

# CHAPTER 77 LIVESTOCK CODE

## 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

**Cross-references.** - As to penalty for killing, injuring or poisoning any animal or domesticated fowl, see 30-18-2 NMSA 1978.

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

**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. Village of Tijeras*, 108 N.M. 116, 767 P.2d 355 (Ct. App. 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 § 94.

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 reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

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

**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.

**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, repeals 77-1-4 NMSA 1978, 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, repeals former 77-1-6 NMSA 1978, relating to notice to a health officer of an animal bite and confinement of the animal, and enacts the above section.

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 33, 35.

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, repeals 77-1-7 and 77-1-8 NMSA 1978, 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 §§ 40 to 45.

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 reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**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.

**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 "vicious" 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.

**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.

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

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 194, § 9, repeals 77-1-11 NMSA 1978, 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 their premises.

**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.

## ANNOTATIONS

**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 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 41-4-11A NMSA 1978, relating to negligent maintenance of highways, roadways, and streets. *Smith v. Village of Corrales*, 103 N.M. 734, 713 P.2d 4 (Ct. App. 1985).

**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, repeals former 77-1-13 NMSA 1978, relating to the enforcement of animal control ordinances, and enacts the above section.

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

#### **ANNOTATIONS**

**Repeals.** - Laws 1989, ch. 242, § 5 repeals 77-1-14 NMSA 1978, as amended by Laws 1967, ch. 38, § 1, relating to guide dogs leading the blind, effective June 16, 1989. For provisions of former section, see Original Pamphlet.

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

#### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 194, § 9, repeals 77-1-15 NMSA 1978, 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 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 41-4-11A NMSA 1978, relating to negligent maintenance of highways, roadways, and streets. *Smith v. Village of Corrales*, 103 N.M. 734, 713 P.2d 4 (Ct. App. 1985).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 23, 24.

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

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

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 194, § 9, repeals 77-1-16 NMSA 1978, 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.

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

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

**History:** Laws 1993, ch. 43, § 1.

## **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 43, § 4 makes the act effective on July 1, 1993.

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

As used in the Pet Sterilization Act [77-1-18 to 77-1-20 NMSA 1978]:

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.

## **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 43, § 4 makes the act effective on July 1, 1993.

## **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.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 43, § 4 makes the act effective on July 1, 1993.

## **ARTICLE 2 LIVESTOCK BOARD**

### **77-2-1. Short title; purpose. (Effective until July 1, 2000.)**

Chapter 77 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.

## **ANNOTATIONS**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 31 to 39.

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

### **77-2-1.1. Definitions. (Effective until July 1, 2000.)**

As used in The Livestock Code [this chapter], unless the context clearly indicates otherwise:

A. "animals" or "livestock" means all domestic or domesticated animals used or raised on a farm or ranch including the carcasses thereof and exotic animals in captivity. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules and regulations governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "livestock" or "animal";

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 therein;

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

D. "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 but not limited to 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;

E. "brand" means a mark, notch 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 animals or livestock;

F. "bureau" means the United States department of agriculture animal and plant health inspection service or its successor agencies;

G. "carcasses" means dead or dressed bodies or parts thereof, not less than one-quarter of a carcass;

H. "cattle" means animals of the genus bos raised for consumption only, and does not include any other kind of domestic animals;

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

J. "disease" or "diseases" means any communicable, infectious or contagious disease or diseases;

K. "estrays" means any 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 which 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;

L. "mark" refers to a sheep ear tag or ownership mark;

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

N. "person" includes an individual, firm, partnership, association or corporation.

**History:** 1978 Comp., § 77-2-1.1, enacted by Laws 1993, ch. 248, § 2.

## **ANNOTATIONS**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

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

**Effective dates.** - Laws 1993, ch. 248 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**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. (Effective until July 1, 2000.)**

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**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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. (Effective until July 1, 2000.)**

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

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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.

**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.

**Meaning of "this act".** - The phrase "this act" refers to Laws 1967, ch. 213, which enacted sections compiled as 77-2-1 to 77-2-5, 77-2-7, 77-2-9, 77-2-22 and 77-8-1 NMSA 1978.

**Members of legislature may not serve on following boards and commissions:** (1) 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 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 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. (Effective until July 1, 2000.)**

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 to 10-8-7 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**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

#### **77-2-5. Report of board. (Effective until July 1, 2000.)**

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**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

#### **77-2-6. Livestock board attached to New Mexico department of agriculture. (Effective until July 1, 2000.)**

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

**Delayed repeals.** - See 77-2-28 NMSA 1978.

### **77-2-7. Additional powers of the New Mexico livestock board. (Effective until July 1, 2000.)**

A. In addition to the powers transferred from the cattle and sheep sanitary boards, the board has the following powers to:

- (1) exercise general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and contagious or infectious diseases and in order to protect the public from diseased or unwholesome meat or meat products;
- (2) 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 executive 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;
- (3) employ clerical help and purchase equipment;
- (4) employ inspectors and other personnel necessary to carry out the purposes of The Livestock Code [this chapter]. All inspectors appointed by the board shall have the same powers as any other peace officer in the enforcement of The Livestock Code;
- (5) appoint a state veterinarian and subordinate veterinarians as are necessary to carry out the duties of the board. All veterinarians employed by the board must be licensed by the board of veterinary examiners;
- (6) make and publish rules and regulations to control the importation of animals into this state;
- (7) establish quarantine, provide its boundaries and give notice of the quarantine and to do all other things necessary to effect the object of the quarantine and to protect the livestock industry of this state from contagious or infectious disease and prevent the spread of disease;
- (8) make and publish rules and regulations for meat inspection, including the slaughter and disposition of the carcasses of animals affected with contagious or infectious

diseases when the action appears necessary to prevent the spread of any contagion or infection among livestock;

(9) make and publish rules and regulations governing the importation, manufacture, sale, distribution or use within the state of serums, vaccine and other biologicals intended for diagnostic or therapeutic uses with animals and to regulate the importation, manufacture or use of virulent blood or living virus of any diseases affecting animals;

(10) set fees or charges, not to exceed twenty dollars (\$20.00) per call for any services rendered by the board or its employees which are deemed necessary by the board and for which no fee has been set by statute;

(11) consider the views of the livestock industry in the administration of The Livestock Code; and

(12) make and publish rules and regulations to otherwise carry out the purposes of The Livestock Code.

B. The board may hold hearings and subpoena witnesses for the purpose of investigating or enforcing The Livestock Code or rules established thereunder.

**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.

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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.

**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.

**Compiler's note.** - Laws 1967, ch. 213, § 7, is compiled as 77-2-22 NMSA 1978.

**Livestock board authorized to cooperate with department of agriculture.** - Because common powers do exist between the two agencies, the 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.

**And may adopt federal regulations.** - Although the 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.

**But not some rules and regulations.** - The 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. 1968 Op. Att'y Gen. No. 68-46.

**And 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 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 livestock board. 1967 Op. Att'y Gen. No. 67-115.

**Health department also to determine wholesomeness of meat.** - The fact that the 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.

## **77-2-8. Research and promotion of meat and meat products. (Effective until July 1, 2000.)**

The New Mexico livestock 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. 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. The provisions of this section shall not apply to or include cattle coming out of feedlots.

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

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

### **77-2-9. Reports of inspectors; prosecution of violations of livestock laws. (Effective until July 1, 2000.)**

A. The New Mexico livestock board shall keep reports of its veterinarians and inspectors in accordance with Public Records Act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978].

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

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

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**Cross-references.** - For penalty for violating rule or regulation of New Mexico livestock board, see 77-2-22 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 and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds. (Effective until July 1, 2000.)**

A. All fees and other money collected by the board shall be received and disbursed directly by the board, but receipts and disbursements are subject to audit by the state auditor. The board is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The executive director of the board shall issue warrants in the name of the board against funds of the board in payment of its lawful obligations, issue purchase orders and contract for goods or services in the name of the board. The board shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

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

D. 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.

### **ANNOTATIONS**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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. [Definition of "cattle."] (Effective until July 1, 2000.)**

The word "cattle" used in this article shall be understood and construed as bovine cattle only, and shall not relate to or include any other kind of domestic animals.

**History:** Laws 1889, ch. 106, § 1; C.L. 1897, § 181; Code 1915, § 67; C.S. 1929, § 4-802; 1941 Comp., § 49-202; 1953 Comp., § 47-2-2.

### **ANNOTATIONS**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**Meaning of "this article".** - The compiler of the 1915 Code substituted the words "this article" for "this act" in reference to Code 1915, ch. III, art. III, the present provisions of which are compiled as 77-2-11 to 77-2-13, 77-2-18, 77-2-19 and 77-2-21 NMSA 1978.

### **77-2-12. Executive director; duties, oath and bond. (Effective until July 1, 2000.)**

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

**Delayed repeals.** - See 77-2-28 NMSA 1978.

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

**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.

**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.

### **77-2-13. Records; certified copy evidence. (Effective until July 1, 2000.)**

The records required to be kept by the executive director of the New Mexico livestock board 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 executive director of the board 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.

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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; special tax. (Effective until July 1, 2000.)**

The New Mexico livestock board has authority to 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 and to fix the compensation to be paid to such attorney. For the purpose of providing funds therefor and for the employment of additional inspectors and other necessary expenses incurred by the board, a special tax shall be levied upon all cattle, horses, mules and asses in every county of this state in the manner and according to the provisions of Section 77-2-15 NMSA 1978, which levy shall be within the limit provided for in that section.

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

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

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

**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; indemnity funds; collection. (Effective until July 1, 2000.)**

A. Each year it is the duty of the board of county commissioners of each county at its first meeting after the return of the assessment of the property for taxation by the county assessors of each county to 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 in a sum and manner as set forth herein:

(1) for beef cattle, horses, mules, asses and buffalo a sum 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 through 38 NMSA 1978];

(2) for dairy cattle a sum at a rate to be fixed each year by the board 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 of all dairy-breed cattle in the county; and



(3) for sheep and goats, a sum at a rate not to exceed twenty dollars (\$20.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code.

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 executive director. The department of finance and administration shall certify the amount of the levy to the board of county commissioners of each county, and such commissioners shall include the levy in their 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 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.

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

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

As to dairy industry indemnity fund, see 77-6-5 NMSA 1978.

As to brand fees to be placed to credit of fund, see 77-9-11 NMSA 1978.

**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.

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

**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. 193.

**77-2-16. Financial report and tax estimate; state levy; maximum rate. (Effective until July 1, 2000.)**

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, 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

**Delayed repeals.** - See 77-2-28 NMSA 1978.

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

As to brand fees to be placed to credit of fund, see 77-9-11 NMSA 1978.

As to fees from rerecording of brands, see 77-9-20 NMSA 1978.

**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."

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

**Compiler's note.** - The title of Laws 1929, ch. 157, purported to amend Laws 1921, ch. 85, § 1, but Laws 1929, ch. 157, § 2, amended Laws 1915, ch. 85, § 1.

**Property Tax Code.** - The provisions of the Property Tax Code, referred to in the second sentence of this section, are presently compiled as 7-35-1 to 7-38-93 NMSA 1978.

