to be unsafe, the livestock inspector shall have the authority to remedy the situation.

C. All expenses incurred in compliance with this section are the responsibility of the livestock owner or his agent.

D. A person shall not dispose of carcasses along the public streets, roads or highways of this state. A person who violates the provisions of this subsection is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** 1953 Comp., § 47-9-59, enacted by Laws 1969, ch. 124, § 2; 1991, ch. 16, § 1; 1978 Comp., § 77-9-63, recompiled and amended as 1978 Comp., § 77-9A-5 by Laws 1999, ch. 282, § 70.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, recompiled this section which was formerly 77-9-63 NMSA 1978, added "dumping carcasses; penalty" to the section heading; in Subsection A, inserted "or sheep" following "cattle", and deleted the last sentence, which read "The loading and unloading of in-transit cattle shall be subject to the provisions of Section 77-9-58 NMSA 1978"; added Subsection D; and made stylistic changes throughout the section.

**The 1991 amendment**, effective June 14, 1991, substituted "twenty-four hours" for "thirty-six hours" in the first sentence in Subsections A and B; substituted "77-9-58 NMSA 1978" for "47-9-54 NMSA 1953" in the third sentence in Subsection A; added the second sentence in Subsection B; and made minor stylistic changes in Subsections A and B.

## ARTICLE 10

### Livestock Auction Markets

#### 77-10-1. Definitions.

As used in Chapter 77, Article 10 NMSA 1978:

A. "livestock auction market" means a place, establishment or facility conducted or operated for compensation or profit as a public livestock market consisting of pens or other enclosures, barns, stables, sheds and their appurtenances, including saddle and work stock, and vehicles used in connection therewith or in the operation thereof where livestock not owned by the operator for at least three months next preceding the receipt thereof is received, held or kept for any purpose other than:

- (1) immediate shipment or immediate slaughter;
- (2) grazing, feeding or breeding; or
- (3) for the sale and exchange of breeding stock by a bona fide livestock association; and

B. "operator" means a person in control of the management or operation of a livestock auction market.

**History:** Laws 1937, ch. 59, § 1; 1941 Comp., § 49-1001; 1953 Comp., § 47-10-1; Laws 1969, ch. 175, § 1; 1993, ch. 248, § 75; 1999, ch. 282, § 71.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "livestock auction market" for "sales ring" in Subsections A and B, and deleted "auction market" following "establishment" near the beginning of Subsection A.

**The 1993 amendment**, effective June 18, 1993, substituted "Chapter 77, Article 10 NMSA 1978" for "Sections 47-10-1 through 47-10-10 NMSA 1953" in the introductory paragraph; deleted former Subsections A, D and E defining "livestock", "person" and "board", respectively; redesignated former Subsections B and C as Subsections A and B; inserted "auction market" near the beginning of Subsection A; and made a minor stylistic change.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Auctions and Auctioneers § 10; 51 Am. Jur. 2d Licenses and Permits § 1 et seq.

3 C.J.S. Agriculture § 163 et seq.; 7A C.J.S. Auctions and Auctioneers § 1 et seq.

## **77-10-2. Necessity of license; application; fee; bond; cancellation of license; copies.**

A. It is unlawful for a person to operate a livestock auction market in this state unless he is the holder of an unexpired, uncanceled license issued by the board.

B. An application to operate a livestock auction market shall set forth:

(1) the name and address of the applicant;

(2) the location of the livestock auction market for which application is made;  
and

(3) a description of the facilities afforded by the livestock auction market.

C. The application shall be accompanied by the payment of a license fee set by the board not to exceed the amount prescribed by law.

D. The applicant shall file with the packers and stockyards division of the United States department of agriculture a bond in the penal sum as prescribed by the packers and stockyards division and approved by the board and conditioned that the principal shall comply with the terms of the surety and with all of the terms and conditions of Chapter 77, Article 10 NMSA 1978, with some surety company authorized to do business in this state.

E. If the applicant satisfies the conditions of application, the board shall issue a license good for one year to operate the livestock auction market at the location specified in the application.

F. A license issued in accordance with this section may be canceled by the board for violation of Chapter 77, Article 10 NMSA 1978 by the licensee, and the board may refuse to issue a license to a person whose previous license has been canceled or to any firm, association or corporation of which he is a member or by which he is employed.

G. It is unlawful for an operator to employ a person whose license was canceled by the board or to operate a livestock auction market in which that person has direct or indirect interest.

H. The bond required by this section shall be for the benefit of a person damaged by a breach of the condition of the bond, and the person damaged shall be entitled to bring an action on the bond in his own name. The board shall furnish a certified copy of the bond to a person who applies for a copy on payment of the fee set by the board for copy services.

**History:** Laws 1937, ch. 59, § 2; 1941 Comp., § 49-1002; 1953 Comp., § 47-10-2; Laws 1969, ch. 175, § 2; 1999, ch. 282, § 72.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "livestock auction market" for "sales ring" in Subsection A and made similar substitutions throughout the section; substituted "An application to operate a livestock auction market" for "Any person, except as herein otherwise provided on application to the board in such form as the board shall prescribe, wherein" in the introductory language to Subsection B; added the Subsection C to H designations; substituted "fee set by the board not to exceed the amount prescribed by law" for "fee of twenty-five dollars (\$25.00)" in Subsection C; in Subsection D, inserted "and approved by the board", substituted "terms of the surety" for "terms set forth therein or, in lieu of such bond, the filing of a bond approved by the board as to form and sufficiency in a penal sum of ten thousand dollars (\$10,000), conditioned that the principal shall comply", and updated the statutory reference; updated the statutory reference in Subsection F; substituted "the fee set by the board for copy services" for "a fee of one dollar (\$1.00)"; and made stylistic changes throughout the section.

**When bonding requirement without effect.** — In those instances where a livestock sales ring is operated so as to come within the provisions of the federal Packers and Stockyard Act, 7 U.S.C. §§ 181 to 231, a state bonding requirement is without effect and unenforceable. 1957-58 Op. Att'y Gen. No. 58-107.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 1 et seq.

53 C.J.S. Licenses § 1 et seq.

### **77-10-3. Duties of licensees.**

The operator shall:

A. keep posted and on display in a conspicuous place at the livestock auction market an unexpired, uncanceled license issued by the board as provided in Section 77-10-2 NMSA 1978;

B. keep the livestock auction market clean and sanitary and, whenever required by the board or a veterinarian authorized by the board, shall disinfect the livestock auction market or any part thereof and shall procure to be administered preventive or curative treatment of livestock in the possession of the operator, all under the supervision and direction of the board or its authorized veterinarian and without expense to the board;

C. allow the board and its members and officials and its inspectors and authorized veterinarians to have convenient access to the livestock auction market and its books and records or any livestock that may be in his possession at all reasonable times for the purpose of inspection;

D. post in a conspicuous place at the livestock auction market a schedule of all charges for services, accommodations and facilities that he holds himself out as ready, able and willing to furnish at the livestock auction market to owners of livestock and shall file a true copy of the schedule with the board. The schedule shall be the sole basis for all charges until a different schedule has been posted and filed;

E. immediately after the sale of any livestock at the livestock auction market, account and pay to the owner of the livestock the entire proceeds of the sale less his applicable scheduled charges;

F. make promptly after each sale and keep for a period of three years a complete record of the sale that contains a description of the livestock sold, the name of the owner and of the purchaser, the date of sale, the sale price and the amount and items of the operator's charges and open all such records to examination by the board or its inspector at any time on request;

G. be responsible for the wrongful acts or omissions of his agents and employees; and

H. comply with and conform to all lawful rules of the board and shall cooperate with the board in preventing the spread of diseases through the operation of the livestock auction market and in the suppression of livestock theft.

**History:** Laws 1937, ch. 59, § 3; 1941 Comp., § 49-1003; 1953 Comp., § 47-10-3; Laws 1999, ch. 282, § 73.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, substituted the Subsection A to G designations for former paragraph (a) to (g) designations; substituted "livestock auction market" for "sales ring" throughout the section; substituted "provided in Section 77-10-2 NMSA 1978" for "herein provided" in Subsection A; deleted "contagious and infectious livestock" preceding "diseases" in Subsection H; and made stylistic changes throughout the section.

#### **77-10-4. Notice to board of receipt of livestock; contents; fees.**

Immediately on receipt of any livestock at the livestock auction market, the operator shall give written notice to the board in such form as the board may prescribe, stating the kind and number and description of the livestock received. At the same time, the operator shall collect and remit to the board or agent for the board the inspection fees prescribed by law for each head of livestock received. All money paid to the board shall be deposited to the proper board fund.

**History:** Laws 1937, ch. 59, § 4; 1941 Comp., § 49-1004; Laws 1951, ch. 167, § 1; 1953 Comp., § 47-10-4; Laws 1969, ch. 175, § 3; 1973, ch. 234, § 4; 1981, ch. 357, § 12; 1993, ch. 248, § 76; 1999, ch. 282, § 74.

#### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, deleted "payment in lieu of" preceding "fees" in the section heading; substituted "livestock auction market" for "sales ring" in the first sentence; and in the second sentence, deleted "and in lieu of all fees required by law", substituted "the inspection fees" for "a sum not to exceed the amount", and made a stylistic change.

**The 1993 amendment**, effective June 18, 1993, deleted "New Mexico livestock" preceding "board" near the beginning of the section; deleted "the name and address of the owner, the name and address of the person from whom received, the manner of the delivery to the sales ring and, if such delivery be by motor vehicle, the make, type and license number of the vehicle and the name and address of the driver" following "received" in the first sentence; and made minor stylistic changes.

**The 1981 amendment**, in the first sentence, deleted "thereof" following "notice," "owner," "the delivery" and "driver," deleted "therein" following "stating," deleted "herein" following "fees" and deleted "or" following "cattle," inserted "New Mexico livestock" and "by law" following "required" and substituted "the" for "such" preceding "vehicle," substituted "the amount prescribed by law" for "twenty cents for the period ending January 1, 1975 and not to exceed twenty-five cents (\$.25)," substituted "mules, asses" for "thereafter and a sum not to exceed eight cents (\$.08) per head for" and substituted "or" for "and" following "sheep."

#### **77-10-5. Livestock inspected by board inspector.**

All livestock received at a livestock auction market shall be inspected by an inspector as soon as practicable. The inspector shall satisfy himself as to the ownership of the livestock and the purpose for which it has been received. Before the removal of the livestock, it shall be again inspected as to ownership by an inspector, and the inspector shall conduct an inspection of the records documenting the receipt, sale or purchase of the livestock and may conduct a visual inspection of the livestock prior to issuing a certificate of inspection. The inspector shall issue his certificate of inspection and deliver one copy to the purchaser or his agent, one copy to the inspector at designation and forward the original to the board for filing.

**History:** Laws 1937, ch. 59, § 5; 1941 ch. 38, § 1; 1941 Comp., § 49-1005; 1953 Comp., § 47-10-5; Laws 1999, ch. 282, § 75.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "livestock auction market" for "sales ring" and "an inspector" for "a duly accredited inspector of the board" in the first sentence; deleted "and that the operator has been duly authorized by the owner thereof to receive the same" following "the livestock" in the second sentence; substituted "inspector, and the inspector shall conduct an inspection of the records documenting the receipt, sale or purchase of the livestock and may conduct a visual inspection of the livestock prior to issuing a certificate of inspection" for "accredited inspector of the board, and" in the third sentence; substituted "one copy to the inspector at designation and forward the original to the board" for "one copy to the operator and forward one copy to the board" in the last sentence; deleted the former last two sentences, which stated that if the facts requisite for the issue of the inspection certificate are not furnished to the inspector, the livestock in question shall be held for a period of five days, at which time, the livestock shall be deemed to be and shall be dealt with as estray; and made stylistic changes throughout the section.

**Board inspectors have mandatory legal duty to inspect all Indian owned livestock** arriving at off-reservation sales rings as soon as practicable; the inspector may order the livestock held for inspection by the pueblo or tribal inspector only in those cases where such an inspection is necessary to enable the state inspector to satisfy himself as to the ownership of the livestock. 1980 Op. Att'y Gen. No. 80-24.

### 77-10-6. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1981, ch. 357, § 16, repealed 77-10-6 NMSA 1978, as enacted by Laws 1937, ch. 59, § 6, relating to livestock inspected by a board veterinarian, effective July 1, 1981.

### 77-10-7. [Scales; inspection and certification.]

All scales maintained by the operator shall be regularly inspected and certified as is required of scales used by merchants.

**History:** Laws 1937, ch. 59, § 7; 1941 Comp., § 49-1007; 1953 Comp., § 47-10-7.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **77-10-8. [Rules and regulations.]**

The board is hereby authorized to make and enforce rules and regulations by it deemed necessary or convenient to carry out the purpose and intent of this act [77-10-1 through 77-10-10 NMSA 1978].

**History:** Laws 1937, ch. 59, § 8; 1941 Comp., § 49-1008; 1953 Comp., § 47-10-8.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **77-10-9. Livestock; owners bound by rules.**

Whenever an owner of livestock avails himself of the provisions of Chapter 77, Article 10 NMSA 1978, he is bound by the rules of the board as to health and ownership.

**History:** Laws 1937, ch. 59, § 81/2; 1941 Comp., § 49-1009; 1953 Comp., § 47-10-9; Laws 1993, ch. 248, § 77; 1999, ch. 282, § 76.

#### **ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Chapter 77, Article 10" for "Sections 77-10-1 through 77-10-10", and made several stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, substituted "Sections 77-10-1 through 77-10-10 NMSA 1978" for "this act"; substituted "the board as to health and ownership" for "the Sheep Sanitary Board as to health and ownership as are now in force or may hereafter be adopted"; and made minor stylistic changes.

#### **77-10-10. Violations; penalty.**

A person who violates Chapter 77, Article 10 NMSA 1978 or any rule of the board made pursuant to that article is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978, and each day's violation constitutes a separate offense.

**History:** Laws 1937, ch. 59, § 9; 1941 Comp., § 49-1010; 1953 Comp., § 47-10-10; Laws 1999, ch. 282, § 77.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, rewrote the section, which formerly read: "Violation of this act or of any rule or regulation of the board made in pursuance of this act shall constitute a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), and each day's violation shall constitute a separate offense."

## ARTICLE 11 Herding

### 77-11-1. [Driving herds through fenced lands; restrictions; penalty for violations.]

Any person, persons, company or corporation, or their or either of their [sic] agents or employees, having charge of any herd of cattle, horses or other animals for the purpose of driving them from place to place through or over the fenced land of another shall, at least 24 hours before beginning such drive and passing through such land, obtain permission from the owner thereof, or his agent in charge, or if said land be leased, from the lessee thereof, or his agent in charge, of an intention to drive said herd across said inclosed lands, and during passage over said land shall carefully herd said animals to prevent mixture with other animals and the brands being driven, and shall before leaving such inclosure check the herd thoroughly and cut therefrom all animals other than the brands being driven; and any person, persons, company or corporation, or their agent, driving any herd other than in the owner's recorded brand shall have the authorization in writing of the person owning the brand of record to drive the same, and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not more than \$500 or confined in the county jail not more than six months, or by both such fine and imprisonment.

**History:** Laws 1941, ch. 94, § 1; 1941 Comp., § 49-1201; 1953 Comp., § 47-12-1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For trespass by herds, see 77-14-3 NMSA 1978.

**Immediate separation of intermixed herd required.** — Code 1915, § 31 (now repealed) required the drover of cattle, when stock of other owners should intermix with his herd, immediately to cut out and separate such stock from the drove, and the practice of drovers to stop at stated periods and cut them out was not a compliance with this section. *State v. Rucker*, 22 N.M. 275, 161 P. 337 (1916) (decided under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 69 et seq.

3A C.J.S. Animals §§ 36, 121, 122.

### **77-11-2. [Filing of partido or herding contracts required.]**

All contracts made by the owner of any animals, including horses, cattle, sheep and goats, with any other person, for the herding or caring for the same, for pay or on shares, or in any other manner except by absolute purchase, shall be filed in the office of the county clerk of the county or counties wherein said horses, cattle, sheep or goats are located or about to be removed.

**History:** Laws 1923, ch. 14, § 1; C.S. 1929, § 4-311; Laws 1939, ch. 60, § 1; 1941 Comp., § 49-1202; 1953 Comp., § 47-12-2.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Recording of partido contracts deemed permissive.** — Code 1915, §§ 41 and 42 (now repealed), which authorized the recording of partido contracts, were permissive and not mandatory, and a failure to record did not render the same void as to subsequent purchasers or mortgagees without notice. *Encino State Bank v. Tenorio*, 28 N.M. 65, 206 P. 698 (1922); *Page v. Jones*, 26 N.M. 195, 190 P. 541 (1920) (both decided under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 18.

### **77-11-3. [Method of filing contracts.]**

Partido and herding contracts shall be filed in the manner now or hereafter provided by law for filing chattel mortgages.

**History:** Laws 1923, ch. 14, § 2; C.S. 1929, § 4-312; Laws 1939, ch. 60, § 2; 1941 Comp., § 49-1203; 1953, Comp., § 47-12-3.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-11-4. [Effect of filing contract.]**

Every such partido or herding contract filed in accordance with the provisions of this act [77-11-2 through 77-11-5, 77-11-7 NMSA 1978] shall have the full force and effect given to the recording of an instrument affecting real estate.

**History:** Laws 1923, ch. 14, § 4; C.S. 1929, § 4-314; Laws 1939, ch. 60, § 3; 1941 Comp., § 49-1204; 1953 Comp., § 47-12-4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-11-5. [Effect of failure to file contracts.]**

The failure to file any such partido or herding contract, as hereinbefore in this act [77-11-2 through 77-11-4 NMSA 1978] provided, shall render the same void as to subsequent mortgages [mortgagees] in good faith, purchasers for value without notice and subsequent judgment or attaching creditors without notice, from the date of the entry of such judgment or the levy of such attachment; as against trustees in bankruptcy, receivers from the date of filing the order of appointment and assignees for the benefit of creditors from the date of the recording of the assignment.

**History:** Laws 1923, ch. 14, § 5; C.S. 1929, § 4-315; Laws 1939, ch. 60, § 4; 1941 Comp., § 49-1205; 1953 Comp., § 47-12-5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-11-6. [Contracts previously filed; effect.]**

All such partido or herding contracts which have heretofore been filed in accordance with the law covering the filing of chattel mortgages in force and effect at the time of such filing shall by such filing be considered as effective notice thereof to all persons, and such filing thereof shall have the full force and effect given to the recording of an instrument affecting real estate; provided, however, that nothing herein shall be considered to mean that the recording or filing of such contracts in any other manner required or permitted by law is to any extent ineffective.

**History:** Laws 1939, ch. 60, § 5; 1941 Comp., § 49-1206; 1953 Comp., § 47-12-6.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-11-7. Partido and herding contracts; rights of person in possession.**

When anyone has or shall receive from the owner thereof any horses, cattle, sheep or goats under written contract, for the herding or caring for the same for pay or on shares, or in any other manner, except by absolute purchase, such horses, cattle, sheep and goats, together with the increase and product thereof, at all times, and until the full completion of such contract according to the terms thereof, shall be and remain the property of the said owner or owners so letting them out to be herded or cared for; and the person or persons so receiving the same for such purpose shall have no authority or right to sell, transfer, mortgage or dispose of the same, or any part thereof, in any manner whatever, without the express consent in writing of the owner or owners thereof.

**History:** Laws 1882, ch. 67, § 2; C.L. 1884, § 78; C.L. 1897, § 96; Code 1915, § 42; Laws 1923, ch. 14, § 6; C.S. 1929, § 4-316; 1941 Comp., § 49-1207; 1953 Comp., § 47-12-7.

### ANNOTATIONS

**Owner retains title under partido contract.** — A mortgage made by one in possession of animals under a partido contract from the owner is void as against the owner; and the owner is not estopped from asserting his title by reason of allowing them to remain in possession of the mortgagor. *Encino State Bank v. Tenorio*, 28 N.M. 65, 206 P. 698 (1922).

**Owner retains title only as to aliquot part of flock.** — Where sheep belonging to different owners were run in one flock under partido contracts, and were of the same kind or value, although intermingled by the negligence of one party, and the numbers were greatly decreased because of two dry years, plaintiff in an action of replevin was entitled only to such aliquot part of the entire number of sheep as she was able to show rightly belonged to her. *Page v. Jones*, 26 N.M. 195, 190 P. 541 (1920).

**Person in charge has no power to dispose of flock.** — Under a "partido" contract which calls for the return of a like number and kind of animals at the expiration of the contract, the original animals and their increase remain the property of the original owner until the full completion of the contract, and the person having such animals in charge has no power to dispose of them until his title thereto has vested. *Milliken v. Martinez*, 22 N.M. 61, 159 P. 952 (1916).

## **77-11-8. [Bulls required with herd; penalty for noncompliance; "pedigree bull" defined.]**

Hereafter it shall be unlawful for any person or persons, company or corporation to turn loose upon any common or public range in this state any she or female cattle unspayed and over the age of nine months without at the same time turning loose and keeping herded with the same, at the rate of at least one good bull, not less than nine months nor more than eight years old, of at least one-half pedigree stock, to every twenty head of such she or female cattle; and any person or persons, company or corporation, violating the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than twenty-five [(\$25.00)] nor more than five hundred dollars [(\$500)], and be liable to the person or persons injured or damaged by such violation in an action at law for the amount of the injury or damage sustained: provided, further, that the words, "pedigree bull," shall not be construed to mean a Texas or Mexican bull.

**History:** Laws 1891, ch. 37, § 2; C.L. 1897, § 73; Code 1915, § 48; C.S. 1929, § 4-324; 1941 Comp., § 49-1208; 1953 Comp., § 47-12-8.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **77-11-9. [Stray bulls in herd; rights of owner.]**

Whenever dangerous bulls of bad breed are found in any herd and remain there doing damage to the owner of said herd for the term of fifteen days, driving off or horning his own bulls, it shall be lawful for the owner or person in charge of said herd to geld any such dangerous, vicious, or low grade bull in order to avoid the damage which might be required from the owner of said herd: provided, that if the owner of said bull or bulls above mentioned is known, and it is within the power of the owner or herder of said herd, he shall notify the owner of said bull or bulls to take out or separate the same in order to avoid such damage.

**History:** Laws 1882, ch. 66, § 11; C.L. 1884, § 119; C.L. 1897, § 180; Code 1915, § 47; C.S. 1929, § 4-323; 1941 Comp., § 49-1209; 1953 Comp., § 47-12-9.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **ARTICLE 12**

### **Herd Law Districts**

## **77-12-1. ["Person" defined.]**

Whenever the word "person" is used in this act [77-12-1 through 77-12-12 NMSA 1978], it shall include persons, firms and corporations.

**History:** Laws 1923, ch. 68, § 1; C.S. 1929, § 4-401; 1941 Comp., § 49-1301; 1953 Comp., § 47-13-1.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 94, provided for the establishment of a herd law in Quay and Roosevelt counties and part of Guadalupe county. By Laws 1909, ch. 138, the former act was made applicable to Curry county.

**Herd laws unaffected.** — Laws 1909, ch. 94, providing for a herd law in certain counties, was not repealed by the repealing clause of the 1915 Code. *Scarborough v. Wooten*, 23 N.M. 616, 170 P. 743 (1918).

Laws 1909, ch. 138, extended the special legislation in ch. 94 to the newly created Curry county, and was not repealed by the general repealing clause of the 1915 Code. 1917-18 Op. Att'y Gen. No. 17-1912.

**Herd district laws constitute encroachment on unrestricted right of owner** to let his stock run at large. *Grubb v. Wolfe*, 75 N.M. 601, 408 P.2d 756 (1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 69 et seq.

3A C.J.S. Animals §§ 139 et seq., 238 et seq.

## **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 [77-12-1 through 77-12-12 NMSA 1978], 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.

**History:** Laws 1923, ch. 68, § 2; C.S. 1929, § 4-402; Laws 1933, ch. 92, § 1; 1941 Comp., § 49-1302; 1953 Comp., § 47-13-2.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For "legal newspapers," see 14-11-2 NMSA 1978.

**Certain duties on owner without districts.** — Although the herd law district legislation places certain responsibilities upon owners of livestock in herd law districts, it does not follow that no duty exists concerning protection of livestock absent such a district. The law requires an owner of livestock to use due care to protect his property from injury. *Grubb v. Wolfe*, 75 N.M. 601, 408 P.2d 756 (1965).

**Word "contiguous" means to touch,** and if there is any separation of the lands by intervening parts or parcels of land, then the property would not be contiguous, under the meaning of the law. 1931-32 Op. Att'y Gen. No. 32-502.

**"Owners, lessees and contract holders".** — The proper construction of the words "owners, lessees and contract holders," as used in this section, would be those owners, lessees and contract holders who have the present right to possession of the lands. In other words, a lessee with the present right to possession would have the control of the property and it would be his prerogative to sign a petition for the establishment of a district rather than the person who actually was the owner and had the title to such property, and the owners of leased property would not have the right to petition for

inclusion in a herd law district without the will and consent of their lessees. 1931-32 Op. Att'y Gen. No. 32-502.

**Lessee has right to sign petition for establishment of district,** and a contrary petition by the owner is without weight. 1929-30 Op. Att'y Gen. No. 30-29.

**Additional small contiguous tracts allowed within district.** — The district in the first instance must be formed of contiguous tracts of land which aggregate not less than 3840 acres. If the district, as formed, contains this amount of acreage apparently, under this section, smaller contiguous tracts may be included therein upon proper petition to the board of county commissioners and signed by the proper parties. 1931-32 Op. Att'y Gen. No. 32-502.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 71.

Constitutionality of statute for formation of cattle districts, 69 A.L.R. 289.

Boundaries of territory to be erected into stock law district or to be added to, or detached from, existing district, statute which leaves determination thereof to private individuals, 70 A.L.R. 1064.

3A C.J.S. Animals § 139.

### **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.

**History:** Laws 1923, ch. 68, § 3; C.S. 1929, § 4-403; 1941 Comp., § 49-1303; 1953 Comp., § 47-13-3.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-12-4. [Publications; language.]**

The publications required by this act [77-12-1 through 77-12-12 NMSA 1978] 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.

**History:** Laws 1923, ch. 68, § 4; C.S. 1929, § 4-404; 1941 Comp., § 49-1304; 1953 Comp., § 47-13-4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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.

**History:** Laws 1923, ch. 68, § 5; C.S. 1929, § 4-405; 1941 Comp., § 49-1305; 1953 Comp., § 47-13-5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 136.

Liability for personal injury or death caused by trespassing or intruding livestock, 49 A.L.R.4th 710.

3A C.J.S. Animals § 238.

### **77-12-6. Distraint of livestock for damages.**

A person damaged by trespassing livestock may hold and distraint 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 distrainted, are paid or legally tendered. The person distrainted the livestock shall give notice to the owner, if known or ascertainable, within forty-eight hours after distraint.

**History:** Laws 1923, ch. 68, § 6; C.S. 1929, § 4-406; 1941 Comp., § 49-1306; 1953 Comp., § 47-13-6; Laws 1999, ch. 282, § 78.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, substituted "a reasonable amount set by the board" for "the sum of fifty cents (\$.50)" in the first sentence.