## **77-2-17. Payment of tax collections to state treasurer; disbursement. (Effective until July 1, 2000.)**

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; 1993, ch. 248, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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.

**Compiler's note.** - Laws 1909, ch. 9, § 9, superseded by this section, establishes the "fund for the eradication and extirpation of contagious and infectious diseases among cattle, horses, mules and asses" referred to in this section.

**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. 14.

## **77-2-18. Compensation of employees. (Effective until July 1, 2000.)**

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 [this chapter], 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; 1993, ch. 248, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

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

### **77-2-19. Limitation on expenditures. (Effective until July 1, 2000.)**

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**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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."

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

### **77-2-20. [Epidemics; issuance of bonds; levies; bond required of board members.] (Effective until July 1, 2000.)**

In case an epidemic or contagious disease (including Texas or splenic fever) may become known to the board to exist or shall be likely to exist or shall be threatened within the state, and the board may deem it necessary to use more money than the present assessment (one-half of one mill on each dollar) may yield, then they may summon the governor, treasurer and state auditor to meet as a state cattle sanitary board [New Mexico livestock board], at the governor's, treasurer's or auditor's office, in the city of Santa Fe, and if this board upon meeting, shall determine it to be to the best interests of the cattlemen of the state to do so, they may order a levy not to exceed one-fourth of one percent of the assessable value of cattle within the state, or they may issue bonds in the denomination of one hundred dollars [(\$100)], bearing interest not to exceed eight percent, payable annually. Interest and bonds shall be payable at the first national bank of Santa Fe, N.M. Said bonds shall run from five to eight years and are payable at any time after five years. The bonds will be signed by the president of the cattle sanitary board [livestock board] and by the treasurer of the state, and by the latter registered in a book to be provided by the cattle sanitary board [livestock board], which book shall be continued in the possession of the treasurer of the state and his successors. The governor of the state will preside at all meetings of the state cattle sanitary board [livestock board], and a record of each meeting will be made by the treasurer of the state and also by the secretary of the cattle sanitary board [executive director of the New Mexico livestock board]. The bonds shall be sold at the highest

obtainable price. Whenever the state cattle sanitary board [livestock board] may think best, they may order a levy not to exceed one-eighth of one percent of the assessed value of cattle within the state, and continue said levy yearly until a sufficient sum is realized to pay said bonds with the yearly accruing interest. Said levy shall constitute a sinking fund for the payment of said bonds and for no other purpose. Said sinking fund shall be deposited with the state treasurer, who shall give a good and sufficient bond, to be approved by the governor, for a sum equal to the bonds and interest. The levies shall be made by the several county commissioners of the different counties at the expense of such counties making such levies. The state treasurer shall pay said bonds in their numerical order. Notice of payment will be posted in the first national bank of Santa Fe, N. M., sixty days before payment. The bonds when paid shall be destroyed by the treasurer and auditor of the state and a record of the same by the treasurer. It shall be the duty of the governor to demand of and cause to be executed a bond by each of the members of the cattle sanitary board [livestock board] to the state of New Mexico with two or more sufficient securities, and in such sum as will cover the amount which may be raised and collected by the aforesaid levies, conditioned for the faithful disbursement of said moneys. In the event that either of said members do not execute said bonds within twenty days, his or their office will be vacant, and the governor will at once fill such vacancy and require the two bonds provided for in this article.

**History:** Laws 1889, ch. 106, § 20; C.L. 1897, § 200; Laws 1903, ch. 1, § 2; Code 1915, § 97; C.S. 1929, § 4-914; 1941 Comp., § 49-216; 1953 Comp., § 47-2-16.

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**Cross-references.** - As to power to levy special tax to extent of ten mills on each dollar, see 77-2-15 NMSA 1978.

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" and "executive director" were inserted in brackets.

**Meaning of "this article".** - See same catchline in notes to 77-2-11 NMSA 1978.

### **77-2-21. Fees. (Effective until July 1, 2000.)**

All fees and charges collected pursuant to the provisions of The Livestock Code [this chapter] 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; 1993, ch. 248, § 12.

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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 or regulation. (Effective until July 1, 2000.)**

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.

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

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

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

**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).

**And 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 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 repeals 77-2-23 and 77-2-24 NMSA 1978, as enacted by Laws 1945, ch. 22, §§ 1 and 2, and amended by Laws 1993, ch. 248, § 13, concerning vehicles of the New Mexico livestock board, effective May 18, 1994. For former sections, see 1993 Replacement pamphlet. For present comparable provisions concerning state-owned vehicles generally, see 15-8-1 to 15-8-11 NMSA 1978.

### **77-2-25. Interim receipts and disbursements fund created. (Effective until July 1, 2000.)**

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

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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. (Effective until July 1, 2000.)**

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**

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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 repeals 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 Original Pamphlet.

#### **77-2-28. Termination of board life; delayed repeal. (Effective until July 1, 2000.)**

The New Mexico livestock board is terminated July 1, 1999 unless continued by the legislature pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to all of the provisions of Chapter 77, Article 2 NMSA 1978 until July 1, 2000 for the purpose of winding up its affairs. Effective July 1, 2000, Chapter 77, Article 2 NMSA 1978 is repealed.

**History:** 1978 Comp., § 77-2-28, enacted by Laws 1981, ch. 5, § 1; 1987, ch. 333, § 16; 1993, ch. 248, § 16.

#### **ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, in the first sentence inserted the language following "New Mexico livestock board" and preceding "is terminated July 1, 1993", and substituted "1993" for "1987" and "New Mexico Sunset Act" for "New Mexico Sunset Law"; in the second sentence substituted "1994" for "1988"; and added the last sentence.

**The 1993 amendment,** effective June 18, 1993, deleted provisions pertaining to termination of the board July 1, 1987 unless the board adopts certain regulations; substituted "1999" for "1993" in the first sentence; substituted "2000" for "1994" in the second and third sentences; and made minor stylistic changes.

#### **77-2-29. Fees. (Effective until July 1, 2000.)**



The following fees shall be fixed by the board for services rendered pursuant to the provisions of Chapter 77 NMSA 1978:

A. an inspection fee not to exceed sixteen cents (\$.16) per head to be charged for the importation of sheep pursuant to Section 77-8-3 NMSA 1978; provided that the board shall not increase the fee more than four cents (\$.04) in any one fiscal year starting at the fee of eight cents (\$.08);

B. 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);

C. a fee for recording a transfer of a brand pursuant to Section 77-9-7 NMSA 1978 in an amount not to exceed fifty dollars (\$50.00);

D. a fee for recording a brand for horses, mules, asses, cattle or sheep pursuant to Section 77-9-10 NMSA 1978 in an amount not to exceed fifty dollars (\$50.00);

E. a fee for additional copies of certified copies of brands pursuant to Section 77-9-10 NMSA 1978 in an amount not to exceed five dollars (\$5.00) per copy;

F. a fee for the recording of a holding brand pursuant to Section 77-9-16 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 thereafter;

G. a fee for the rerecording of brands pursuant to Section 77-9-20 NMSA 1978 in an amount not to exceed fifty dollars (\$50.00);

H. a fee for the inspection of cattle, horses, mules and asses pursuant to Section 77-9-38 NMSA 1978 in an amount not to exceed fifty cents (\$.50) per head with a minimum charge of two dollars (\$2.00) 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 inspection of hides pursuant to Section 77-9-54 NMSA 1978 in an amount not to exceed fifty cents (\$.50) per hide with a minimum charge of two dollars (\$2.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents (\$.10) in any one fiscal year;

J. 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;

K. 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); and

L. a fee for the impoundment of trespass livestock or buffalo pursuant to Section 77-14-36 NMSA 1978 in an amount set by the board not to exceed twenty-five dollars (\$25.00) per head and a reasonable charge for the moving of trespass livestock or buffalo pursuant to Section 77-14-36 NMSA 1978 to be set by the board.

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

## ANNOTATIONS

**Delayed repeals.** - See 77-2-28 NMSA 1978.

**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.

**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.

**Compiler's note.** - 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 is compiled as 77-2-29 NMSA 1978.

## ARTICLE 2A BEEF COUNCIL

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

This act [77-2A-1 to 77-2A-7, 77-2A-8, 77-2A-9 NMSA 1978] may be cited as the "New Mexico Beef Council Act".

**History:** Laws 1979, ch. 197, § 1.

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

As used in the New Mexico Beef Council Act [77-2A-1 to 77-2A-7, 77-2A-8, 77-2A-9]:

- 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 citizens of the United States, bona-fide residents of New Mexico and in some branch of the bovine cattle business. 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.

## **ANNOTATIONS**

**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 to 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 public relations programs promoting cattle and beef 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 Beef Council Act [77-2A-1 to 77-2A-7, 77-2A-8, 77-2A-9 NMSA 1978];
- (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 the New Mexico Beef Council 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.

### **ANNOTATIONS**

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

**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.

**Budget process.** - Although it requires budget approval by the director of the department of agriculture, the 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 prior to 1991 amendment).

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

In order to accomplish the purposes of the New Mexico Beef Council Act [77-2A-1 to 77-2A-7, 77-2A-8, 77-2A-9 NMSA 1978], 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 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-7.1. Assessments.**

There is levied and imposed upon all cattle inspected in this state by the [New Mexico livestock] board an additional assessment to be called the "council assessment". The council assessment is to be fixed by the council at a rate not more than twenty-five cents (\$.25) per head on only those cattle involved in a transfer of ownership. The board shall collect this council assessment or the federal domestic assessment imposed pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. 1601, 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. The council shall reimburse the board for the responsible and necessary expenses incurred for such collections and information and not less 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.

### **ANNOTATIONS**

**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.

**Meaning of "board"**. - The reference to "board" throughout this section apparently means the New Mexico livestock board. See 77-2-2 NMSA 1978.

**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. Termination of council assessment.**

Notwithstanding other provisions of law, the council assessment shall terminate July 1, 1997.

**History:** Laws 1983, ch. 228, § 4; 1986, ch. 8, § 1; 1991, ch. 128, § 5.

### **ANNOTATIONS**

**The 1986 amendment** substituted "July 1, 1991" for "July 1, 1986."

**The 1991 amendment**, effective April 3, 1991, substituted "1997" for "1991".

### **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

**Meaning of "board".** - The reference to "board" in the last sentence apparently means the New Mexico livestock board. See 77-2-2 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 to 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 and the Personnel Act. The council members and employees shall be subject to the Tort Claims Act [41-4-1 to 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".

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

## **ARTICLE 3 CONTROL OF CONTAGIOUS DISEASES**

### **77-3-1. Contagious diseases; inspection; quarantine.**

A. The New Mexico livestock board is hereby authorized to use all proper means to prevent the spreading of dangerous and fatal diseases among animals such as cattle, horses, sheep, hogs, mules and asses and for the extirpation of such diseases. In the event of any contagious or infectious diseases breaking out in the state, it is the duty of all persons owning or having in their charge animals infected with the same to immediately notify the board of the existence of such disease, and it shall be the duty of the board to cause proper examination to be made by a licensed veterinarian and, if the disease shall be found to be a dangerously contagious or infectious malady, shall order the diseased animals and such as have been exposed to the contagion 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 domestic animal subject to the disease be removed from or brought to the premises or places so quarantined. The New Mexico livestock board shall prescribe such regulations as they may deem necessary to prevent the contagion from being communicated in any way from the premises so quarantined.