### **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.

**History:** Laws 1923, ch. 68, § 7; C.S. 1929, § 4-407; 1941 Comp., § 49-1307; 1953 Comp., § 47-13-7.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Procedure for dissolution of all districts.** — This section repealed by implication the provisions of Laws 1909, ch. 94, and now sets forth the proper procedure to be followed in the dissolution of such districts. 1929-30 Op. Att'y Gen. No. 30-30.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 75 et seq.

3A C.J.S. Animals §§ 252 to 262.

### **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.

**History:** Laws 1923, ch. 68, § 8; C.S. 1929, § 4-408; 1941 Comp., § 49-1308; 1953 Comp., § 47-13-8.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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.

**History:** Laws 1923, ch. 68, § 9; C.S. 1929, § 4-409; 1941 Comp., § 49-1309; 1953 Comp., § 47-13-9.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For cattle guards and gates required in fences crossing highways, see 67-7-10 NMSA 1978.

For legal fences, see 77-16-1 to 77-16-9 NMSA 1978.

**Judicial notice of nature of cattle guards allowed.** — Cattle guards are common objects in New Mexico cattle country and courts can take judicial notice of their nature by appropriate books or documents of reference. *Williams v. N.M. State Hwy. Comm'n*, 82 N.M. 550, 484 P.2d 770 (Ct. App. 1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 70 et seq.

3A C.J.S. Animals § 140.

### **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.

**History:** Laws 1923, ch. 68, § 10; C.S. 1929, § 4-410; 1941 Comp., § 49-1310; 1953 Comp., § 47-13-10; Laws 1999, ch. 282, § 79.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, inserted "provided for in Section 77-12-9 NMSA 1978" and substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "fined not less than five dollars nor more than fifty dollars".

### **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.

**History:** Laws 1923, ch. 68, § 11; C.S. 1929, § 4-411; 1941 Comp., § 49-1311; 1953 Comp., § 47-13-11; Laws 1999, ch. 282, § 80.

## ANNOTATIONS

**The 1999 amendment,** effective July 1, 1999, updated the statutory reference near the beginning of the section, and substituted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "fined not less than five dollars nor more than fifty dollars" at the end.

**Owner liability if cattle strays upon highway.** — A cattle owner who negligently fails to keep his cattle from straying upon a highway may be held liable in a civil action for damages arising from a collision with his livestock, even at a point where the highway is unfenced, in open range country. *Grubb v. Wolfe*, 75 N.M. 601, 408 P.2d 756 (1965).

**Public roads deemed not within districts.** — It is to be noted that a herd law district must contain land which is contiguous. State and federal highways and the rights-of-way upon which they are built would be public roads subject to the jurisdiction of the state of New Mexico and its agents, and therefore would not be land lying within a herd law district. 1953-54 Op. Att'y Gen. No. 53-5864.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Owner's liability, under legislation forbidding domestic animals to run at large on highways, as dependent on negligence, 34 A.L.R.2d 1285.

Liability of person, other than owner of animal or owner or operator of motor vehicle, for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 132.

Liability of owner or operator of motor vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 159.

Liability of owner of animal for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 29 A.L.R.4th 431.

### **77-12-12. [Application of act.]**

This act [77-12-1 through 77-12-12 NMSA 1978] 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 [77-14-8 through 77-14-24 NMSA 1978], 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.

**History:** Laws 1923, ch. 68, § 12; C.S. 1929, § 4-412; 1941 Comp., § 49-1312; 1953 Comp., § 47-13-12.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## ARTICLE 13 Estrays

### 77-13-1. Possession of estray unlawful.

It shall be unlawful for any person, corporation or company or its employees or agents to take up any estray and retain possession of the estray except as provided in Chapter 77, Article 13 NMSA 1978.

**History:** Laws 1907, ch. 80, § 1; Code 1915, § 157; C.S. 1929, § 4-1501; 1941 Comp., § 49-1501; 1953 Comp., § 47-14-1; Laws 1975, ch. 45, § 1; 1993, ch. 248, § 78.

## ANNOTATIONS

**Cross references.** — For unbranded animals or those unaccompanied by bill of sale as estrays, see 77-9-40 NMSA 1978.

For illegal confinement of animals, see 30-18-5 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**When horse not estray.** — A horse whose brand was duly recorded and which was not 50 miles from its usual range was not an estray. *State v. Miller*, 41 N.M. 618, 72 P.2d 1088 (1937).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 66.

3A C.J.S. Animals § 123.

### 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.

**History:** Laws 1907, ch. 80, § 2; Code 1915, § 158; C.S. 1929, § 4-1502; 1941 Comp., § 49-1502; Laws 1951, ch. 122, § 1; 1953 Comp., § 47-14-2; Laws 1977, ch. 165, § 1; 1999, ch. 282, § 81.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, updated the statutory references in Subsection C, and made stylistic changes throughout the section.

**The 1977 amendment** rewrote this section, which formerly dealt with reporting the taking up of estray animals to the secretary of the cattle sanitary board.

**Board may sell unclaimed animals.** — The cattle sanitary board of New Mexico (now livestock board) can sell impounded livestock which have a legally recorded brand and whose owners are known, and have been notified of impoundment, but who refuse to claim such impounded animals within the specified time, if the statutory procedure is followed. 1953-54 Op. Att'y Gen. No. 54-5954.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 68.

3A C.J.S. Animals §§ 87, 124, 125.

**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.

**History:** Laws 1907, ch. 80, § 3; Code 1915, § 159, C.S. 1929, § 4-1503; 1941 Comp., § 49-1503; Laws 1953, ch. 18, § 1; 1953 Comp., § 47-14-3; Laws 1977, ch. 165, § 2; 1999, ch. 282, § 82.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, made several stylistic changes throughout the section.

**The 1977 amendment** rewrote this section, which formerly dealt with duties of the secretary of the cattle sanitary board and the taking up of estrays.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 128.

### 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.

**History:** Laws 1907, ch. 80, § 4; Code 1915, § 160; Laws 1921, ch. 114, § 1; C.S. 1929, § 4-1504; Laws 1941, ch. 109, § 1; 1941 Comp., § 49-1504; Laws 1953, ch. 19, § 1; 1953 Comp., § 47-14-4; Laws 1977, ch. 165, § 3.

### ANNOTATIONS

**Cross references.** — For impounding of animals running at large in irrigation districts, see 77-14-7 NMSA 1978.

**The 1977 amendment** rewrote this section, which formerly dealt with duties of the secretary of the cattle sanitary board and the taking up of estrays.

## **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.

**History:** Laws 1907, ch. 80, § 5; Code 1915, § 161; Laws 1921, ch. 114, § 2; C.S. 1929, § 4-1505; Laws 1939, ch. 16, § 1; 1941 Comp., § 49-1505; 1953 Comp., § 47-14-5; Laws 1977, ch. 165, § 4; 1999, ch. 282, § 83.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, made stylistic changes throughout the section.

**The 1977 amendment** rewrote this section, which formerly dealt with the duties of the cattle sanitary board and its brand inspectors, reducing the period before sale in the first sentence from twenty days to five days.

**Sales of estray animals must be strictly in accordance with statute**, and brands must be correctly given in the advertisement. 1912-13 Op. Att'y Gen. No. 13-993.

**Law silent on branding of estrays by board.** — The law is apparently absolutely silent on whether the cattle sanitary board (now New Mexico livestock board) may brand estrays with its brand before sale for the purpose of identifying it, and include the brand in the description of the animal in the bill of sale issued by the board. Nothing expressly permits such practice, or prohibits it. 1939-40 Op. Att'y Gen. No. 40-3636.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 68.

3A C.J.S. Animals § 130.

## **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.

**History:** Laws 1907, ch. 80, § 6; Code 1915, § 162; C.S. 1929, § 4-1506; 1941 Comp., § 49-1506; 1953 Comp., § 47-14-6; Laws 1977, ch. 165, § 5; 1981, ch. 357, § 13; 1999, ch. 282, § 84.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, made stylistic changes throughout the section.

**The 1981 amendment** substituted "prescribed by law" for "of five dollars (\$5.00)" in the second sentence.

**The 1977 amendment** substituted "livestock inspector" for "brand inspector" near the beginning of this section, substituted "New Mexico livestock board" for "cattle sanitary board" in two places, substituted "five dollars (\$5.00) for office handling fees" for "one dollar (\$1.00) for each estray, to be retained by the cattle sanitary board" in the second sentence and made other minor changes.

### **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.

**History:** Laws 1907, ch. 80, § 7; Code 1915, § 163; C.S. 1929, § 4-1507; 1941 Comp., § 49-1507; 1953 Comp., § 47-14-7; Laws 1977, ch. 165, § 6.

### **ANNOTATIONS**

**The 1977 amendment** rewrote this section, which formerly referred to takers-up and the cattle sanitary board.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 66.

3A C.J.S. Animals § 127.

### **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.

**History:** Laws 1907, ch. 80, § 8; Code 1915, § 164; C.S. 1929, § 4-1508; 1941 Comp., § 49-1508; 1953 Comp., § 47-14-8; Laws 1977, ch. 165, § 7; 1999, ch. 282, § 85.

#### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, updated the statutory references in the first section, substituted "shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "may be fined one hundred dollars (\$100)" in the last sentence, and made stylistic changes.

**The 1977 amendment** rewrote this section, which formerly dealt with taking up estrays and provided a maximum fine of \$500 for taking up estrays without notifying the cattle sanitary board.

**Board may impound livestock upon roads within herd law districts.** — The cattle sanitary board of New Mexico (now livestock board) does have the authority to take up and impound livestock with a legally recorded brand on them which are found running at large upon state or federal highways or upon public roads within herd law district areas. 1953-54 Op. Att'y Gen. No. 53-5864.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 133.

### **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.

**History:** Laws 1907, ch. 80, § 9; Code 1915, § 165; C.S. 1929, § 4-1509; 1941 Comp., § 49-1509; 1953 Comp., § 47-14-9; Laws 1977, ch. 165, § 8.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this article" at the end of this section first appeared in Laws 1977, ch. 165, and refer to Article 14 of Chapter 47, 1953 Comp., the present provisions of which are compiled as 77-13-1 to 77-13-10 NMSA 1978.

**The 1977 amendment** substituted "impounding" for "taking up" at the end of the catchline of this section, substituted "impounded" for "taken up" near the beginning of the section, inserted "or the New Mexico livestock board or its authorized inspector" and made other minor changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 129.

#### **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.

**History:** Laws 1907, ch. 80, § 11; Code 1915, § 167; C.S. 1929, § 4-1511; 1941 Comp., § 49-1510; 1953 Comp., § 47-14-10; Laws 1977, ch. 165, § 9.

#### **ANNOTATIONS**

**Compiler's notes.** — The words "this article" at the end of this section first appeared in Laws 1977, ch. 165, and refer to Article 14 of Chapter 47, 1953 Comp., the present provisions of which are compiled as 77-13-1 to 77-13-10 NMSA 1978.

**The 1977 amendment** substituted "municipalities" for "cities and towns" in the catchline of this section and "municipality" for "town or city" in this section.

## **ARTICLE 14**

### **Trespass and Running at Large**

#### **77-14-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-14-1 NMSA 1978, as enacted by Laws 1882, ch. 42, § 5, relating to trespass within inclosure for occupation or pasturage, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

## **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.

**History:** 1953 Comp., § 47-15-1.1, enacted by Laws 1977, ch. 189, § 1; 1989, ch. 230, § 1; 1999, ch. 282, § 86.

### **ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Chapter 77, Article 14" for "Article 77, Chapter 14" in the introductory language, deleted Subsection A, which defined "livestock", and removed the Subsection B designation from the remaining definition.

**The 1989 amendment,** effective June 16, 1989, restructured the formerly undesignated provisions as the present undesignated introductory paragraph and Subsection A, substituted "Article 77, Chapter 14 NMSA 1978" for "Article 15 of Chapter 47" in the undesignated introductory paragraph and "means" for "shall include" in Subsection A, and added Subsection B.

## **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.

**History:** Laws 1901, ch. 28, § 1; 1901, ch. 75, § 1; Code 1915, § 39; C.S. 1929, § 4-309; 1941 Comp., § 49-1602; 1953 Comp., § 47-15-2; Laws 1989, ch. 230, § 2; 1999, ch. 282, § 87.

## ANNOTATIONS

**Compiler's notes.** — Laws 1905, ch. 130, § 1, repealed Laws 1901, ch. 28, § 2, providing penalties for violation of Laws 1901, ch. 28, § 1.

**Cross references.** — For stray bulls in herd, see 77-11-9 NMSA 1978.

For public lands as common pastures, see 19-3-5 to 19-3-9 NMSA 1978.

For penalty for use of public land for range without owning water right, see 19-3-15 NMSA 1978.

For trespass on mining claims or millsites, see 69-3-27 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, inserted "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 trespass and shall" in the second sentence of Subsection A, substituted "proper military authority" for "representative of a military reservation or enclave" in Subsection B, and made stylistic changes throughout the section.

**The 1989 amendment**, effective June 16, 1989, added the catchline and the subsection designations; substituted "livestock or other animals" for "drove of bovine cattle, horses, sheep, goats or other animals" in the first sentence of Subsection A; in Subsection B inserted "or representative of a military reservation or enclave" and substituted "livestock" for "such droves, flocks or herds of animals"; and made minor stylistic changes throughout the section.

**This section is no bar to suit for willful trespass**, though the owner has not complied with its provisions. *Gutierrez v. Montosa Sheep Co.*, 25 N.M. 540, 185 P. 273 (1919).

**No injunction unless owner complies with statute.** — Where it is not shown that a party knows the boundaries of privately owned land, surrounded by governmental domain, he cannot be enjoined from driving his flocks and herds upon such lands, unless the owner of such land has complied with this statute. *Jastro v. Francis*, 24 N.M. 127, 172 P. 1139 (1918).

### **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.

**History:** Laws 1909, ch. 146, § 1; Code 1915, § 35; C.S. 1929, § 4-305; Laws 1939, ch. 119, § 1; 1941 Comp., § 49-1603; 1953 Comp., § 47-15-3; Laws 1989, ch. 230, § 3.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "irrigation districts and on military reservations or enclaves" for "and irrigation districts" in the catchline; in the first sentence substituted "livestock" for "cattle, horses, swine, sheep, goats, burros, and other domestic animals within the limits of any platted townsite or platted addition of any unincorporated town having a population of not less than three hundred people and", and inserted "and within any portion of a military reservation or enclave, and"; inserted "and the fence erected by a military reservation or enclave" in the second sentence; and made minor stylistic changes throughout the section.

**When commissioners may prevent at large running of animals.** — The first sentence of this section was intended by the legislature to be read in the disjunctive. Therefore, the condition precedent of a population of 300 persons must be met before the county commissioners may act to prevent at large running of animals in a platted townsite or addition of any unincorporated town, but the commissioners are bound by no such condition precedent in order to make such a ruling effective in a conservancy or irrigation district. 1966 Op. Att'y Gen. No. 66-29.

**Impoundment of livestock on roads within herd law district.** — The cattle sanitary board (New Mexico livestock board) does have the authority to take up and impound livestock with a legally recorded brand on them which are found running at large upon state or federal highways or upon public roads within herd law district areas. 1953-54 Op. Att'y Gen. No. 53-5864 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 59.

3A C.J.S. Animals § 137.

### **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.

**History:** Laws 1909, ch. 146, § 2; Code 1915, § 36; C.S. 1929, § 4-306; Laws 1939, ch. 119, § 2; 1941 Comp., § 49-1604; 1953 Comp., § 47-15-4; Laws 1989, ch. 230, § 4.

### ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "Livestock" for "Animals" in the catchline; substituted the language of the present first and second sentences for the former first sentence, as set out in the Original Pamphlet; made minor stylistic changes in the next-to-last sentence; and added the last sentence.

**In this section "residents" must be given its ordinary meaning** because no contrary intent appears from the statute. A "resident" is a person who resides in a given location and each member of a family who resides in a locality is a "resident." Therefore, members of one family can each sign the petition if each is a resident of the geographic area wherein the running of stock at large is sought to be prohibited. 1966 Op. Att'y Gen. No. 66-29.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 59 et seq.

Liability of owner of animal for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 29 A.L.R.4th 431.

3A C.J.S. Animals §§ 139, 143.

### **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.

**History:** Laws 1909, ch. 146, § 3; Code 1915, § 37; C.S. 1929, § 4-307; Laws 1939, ch. 119, § 3; 1941 Comp., § 49-1605; 1953 Comp., § 47-15-5; Laws 1989, ch. 230, § 5.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "livestock" for "such animals", inserted "or within the limits of the military reservation or enclave", substituted "the county where the petition has been filed" for "said town or in said county and shall cause printed handbills containing such order to be posted in at least three public places in such town or in such district", and made minor stylistic changes.

**Intent of legislature to make this section mandatory upon county commissioners** to prohibit certain animals from running at large if a proper petition is presented to them seems clear. The only discretion allowed to the county commissioners in such a situation is a determination of the validity of the petition as it appears on its face. 1966 Op. Att'y Gen. No. 66-29.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 148.

### **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.

**History:** Laws 1909, ch. 146, § 4; Code 1915, § 38; C.S. 1929, § 4-308; Laws 1939, ch. 119, § 4; 1941 Comp., § 49-1606; 1953 Comp., § 47-15-6; Laws 1989, ch. 230, § 6; 1999, ch. 282, § 88.

## ANNOTATIONS

**Cross references.** — For unlawfully permitting livestock upon highways, see 30-8-13 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, in Subsection A, inserted "pursuant to Section 77-14-6 NMSA 1978" in the first sentence, and substituted "shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978" for "before a magistrate shall be punished by a fine not exceeding ten dollars (\$10.00)" in the last sentence; inserted "per day" following "five dollars (\$5.00)" in the second sentence of Subsection B; substituted "the impound fees and costs incurred" for "to the officer one dollar (\$1.00)" in Subsection C; and made stylistic changes throughout the section.

**The 1989 amendment,** effective June 16, 1989, rewrote this section to the extent that a detailed comparison is impracticable.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 60 et seq.

Joint liability of several independent owners of trespassing animals, 9 A.L.R. 945, 35 A.L.R. 409, 91 A.L.R. 759.

Character and extent of claims for which lien on animal damage feasant attaches, 26 A.L.R. 1047.

Tenant's liability for trespass by animals leased with farm, 32 A.L.R. 859.

Scienter as condition of liability for damage by trespassing animals other than dogs, 33 A.L.R. 1305.

What constitutes willful trespass by stock on land not inclosed by legal fence, 158 A.L.R. 375.

Civil liability of landowner for killing or injuring trespassing dog, 15 A.L.R.2d 578.

Liability for injury to animals poisoned as result of spraying or dusting of crop, 37 A.L.R.3d 833.

3A C.J.S. Animals §§ 157 to 162.

**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.

**History:** Laws 1919, ch. 88, § 1; 1921, ch. 70, § 1; C.S. 1929, § 4-701; 1941 Comp., § 49-1607; 1953 Comp., § 47-15-7; Laws 1999, ch. 282, § 89.

### ANNOTATIONS

**The 1999 amendment,** effective July 1, 1999, updated the statutory references, and made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals §§ 143, 159, 160.

### 77-14-9. [Definition of political subdivision.]

By the term "political subdivision," as used herein [77-14-8 through 77-14-24 NMSA 1978], 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.

**History:** Laws 1919, ch. 88, § 2; C.S. 1929, § 4-702; 1941 Comp., § 49-1608; 1953 Comp., § 47-15-8.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1919, ch. 41, § 56, repealed Chapter 60 of the 1915 Code, referred to in this section. See 73-9-62 NMSA 1978.

Chapter 113 of the 1915 Code, referred to in this section, is presently compiled as 73-5-1 to 73-5-9 NMSA 1978.

### **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.

**History:** Laws 1919, ch. 88, § 3; C.S. 1929, § 4-703; 1941 Comp., § 49-1609; 1953 Comp., § 47-15-9.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For "legal newspapers," see 14-11-2 NMSA 1978.

### **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.

**History:** Laws 1919, ch. 88, § 4; C.S. 1929, § 4-704; 1941 Comp., § 49-1610; 1953 Comp., § 47-15-10; Laws 1999, ch. 282, § 90.

## ANNOTATIONS

**Cross references.** — For legal fences, see 77-16-1 to 77-16-8 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, inserted the statutory references in the section, inserted "that described in Chapter 77, Article 16 NMSA 1978" for language describing fencing specifications, and made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 62.

3A C.J.S. Animals §§ 159 to 162.

### **77-14-12. [Holding animals for damages.]**

Any person taking up any trespassing animals under the provisions of this act [77-14-8 through 77-14-24 NMSA 1978] may hold and restrain said animals, and may adjust the damages with the owner of said stock, either by agreement or arbitration.

**History:** Laws 1919, ch. 88, § 5; C.S. 1929, § 4-705; 1941 Comp., § 49-1611; 1953 Comp., § 47-15-11.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 75 et seq.

Liability for personal injury or death caused by trespassing or intruding livestock, 49 A.L.R.4th 710.

3A C.J.S. Animals §§ 252 to 257.

### **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.

**History:** Laws 1919, ch. 88, § 7; C.S. 1929, § 4-707; 1941 Comp., § 49-1613; 1953 Comp., § 47-15-13.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished and all jurisdiction, powers and duties were transferred to the magistrate court. See 35-1-38 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals §§ 258, 259.

### 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. ....

**History:** Laws 1919, ch. 88, § 8; C.S. 1929, § 4-708; 1941 Comp., § 49-1614; 1953 Comp., § 47-15-14.

### ANNOTATIONS

**Cross references.** — For replevin before magistrate, see 35-11-1 and 35-11-3 NMSA 1978.

For replevin, see 42-8-1 to 42-8-22 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 259.

### **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 [77-14-8 through 77-14-24 NMSA 1978] shall be liable on his official bond for the same.

**History:** Laws 1919, ch. 88, § 9; C.S. 1929, § 4-709; 1941 Comp., § 49-1615; 1953 Comp., § 47-15-15.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished and all jurisdiction, powers and duties were transferred to the magistrate court. See 35-1-38 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 79.

Validity of statute authorizing seizure and sale of trespassing stock, 6 A.L.R. 212, 18 A.L.R. 67.

3A C.J.S. Animals § 163.

### **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 [77-14-8 through 77-14-24 NMSA 1978], 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.

**History:** Laws 1919, ch. 88, § 10; C.S. 1929, § 4-710; 1941 Comp., § 49-1616; 1953 Comp., § 47-15-16.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished and all jurisdiction, powers and duties were transferred to the magistrate court. See 35-1-38 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 79.

3A C.J.S. Animals § 163.

### **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.

**History:** Laws 1919, ch. 88, § 11; C.S. 1929, § 4-711; 1941 Comp., § 49-1617; 1953 Comp., § 47-15-17.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished and all jurisdiction, powers and duties were transferred to the magistrate court. See 35-1-38 NMSA 1978.

### **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 [77-14-8 through 77-14-24 NMSA 1978], 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.

**History:** Laws 1919, ch. 88, § 12; C.S. 1929, § 4-712; 1941 Comp., § 49-1618; 1953 Comp., § 47-15-18.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished and all jurisdiction, powers and duties were transferred to the magistrate court. See 35-1-38 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 62 et seq.

3A C.J.S. Animals § 163.

### **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.

**History:** Laws 1919, ch. 88, § 13; C.S. 1929, § 4-713; 1941 Comp., § 49-1619; 1953 Comp., § 47-15-19.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished and all jurisdiction, powers and duties were transferred to the magistrate court. See 35-1-38 NMSA 1978.

### **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.

**History:** Laws 1919, ch. 88, § 14; C.S. 1929, § 4-714; 1941 Comp., § 49-1620; 1953 Comp., § 47-15-20; Laws 1999, ch. 282, § 91.

#### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, assigned the Subsection A and B designations; in Subsection A, updated the statutory reference in the first sentence and substituted "a reasonable fee" for "the sum of one dollar each" in the second sentence; in Subsection B, substituted "set a reasonable charge per day" for "allowed fifteen cents per head each day" in the first sentence, and deleted "and shall be allowed for feed the market price thereof, providing that the costs of feed shall not exceed fifty cents a day per head" at the end of the second sentence; and made stylistic changes throughout the section.

### **77-14-21. [Owners of animals unknown; appraisers; report.]**

If the owner of said animals is unknown and cannot be ascertained by reasonable investigation [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 [77-14-8 through 77-14-24 NMSA 1978], and when said appraisers have assessed the amount of damages the claimant for damages shall be bound thereby.

**History:** Laws 1919, ch. 88, § 15; C.S. 1929, § 4-715; 1941 Comp., § 49-1621; 1953 Comp., § 47-15-21.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished and all jurisdiction, powers and duties were transferred to the magistrate court. See 35-1-38 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals § 91.

### **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.

**History:** Laws 1919, ch. 88, § 16; C.S. 1929, § 4-716; 1941 Comp., § 49-1622; 1953 Comp., § 47-15-22; Laws 1999, ch. 282, § 92.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, inserted the statutory references, substituted "with the board, which shall handle the proceeds in accordance with the provisions of Chapter 77, Article 13 NMSA 1978" for "with the county clerk and if said sum so received by the county clerk is not called for by the owner within two years, the said county clerk shall pay the same over to the county treasurer of the county for the use and benefit of the school fund" in the second sentence, and made stylistic changes throughout the section.

### **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.

**History:** Laws 1919, ch. 88, § 17; C.S. 1929, § 4-717; 1941 Comp., § 49-1623; 1953 Comp., § 47-15-23.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-14-24. [Application of act.]**

This chapter [77-14-8 through 77-14-24 NMSA 1978] shall not apply to any incorporated city or town within said subdivision.

**History:** Laws 1919, ch. 88, § 18; C.S. 1929, § 4-718; 1941 Comp., § 49-1624; 1953 Comp., § 47-15-24.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **77-14-25 to 77-14-34. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-14-25 to 77-14-34 NMSA 1978, as enacted by Laws 1927, ch. 50, §§ 1 to 10, relating to impoundment of animals, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **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.

**History:** Laws 1901, ch. 54, § 1; Code 1915, § 40; C.S. 1929, § 4-310; 1941 Comp., § 49-1635; 1953 Comp., § 47-15-35; Laws 1957, ch. 34, § 1; 1999, ch. 282, § 93.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, in the second sentence, inserted "sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 and may be", and deleted "and may be brought before any justice of the peace and a fine of not less than five dollars (\$5.00) or more than ten dollars (\$10.00) upon such conviction before any justice of the peace" at the end of the sentence, and made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 58 et seq.

3A C.J.S. Animals §§ 137, 138.

### **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.

**History:** 1953 Comp., § 47-15-35.1, enacted by Laws 1975, ch. 329, § 1; 1977, ch. 44, § 1; 1981, ch. 357, § 14; 1989, ch. 230, § 7.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, deleted "or buffalo" following "livestock" in the catchline and throughout the section; in Subsection A substituted "town, village or military reservation or enclave" for "town or village" in the first sentence and deleted the former last sentence, which read: "This subsection does not apply to livestock or buffalo on a military reservation"; and substituted "New Mexico livestock board" for "board" in Subsection B.

**The 1981 amendment** substituted "amounts prescribed by law" for "two dollars fifty cents (\$2.50) per head, plus twelve cents (\$.12) per mile, and cost" in Subsection B and "the" for "such" following "pay" in the second sentence in Subsection E and deleted "then" following "reasonable charge" in the proviso clause in Subsection C.