B. The New Mexico livestock board may expend funds to prevent, suppress, control or eradicate any disease or parasite of livestock which the board has by regulation

declared to be an exotic pest 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 New Mexico livestock board finds any livestock infested with any exotic pest or pest declared by the board to be of significant economic impact, the board is authorized to 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.

### ANNOTATIONS

**Cross-references.** - As to eradication of scabies, see 77-4-1 to 77-4-8 NMSA 1978.

For Dairy Industry Indemnity Act, see 77-6-1 to 77-6-10 NMSA 1978.

**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 §§ 32, 33.

3A C.J.S. Animals §§ 66 to 69, 73.

### **77-3-2. Report of diseased animals; offenses; expense recovery; duties of sheriffs.**

Any person, firm, corporation, agent or employee having in his possession or under his care any animal which he knows or has reason to believe is affected with a dangerously contagious or infectious disease and does not without unnecessary delay make known to board or some member thereof or to the sheriff of the county in which the animal is situate to be by him communicated to the board, or any person, corporation or employee or agent thereof who brings into this state, or sells or disposes of any animals known to be affected or any animal having been exposed to such contagion or moves any animal so diseased or exposed from quarantine or moves any animal to or from any districts in the state declared to be infected with such contagious disease or brings into this state any animal of the kind diseased 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 shall upon conviction be fined in a sum not less than fifty dollars (\$50.00) and not exceeding five hundred dollars (\$500). Any guard or other proper expenses incurred in

the quarantining of the animals under the provisions of Sections 77-3-1 through 77-3-4, 77-3-9 and 77-3-10 NMSA 1978, 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; 1993, ch. 248, § 18.

### ANNOTATIONS

**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 §§ 32, 33, 38.

3A C.J.S. Animals §§ 91 to 98.

### 77-3-3. Repealed.

### ANNOTATIONS

**Repeals.** - Laws 1993, ch. 248, § 80 repeals 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 Original Pamphlet.

### 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; 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 § 26.

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.**

If a pasture, building, corral or any yard or enclosure where cattle or sheep have been or may be pastured or confined is infected with or has become dangerous on account of any infectious disease or poisonous weed or plant, the board may post notices in not less than two conspicuous places in or upon such pasture, building, corral or other yard or enclosure sufficient to warn all owners and others in charge of sheep or cattle of the nature of such infection, disease or poisonous weed or plant and of the danger.

**History:** Laws 1917, ch. 30, § 1; C.S. 1929, § 4-915; 1941 Comp., § 49-305; 1953 Comp., § 47-3-5; 1993, ch. 248, § 20.

### **ANNOTATIONS**

**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. [Failure to post notice of infection; penalty.]**

Any board or inspector violating the provisions of this act [77-3-5 to 77-3-7 NMSA 1978] shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed fifty dollars [(\$50.00)].

**History:** Laws 1917, ch. 30, § 2; C.S. 1929, § 4-916; 1941 Comp., § 49-306; 1953 Comp., § 47-3-6.

### **77-3-7. [Repeal; removal of infection notices.]**

All acts and parts of acts in conflict herewith are hereby repealed. Provided, however, that when all danger from infectious disease has been eradicated, the printed notices as hereinabove designated shall be taken down.

**History:** Laws 1917, ch. 30, § 3; 1941 Comp., § 49-307; 1953 Comp., § 47-3-7.

### **77-3-8. Destruction of diseased animals; payment to the owner; appraisal.**

In cases where the board deems it necessary to destroy any diseased, infected or exposed animals in order to prevent the spread of dangerous and fatal disease 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 dipping or means other than the destroying of the diseased or infected animals, the board is authorized to have such animals killed and burned or buried under such rules and regulations as the board may prescribe. The board shall pay, in cooperation with the United States department of agriculture, to the owners of such slaughtered animals 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; 1993, ch. 248, § 21.

## ANNOTATIONS

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

As to dairy cattle indemnity fund, see 77-6-5 NMSA 1978.

**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 § 35; 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 is authorized to accept on behalf of the state the rules and regulations prepared by the secretary of the United States department of agriculture, 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 to cooperate with the authorities of the United States in the enforcement of the provisions of such act and all other acts 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; 1993, ch. 248, § 22.

#### **ANNOTATIONS**

**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".

**Compiler's note.** - The provisions of Section 3, Act of Congress, approved May 29, 1884, referred to in this section, appear as 21 U.S.C. § 114.

### **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 shall have the right of inspection, quarantine and condemnation of animals affected with any contagious, infectious or communicable disease or suspected of being affected or that have been exposed to any such disease and for these purposes are authorized and empowered to enter any grounds or premises in the state. They have power to call upon any peace officers to assist them in the discharge of their duties in carrying out the provisions of the act of congress as provided in Section 77-3-9 NMSA 1978, 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.

**History:** Laws 1909, ch. 9, § 5; Code 1915, § 110; C.S. 1929, § 4-1013; 1941 Comp., § 49-310; 1953 Comp., § 47-3-10; 1993, ch. 248, § 23.

## ANNOTATIONS

**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.

**Bureau of animal industry.** - The Act of Congress of May 29, 1884, establishing a bureau of animal industry, referred to in this section, appears as 7 U.S.C. § 391 and 21 U.S.C. §§ 112 to 114a, 115, 117 to 119, 130.

### **77-3-11. Marking or branding of cattle found infected with tuberculosis or Bang's disease.**

Whenever any cattle within this state are tested for tuberculosis or Bang's disease by the board or its agents or employees or by any authorized agent or employee of the department of agriculture animal and plant health inspection service, if any animal so tested is found to have a positive reaction to such tests, the animals shall be permanently marked or branded according to the requirements of the board by the owner. The type of brand to be used shall be designated by the board and animals shall be marked or branded by the owner immediately upon instructions from the board.

**History:** 1941 Comp., § 49-318, enacted by Laws 1949, ch. 48, § 1; 1953 Comp., § 47-3-11; 1993, ch. 248, § 24.

## ANNOTATIONS

**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.**

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.

**History:** 1941 Comp., § 49-319, enacted by Laws 1949, ch. 48, § 2; 1953 Comp., § 47-3-12; 1993, ch. 248, § 25.

## ANNOTATIONS

**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; proclamation; imports prohibited; penalty.**

Whenever it comes to the knowledge of the board or any of its authorized representatives that any contagious or infectious disease, the nature of which is known to be fatal or highly injurious to livestock, pigeons or fowls of any kind, has become epidemic or exists in any locality in any country, state or territory beyond the limits of this state, it shall immediately communicate the fact to the governor in writing, and thereupon, or when the governor shall otherwise have good reason to believe that any such disease so exists or has become epidemic, the governor shall immediately issue and publish by a general proclamation such rules and regulations as the board may adopt and thereby prohibit the importation into this state of any animals subject to the disease which may be so reported except under such restrictions and safeguards as the board deems proper and shall specify for the protection of such animals in this state and may also prohibit the importation into this state of any hoofs, hides, skins or meat of any livestock or any hay, straw fodder, cottonseed or other products or material calculated to carry the infection of such disease. Any person, company or corporation who after the publication of the proclamation receives in charge of any of the animals or any of the products previously provided for in this section, the importation of which into this state has been so prohibited, or shall drive, transport or in any manner convey the animals or products to and within the limits of this state or shall knowingly cause or procure the animals or products to be driven, transported or conveyed into this state in violation of the proclamation by driving, conveying or transporting or aiding therein or causing or procuring to be driven, conveyed or transported into this state any of the animals or any of the products, the importation of which is by the proclamation declared to be unlawful, is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense and is also liable in a civil action for any and all damages and loss sustained by reason of such importation of the animals 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; 1993, ch. 248, § 26.

## ANNOTATIONS



**Cross-references.** - As to posting of notices on infected pastures and buildings, see 77-3-5 and 77-3-6 NMSA 1978.

As to importation of cattle for dairy purposes, see 77-5-4 NMSA 1978.

**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 § 33.

3A C.J.S. Animals § 74.

### **77-3-14. Health certificate; inspection; permit; penalty'.**

After the issuance and publication of such proclamation by the governor and while the proclamation continues in force or while the prohibition against the importation of livestock from any other state or country is in force, it is unlawful for any person, company or corporation to drive or transport or cause to procure 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 such prohibitions without first having obtained a certificate of health from a veterinarian or a permit in writing from the board under such rules and regulations as the board prescribes and publishes for the information of the public. Any person failing to comply with this provision after due notice is guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) and is also personally liable for all loss and damages sustained by any persons by reason of the introduction of any contagious or infectious disease from the livestock so unlawfully imported into this state. During the time covered by the proclamation, all livestock desiring to enter the state must submit to an inspection, and they shall not be permitted to enter the state until a written or printed permit is issued by the board. Any person 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 the violation of this law and is subject to all the penalties provided by this section.

**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; 1993, ch. 248, § 27.

## **ANNOTATIONS**

**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 § 33.

### **77-3-14.1. AGID tests required.**

The board shall adopt regulations 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 or cattle or sheep.

**History:** 1978 Comp., § 77-3-14.1, enacted by Laws 1993, ch. 248, § 28.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 248 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **77-3-15. Investigation of suspected illegal imports; oaths; health certificate of 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; 1993, ch. 248, § 29.

#### ANNOTATIONS

**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 § 33.

#### 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; 1993, ch. 248, § 30.

#### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle" in two places; and made minor stylistic changes.

**Compiler's note.** - 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.

### **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; 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. 258.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 33.

### **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; 1993, ch. 248, § 32.

## ANNOTATIONS

**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.

**Meaning of "this chapter".** - The words "this chapter" refer to Laws 1889, ch. 106, the present provisions of which are compiled as 77-2-11, 77-2-18 to 77-2-20 and 77-3-13 to 77-3-19 NMSA 1978.

### **77-3-19. Seizure; procedure; sale.**

In order to enforce Sections 77-3-17 and 77-3-18 NMSA 1978, the board or any member thereof or anyone they may authorize shall seize any livestock that may come into this state during the enforcement of this law without first having obtained a permit. After seizure, the livestock shall be held in close quarantine until the board is satisfied all danger has passed. Either of the parties above named and empowered to make the arrest may call on any party within a reasonable distance to assist in making the seizure of the livestock, and anyone refusing to assist is guilty of a petty misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or be imprisoned in the county jail not to exceed three months. When the board is satisfied that there is no further danger from the seized livestock, they may render a bill of costs to the owner or claimant and upon the payment of the sum release the livestock or they may advertise such livestock in a public newspaper for at least two weeks or in a generally accepted industry publication approved by the board and then sell them to the highest bidder retaining only enough to satisfy all expenses incurred or they may turn loose the livestock on the range or return them to the place of entry. All persons who are summoned to assist in seizing the livestock shall be allowed a reasonable compensation for their service to be determined by the board.