**The 1977 amendment** added "or buffalo" to the catchline of this section, deleted "except on a military reservation" near the beginning of Subsection A, added the present third sentence of such subsection, substituted "and cost for impounding, if any incurred" for "if any be incurred for impounding" at the end of Subsection B, inserted "or buffalo" before the proviso in Subsection C, and added the second sentence of Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 62 et seq.

Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street, 49 A.L.R.4th 653.

3A C.J.S. Animals §§ 159 to 164.

**77-14-37 to 77-14-39. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-14-37 to 77-14-39 NMSA 1978, as enacted by Laws 1921, ch. 76, §§ 1, 2 and 3, relating to stallions, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

## ARTICLE 15

### Predatory Wild Animals and Rodent Pests

#### 77-15-1. [Cooperation with United States; appropriation.]

That the state of New Mexico will cooperate with the bureau of biological survey of the United States, department of agriculture, in destroying predatory wild animals and rodent pests in the interest of the protection of crops and livestock and the improvement of range conditions. The work of destroying such predatory wild animals and rodent pests [is] to be carried on under the direction of the bureau of biological survey. There is

hereby appropriated for the eighth fiscal year and each year thereafter until otherwise provided by law, the sum of twenty-five thousand dollars [(\$25,000)] for paying the state's share of the cost of such operations as may be provided in the cooperative agreement hereinafter mentioned: provided, that not less than twenty-five thousand dollars [(\$25,000)] be furnished for such cooperative operations each year by the federal government.

**History:** Laws 1919, ch. 119, § 1; C.S. 1929, § 4-1301; 1941 Comp., § 49-1701; 1953 Comp., § 47-16-1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The bureau of biological survey, referred to near the beginning of the section, was transferred from the department of agriculture to the department of interior by reorganization plan No. II, Part 1, § 4(f), May 9, 1939, and was consolidated with the bureau of fisheries, the combined agency to be known as the fish and wildlife service, by reorganization plan No. III, § 3, April 2, 1940. The fish and wildlife service was reorganized by act of August 8, 1956, ch. 1036, § 3, 70 Stat. 1120. See 16 U.S.C. § 742b.

**Cross references.** — For Taylor Grazing Act funds for control of rodents and predatory animals, see 6-11-6 NMSA 1978.

**Legislative intent.** — The legislature, in enacting Laws 1919, ch. 119 (77-15-1 to 77-15-5 NMSA 1978), did not intend that the owners of gardens and other property should be at the mercy of the predatory dogs and other animals, even though they had become domesticated. *State v. Anderson*, 40 N.M. 173, 56 P.2d 1134 (1936).

**Source of appropriations.** — The appropriation hereunder consists of such proceeds as may be derived from sale of furs, skins and specimens, plus a sufficient amount from the funds not otherwise appropriated to make up the \$25,000. However, expenditures from this appropriation are limited to the sum of \$25,000 for each fiscal year. 1931-32 Op. Att'y Gen. No. 31-215.

**State personnel board without authority.** — Since the fish and wildlife service is in fact a federal agency and employees working in the joint programs are subject to hiring and dismissal by federal officers, the state personnel board has no duties or control over such program or its employees. 1963-64 Op. Att'y Gen. No. 63-109.

**Employees of fish and wildlife service are not employees of State** of New Mexico for purposes of the Public Employees Retirement Act (10-11-1 to 10-11-38 NMSA 1978) even though they are paid by state funds. 1957-58 Op. Att'y Gen. No. 57-231.

**However employment under cooperative agreement deemed creditable.** — Employment under the cooperative agreement of July 1, 1923 between the state and the United States for rodent and predator control may be credited toward public employee's retirement. 1957-58 Op. Att'y Gen. No. 58-100.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 1 et seq.; 3 Am. Jur. 2d Agriculture § 42 et seq.

3 C.J.S. Agriculture § 83 et seq.; 3A C.J.S. Animals § 1 et seq.

## **77-15-2. [Agreement for cooperative work.]**

The president of the New Mexico college of agriculture and mechanic arts [New Mexico state university] is hereby authorized and directed to execute a cooperative agreement with the secretary of agriculture or the bureau of biological survey, for carrying on such cooperative work in such manner and under such regulations as may be stated in said agreement.

**History:** Laws 1919, ch. 119, § 2; C.S. 1929, § 4-1302; 1941 Comp., § 49-1702; 1953 Comp., § 47-16-2.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico college of agriculture and mechanic arts, referred to in this section, to New Mexico state university.

**Compiler's notes.** — Laws 1949, ch. 57, § 3, authorizes the president of the New Mexico college of agriculture and mechanic arts (New Mexico state university) to execute a cooperative agreement with an official of the United States fish and wildlife service to control predatory animals and rodents. For similar provisions, see Laws 1929, ch. 153, § 2; Laws 1931, ch. 57, § 2; Laws 1939, ch. 26, § 2 and Laws 1941, ch. 44, § 2.

See also Laws 1945, ch. 57, § 3.

**Cross references.** — For the bureau of biological survey, see compiler's notes to 77-15-1 NMSA 1978.

**77-15-2.1. State-managed predator control program continued; creation of permanent state-managed rodent pest control program.**

The state-managed predator control program, authorized by Subsection K of Section 4 of Chapter 155 of Laws 1980, is continued on a permanent basis and a permanent state-managed rodent pest control program is established within the New Mexico department of agriculture, subject to the availability of funds.

**History:** Laws 1981, ch. 20, § 1.

## ANNOTATIONS

**Compiler's notes.** — Laws 1980, ch. 155, § 4, Subsection K, referred to in this section, provides that the department of agriculture is authorized to establish and operate a state-managed predator control program, notwithstanding the provisions of Section 77-15-1 NMSA 1978.

### **77-15-3. Apportionment of appropriation; sale of furs and specimens; bounty.**

The funds hereby appropriated shall be apportioned for predatory animal destruction and rodent pest repression in such amounts as may be stated in such agreement or in the absence of such agreement as may be determined by the president of New Mexico state university, who shall forward a certificate of such apportionment to the department of finance and administration and a duplicate thereof to the state treasurer, who shall thereupon credit the funds available for the said appropriations to the predatory animal fund and the rodent pest repression fund respectively as stated in said certificate. Said funds shall be expended in amounts as authorized by said president and disbursed by warrants issued by the secretary of finance and administration upon itemized vouchers or payrolls certified by the predatory animal inspector of the bureau of biological survey or by the state rodent inspector or the assistant of the biological survey in charge of rodent pest repression, respectively.

All furs, skins and specimens taken by hunters or trappers paid from the state funds shall be sold upon sealed bids, after advertisement as may be prescribed by the president of said university, and the proceeds of such sales shall be paid to the state treasurer to be credited and added to said predatory animal fund; provided, that any specimens so taken may be presented free of charge to the New Mexico museum or any state institution.

No bounty shall be collected from any county for animals taken by hunters or trappers operating under such agreements, and scalps of animals so taken shall be destroyed or cancelled or marked in such manner that they cannot be used by any other person for collecting of bounty.

**History:** Laws 1919, ch. 119, § 3; C.S. 1929, § 4-1303; 1941 Comp., § 49-1703; 1953 Comp., § 47-16-3; Laws 1977, ch. 247, § 158.

## ANNOTATIONS

**Compiler's notes.** — Laws 1949, ch. 57, § 4, provides for the control of expenditures under the act by the president of New Mexico college of agriculture and mechanic arts (New Mexico state university), for the sale of furs taken by persons under the act and for a \$50,000 limit on expenditures. For similar provisions, see Laws 1929, ch. 153, § 3; Laws 1931, ch. 57, § 3; Laws 1939, ch. 26, § 3 and Laws 1941, ch. 44, § 3.

See also Laws 1945, ch. 57, § 4.

For the bureau of biological survey, see compiler's notes to 77-15-1 NMSA 1978.

**The 1977 amendment** substituted, in the first paragraph, "New Mexico state university" for "said college" and "department of finance and administration" for "state auditor" in the first sentence and "secretary of finance and administration" for "state auditor" in the second sentence and, in the second paragraph, "university" for "college" and "provided" for "Provided."

**Payment of earned bounties.** — Where wild animals had been killed and evidence thereof submitted, in contemplation of the bounty provided by Code 1915, §§ 1330, 1333, and certificates of indebtedness thereof had been issued, the repeal of such sections by Laws 1923, ch. 52, § 1 was inoperative as to persons who had already earned the bounty. *Hayner v. Bd. of Comm'rs*, 29 N.M. 311, 222 P. 657 (1924).

#### **77-15-4. [Payment of cost of rodent pest repression.]**

On lands which are a part of any national forest, Indian reservation or other national reserve, rodent pest repression is to be carried on at the expense of the federal government. On state lands leased or sold under contract for which the purchaser has not yet obtained the title, rodent pest repression is to be prosecuted on a cooperative basis with such lessee or purchaser on such terms as may be agreed upon. All leases hereafter issued for state lands, and all contracts hereafter made for the sale of the state lands, shall provide that the lessee or purchaser shall be obligated to destroy the rodent pests upon such lands and upon failure to do so to pay the cost of rodent pest repression upon such lands by the state rodent force or the cooperative force provided for by this act [77-15-1 through 77-15-5 NMSA 1978], which cost shall not exceed ten cents [(\$.10)] per acre for the infested areas of such lands.

Upon public lands of the United States or of the state, not included in reservations or covered by lease or contract, rodent pest repression shall be carried on and paid for out of the state and federal cooperative funds available as hereinbefore mentioned.

Upon privately owned lands rodent pest repression under this act shall be based on voluntary cooperation of owners, lessees or occupants; poison materials or prepared poison grain to be supplied to such cooperators at actual cost, payable to the state of New Mexico, and the moneys so received shall revert and be added to the said rodent pest fund.

Landowners may arrange with the state rodent inspector or assistant of the biological survey in charge of rodent pest repression in any part of the state for the destruction of rodents on their lands, under written agreement; provided, that the state shall be reimbursed for the actual cost of such treatment to be paid into the state treasury within thirty days after the presentation of the itemized account therefor by the foreman or person in charge of such work; and if not so paid such amount shall be a lien upon the said land. Provided, the amount of such lien shall not exceed ten cents [ (\$.10) ] per acre for the infested areas treated.

**History:** Laws 1919, ch. 119, § 4; C.S. 1929, § 4-1304; 1941 Comp., § 49-1704; 1953 Comp., § 47-16-4.

### ANNOTATIONS

**Compiler's notes.** — For the assistant of the biological survey — see the compiler's note to 77-15-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 42 et seq.

3 C.J.S. Agriculture § 83.

### **77-15-5. [State rodent inspector; salary; destruction of prairie dogs; cost; interfering with inspector; penalty.]**

A state rodent inspector shall be appointed by the president of the New Mexico college of agriculture and mechanic arts [New Mexico state university], such appointment to be made from a list of names furnished by the bureau of biological survey; said state rodent inspector shall be at all times subject to and under the direction of the bureau of biological survey. He shall be paid a salary not exceeding one hundred fifty dollars [ (\$150) ] per month and actual and necessary traveling expenses while performing the duties of his office; such salary and expenses to be paid out of said rodent pest fund in the manner provided in Section 3 [77-15-3 NMSA 1978] of this act.

In case any owner of land infested by prairie dogs shall fail, after written notice from the state rodent inspector served upon such owner in person or mailed to his last known post-office address, to destroy the prairie dogs in such infested areas or to enter into a cooperative agreement as provided by the preceding section to have the same destroyed, or in case the owner is unknown to the county assessor, it shall be the duty of the state rodent inspector, or some member of the cooperative force designated by him, and such inspector or member of said force is hereby authorized, to enter upon said lands and to destroy the prairie dogs therein at the expense of the owner of said lands; which expense shall be a lien upon said lands; provided, that such expense chargeable to the owner or against land of unknown owners shall not exceed ten cents [ (\$.10) ] per acre for the infested areas; provided further, that in case any tract of land not exceeding one hundred and sixty acres actually owned and occupied as a home by a citizen of this state is infested with prairie dogs and such owner can show to the

satisfaction of the state rodent inspector or assistant in charge of the work that he or she is financially unable to pay the cost of destroying the prairie dogs therein, such cost shall be borne by the state and paid out of the rodent pest repression fund.

The state rodent inspector, or the person so designated by him, shall keep an itemized account of the actual expense of materials and labor and necessary traveling or other expense in connection with destroying the rodent pests upon any such lands under such cooperative agreement, or of destroying such prairie dogs in the absence of such agreement, and if the owner shall fail to pay the same within thirty days after notice to him in person or by mail to his last known post-office address, the amount of such costs and expenses, not exceeding ten cents [(\$.10)] per acre, shall be certified to the county assessor of the county in which such lands are situate, together with an accurate description of the land by government subdivisions or other descriptions sufficient to identify the same, and a statement of the number of acres of said land so infested and treated. It shall be the duty of the county commissioners of said county at the time and in the manner for levying other taxes, to make a special levy upon the lands so described sufficient to pay the amount of such costs and expenses, not exceeding ten cents [(\$.10)] per acre, of such infested land, together with a penalty of five percent and interest at the rate of one per centum per month from the date of such certificate, which tax shall be entered upon the assessment roll assessed against the owner of said lands, or assessed to unknown owners, as the case may be, and shall be collected at the time and in the manner provided for the collection of other taxes upon said tax roll, and transmitted to the state treasurer without the deduction of any percentage thereof and credited to the state rodent pest fund.

Should there be any land infested with prairie dogs in any county, the owner of which land is unknown, and such land is assessed in such county against unknown owners upon the tax roll for the then current year, it shall be the duty of the state rodent inspector to cause the prairie dogs therein to be destroyed, and the expense thereof, not exceeding ten cents [(\$.10)] per acre of infested areas, shall be certified to the county commissioners, levied upon said land and assessed, collected and paid into the state treasury to the credit of the rodent fund as hereinbefore provided.