**History:** Laws 1889, ch. 106, § 16; C.L. 1897, § 196; Code 1915, § 93; C.S. 1929, § 4-910; 1941 Comp., § 49-317; 1953 Comp., § 47-3-19; 1993, ch. 248, § 33.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle" throughout the section; substituted "Sections 77-3-17

and 77-3-18 NMSA 1978" for "Sections 91 and 92" in the first sentence; substituted "is guilty of a petty misdemeanor and upon conviction thereof shall" for "shall, upon complaint and proof of such an officer, to the justice of the peace" in the third sentence; inserted "or in a generally accepted industry publication approved by the board" in the fourth sentence; substituted "to be determined by the board" for "not to exceed two dollars per day for man and horse or four dollars per day for a man and team of two horses nor shall any person be required to assist in the seizure for more than ten consecutive days" at the end of the section; and made minor stylistic changes.

**Jurisdiction, etc., of justices of peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978.

## **ARTICLE 4**

### **ERADICATION OF SCABIES**

#### **77-4-1. Infectious disease eradication; regulations.**

The board has the power and it is its duty to 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 contagious or infectious disease among livestock and to direct and regulate the handling, dipping or treating of any livestock when infected or which it may have good reason to believe to have been exposed to any of the diseases; to make and adopt quarantine and sanitary regulations; provided, that all such regulations shall, 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; provided further, that 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.

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.

**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; 1993, ch. 248, § 34.

#### **ANNOTATIONS**

**Cross-references.** - As to posting notices on infected pastures and buildings, see 77-3-5 and 77-3-6 NMSA 1978.

**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.

**Compiler's note.** - The compilers of the 1915 Code deleted "In addition to the powers now conferred upon it by law" which formerly appeared at the beginning of this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 32.

3A C.J.S. Animals §§ 66 to 69.

### **77-4-2. [Infected districts; publication of notice; dipping regulations.]**

Whenever the said board shall, from time to time, have determined that said disease exists in any such district or districts and created and defined the same, the same shall be known as an infected district or districts, and the board shall as soon as possible after creating such infected district, cause notice of the creation and of the limits thereof to be given by publication once a week for three successive weeks in some newspaper published within and of general circulation within said district, and if no newspaper be published therein, then in some newspaper published at a point nearest thereto; and thereupon it shall be the duty of all persons owning or having the control of any of the aforesaid classes of livestock within the boundaries of said district, to dip or treat said livestock within said district or so much of said livestock as the regulations of said board applicable to said district may require; the dipping of all such livestock to be in strict compliance with the regulations of said board, and within such reasonable time after the completion of the publication of the notice of the creation of said district, as said board may prescribe. The said board shall, before publishing said notice, as to any created district, prescribe the dipping regulations applicable thereto, and shall publish said regulations with said notice.

**History:** Laws 1905, ch. 31, § 2; Code 1915, § 99; C.S. 1929, § 4-1002; 1941 Comp., § 49-402; 1953 Comp., § 47-4-2.

### **ANNOTATIONS**

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

### **77-4-3. [Dipping of livestock; liability.]**

It shall be the duty of the said cattle sanitary board [New Mexico livestock board], promptly upon the expiration of 40 days after the completion of the publication of the notice of the creation of any such infected district, to cause to be seized and gathered and dipped and treated any undipped or untreated livestock of the classes named within said district: provided, however, that no obligation shall exist or be created by or against said board on account of the dipping or treating of any livestock by it, but such

expenses shall be a charge and shall be paid by said board out of any sums realized out of the lien or liability created by Section 77-4-7 NMSA 1978.

**History:** Laws 1905, ch. 31, § 3; Code 1915, § 100; C.S. 1929, § 4-1003; 1941 Comp., § 49-403; 1953 Comp., § 47-4-3.

## ANNOTATIONS

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

### **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.

### **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.

### **77-4-6. [Dipping; supervision; certificate; fees.]**



All dipping shall be under the supervision of the department of agriculture through its regular inspectors, or a duly authorized member of this board, and every person within the district who shall own or control any of said livestock required to be dipped or treated therein, shall as soon as the same shall have been dipped or treated in conformity with the regulations of said board, be entitled to receive and shall receive from the said board a certificate in writing to that effect. The said board is hereby empowered and required by regulation to impose and collect a dipping inspection fee to cover the estimated cost of dipping or treating supervision incurred under its regulations.

**History:** Laws 1905, ch. 31, § 6; Code 1915, § 103; C.S. 1929, § 4-1006; 1941 Comp., § 49-406; 1953 Comp., § 47-4-6.

### **77-4-7. [Lien for dipping or treating; records; notice.]**

For all sums paid out by the said board pursuant to the provisions of this section and in addition thereto such further sum per head of livestock so dipped or treated as may be fixed by the said board by regulations as a penalty, and for all amounts due on account of dipping or treating supervision, it shall have a lien upon all such livestock so dipped or treated and any other livestock of the person owning the same, which lien shall be a first lien and superior to any other lien, claim or demand against said livestock, which said lien the said board shall have power to enforce by appropriate action and it may further maintain an action to recover from the owner of such livestock the amount of said lien.

The board shall cause to be kept in the office of the secretary [executive director] thereof a record of all sums due to it on account of payments made or expenditures incurred on account of the dipping of any such livestock, or on account of dipping or treating supervision, together with the brand of all livestock affected by the lien aforesaid, and the name of the owner thereof, if known, which record shall be deemed to impart notice of such lien.

**History:** Laws 1905, ch. 31, § 7; Code 1915, § 104; C.S. 1929, § 4-1007; 1941 Comp., § 49-407; 1953 Comp., § 47-4-7.

## **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" was inserted in brackets.

### **77-4-8. [Offenses; penalty.]**

Any owner or person having control of any of said livestock or any other person, whether an officer or employee of said board or a private person who shall wilfully violate any provisions of Sections 77-4-1 to 77-4-8 NMSA 1978, or regulations or orders lawfully made in conformity therewith, or who shall in any manner hinder or obstruct the

execution of any such regulation or order, or hinder, resist or obstruct any officer or employee of said board or the state veterinarian or any inspector in the discharge of his duty or in the exercise of his lawful powers or who shall wilfully or negligently break any quarantine or wilfully or negligently suffer any quarantined animal or animals to escape from any quarantine, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500), or imprisoned for not less than thirty (30) days nor more than six (6) months, or both.

**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.

### ANNOTATIONS

**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 has power to make tests and examinations for the purpose of ascertaining whether or not any domestic animals in the state are affected with tuberculosis. Such 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 such tests and examinations.

**History:** Laws 1929, ch. 159, § 1; C.S. 1929, § 4-1101; 1941 Comp., § 49-501; 1953 Comp., § 47-5-1; 1993, ch. 248, § 35.

### ANNOTATIONS

**Cross-references.** - As to marking or branding of cattle infected with tuberculosis or Bang's disease, see 77-3-11 and 77-3-12 NMSA 1978.

**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.** - 4 Am. Jur. 2d Animals § 34.

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 this article, it should appear that any cattle, hogs or poultry are affected with tuberculosis and that the public interest would be best served through the destruction of such animals, it is the duty of the board to cause the destruction thereof 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; 1993, ch. 248, § 36.

### **ANNOTATIONS**

**Cross-references.** - As to marking or branding of cattle infected with tuberculosis or Bang's disease, see 77-3-11 and 77-3-12 NMSA 1978.

**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 § 35.

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; 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 tuberculine 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; 1993, ch. 248, § 38.

### ANNOTATIONS

**Cross-references.** - For Dairy Industry Indemnity Act, see 77-6-1 to 77-6-10 NMSA 1978.

**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 § 33.

Constitutionality of regulations as to milk, 155 A.L.R. 1383.

3A C.J.S. Animals § 74.

### **77-5-5. [Dairy cattle; importation; offenses; penalty.]**

Any person, or corporation, whether acting as a common carrier or otherwise, who shall bring into the state of New Mexico any cattle, of the kind described in Section 4 [77-5-4 NMSA 1978], hereof in violation of the provisions of this act [77-5-1 to 77-5-5 NMSA 1978], or of any of the rules and regulations adopted by the New Mexico cattle sanitary board [New Mexico livestock board] for the enforcement of this act, shall be deemed guilty of a misdemeanor and shall upon conviction 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.

**History:** Laws 1929, ch. 159, § 5; C.S. 1929, § 4-1105; 1941 Comp., § 49-505; 1953 Comp., § 47-5-5.

#### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals § 93.

## **ARTICLE 6 DAIRY INDUSTRY INDEMNITY**

### **77-6-1. Short title.**

This act [77-6-1 to 77-6-10 NMSA 1978] may be known and cited as the "Dairy Industry Indemnity Act."

**History:** Laws 1941, ch. 150, § 1; 1941 Comp., § 49-601; 1953 Comp., § 47-6-1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 35 et seq.

3A C.J.S. Animals § 76.

### **77-6-2. Declaration of policy.**

It is hereby declared to be the policy of the legislature to provide for the payment of indemnities to owners of dairy breed cattle slaughtered in the eradication of Bang's disease, tuberculosis and other communicable, infectious or contagious disease to provide for the method of such payments and to set up a separate fund for the dairy industry of this state for the payment of such indemnities.

**History:** Laws 1941, ch. 150, § 2; 1941 Comp., § 49-602; 1953 Comp., § 47-6-2.

### **77-6-3. Definitions.**

A. The term "dairy cattle" wherever used shall mean dairy breed cattle as distinguished from meat breed cattle.

B. The term "bureau" wherever used shall mean the United States bureau of animal industry.

C. The term "board" wherever used shall mean the cattle sanitary board of the state of New Mexico [New Mexico livestock board].

D. The term "owner" wherever used shall mean the owner of a dairy breed cow or cattle slaughtered in the eradication and control of Bang's disease, tuberculosis and other communicable, infectious or contagious diseases in dairy breed cattle.

E. The term "treasurer" or "state treasurer" wherever used shall mean the state treasurer of the state of New Mexico.

F. The term "disease" or "diseases" wherever used herein shall mean any communicable, infectious or contagious disease or diseases in dairy breed cattle.

**History:** Laws 1941, ch. 150, § 3; 1941 Comp., § 49-603; 1953 Comp., § 47-6-3.

### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

### **77-6-4. [Assessment of dairy breed cattle; right to indemnity payments restricted.]**

That hereafter all owners of dairy breed cattle shall assess the same as dairy breed cattle and the assessor of each and every county in the state of New Mexico shall

cause a separate assessment to be made of such dairy breed cattle on the assessment rolls of such county. Provided: that no owner or owners of dairy breed cattle shall be entitled to participate in the indemnity payments hereinafter provided for as to cattle slaughtered on and after December 1, 1941, unless such owner or owners shall have had said dairy breed cattle assessed as provided in this section, and shall have paid all taxes levied under such assessments on said dairy breed cattle.

**History:** Laws 1941, ch. 150, § 4; 1941 Comp., § 49-604; 1953 Comp., § 47-6-4.

### **77-6-5. Segregation of tax levy money; deposit in state dairy industry indemnity fund; appropriations; purposes.**

Hereafter all moneys collected from owners of said dairy breed cattle in the state of New Mexico in accordance with and by the methods prescribed in the tax levy authorized by Section 2, Chapter 205, New Mexico Session Laws of 1937, as amended (§ 77-2-15 NMSA 1978), and assessed for the taxable year of 1941 and subsequent years, shall be completely segregated by the county treasurer in each county of this state from that part paid by owners of meat breed cattle and such moneys shall be paid to the state treasurer. Said moneys shall be deposited by the state treasurer in the "state dairy industry indemnity fund." Said fund shall be and remain in the custody of the state treasurer. All moneys as they are deposited and paid into said fund shall be used and are hereby appropriated for the following purposes: for the payment of indemnity claims for dairy breed cattle slaughtered in accordance with the provisions of this act [77-6-1 to 77-6-10 NMSA 1978], and for the payment of the administrative expense necessarily incurred by the cattle sanitary board of New Mexico [New Mexico livestock board] in its administration of this act, also for the purchase of material and equipment, and its expenses incurred in connection with the establishment and enforcement of a quarantine area relative to dairy breed cattle, and the enforcement of other sanitary laws of the state of New Mexico insofar as they affect dairy breed cattle only, provided, however, that the total administrative expenses chargeable against said fund for any year shall in no event exceed the sum of \$4,000.00 in the sum above mentioned. The expenses, as herein provided, shall be paid by the cattle sanitary board [livestock board] by vouchers supported by itemized accounts of such expenses drawn by the cattle sanitary board [livestock board] against said fund.

**History:** Laws 1941, ch. 150, § 5; 1941 Comp., § 49-605; Laws 1943, ch. 118, § 1; 1945, ch. 96, § 1; 1953 Comp., § 47-6-5.

### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

### **77-6-6. [Dairy breed cattle to be tested by bureau of animal industry; slaughter of reactors.]**

That all dairy breed cattle in the state of New Mexico shall hereafter be tested for Bang's disease, tuberculosis and other communicable, infectious or contagious diseases in accordance with the rules and regulations of the bureau of animal industry of the federal government and all such tests shall be made by bureau employees or accredited veterinarians. All dairy breed cattle found to be reactors by such tests shall be slaughtered in accordance with the rules and regulations of said bureau.

**History:** Laws 1941, ch. 150, § 6; 1941 Comp., § 49-606; 1953 Comp., § 47-6-6.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 35.

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.

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.

### **77-6-7. [Appraisers of slaughtered dairy breed cattle; selection; duties; payment by state; maximum amount.]**

That the value of dairy breed cattle to be slaughtered in the eradication and control of such diseases shall be fixed and determined by three appraisers selected as follows: one selected by the cattle sanitary board [New Mexico livestock board], and one selected by the bureau of animal industry and one selected by the owner of the animal or animals. That in making their appraisalment said appraisers shall give due consideration to breeding values and values as dairy breed cattle, as distinguished from meat breed or range cattle. The appraisalment when made by the appraisers herein shall be final and binding upon the owner of said dairy breed animal or animals. The amount of indemnity to be paid to owners of dairy breed animals so slaughtered shall be determined by the appraisers and the amount to be paid by the state of New Mexico shall be one-third of the difference between the appraised value of such dairy breed animal or animals and the value of the salvage thereof. Provided: the maximum amount of payment to be made by the state of New Mexico as an indemnity shall in no case be more than the sum of \$25.00 for any grade animal, or more than the sum of \$50.00 for any purebred animal and such payment shall be in addition to the payment made by the bureau of animal industry of the federal government and shall be made in cooperation with said bureau and said bureau's rules and regulations concerning the payment of such indemnities.

**History:** Laws 1941, ch. 150, § 7; 1941 Comp., § 49-607; 1953 Comp., § 47-6-7.



## ANNOTATIONS

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 35.

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 § 76.

### **77-6-8. [Report of appraisalment.]**

After the appraisers herein provided for have determined the amount of indemnity to be paid to the owners by the state of New Mexico, they shall make a report of their appraisalment and determination of indemnity to the cattle sanitary board [New Mexico livestock board] on forms furnished by it.

**History:** Laws 1941, ch. 150, § 8; 1941 Comp., § 49-608; 1953 Comp., § 47-6-8.

## ANNOTATIONS

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

### **77-6-9. Payment of indemnity.**

The livestock board, upon receiving satisfactory evidence that the taxes §1 assessed as provided in Sections 77-6-1 through 77-6-10 and 77-2-15 NMSA 1978, upon the dairy cattle for which claim for indemnity is made have been paid as to such cattle slaughtered on and after December 1, 1941, shall issue its voucher signed by the secretary [executive director] of said board and sworn to by the claimant for indemnity and shall attach thereto the report of the appraisers. Warrant therefor shall be issued by the secretary of finance and administration and paid by the state treasurer out of the state dairy industry indemnity fund in the same manner as other warrants are issued and paid.

**History:** Laws 1941, ch. 150, § 9; 1941 Comp., § 49-609; 1953 Comp., § 47-6-9; Laws 1977, ch. 247, § 157.

## ANNOTATIONS

**The 1977 amendment** substituted "livestock board" for "cattle sanitary board" and the specific statutory references for "this act and as provided for by Section 2 of Chapter 205, New Mexico Session Laws of 1937, as amended" in the first sentence, "secretary

of finance and administration" for "state auditor" in the second sentence and inserted "indemnity" following "industry" near the middle of the second sentence.

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" was inserted in brackets.

### **77-6-10. [Administration of act; payment of expenses.]**

The cattle sanitary board [New Mexico livestock board] shall administer the provisions of this act [77-6-1 to 77-6-10 NMSA 1978] and are hereby authorized to make rules and regulations necessary to carry out the provisions hereof. Nothing contained herein shall be construed in any manner to limit or impair the authority of the board to exercise its existing powers and duties relative to the inspection and general supervision of communicable and infectious diseases relative to dairy bred [breed] cattle and the expenses necessary to carry out these duties insofar as they pertain to dairy bred [breed] cattle shall be paid out of the state dairy industry indemnity fund; it being the intention of the legislature to have the administrative expenses relative to animals under the jurisdiction of the cattle sanitary board of New Mexico [livestock board], other than dairy breed cattle, paid out of the cattle indemnity fund, and the administrative expense relative to dairy breed cattle, as herein defined, paid out of the state dairy industry indemnity fund, provided, however, that the total administrative expenses chargeable against the state dairy industry indemnity fund for any year shall in no event, exceed the sum of \$1,500.00.

**History:** Laws 1941, ch. 150, § 10; 1941 Comp., § 49-610; 1953 Comp., § 47-6-10.

#### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

## **ARTICLE 7 FEEDING OF HOGS**

### **77-7-1 to 77-7-15. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 229, § 9, repeals 77-7-1 to 77-7-15 NMSA 1978, relating to eradication of hog cholera.

Laws 1983, ch. 229, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **77-7-16. Definitions.**

As used in this act [77-7-16 to 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 to 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.

### **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 repeals 77-8-1 NMSA 1978, as amended by Laws 1967, ch. 213, § 9, relating to the definitions of terms used under this act (77-8-1 to 77-8-19 NMSA 1978), effective June 18, 1993. For provisions of former section, see the Original Pamphlet.

### 77-8-2. Quarantine; dipping; treatment.

Sheep afflicted with or exposed to scabies or other infectious or contagious disease shall be immediately placed under quarantine under the supervision of a veterinarian or inspector in conformity with the rules and regulations of the board. Said sheep shall not be moved from the quarantine area, except to dipping vats under the supervision of a veterinarian or inspector, until a veterinarian or inspector declares them to be free of said disease or until the board otherwise grants permission for the moving of the sheep. The sheep shall be dipped or 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. 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.

**History:** 1941 Comp., § 49-872, enacted by Laws 1951, ch. 188, § 11; 1953 Comp., § 47-8-11.

#### ANNOTATIONS

**No presumption that board negligent.** - Court will not presume that sheep sanitary board (now 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 §§ 32, 33.

3A C.J.S. Animals §§ 73, 75.

### 77-8-3. Importation; notice; inspection; fees.

A. Any person intending to bring any sheep into the state from any other country or state shall give notice of his intention to the director of the board by telegraph, 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 will be loaded and their destination. The director shall then issue a permit for entry of the sheep into the state, stating in the permit the applicable board regulations 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 authorized state inspector or authorized veterinarian that the sheep are healthy and free from scabies or other contagious or infectious disease. 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. He shall then issue the shipper or owner a copy of the brand inspection certificate, if the inspector is satisfied all requirements have been met.

C. A fee to be fixed by the board shall be charged and paid by the owner or person in charge of the sheep to the board received by the inspector for the inspection and certificates. If the inspector finds that the sheep are infected with scabies or other contagious or infectious disease, or the owner or person in charge has not met the entry requirements, he shall require the owner or the person in charge of them to comply with the quarantine, dipping and treating provisions of Section 77-8-2 NMSA 1978 or other applicable statutes and regulations. The provisions of this section shall not apply to sheep loaded on transport vehicles which are being transported from some country or state to another country or state through New Mexico if the sheep 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 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.

## ANNOTATIONS

**Cross-references.** - As to certificate necessary for transportation of animals or carcasses, see 77-9-41 NMSA 1978.

**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.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 33.

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; notice to board.**

It shall be the duty of any person owning or having under his control sheep which have become exposed to or infected with scabies or any other contagious or infectious disease to forthwith report such fact to the secretary [executive director]. A veterinarian or inspector shall be immediately dispatched to examine said sheep and if found to be so exposed or infected the veterinarian or inspector shall follow the quarantine, dipping and treating provisions set forth in Section 11 [77-8-2 NMSA 1978].

**History:** 1941 Comp., § 49-875, enacted by Laws 1951, ch. 188, § 14; 1953 Comp., § 47-8-14.

### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" was inserted in brackets.

#### **77-8-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 229, § 9, repeals 77-8-6 NMSA 1978, relating to yearly inspection of sheep.

Laws 1983, ch. 229, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **77-8-7. Exportation; notice; inspection fees.**

A. Any person intending to ship sheep out of the state shall give notice of his intention to the director of the board or to the inspector for his district by telegraph, certified letter or by delivery in person or by telephone to the director or inspector so that the notice is received at least forty-eight hours previous to the proposed date of shipment. The notice shall state the date and place that the sheep will be loaded and destination of the sheep. The inspector shall examine the sheep as to their sanitary conditions and inspect and make a record of all the marks and brands upon the sheep. He shall not allow sheep 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. He shall also require each person shipping sheep out of the state to exhibit a bill of sale executed as provided by Section 77-8-15 NMSA 1978 or authority in writing to ship the sheep from the recorded owner of all marks and brands upon the sheep 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 if he is fully satisfied that the sheep are free from any contagious or infectious disease and that the person shipping has rightful ownership of said sheep as evidenced by the brands or marks and bill of sale as necessary and provided for in this section and all other applicable rules and regulations of the board. This certificate shall authorize the shipping of the sheep 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 above certificates until he has been paid the fee. The inspector shall make a report to the director after each inspection of any matters contained in this section which may be required of him by the director.