Any person who shall interfere with the said rodent inspector in the discharge of his duties as herein provided shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred [(\$100)] nor more than five hundred dollars [(\$500)] for each offense; provided, that in case of any small tract of land not exceeding one hundred and sixty acres in extent, actually occupied as a home by any resident of the state of New Mexico, who is able to show to the satisfaction of the state rodent inspector or assistant of the biological survey, in charge of said work, that he or she is not financially able to pay the costs of clearing said land of the prairie dogs therein, such cost shall be borne by the state and paid out of said rodent pest repression fund.

**History:** Laws 1919, ch. 119, § 5; C.S. 1929, § 4-1305; 1941 Comp., § 49-1705; 1953 Comp., § 47-16-5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico college of agriculture and mechanic arts, referred to in this section, to New Mexico state university.

For the bureau of biological survey, see compiler's notes to 77-15-1 NMSA 1978.

**In exterminating rodent pests on private lands, the actual expense must be determined.** 1923-24 Op. Att'y Gen. No. 23-3720.

**Levy not contingent upon effective work.** — It is the duty of the board of county commissioners under this section to make the required levy, although work done is not effective. It is the work itself for which payment is to be made, and such payment is not contingent upon the successful outcome of the work. 1937-38 Op. Att'y Gen. No. 37-1732.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 42 et seq.

3 C.J.S. Agriculture §§ 83 to 87.

### **77-15-6. Short title.**

This act [77-15-6 through 77-15-14 NMSA 1978] may be cited as the "County Predatory Control Act."

**History:** 1953 Comp., § 47-16-6, enacted by Laws 1965, ch. 92, § 1.

### **77-15-7. Purpose of predator control program; method of establishment.**

Predator control programs shall be established in any county by the board of county commissioners upon receipt of a valid petition for that purpose. The predator control program shall be for the protection of sheep and goats, or cattle, or both groups of animals, against predators, for one-, two-, three-, four- or five-year periods.

**History:** 1953 Comp., § 47-16-7, enacted by Laws 1965, ch. 92, § 2.

### **77-15-8. Petitions; signatures required.**

The petitions for the establishment of a predator control program shall be valid for a program for the protection of sheep and goats, if in the proper form and signed by the

owners of at least fifty-one percent of the sheep and goats listed on the tax rolls in the county, and shall be valid for a program for the protection of cattle if in the proper form and signed by the owners of fifty-one percent of the cattle listed on the tax rolls in the county. If a signer of the petition owns both cattle and sheep and goats, and wishes to sign the petition for the limited purpose of cattle, or for the limited purposes of sheep and goats he may do so by indicating after his signature "sheep and goats only" or "cattle only" as the case may be, in the column headed "Limitation." If there is no qualification and the signer owns both classes of animals, the signature shall be valid for both predator control programs. If the livestock are assessed under a partnership or firm name, the signer shall list the name under which assessed. The petition shall state a maximum rate of assessment.

**History:** 1953 Comp., § 47-16-8, enacted by Laws 1965, ch. 92, § 3.

**77-15-9. Form of petitions.**

The petitions shall be in substantially the following form:

PETITION FOR COUNTY PREDATOR CONTROL PROGRAM

To the Board of County Commissioners of \_\_\_\_\_ (name of county)  
New Mexico:

The undersigned, owners of at least fifty-one percent of the sheep and goats, and fifty-one percent of the cattle (or either, as the case may be) on the tax rolls of \_\_\_\_\_ (name of county) county, New Mexico, hereby petition the board of county commissioners to establish a county predator control program as authorized by \_\_\_\_\_ (cite applicable law) to last for a period of \_\_\_\_\_ years from the date of the establishment of the program. This program shall be financed by a mill levy on the appropriate kind of livestock in this county at a rate not to exceed \_\_\_\_\_ (\$ ) per head.

We further petition the board of county commissioners to appoint the following five livestock owners, residents of this county, to serve as the county predator control board:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

Date Signed	Signature	Address	Name under which assessed	Limitation (if any)

The petitions may consist of as many sheets of paper as needed, as long as each sheet is headed as provided in this section.

**History:** 1953 Comp., § 47-16-9, enacted by Laws 1965, ch. 92, § 4.

### **77-15-10. Filing of petition; verification by board of county commissioners; creation of program; creation of predator control board.**

The petitions shall be filed on or before the first Monday in August in any year at a regularly scheduled meeting of the board of county commissioners. After examination of the petition, if the board finds the petition in order and properly signed by the owners of at least fifty-one percent of the sheep and goats, and by the owners of at least fifty-one percent of the cattle, the board shall declare a county predator control program established for both classes of animals for the period specified in the petition. If the petition is signed by the owners of fifty-one percent of either class but not both classes, the board shall declare a county predator program established for that class of animal for which the petition contains the required signatures for the period specified in the petition. The board shall further appoint the persons designated on the petition as the county predator control board, to serve for the period of the county predator control program. The predator control program established shall commence on January 1 following the establishment of the program, and shall continue for the term specified on the petition. If any funds remain after the termination of the program, these funds shall be refunded to each livestock owner assessed under the County Predator Control Act [77-15-6 through 77-15-14 NMSA 1978] in the proportion that the number of head of his livestock protected and assessed under the act at the date of termination of the program bears to the total number of head of livestock protected and assessed under that county program at the date of termination. Any pelts collected shall be sold and the proceeds placed in the county predator control fund.

**History:** 1953 Comp., § 47-16-10, enacted by Laws 1965, ch. 92, § 5.

### **77-15-11. Special levy.**

A. Upon the establishment of a county predator control program, the board of county commissioners shall order a special levy of a tax in the form of a mill levy that will produce not more than the rate limitation set on the petition and not more than one dollar (\$1.00) per head on all animals in the county to be protected under the county predator control program. This special levy shall be over and above any other special levies and shall not be construed to be within the constitutional twenty-mill limitation. The proceeds of this special levy shall be deposited with the county treasurer for expenditure upon order of the county predator control board and shall be spent, during the existence of the program, solely for predator control.

B. The amount of the levy shall be stated on the petition, and the county predator control board shall certify it to the board of county commissioners on or before the first Monday in August following its appointment. The special levy shall be assessed, levied and collected as other taxes in the county and at the expense of the county.

C. The owners of fifty-one percent of the animals assessed under the County Predator Control Act [77-15-6 through 77-15-14 NMSA 1978] may require a change in the amount of the levy within the statutory limit by petitioning the county predator control board on or before the first Monday of July of any year.

D. Any owner of dairy animals or of feedlot animals being fattened on full feed for slaughter and which animals are included in the animals on the tax rolls for this special assessment may have these animals excluded from the special assessment by filing a certified statement containing the description and count of the animals with the board of county commissioners prior to September 1 of the year in which the tax is assessed.

**History:** 1953 Comp., § 47-16-11, enacted by Laws 1965, ch. 92, § 6; 2005, ch. 233, § 1.

## **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, increased the special levy in Subsection A from twenty-five cents to one dollar per head on all animals in a county protected under the county predator control program.

### **77-15-12. Abolition or continuation of program.**

The owners of fifty-one percent of the animals covered by a county predator control program can abolish the program in any year by a petition to the county commissioners on or before the first Monday of August of any year in the same manner as the program was created.

If it is desired to continue a program past the date set for its termination, it must be done by the same type of petition by which the program was initiated, and must be filed by the first Monday of August of the year preceding the termination date.

**History:** 1953 Comp., § 47-16-12, enacted by Laws 1965, ch. 92, § 7.

### **77-15-13. Powers of county predator control board.**

The county predator control board shall expend the moneys collected under the County Predator Control Act [77-15-6 through 77-15-14 NMSA 1978] for a predator control program for the county. The board may do so by establishing a separate predator control program or by contracting with other federal or state agencies or with agencies of other counties.

**History:** 1953 Comp., § 47-16-13, enacted by Laws 1965, ch. 92, § 8.

### **77-15-14. Program in addition to all other programs.**

The county predator control program established under this County Predator Control Act [77-15-6 through 77-15-14 NMSA 1978] shall be in addition to other state and federal programs, and shall not be construed to be in lieu of those programs.

**History:** 1953 Comp., § 47-16-14, enacted by Laws 1965, ch. 92, § 9.

## **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.

**History:** Laws 1909, ch. 70, § 1; Code 1915, § 2340; C.S. 1929, § 50-101; 1941 Comp., § 49-1801; 1953 Comp., § 47-17-1.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For fences along exterior of herd law districts, see 77-12-9 NMSA 1978.

For fences within irrigation districts, see 77-14-11 NMSA 1978.

For unlawful fences, see 77-16-4, 77-16-6 and 77-16-7 NMSA 1978.

**Ordinance conflicted with free range of livestock management.** — Where the county filed a criminal complaint against defendant for allowing defendant's cattle to run at large in violation of a county ordinance that made it unlawful for a person to allow or permit an animal to run at large; and the land in question was not within the boundary of a municipality, a conservancy district, or a military base, the metropolitan court properly dismissed the criminal complaint because the ordinance conflicted with New Mexico's free range or "fence out" approach to livestock management as expressed in Subsection C of Section 66-7-363 NMSA 1978 and Section 77-16-1 NMSA 1978, and the county did not have general authority to disallow the free running of livestock in unincorporated or open areas of their jurisdiction. *Bernalillo Bd. of Co. Comm'rs v. Benavidez*, 2013-NMCA-015, 292 P.3d 482, cert. denied, 2012-NMCERT-012.

**Owner's duty to enclose property.** — Where the running of livestock is lawful, it is the duty of the owner of property to effectively enclose it should he desire to keep roaming stock off his premises. *Stewart v. Oberholtzer*, 57 N.M. 253, 258 P.2d 369 (1953).

**Legal fence not necessary for landowner's recovery for damages.** — Recovery of damages caused by trespassing animals and the award of injunctive relief is not barred by failure to have lands enclosed by a legal fence, where trespass complained of is proven to have been willfully committed. *Frostenson v. Marshall*, 25 N.M. 215, 180 P. 287 (1919).

Recovery for willful trespass may be had regardless of the existence of a statutory fence. *Gallegos v. Allemand*, 49 N.M. 97, 157 P.2d 493 (1945).

Relief as against willful trespass is not dependent upon the existence of the statutory fence. *Wright v. Atkinson*, 39 N.M. 307, 46 P.2d 667 (1935); *Carnes v. Withers*, 38 N.M. 441, 34 P.2d 1092 (1934); *Vanderford v. Wagner*, 24 N.M. 467, 174 P. 426 (1918); *Hill v. Winkler*, 21 N.M. 5, 151 P. 1014 (1915).

**Landowner's burden of proof.** — Since landowner did not have a legal fence, before he may recover, it must be shown that the claimed trespasser drove his animals upon the lands of the injured party or willfully turned them loose upon other lands knowing that they would necessarily enter the lands of the injured party, and intended that they should do so. *Woofter v. Lincoln*, 62 N.M. 297, 309 P.2d 622 (1957).

A plaintiff, to recover damages from a defendant for willfully permitting cattle to trespass on his land, is required to prove that defendant turned cattle loose upon other's land, cognizant that the cattle would inevitably enter upon lands belonging to plaintiff and that such result was intended to follow. *Gallegos v. Allemand*, 49 N.M. 97, 157 P.2d 493 (1945).

**No recovery by landowner without willfulness or legal fence.** — Where there was no "willful trespass" in action for damages to land by defendant's sheep, and lands were not shown to be in locality governed by the Herd Law (77-12-1 to 77-12-12 NMSA 1978), and where the lands of plaintiff and defendant were separated by a fence which was not a lawful fence as contemplated by 77-16-1 to 77-16-4 NMSA 1978, no damages were recoverable. *Carnes v. Withers*, 38 N.M. 441, 34 P.2d 1092 (1934).

Owner of unfenced lands cannot recover damages for the injury occasioned by trespassing animals thereon, where such animals are lawfully at large and the trespass is not willful. *Carnes v. Withers*, 38 N.M. 441, 34 P.2d 1092 (1934); *Vanderford v. Wagner*, 24 N.M. 467, 174 P. 426 (1918).

**No right to retain trespassing animals.** — No person has a lien or right to retain possession of any animals trespassing on his lands unless they are fenced by not less than four wires firmly fastened to posts. *Candelaria v. Gutierrez*, 30 N.M. 195, 230 P. 436 (1924).

**Effect of this section** is to deny a defendant the right to exercise force in expelling trespassing livestock from his premises, unless the trespass is willful. *Stewart v. Oberholtzer*, 57 N.M. 253, 258 P.2d 369 (1953).

**Landowner may recover for damages.** — Where animals have been turned out by their owners with the certainty that they will go upon the unfenced lands owned by another, the landowner can recover damages even though his land is not fenced. 1915-16 Op. Att'y Gen. Nos. 15-1561, 15-1649, and 16-1769.

**This section does not repeal 77-14-3 NMSA 1978.** 1915-16 Op. Att'y Gen. No. 15-1567.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 70; 35 Am. Jur. 2d Fences § 1 et seq.

Constitutionality of fence and stock laws, 6 A.L.R. 212, 18 A.L.R. 67.

"Owner," meaning and import of term, in statute as to fencing against animals, 95 A.L.R. 1098.

What constitutes willful trespass by stock on land not inclosed by legal fence, 158 A.L.R. 375.

Zoning regulations prohibiting or limiting fences, hedges, or walls, 1 A.L.R.4th 373.

Fences as factor in fixing location of boundary line - modern cases, 7 A.L.R.4th 53.

Liability for killing or injuring, by motor vehicle, livestock or fowl on highway, 55 A.L.R.4th 822.

Validity of statutes requiring the construction of fences - modern cases, 87 A.L.R.4th 1129.

3A C.J.S. Animals § 140; 36A C.J.S. Fences § 1 et seq.

## **77-16-2. Definition.**

As used in Article 16 of Chapter 77 [NMSA 1978], "livestock" shall include domestic animals such as cattle, horses, sheep, hogs, goats and buffaloes.

**History:** 1953 Comp., § 47-17-1.1, enacted by Laws 1977, ch. 189, § 2.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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 [77-16-1 NMSA 1978].

**History:** Laws 1909, ch. 70, § 2; Code 1915, § 2341; C.S. 1929, § 50-102; 1941 Comp., § 49-1802; 1953 Comp., § 47-17-2.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "preceding section" at the end of this section refer to Laws 1909, ch. 70, § 1, presently compiled as 77-16-1 NMSA 1978.

**Notice required for landowner to recover for depasturing.** — The owner of private lands may prevent its depasturing by others by marking its boundaries and posting notices on it, or serving written notices upon parties not to trespass thereon, provided the owner so complies with this statute, but otherwise he cannot recover damages for such depasturing. *Jastro v. Francis*, 24 N.M. 127, 172 P. 1139 (1918).

**And theory of implied contract not available.** — Absent a finding of willfulness, this section specifically denies the right of recovery for trespassing animals on unfenced lands, and there is no ground for recovery on any theory of implied contract. *Kinsolving v. Reed*, 74 N.M. 284, 393 P.2d 20 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 70.

3A C.J.S. Animals § 140.

### **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 [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.

**History:** Laws 1909, ch. 13, § 1; Code 1915, § 2342; Laws 1923, ch. 94, § 1; C.S. 1929, § 50-103; 1941 Comp., § 49-1803; 1953 Comp., § 47-17-3.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Owner of livestock has duty to care for his property** as a reasonable man, and he may be liable for injuries to motorists resulting from collisions with his animals due to his negligence in permitting them to be on the highway. *Mitchell v. Ridgway*, 77 N.M. 249, 421 P.2d 778 (1966).

**Trier of fact to determine presence of reasonable care.** — It is for the trier of the facts to determine whether the owner of the animal has used reasonable care to restrain his livestock. *Mitchell v. Ridgway*, 77 N.M. 249, 421 P.2d 778 (1966).

**This section does not repeal 77-14-3 NMSA 1978.** 1915-16 Op. Att'y Gen. No. 15-1567.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fences § 9.

Liability for personal injury by barbed wire, 36 A.L.R. 545.

### **77-16-5. [Applicability of act.]**

This act [77-16-4, 77-16-5 NMSA 1978] 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 [77-14-8 through 77-14-24 NMSA 1978].

**History:** Laws 1923, ch. 94, § 2; C.S. 1929, § 50-104; 1941 Comp., § 49-1804; 1953 Comp., § 47-17-4.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of statutes requiring the construction of fences - modern cases, 87 A.L.R.4th 1129.

### **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 [77-16-4 NMSA 1978] 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.

**History:** Laws 1909, ch. 13, § 2; Code 1915, § 2343; C.S. 1929, § 50-105; 1941 Comp., § 49-1805; 1953 Comp., § 47-17-5.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "preceding section" refer to Laws 1909, ch. 13, § 1, presently compiled as 77-16-4 NMSA 1978.

### **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.

**History:** Laws 1909, ch. 13, § 3; Code 1915, § 2344; C.S. 1929, § 50-106; 1941 Comp., § 49-1806; 1953 Comp., § 47-17-6.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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.

**History:** Laws 1909, ch. 13, § 4; Code 1915, § 2345; C.S. 1929, § 50-107; 1941 Comp., § 49-1807; 1953 Comp., § 47-17-7.

#### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **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.

**History:** Laws 1869, ch. 20, § 1; C.L. 1884, § 1272; C.L. 1897, § 1814; Code 1915, § 2347; C.S. 1929, § 50-109; 1941 Comp., § 49-1808; 1953 Comp., § 47-17-8.

#### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Prior to the 1915 Code compilation, this section read: "The fences actually existing or that may henceforward be constructed within any county of this territory, 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.

**History:** Laws 1869, ch. 20, § 2; C.L. 1884, § 1273; C.L. 1897, § 1815; Code 1915, § 2348; C.S. 1929, § 50-110; 1941 Comp., § 49-1809; 1953 Comp., § 47-17-9; Laws 1981, ch. 365, § 1.

#### ANNOTATIONS

**The 1981 amendment** added the catchline and substituted "is found" for "shall be," "wilfully cutting or otherwise destroying" for "breaking or throwing down" and "or any part thereof is guilty of a petty misdemeanor" for "or in any manner whatever breaking any rail, post, stake or whatsoever other material is placed for the purpose of fencing, or wall built with that object, shall be summarily judged before the justice of the peace of the precinct in which such offense is committed; and if convicted, shall be fined in the sum of five dollars; provided, that when children, or minors, shall commit such offense, their fathers, mothers or guardians shall be responsible for them under the provisions of this section."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fences §§ 33, 36, 37.

36A C.J.S. Fences §§ 16 to 18.

### **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.

**History:** Laws 1869, ch. 20, § 3; C.L. 1884, § 1274; C.L. 1897, § 1819; Code 1915, § 2352; C.S. 1929, § 50-114; 1941 Comp., § 49-1810; 1953 Comp., § 47-17-10.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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.

**History:** Laws 1869, ch. 20, § 4; C.L. 1884, § 1275; C.L. 1897, § 1820; Code 1915, § 2353; C.S. 1929, § 50-115; 1941 Comp., § 49-1811; 1953 Comp., § 47-17-11.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The compilers of the 1915 Code changed the statutory reference in this section, so that instead of referring to Laws 1869, ch. 20, § 1 (presently compiled as 77-16-9 NMSA 1978), this section referred to Laws 1869, ch. 20, § 3 (presently compiled as 77-16-11 NMSA 1978). Consideration of the section's provisions would seem to indicate that it was intended to refer to Laws 1869, ch. 20, § 2 (presently compiled as 77-16-10 NMSA 1978).

### **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.

**History:** Laws 1897, ch. 39, § 1; C.L. 1897, § 1825; Code 1915, § 2354; C.S. 1929, § 50-116; 1941 Comp., § 49-1812; 1953 Comp., § 47-17-12.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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.

**History:** Laws 1897, ch. 39, § 2; C.L. 1897, § 1826; Code 1915, § 2355; C.S. 1929, § 50-117; 1941 Comp., § 49-1813; 1953 Comp., § 47-17-13.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The compilers of the 1915 Code deleted "shall close said gate, and if any person or persons so passing" which followed "aforesaid." The bracketed word "and" was added to replace the deleted words.

### **77-16-15. Penalty.**

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).

**History:** Laws 1897, ch. 39, § 3; C.L. 1897, § 1827; Code 1915, § 2356; C.S. 1929, § 50-118; 1941 Comp., § 49-1814; 1953 Comp., § 47-17-14; 2011, ch. 46, § 1.

#### **ANNOTATIONS**

**Compiler's notes.** — The office of justice of the peace was abolished and all jurisdiction, powers and duties conferred by law upon justices of the peace were transferred to the magistrate courts. See N.M. Const., art. VI, § 31.

The **2011 amendment**, effective June 17, 2011, increased the amount of the fine.

## **77-16-16. Railroads; fencing of lines; 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 the railroad or any part thereof are open, erect and thereafter maintain fences on the sides of the 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 railroad, except at the crossings of public roads and highways and within the limits of municipalities and shall also construct, where not already 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 the railroad. If any railroad fails to construct and maintain fences and cattle guards as directed in this section, the railroad shall be liable to the owner for all damages resulting from injury or death caused to any livestock, including reasonable attorney fees, on order of the court should legal proceedings be commenced by the owner. Should the New Mexico livestock board be unable to determine ownership of livestock crippled or killed by the railroad within thirty 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 the unknown owner in any court of competent jurisdiction and recover damages as provided in this section, and the proceeds shall be disposed of as provided for under the laws pertaining to estrays.

B. In the event that a fence is in a condition of neglect, disrepair or nonexistence, the adjacent landowner may contact the railroad supervisor or the owner of the right of way by certified mail, return receipt requested, and demand repair or construction to the legal standard provided in Section 77-16-17 NMSA 1978. Within thirty days thereafter, the railroad shall commence construction or provide proof of intent to comply, and after ten more days, if the railroad has failed to commence construction or to comply with agreed-upon terms of construction or repair, the adjacent landowner may repair, construct or cause to be repaired or constructed the fence at the expense of the railroad calculated at the cost of commercial rates common to the area. If the railroad fails to comply within thirty days of presentation of proof of cost, the landowner shall be compensated in an amount equal to two times the amount of the presented proof plus any cost of litigation, including attorney fees.

C. State-owned railroads and narrow-gauge and recreational railroads are exempt from the provisions of this section.

**History:** Laws 1889, ch. 75, § 1; 1889, ch. 139, § 1; C.L. 1897, § 241; Laws 1901, ch. 86, § 1; Code 1915, § 28; C.S. 1929, § 4-103; 1941 Comp., § 49-1815; 1953 Comp., § 47-17-15; Laws 1965, ch. 9, § 1; 2013, ch. 145, § 1.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, provided for enforcement of railroad fencing requirements by adjacent landowners; added the title, and added Subsections B and C.

**This section authorizes a common-law** action to recover damages for killing of livestock proximately resulting from the failure to fence. *Hittson v. Chicago, R.I. & Pac. Ry. Co.*, 43 N.M. 122, 86 P.2d 1037 (1939).

**Failure to fence not negligent per se.** — Failure to construct fences is not negligence per se, but only places the burden of proof upon the defendant railroad companies to show lack of negligence. *Reagan v. El Paso & N.E. Ry. Co.*, 15 N.M. 270, 106 P. 376 (1910); *Pecos Valley & N.E. Ry. Co. v. Cazier*, 13 N.M. 131, 79 P. 714 (1905).

**Exclusive remedy.** — An adequate remedy to owners is provided by 47-17-16, 1953 Comp. (now repealed), and the remedy is exclusive. *Hittson v. Chicago, R.I. & P. Ry.*, 43 N.M. 122, 86 P.2d 1037 (1939) (decided under former law now repealed).

**And railroad may waive affidavit.** — Under 47-17-16, 1953 Comp. (now repealed), the requirement of affidavit of ownership and injury by the owner may be waived by the railroad. *Hittson v. Chicago, R.I. & P. Ry.*, 43 N.M. 122, 86 P.2d 1037 (1939) (decided under former law now repealed).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 65 Am. Jur. 2d Railroads §§ 125 to 148.

Liability of interurban road for killing or injuring livestock running at large, 2 A.L.R. 98, 25 A.L.R. 1506.

Failure to fence as rendering railroad company liable for damage to or by livestock after leaving right of way, 24 A.L.R. 1057.

Dogs as within contemplation of statutes as to duty of railroads as regards livestock, 46 A.L.R. 1536.

74 C.J.S. Railroads § 560.

### **77-16-17. [Requirements of railroad fence.]**

That for the purposes of the preceding two sections [77-16-16 NMSA 1978] 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.

**History:** Laws 1889, ch. 75, § 3; 1889, ch. 141, § 1; C.L. 1897, § 243; Code 1915, § 30; C.S. 1929, § 4-105; 1941 Comp., § 49-1817; 1953 Comp., § 47-17-17.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "preceding two sections" refer to §§ 28 and 29 of the Code of 1915. Code 1915, § 28 is compiled as 77-16-16 NMSA 1978; however, Code 1915, § 29, was repealed by Laws 1963, ch. 180, § 2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 65 Am. Jur. 2d Railroads § 125.

74 C.J.S. Railroads § 576.

### **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.

**History:** 1953 Comp., § 47-17-18, enacted by Laws 1963, ch. 180, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For references to the "cattle sanitary board" being deemed as references to the "New Mexico livestock board", see 77-2-2 NMSA 1978.

## ARTICLE 17 Abattoirs, Meat Dealers and Storage Plants

### 77-17-1. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 2013, ch. 84, § 2 repealed 77-17-1 NMSA 1978, as enacted by Laws 1939, ch. 115, § 1, relating to license and bond required, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

### 77-17-2. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 2013, ch. 84, § 2 repealed 77-17-2 NMSA 1978, as enacted by Laws 1939, ch. 115, § 2, relating to dealers in fresh meat or livestock or poultry meat products or meat from other birds and animals used for human consumption, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

### 77-17-3. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 2013, ch. 84, § 2 repealed 77-17-3 NMSA 1978, as enacted by Laws 1939, ch. 115, § 3, relating to bonds for licenses, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

### 77-17-4. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by Sections 77-17-7 through 77-17-14 NMSA 1978.

History: 1953 Comp., § 47-20-3.1, enacted by Laws 1974, ch. 78, § 8; 2013, ch. 84, § 1.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, limited the scope of this section; and after "Sections", deleted "47-20-1 through 47-20-13 NMSA 1953" and added "77-17-7 through 77-17-14 NMSA 1978.

### **77-17-5. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2013, ch. 84, § 2 repealed 77-17-5 NMSA 1978, as enacted by Laws 1939, ch. 115, § 4, relating to disposition of license fees, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

### **77-17-6. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2013, ch. 84, § 2 repealed 77-17-6 NMSA 1978, as enacted by Laws 1939, ch. 115, § 5, relating to penalties, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

### **77-17-7. Definition.**

As used in Sections 77-17-7 and 77-17-8 NMSA 1978, "slaughterhouse" means an abattoir or a place where livestock are slaughtered.

**History:** 1953 Comp., § 47-20-5.1, enacted by Laws 1965, ch. 127, § 1; 1999, ch. 282, § 98.

## ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, deleted the definitions for "person" and "residential dwelling house", substituted "Sections 77-17-7 and 77-17-8 NMSA 1978" for "this act", and made stylistic changes.

### **77-17-8. Restriction upon establishing slaughterhouses.**

No person shall establish a slaughterhouse in any location which is within one thousand feet of a residential dwelling house unless, prior thereto, the person shall gain the written consent from at least seventy-five percent of the owners of residential dwelling houses located within one thousand feet of the proposed slaughterhouse.