**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.

### **ANNOTATIONS**

**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.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals § 74.

### **77-8-8. Unlawful transportation; penalty.**

It shall not be lawful for any carrier of sheep to receive for transportation beyond the boundaries of this state any sheep for which a brand inspection certificate is not first exhibited to the carrier by the shipper immediately before and at the place of shipment. Any carrier violating the provisions of the [this] section shall be held liable in a sum not to exceed five hundred dollars (\$500).

**History:** 1941 Comp., § 49-878, enacted by Laws 1951, ch. 188, § 17; 1953 Comp., § 47-8-17.

### **77-8-9. Special marks.**

In any instance where it appears impossible or impracticable for any owner to use in his sheep his regular recorded or rerecorded mark or brand, the secretary [executive director] may award the owner a special and additional mark or brand, which may be the mark or brand already on the owner's sheep, or a portion of said sheep. Such mark or brand shall be recorded or rerecorded in the same manner as regular marks or brands and the certificate of mark awarding such mark or brand shall specify the sheep for whose use it is intended and the length of time for which it may be used, and the owner shall limit its use accordingly.

**History:** 1941 Comp., § 49-882, enacted by Laws 1951, ch. 188, § 21; 1953 Comp., § 47-8-21.

## **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" was inserted in brackets.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 8, 9.

3A C.J.S. Animals §§ 15 to 20.

### **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 to 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

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" was inserted in brackets.

#### **77-8-11. Cancellation of marks; reinstatement.**

Any person failing to rerecord his mark or brand within the one hundred and twenty (120) days provided in Section 19 shall forfeit the right to use that mark or brand, and it shall be canceled from the records of the board. However, said mark or brand shall not be awarded to any person until the expiration of ninety (90) days from the date of forfeiture. During this time the original owner of the mark or brand may apply to the board, and if just cause be shown for failure to comply with the rerecording provisions the board may rerecord the mark or brand in the name of such owner upon compliance with the provisions of this act [77-8-1 to 77-8-19 NMSA 1978] as to payment of fees and filing a facsimile of mark or brand.

**History:** 1941 Comp., § 49-884, enacted by Laws 1951, ch. 188, § 23; 1953 Comp., § 47-8-23.

### ANNOTATIONS

**Compiler's note.** - Section 19 refers to Laws 1951, ch. 188, § 19, which was compiled as 47-8-19, 1953 Comp., but was repealed by Laws 1971, ch. 50, § 5.

#### **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; notice; supervision.**

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 [executive director] or an inspector 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.

#### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" was inserted in brackets.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals § 25.

### **77-8-15. Bill of sale; evidence of larceny.**

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 acknowledgments. The possession by any person of sheep having any mark or brand but his recorded mark or brand, unless he have a bill of sale therefor or authority in writing to possess or sell such sheep, shall be

taken as prima facie evidence that he committed larceny of said sheep and shall be sufficient for his conviction of larceny unless the evidence shall show his innocence.

**History:** 1941 Comp., § 49-888, enacted by Laws 1951, ch. 188, § 27; 1953 Comp., § 47-8-27.

### **77-8-16. Report of estray sheep; sale.**

Any person finding estray sheep shall immediately report them to an inspector or the secretary [executive director] and deliver them to an inspector upon his or the secretary's [executive director's] demand therefor. If the mark or brand on the sheep is recorded in the board office, the secretary [executive director] shall notify the owner of record and make arrangements to deliver the sheep of said owner of record if he is the actual owner. If the owner of record no longer owns the sheep, the secretary [executive director] shall deliver them to a subsequent purchaser who can prove ownership with a valid bill of sale. In either case above, delivery shall be conditioned upon payment by the claimant of all costs incurred in keeping the sheep and such other expenses as may have been necessarily incurred. If the owner cannot be ascertained after diligent [diligent] inquiry the secretary [executive director] shall order an inspector to sell them to the person paying the highest cash price for them after giving such general or special notice or advertising as he deems necessary under the circumstances. The moneys arising from the sale shall be used first to defray the costs and expenses in keeping and advertising the sheep 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 one (1) year after the sale any person shall prove ownership of the sheep 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.

## **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" was inserted in brackets.

### **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 note.** - 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.**

Any person who violates the provisions of Sections 11, 12, 16, or 26 [77-8-2, 77-8-3, 77-8-7 or 77-8-14 NMSA 1978] of this act or rules and regulations made in pursuance thereof, upon his conviction before any justice of the peace [magistrate] 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.

**History:** 1941 Comp., § 49-891, enacted by Laws 1951, ch. 188, § 30; 1953 Comp., § 47-8-30.

#### **ANNOTATIONS**

**Jurisdiction, etc., of justices of the peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978.

#### **77-8-19. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 248, § 80 repeals 77-8-19 NMSA 1978, as amended by Laws 1977, ch. 249, § 30, relating to tax levies, effective June 18, 1993. For provisions of former section, see the Original Pamphlet.

#### **77-8-20. "Commuting sheep"; fees.**

A. For the purpose of this section "commuting sheep" means sheep that are transferred:

(1) from New Mexico to some other state with which New Mexico shares a common boundary and back again; or

(2) from some other state which shares a common boundary with New Mexico, to New Mexico and back again;

(3) during any twelve-month period;

(4) by one owner;

(5) for the purpose of seasonal grazing, breeding or lambing, 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 shall have them inspected for each movement, but shall pay the inspection fees 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.

**History:** 1953 Comp., § 47-8-41, enacted by Laws 1963, ch. 129, § 6.

### **77-8-21. Dipping fees.**

If any dipping of sheep is required by law or requested by the owner to be done under the supervision of an inspector or other person authorized by the board, a dipping fee to be set by the board shall be paid to the inspector or other person authorized by the board by the owner or person in charge of the sheep. This dipping fee is not required during an immediate conjunction with an outgoing or incoming inspection if an inspection fee is paid. The inspector or other person authorized by the board shall remit all dipping fees required under this section to the board.

**History:** 1953 Comp., § 47-8-42, enacted by Laws 1963, ch. 129, § 7; 1993, ch. 248, § 41.

## **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "to be set by the board" for "not to exceed five cents (\$.05) a head" in the first sentence.

## **ARTICLE 9 BRANDS, OWNERSHIP, TRANSPORTATION AND SALE OF ANIMALS**

### **77-9-1. Branding and marking of cattle and sheep; offense; penalty.**

Animals such as are usually branded shall be branded with the owner's brand as his recorded brand certificate designates. Each drove of cattle or sheep which may be driven into or through any county in this state shall be plainly branded or marked with

one uniform brand or mark. The cattle shall be so branded with the distinguishing ranch or road brand of the owner as to show distinctly. Sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish them readily should they become intermixed with other flocks of sheep owned in the state. Any owner or person in charge of such drove which may be driven into or through the state who fails to comply with the provisions of this section shall be guilty of a petty misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300) for each offense.

**History:** Laws 1884, ch. 47, § 1; C.L. 1884, § 54; C.L. 1897, § 64; Code 1915, § 115; C.S. 1929, § 4-1401; 1941 Comp., § 49-901; 1953 Comp., § 47-9-1; Laws 1975, ch. 139, § 1; 1993, ch. 248, § 42.

## ANNOTATIONS

**Cross-references.** - For registration of sheep marks and brands, see 77-8-9 to 77-8-16 NMSA 1978.

For registration of cattle brands, see 77-9-13 NMSA 1978.

As to sheriffs, deputy sheriffs and constables to trace stolen livestock, see 29-1-2 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, inserted "be guilty of a petty misdemeanor and upon conviction shall" in the final sentence; added "for each offense" at the end of the final sentence; and made minor stylistic changes.

**Brand not sole evidence of ownership.** - The brand law does not require that the ownership of an animal must be proved by the brand itself, and ownership may be proved by flesh marks, or other proper evidence. *Chavez v. Territory*, 6 N.M. 455, 30 P. 903 (1892).

**And may prove ownership of brand.** - The law does not prohibit proof of the true ownership of a recorded brand where the brand had been sold and became the property of another than the person in whose name it was recorded. *Chavez v. Territory*, 6 N.M. 455, 30 P. 903 (1892).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 8.

3A C.J.S. Animals § 15.

### **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

**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. Every person, firm, company or corporation owning horses, mules, asses or any cattle shall have and adopt a brand for the animals. The brand shall be applied with a hot iron on each animal except registered animals which are properly identified 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. Any unbranded livestock excepting offspring with a branded mother shall be subject to seizure by any peace officer or any duly authorized livestock inspector appointed by the board and shall be handled and disposed of in the same manner as is provided for the handling and disposal of estrays.

C. Any livestock that is purchased must be rebranded by the new owner with his recorded brand within thirty days 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.

D. This section shall not apply to any 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 which 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.

**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.

## ANNOTATIONS



**Cross-references.** - As to the New Mexico livestock board, see 77-2-2 NMSA 1978.

**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.

**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.

**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. 38.

**Wild horses on the White Sands Missile Range** are classified as "estrays" under New Mexico law and should be handled and disposed of by the New Mexico Livestock Board. 1990 Op. Att'y Gen. No. 90-01.

**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 under 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 meets the requirements of Section 77-9-22 NMSA 1978.

B. The bill of sale must 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 must be rebranded within thirty days from the date of purchase.

C. No person shall 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.

D. Any individual, corporation, partnership or association that violates the provisions of either Section 77-9-3 NMSA 1978 or this section is guilty of a 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.

**History:** 1953 Comp., § 47-9-3.1, enacted by Laws 1961, ch. 4, § 1; 1975, ch. 139, § 3; 1993, ch. 248, § 44.

### ANNOTATIONS

**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 30-18-3 NMSA 1978;** this section applies to branding requirements generally while 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 except such as are recorded under the provisions of this article and are peeled and fully healed shall be recognized in law as evidence of ownership of the horses, mules, asses or neat cattle upon which the brand is used unless the owner has other means of identification including freeze brands and freeze mark identification, which shall be 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.

### ANNOTATIONS

**The 1985 amendment** added "including freeze brands and freeze mark identification, which shall be recognized as evidence of ownership for horses, mules or asses."

**Meaning of "this article".** - The compiler of the 1915 Code substituted the words "this article" for "this act" in reference to Code 1915, ch. III, art. VI, the present provisions of which are compiled as 31-7-1, 77-9-1 to 77-9-3, 77-9-5, 77-9-7 to 77-9-19, 77-9-29 to 77-9-40, 77-9-54 and 77-9-55 NMSA 1978.

**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.*, 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).

**However, may prove 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).

**Although need legal brand 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, 9.

3A C.J.S. Animals §§ 18 to 20.

### **77-9-6. Certified copy of brand; prima facie evidence of brand.**

A certified copy of a recorded brand, signed by the director of the New Mexico livestock board shall be accepted in any court in New Mexico as prima facie evidence of the issuance of a valid New Mexico brand recorded in the name of the owner as stated on the face of the brand certificate.