**History:** 1953 Comp., § 47-20-5.2, enacted by Laws 1965, ch. 127, § 2.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades and Professions § 115.

3A C.J.S. Animals § 117.

### **77-17-9. Failing to keep record; penalty.**

A person who carries on the business of butcher or slaughterer of livestock shall keep a true and faithful record, in a book kept for the purpose, of all livestock purchased or slaughtered by him together with a description of each animal, including marks, brands, age and weight and from whom purchased and the date of purchase. The person shall keep the hide and ears of cattle, sheep and goats for thirty days or until inspected by an inspector after the livestock is slaughtered. A person who violates a provision of this section is guilty of a misdemeanor for each offense and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1884, ch. 47, § 20; C.L. 1884, § 73; C.L. 1897, § 86; Code 1915, § 546; C.S. 1929, § 19-103; 1941 Comp., § 49-2206; 1953 Comp., § 47-20-6; Laws 1999, ch. 282, § 99.

## ANNOTATIONS

**Cross references.** — For hides and ears to be kept for inspection, see 77-17-12 NMSA 1978.

For notice of intention to slaughter, see 7-23-1 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, added the section heading; in the second sentence, substituted "hide and ears" for "hide and horns", and inserted "or until inspected by an inspector" following "for thirty days"; in the last sentence, substituted "and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978" for "fined in a sum not less than ten nor more than one hundred dollars to be recovered as provided in the preceding section"; and made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades and Professions § 15.

3A C.J.S. Animals § 118.

### **77-17-10. Inspection of record, hides and ears.**

The record, hides and ears of cattle, sheep and goats shall be open to the inspection by the board for the period of thirty days or until inspected by an inspector, and any

butcher or slaughterer who refuses to permit such inspection or examination is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1884, ch. 47, § 21; C.L. 1884, § 74; C.L. 1897, § 87; Code 1915, § 547; C.S. 1929, § 19-104; 1941 Comp., § 49-2207; 1953 Comp., § 47-20-7; Laws 1999, ch. 282, § 100.

## ANNOTATIONS

**Cross references.** — For inspection of hides, see 77-17-12 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, added the section heading; and rewrote the section which formerly read: "The said record shall be open to the inspection of all persons, and also the hide and horns, for the period of thirty days, and any butcher or slaughterer refusing to permit such inspection or examination shall be subject to a fine of not less than ten nor more than twenty-five dollars for each offense, to be recovered as provided in the preceding sections."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades and Professions § 15.

3A C.J.S. Animals § 118.

## 77-17-11. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-17-11 NMSA 1978, as enacted by Laws 1884, ch. 47, § 22, relating to disposition of fines and penalties, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

## 77-17-12. Hides and ears to be kept; inspection; penalty.

A person killing or causing to be killed any livestock for his own use or for the use of others or for the purpose in whole or in part of sale or exchange is required to keep in his own possession, unchanged and un mutilated and in condition to be easily inspected and examined, all hides or pelts and ears of cattle, sheep and goats, for the period of thirty days after the killing or until inspected by an inspector and shall at any time while the hides or pelts and ears remain in his possession permit them to be inspected and examined by a sheriff, deputy sheriff, inspector or other officer authorized by law to inspect any hides and pelts or livestock, whether dead or alive. A person who violates the provisions of this section is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1891, ch. 45, § 1; C.L. 1897, § 89; Code 1915, § 549; C.S. 1929, § 19-106; 1941 Comp., § 49-2209; 1953 Comp., § 47-20-9; Laws 1999, ch. 282, § 101.

## ANNOTATIONS

**Cross references.** — For inspection of slaughterhouses, see 77-9-33 NMSA 1978.

For keeping records, hides and horns, see 77-17-9 NMSA 1978.

For refusal to permit inspection of records, hides and ears, see 77-17-10 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, added the section heading; in the first sentence, substituted "or until inspected by an inspector" for "and of sheep, ten days after the killing", and deleted "or constable, or by any board or" following "deputy sheriff"; substituted the last sentence for "Provided, however, that the provisions of this section shall also apply to the killing by persons engaged in any public roundup of animals for the use in connection with the making of such roundup"; and made stylistic changes.

**This section does not violate constitutional immunities** from self-incrimination and unreasonable searches and seizures. *State v. Walker*, 34 N.M. 405, 281 P. 481 (1929); *State v. Knight*, 34 N.M. 217, 279 P. 947 (1929).

**This section does not deprive one of property without due process.** *State v. Walker*, 34 N.M. 405, 281 P. 481 (1929).

**This section is a reasonable police regulation.** *State v. Walker*, 34 N.M. 405, 281 P. 481 (1929).

**Purpose of statute.** — This section was enacted in aid of the suppression of larceny of animals. *State v. Walker*, 34 N.M. 405, 281 P. 481 (1929).

This section, in its purpose and effect, is somewhat analogous to statutes requiring persons engaged in certain occupations to keep and produce records of certain transactions. *State v. Walker*, 34 N.M. 405, 281 P. 481 (1929).

**Not element of grand larceny.** — The violation of this section is not a necessary element of the offense of grand larceny of the cattle. A larceny of cattle completed on one day by driving the same away or killing them is a distinct offense from that described in this section, and an acquittal of the former is no bar to a prosecution for the latter. *State v. Knight*, 34 N.M. 217, 279 P. 947 (1929).

**Separate charge necessary.** — No conviction can be had of the crime described in this section under an information charging only grand larceny. *State v. Knight*, 34 N.M. 217, 279 P. 947 (1929).

**Hides preserved under this section are public records.** State v. Walker, 34 N.M. 405, 281 P. 481 (1929).

### **77-17-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-17-13 NMSA 1978, as enacted by Laws 1891, ch. 45, § 2, relating to penalty for failure to retain hides, pelts and ears, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **77-17-14. [Failure to show hides or pelts; evidence of violation.]**

Inability or refusal to show such hide or pelt to any proper authority within said period of thirty days, or a refusal to so show it at any time thereafter while remaining in the possession of the person by or for whom the animal was killed, shall be prima facie evidence of a violation of the provisions of said section [77-17-12 NMSA 1978], and shall be competent evidence to go to the jury upon the trial of any indictment against such person or persons for the larceny of any animal or animals, or for the receiving of stolen property.

**History:** Laws 1891, ch. 45, § 3; C.L. 1897, § 91; Code 1915, § 551; C.S. 1929, § 19-108; 1941 Comp., § 49-2211; 1953 Comp., § 47-20-11.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For larceny of livestock, see 30-16-1 NMSA 1978.

For receiving stolen property, see 30-16-11 NMSA 1978.

### **77-17-15, 77-17-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 282, § 104 repealed 77-17-15 and 77-17-16 NMSA 1978, as enacted by Laws 1899, ch. 44, §§ 1 and 2, relating to purchase of dressed meats, exhibition of hides, keeping of records, inspection and penalties, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

# ARTICLE 18

## General Animal Regulations

### 77-18-1. Sale, purchase, trade and possession of certain animals regulated.

The sale, purchase, trade and possession with intent to keep as a pet of any subhuman primate, skunk, raccoon, fox or other sylvatic carnivore may be regulated by regulation of the health and environment department [department of health] for the protection of public health and safety.

**History:** Laws 1979, ch. 194, § 6.

#### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department, and enacted a new 9-7-4 NMSA 1978, creating the department of health.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 2 et seq.

3A C.J.S. Animals §§ 3, 6 et seq., 99 et seq., 274 et seq.

### 77-18-2. Seizure and disposition of cruelly treated livestock.

A. If a livestock inspector or other peace officer has reason to believe that livestock is being cruelly treated, the inspector or peace officer may apply to a court in the county where the livestock is located for a warrant to seize the allegedly cruelly treated livestock.

B. On a showing of probable cause to believe that the livestock is being cruelly treated, the court shall issue a warrant for the seizure of the livestock and set the matter for hearing as expeditiously as possible within thirty days unless good cause for a later time is demonstrated by the state. Seizure as authorized by this section shall be restricted to only those livestock allegedly being cruelly treated. The board by rule shall establish procedures for preserving evidence of alleged cruel treatment of livestock.

C. If criminal charges are filed against the owner, the court shall, upon proper petition, proceed to determine if security is required to be posted pursuant to Section 30-18-1.2 NMSA 1978. Otherwise, the judge or magistrate executing the warrant shall notify the board, have the livestock impounded and give written notice to the owner of the livestock of the time and place of a hearing to determine disposition of the livestock.

D. All interested parties, including the district attorney, shall be given an opportunity to present evidence at the hearing, and if the court finds that the owner has cruelly treated the livestock, the court shall order the sale of the livestock at fair market value or order humane destruction. If the livestock is ordered sold, the sale shall occur within ten days of the order. If the court does not find that the owner has cruelly treated the livestock, the court shall order the livestock returned to the owner.

E. If the court orders the sale of the livestock, the board shall take proper action to ensure the livestock is sold at fair market value, including acceptance of reasonable bids or sale at auction. A bid by the owner of the livestock or the owner's representative shall not be accepted.

F. Proceeds from the sale of the livestock shall be forwarded to the court ordering the sale. From these proceeds, the court shall pay all expenses incurred in caring for the livestock while it was impounded and any expenses involved in its sale. Any excess proceeds of the sale shall be forwarded to the former owner. If the expenses incurred in caring for and selling the livestock exceed the amount received from the sale, the court shall order the former owner to pay the additional cost.

History: Laws 1987, ch. 151, § 1; 1999, ch. 282, § 102; 2009, ch. 43, § 3.

## ANNOTATIONS

**The 2009 amendment**, effective June 19, 2009, in Subsection A, changed "magistrate court" to "court"; in Subsection C, added the first sentence; in Subsection D, added "including the district attorney"; and in Subsections E and F, changed "magistrate court" to "court".

**The 1999 amendment**, effective July 1, 1999, deleted "by depriving them of necessary sustenance" following "cruelly treated" in Subsections A and B, and made a similar deletion in Subsection D; in Subsection A, inserted "or other peace officer" near the beginning and "allegedly" near the end; in Subsection B, substituted "the matter for hearing as expeditiously as possible within thirty days unless good cause for a later time is demonstrated by the state" for "a time within ten days of the seizure for a hearing to determine whether the livestock are being so cruelly treated" in the first sentence, and added the last sentence; added the Subsection C and D designations, redesignating the subsequent subsections accordingly; in Subsection D, substituted "the sale of the livestock at fair market value or order humane destruction. If the livestock is ordered sold, the sale shall occur within ten days of the order" for "a public sale of the livestock to be held at the next scheduled sale or within ten days, and the court shall have the livestock delivered to a licensed sales ring for public auction"; in the first sentence of Subsection E, inserted "magistrate", and substituted "the board shall take proper action to ensure the livestock is sold at fair market value, including acceptance of reasonable bids or sale at auction" for "by auction, notice of the auction shall be posted on a public bulletin board where other public notices are posted for the city, town or county"; in Subsection F, substituted "former owner" for "owner convicted of so cruelly treating the

livestock" in the second sentence, and added the last sentence; deleted former Subsection E, which defined "livestock"; and made stylistic changes throughout the section.

### **77-18-3. Prohibited means of disposal or destruction.**

No animal shall be destroyed by means of a high altitude decompression chamber or decompression device.

**History:** Laws 1989, ch. 175, § 1.

### **77-18-4. Penalty.**

Any person who violates Section 1 [77-18-3 NMSA 1978] of this act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for a definite term of less than one year or both.

**History:** Laws 1989, ch. 175, § 2.

### **77-18-5. Wild horses; conformation, history and deoxyribonucleic acid testing; Spanish colonial horses; birth control.**

A. As used in this section:

(1) "public land" does not include federal land controlled by the bureau of land management, the forest service or state trust land controlled by the state land office;

(2) "range" means the amount of land necessary to sustain a herd of wild horses, which does not exceed its known territorial limits;

(3) "Spanish colonial horse" means a wild horse that is descended from horses of the Spanish colonial period; and

(4) "wild horse" means an unclaimed horse on public land that is not an stray.

B. A wild horse that is captured on public land shall have its conformation, history and deoxyribonucleic acid tested to determine if it is a Spanish colonial horse. If it is a Spanish colonial horse, the wild horse shall be relocated to a state or private wild horse preserve created and maintained for the purpose of protecting Spanish colonial horses. If it is not a Spanish colonial horse, it shall be returned to the public land, relocated to a public or private wild horse preserve or put up for adoption by the agency on whose land the wild horse was captured.

C. If the mammal division of the museum of southwestern biology at the university of New Mexico determines that a wild horse herd exceeds the number of horses that is necessary for preserving the genetic stock of the herd and for preserving and maintaining the range, it may cause control of the wild horse population through the use of birth control and may cause excess horses to be:

(1) humanely captured and relocated to other public land or to a public or private wild horse preserve;

(2) adopted by a qualified person for private maintenance; or

(3) euthanized; provided that this option applies only to wild horses that are determined by a veterinarian to be crippled or otherwise unhealthy.

History: Laws 2007, ch. 216, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 216 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

#### **77-18-6. Feral hogs; prohibition; penalty.**

A. The purpose of this section is to ensure the public health, safety and welfare and to prevent the introduction or spread of disease to New Mexico's livestock and wildlife.

B. No person shall import into the state, transport within the state, hold for breeding, release or sell a live feral hog or operate a commercial feral hog hunting enterprise.

C. Any person who violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for a definite term of less than one year or both.

D. As used in this section, "feral hog" means a pig that exists in an untamed state from domestication.

History: Laws 2009, ch. 257, § 1 and Laws 2009, ch. 264, § 1.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 2009, ch. 257, § 1 and Laws 2009, ch. 264, § 1 enacted identical sections, both effective June 19, 2009. Both have been compiled as 77-18-6 NMSA 1978.