**History:** 1953 Comp., § 47-9-4.1, enacted by Laws 1975, ch. 50, § 2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 9.

Constitutionality of statute making presence of brand on animal prima facie evidence that animal belongs to owner of brand, 51 A.L.R. 1168, 86 A.L.R. 179, 162 A.L.R. 495.

3A C.J.S. Animals § 18.

### **77-9-7. Brands; subject to change in ownership; fees for transfer.**

Brands recorded in accordance with the provisions of Section 77-9-10 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.

#### **ANNOTATIONS**

**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).

### **77-9-8. Registration of brands and marks; livestock board.**

The livestock board is the sole board for the registration of brands and marks on horses, mules, asses, cattle and sheep 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.

#### **ANNOTATIONS**

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

### **77-9-9. Brand books.**

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.

**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.

## ANNOTATIONS

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

**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."

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

### **77-9-10. Recording before use; recording fee; conflicting brands.**

A brand for horses, mules, asses, cattle or sheep shall not be used until recorded. A facsimile and a recording fee to be fixed by the board in a sum not to exceed the amount prescribed by law shall be forwarded to the director of the New Mexico livestock board. One certified copy of the recorded brand shall be furnished to the owner of the brand by the director of the New Mexico livestock board immediately upon the brand being recorded. The director of the board shall immediately record the brand unless it has been recorded previously or conflicts with a prior recorded brand. In that event, the director of the board shall return the facsimile unrecorded together with the fee. Additional certified copies of brands recorded may be obtained from the director of the board 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.

## ANNOTATIONS

**Cross-references.** - As to more than one brand prohibited, see 77-9-14 NMSA 1978.

For penalty for recording improper brands, see 77-9-17 NMSA 1978.

**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.

## **77-9-11. Fees; disposition.**

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.

**History:** Laws 1905, ch. 30, § 1; Code 1915, § 124; C.S. 1929, § 4-1410; 1941 Comp., § 49-909; 1953 Comp., § 47-9-9; 1993, ch. 248, § 46.

### **ANNOTATIONS**

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

**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.

## **77-9-12. Only certified copies of brands to be recorded by county clerks.**

It is unlawful for any county clerk to record any brand unless the application to record is accompanied by a certificate from the director of the board to the effect that the brand has been recorded in the brand book.

**History:** Laws 1895, ch. 6, § 11; C.L. 1897, § 115; Code 1915, § 126; C.S. 1929, § 4-1412; 1941 Comp., § 49-911; 1953 Comp., § 47-9-10; 1993, ch. 248, § 47.

### **ANNOTATIONS**

**Cross-references.** - For penalty where county clerk records brand, see 77-9-17 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "director of the board" for "secretary of the cattle sanitary board"; and made minor stylistic changes.

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

## **77-9-13. Brand book.**

It is the duty of the executive director of the New Mexico livestock board to 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 is authorized to 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 of the same. 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.

**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.

### ANNOTATIONS

**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.

**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.

### **77-9-14. More than one brand unlawful; exceptions; penalty.**

A. It is unlawful for any owner of livestock in originally marking or branding horses, mules, asses or any cattle to make use of or keep up more than one mark or brand; provided, that any owner may own and possess animals in different marks or brands if they were acquired by him by purchase or other lawful manner and evidenced by a bill of sale in writing, properly acknowledged, from the previous owner of the animals having such brands or from the heirs, executors, administrators or legal representatives of the owner. Such animals so acquired shall be branded and marked by and with the recorded, 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, it is

lawful for the purpose of identification during the pendency of the lien to brand the increase of the animals in the recorded brand designated in the mortgage or lien.

B. Any person who unlawfully brands any livestock contrary to the provisions of this article is guilty of a misdemeanor and shall upon conviction be punished by confinement in the county jail not to exceed twelve months or fined an amount not to exceed five hundred dollars (\$500), or both, 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.

### ANNOTATIONS

**Cross-references.** - For recording of holding brands, see 77-9-16 NMSA 1978.

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

**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.

**Meaning of "this article".** - The words "this article" were substituted for "this act" in the second paragraph by Laws 1975, ch. 139, § 4, and refer to Article 9 of Chapter 47, 1953 Comp., the provisions of which are presently compiled as 77-9-1 to 77-9-63 NMSA 1978.

### 77-9-15. Brands of minors.

Minors owning horses, mules, asses or any cattle separate from that of the parent or guardian may have a mark and brand which shall be recorded in accordance with the requirement of this article, but the parent or guardian shall be responsible for the proper use of the mark and 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.

### ANNOTATIONS

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

**Meaning of "this article".** - See same catchline in notes to 77-9-5 NMSA 1978.



## **77-9-16. Filing of facsimile; designation of brands; holding brand renewal and fee; branding increase; offenses; penalty.**

It is the duty of every owner of horses, mules, asses or any cattle desiring to use in branding any brand not already duly recorded in the office of the New Mexico livestock board to file with the director of the New Mexico livestock board a facsimile of the brand. The owner shall designate his kept-up or running brand and may record other brands as holding brands upon animals so owned upon furnishing to the director a full description as to the number, class and locality of all animals branded with the holding brand. A fee in an amount prescribed by law shall be charged for the recording of a holding brand, which recording shall be valid for a period of one year, after which time the recording may be renewed for additional years by the payment of a fee in an amount prescribed by law at each yearly renewal; provided, that it is unlawful for any owner to brand the increase of such animals in any other brand than the recorded, kept-up or running brand of the owner except in the case of mortgaged animals as provided in Section 77-9-14 NMSA 1978. Any person who violates the provisions of this section is guilty of a misdemeanor and shall upon conviction be 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, 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.

### **ANNOTATIONS**

**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.

**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 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.

## **77-9-17. [Recording improper brands; recording by county clerk; use of cancelled brand; penalty.]**

Any person, company or corporation who shall cause to be recorded a brand not the property of such person, company or corporation, or who, under the provisions of the

preceding section, shall cause to be recorded any brand in which there are no animals of which such brand is the holding brand, or any county clerk who shall record a brand unless accompanied by a certificate of the secretary [executive director] of the cattle sanitary board [New Mexico livestock board], as now provided by law, or any person who shall use a brand cancelled, as hereinafter provided, shall be guilty of a misdemeanor, and shall, upon conviction, be fined in a sum not less than \$25 nor more than \$100 for each and every offense, said fine to go to the school fund of the county where the offense is committed.

**History:** Laws 1912, ch. 55, § 3; Code 1915, § 139; C.S. 1929, § 4-1425; 1941 Comp., § 49-916; 1953 Comp., § 47-9-15.

### ANNOTATIONS

**Cross-references.** - As to unlawful branding of animals, see 38-18-3 NMSA 1978.

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" and "New Mexico livestock board" were inserted in brackets.

### 77-9-18. 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 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 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.

### ANNOTATIONS

**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.

**Compiler's note.** - Section 138 of the 1915 Code is now compiled as 77-9-16 NMSA 1978. Section 140 of the 1915 Code (Comp. Stat. 1929, § 4-1426), referred to in this section, has been omitted as obsolete. It provided for the expunging of all brands not refiled within six months.

### 77-9-19. 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; 1993, ch. 248, § 53.

## ANNOTATIONS

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

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

### **77-9-20. Rerecording of brands; notice; publication; fees.**

A. The board shall have the power to and shall cause all brands now on record to be rerecorded whenever it deems it necessary to clear records of unused brands. For this purpose, the board shall mail a notice, addressed to each owner of any brand now of record with the board at the post office address shown on the brand record, requiring the owners of brands to file with the director of the board an exact facsimile of any brand being on record to the owners. In addition to the above notice, the board shall cause to be published 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 this notice to rerecord. 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 rerecord, it is the duty of all owners of brands of record in the office of the board to file with the director of the board a facsimile of the brands in actual use and recorded by them. A 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 fees shall be placed in the proper fund of the New Mexico livestock board. Rerecording shall not be required more often than once in any 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.

## ANNOTATIONS

**Cross-references.** - As to "legal newspaper," see 14-11-2 NMSA 1978.

**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."

**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.

## **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**

**Cross-references.** - As to larceny of animals, see 30-16-1 NMSA 1978.

**Repeals and reenactments.** - Laws 1971, ch. 196, § 1, repeals 47-9-19, 1953 Comp., relating to sales of animals, bills of sale and prima facie evidence where person charged with theft, and enacts the above section.

**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.**

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 therein and guarantees to defend said 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 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. The bill of sale shall be executed the day of the transaction.

C. 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.

D. A registration certificate issued by a recognized purebred 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 a duly authorized livestock inspector of the New Mexico livestock board, may be used as proof of ownership.

**History:** 1953 Comp., § 47-9-19.1, enacted by Laws 1971, ch. 196, § 2.

### **ANNOTATIONS**

**Cross-references.** - As to animals transferred without bill of sale as estrays, see 77-9-40 NMSA 1978.

### **77-9-23. Bill of sale of livestock; duty to exhibit; violation; penalty.**

A. Any 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 any inspector or other peace officer. Any person who fails to produce the bill of sale required in Section 77-9-21 NMSA 1978 or is unable to exhibit other written evidence of ownership or legal possession is guilty of a petty misdemeanor.

B. Any 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 under Subsection A of this section shall have such livestock impounded. If sufficient proof of ownership has not been established to the satisfaction of the New Mexico livestock board, within fifteen days of the impoundment, the impounded livestock will be handled and disposed of in the same manner as is now or may hereafter be 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.

## ANNOTATIONS

**Wild horses on the White Sands Missile Range** are classified as "estrays" under New Mexico law and should be handled and disposed of by the New Mexico Livestock Board. 1990 Op. Att'y Gen. No. 90-01.

### **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

**Meaning of "last two sections".** - 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. Sale by range delivery; bill of sale.**

The owner of horses, mules, asses or any cattle running at large upon any range in this state may dispose of the animals by range delivery while on the range and ungathered by the sale and delivery of the marks and brands on the animals, but in every such case the purchaser, in order to acquire title to the animals, shall have his conveyance or written transfer of the animals duly acknowledged by the vendor and then recorded in a book kept for that purpose in the office of the county clerk of the county in which the animals range, and the sale or transfer shall be noted on the record of original marks and brands in the name of the purchaser.

**History:** Laws 1895, ch. 6, § 19; C.L. 1897, § 123; Code 1915, § 46; C.S. 1929, § 4-320; 1941 Comp., § 49-923; 1953 Comp., § 47-9-22; 1993, ch. 248, § 56.

## ANNOTATIONS

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

**Unrecorded bill of sale voids sale.** - Where two parties purport to transfer livestock on the range by an unrecorded bill of sale, the sale is void. *Jenkins v. Reeves*, 40 N.M. 231, 57 P.2d 1203 (1936).

### **77-9-26. Sale by person not brand owner; bill of sale.**

Every person, firm or corporation in this state who sells, transfers or delivers to any person, firm or corporation in this state any cattle, horse, sheep, mule or burro which is banded or marked with any brand or mark not the recorded brand or mark of the person, firm or corporation selling, transferring or delivering the animal shall make and deliver to the person, firm or corporation buying or receiving the animal 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.

**History:** Laws 1921, ch. 159, § 1; C.S. 1929, § 4-321; 1941 Comp., § 49-924; 1953 Comp., § 47-9-23; 1993, ch. 248, § 57.

#### **ANNOTATIONS**

**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.**

Any person, firm or corporation violating the provisions of Section 77-9-26 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be 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.

**History:** Laws 1921, ch. 159, § 2; C.S. 1929, § 4-322; 1941 Comp., § 49-925; 1953 Comp., § 47-9-24; 1993, ch. 248, § 58.

#### **ANNOTATIONS**

**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 animals; permit required; penalty.**

A. Every person, firm, company, corporation or common carrier bringing cattle, buffalo, horses, mules, asses or swine into this state by any manner or causing them to be brought in shall, before doing so, obtain a permit in writing or by wire from the board or its authorized representatives. The permit shall contain a list of all the requirements of the board to be complied with before the animals can be brought into the state and shall also stipulate any requirements of further tests of the livestock for disease as set forth in this section, after the animals are within the state if required by the board. The permit must accompany the animals at the time they enter the state, and the requirements set forth in the permit as to tests for contagious diseases or otherwise must be complied with in every particular before the animals are permitted to enter.

B. No permits are required for cattle transported directly to sales rings or yards which are inspected for health of animals contained therein by the United States department of agriculture or other agency of the United States.

C. Any person, firm, company, corporation or common carrier violating any provisions of this section is guilty of a misdemeanor and shall be punished by a fine of not less than fifteen dollars (\$15.00) nor more than one hundred dollars (\$100).

**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.

#### **ANNOTATIONS**

**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 New Mexico cattle sanitary board (New Mexico livestock board) or sheep sanitary board (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. 5716.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 33.

3A C.J.S. Animals §§ 53, 74.

#### **77-9-29. Inspection rules and regulations.**

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, the board shall make all necessary rules and regulations respecting the inspection of cattle intended for shipment or to be



driven beyond the limits of this state and also respecting the inspection of hides and slaughterhouses in this state and for the government of all employees of the board.

**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; 1993, ch. 248, § 60.

## ANNOTATIONS

**Cross-references.** - For inspection of slaughterhouses, see 77-9-33 NMSA 1978.

For inspection of hides, see 77-9-54 NMSA 1978.

**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 cattle; inspection of brands and ear marks; record.**

It is the duty of the board to cause to be inspected the brands and ear marks upon the cattle shipped or driven out of this state and to cause to be kept and preserved a true and correct record of the result of such inspections in the office of the director of the board. The record shall set forth the date of the inspection, the place where and the person by whom made, the name and post office addresses of the owner, shipper or claimant of the cattle inspected and the names and post office addresses of all persons in charge of the cattle at the time of the inspection, the destination of the cattle as well as a list of all brands and ear marks upon the cattle inspected and the number and classification of the cattle.

**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; 1993, ch. 248, § 61.

## ANNOTATIONS

**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 cattle to be inspected.**

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.

**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; 1993, ch. 248, § 62.

## ANNOTATIONS

**Cross-references.** - As to notice to inspector of desire to transport, see 77-9-43 NMSA 1978.

As to larceny of livestock, see 30-16-1 NMSA 1978.

**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.**

Every person, company or corporation, or their agents, servants or employees, having in charge livestock destined for transportation or to be driven beyond the limits of this state, shall make application to the proper inspector to inspect any such livestock, stating in such application the time said livestock will be ready for inspection, and it shall be the duty of such inspector to inspect the said livestock at a location to be designated by the board, make the record and give the certificate required by law to the owner of said 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 said livestock from the state. If the owner or person in charge of said livestock shall cause any unreasonable delay or loss of time to an inspector, such owner or person in charge of any such 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.

## ANNOTATIONS

**Cross-references.** - For inspection fees, see 77-9-38 NMSA 1978.

As to certificate necessary to transport cattle or carcasses outside of state, see 77-9-41 NMSA 1978.

As to notice to inspector of desire to transport, see 77-9-43 NMSA 1978.

As to when certificate should be refused, see 77-9-45 NMSA 1978.

**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. 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. 5842.

### **77-9-33. Inspection of exported cattle; report; inspection of slaughterhouses.**

A. Every inspector employed by the board under the provisions of Section 77-2-7 NMSA 1978 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 cattle transported or driven out of this state and to make a sworn report to the director of the board of the result of such inspection at least once in every thirty days and oftener 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 cattle killed at the slaughterhouse since the last inspection, the names of the persons from whom each of the cattle was bought, 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 through 77-17-11 NMSA 1978. For the purpose of making an inspection, any inspector employed by the board shall have the right to enter in the day or night any slaughterhouse or other place where cattle are killed in this state and to carefully examine the same and all books and records required by law to be kept therein and to compare the hides found with the records. Any person who hinders or obstructs or attempts to hinder or obstruct any inspector employed by the board in the performance of any of the duties required of him by law is guilty of a misdemeanor and on conviction shall be fined in any sum not exceeding one hundred dollars (\$100), at the discretion of the court trying the case.

B. Inspectors appointed by the board shall have authority to arrest persons found in the act or whom they have good reason to believe to be guilty of driving, holding or slaughtering stolen livestock or of violating the inspection laws of the state. Every inspector shall have authority to carry arms and make arrests in any county in the state.

**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; 1993, ch. 248, § 63.

### **ANNOTATIONS**

**Cross-references.** - As to inspection of hides before shipment, see 77-9-54 NMSA 1978.

As to inspection of records, hides and horns kept by slaughterhouses, see 77-17-10 NMSA 1978.

As to inspection of hides and ears of slaughtered cattle and sheep, see 77-17-12 NMSA 1978.

**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 repeals 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 Original Pamphlet.

### **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; 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. Exportation of livestock without inspection; penalties.**

Any person, firm or corporation who knowingly removes any livestock without having the livestock inspected as required by Article 9 of The Livestock Code [this article] is guilty of a felony and upon the first conviction shall be confined in the penitentiary not less than one year nor more than two years or fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each offense, or both, in the discretion of the court. Upon a second or subsequent conviction of the crime defined in this section and whether the first conviction had been had in the courts of this or any other state, the person so convicted shall be confined in the penitentiary for not less than two nor more than ten years in the discretion of the court.

**History:** Laws 1891, ch. 34, § 13; C.L. 1897, § 219; Code 1915, § 150; Laws 1919, ch. 58, § 1; C.S. 1929, § 4-1436; 1941 Comp., § 49-933; 1953 Comp., § 47-9-33; 1993, ch. 248, § 65.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "livestock" for "cattle, horses, mules, asses, sheep or goats beyond the limits of this state" and "Article 9 of the Livestock Code is" for "law shall be deemed" in the first sentence; substituted "or subsequent conviction of the crime defined in this section" for "conviction of the crime herein defined or upon any conviction of such crime subsequent to the first conviction thereof" in the second sentence; and made minor stylistic changes.

### **77-9-37. Exportation of livestock; receiving for shipment without inspection unlawful.**

It shall be unlawful for any person, firm or corporation to offer, and for any railroad company or other carrier to receive for purposes of shipment, movement or transportation from points within to other points within or beyond the limits of the state, any livestock unless the same shall have been inspected by an authorized inspector at a location to be designated by the New Mexico livestock board and a certificate of such inspection issued by such an inspector as required by the laws of this state except as provided in [Section] 77-9-42 NMSA 1978.

**History:** Laws 1899, ch. 53, § 1; Code 1915, § 151; C.S. 1929, § 4-1437; 1941 Comp., § 49-934; 1953 Comp., § 47-9-34; Laws 1969, ch. 174, § 2.

### ANNOTATIONS

**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.

### **77-9-38. Inspection fees; lien; record.**

There shall be a fee for the inspection of cattle, horses, mules and asses 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 animals inspected until paid. Each inspector shall keep a complete record of all animals 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 New Mexico livestock 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.

### **ANNOTATIONS**

**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 (livestock board) may charge regular inspection fee** on both intrastate and interstate shipments. 1947-48 Op. Att'y Gen. No. 4979.

### **77-9-39. [Penalty for violation of inspection and fee requirements.]**

That any person, firm, corporation, common carrier, railroad company or agent thereof, violating any of the provisions of the two preceding sections [77-9-37, 77-9-38 NMSA 1978] or refusing to permit inspection of any animals as by said sections 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 violation.

**History:** Laws 1899, ch. 53, § 3; Code 1915, § 153; C.S. 1929, § 4-1439; Laws 1933, ch. 53, § 15; 1941 Comp., § 49-936; 1953 Comp., § 47-9-36.

### **77-9-40. Exporting of cattle without brand of shipper or bill of sale; inspection; definition of estrays.**

For the purposes of this section, an estray shall be any cattle 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 or not

accompanied by a duly executed authority in writing, duly acknowledged by the owner of the recorded brand on the animal, authorizing the driving and handling of the animal by the person found driving the same. Upon the inspection of any such herd by any duly authorized inspector, if he finds in or with the herd any estray as is specified in this section, it is his duty and he is hereby empowered to seize and sequester the estray and to hold and dispose of it in the manner now provided by law for the disposition of unclaimed cattle by inspectors. 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.

**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; 1993, ch. 248, § 66.

## ANNOTATIONS

**Cross-references.** - As to driving unbranded animals, see 77-9-1 NMSA 1978.

As to place of inspection, see 77-9-32 NMSA 1978.

As to seizure of livestock or carcasses intended for transport when without bill of sale or proof of ownership, see 77-9-45 NMSA 1978.

As to disposition of unclaimed animals, see 77-13-4 and 77-13-5 NMSA 1978.

**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.

**Wild horses on the White Sands Missile Range** are classified as "estrays" under New Mexico law and should be handled and disposed of by the New Mexico Livestock Board. 1990 Op. Att'y Gen. No. 90-01.

**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.** - As to inspection certificate from 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 (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. 5716.

**And 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. Any person owning horses, mules or asses and desiring to transport them within the state for any purpose other than their sale or trade may, upon request to an inspector of the board, be issued an owner's transportation permit in lieu of the required brand and health inspection certificate for each horse, mule or ass to be transported.

B. The owner's transportation permit issued in lieu of a brand and health inspection 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 and health inspection certificate must 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 regulations of the board.

D. There shall be a fee in an amount set by the board for each owner's transportation permit which shall be in addition to any inspection fee for the issuance of a brand and health inspection certificate.

**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.

### **ANNOTATIONS**

**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.

**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.

## **77-9-43. [Notice of intention to transport; date and place of inspection.]**

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.

**History:** Laws 1929, ch. 87, § 2; C.S. 1929, § 4-2102; 1941 Comp., § 49-940; 1953 Comp., § 47-9-39.

## **ANNOTATIONS**

**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; 1993, ch. 248, § 68.

## **ANNOTATIONS**

**Cross-references.** - As to 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.** - As to 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

**Cross-references.** - As to 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 (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. 5716.

### **77-9-47. [Sale of carcasses to prevent loss by spoiling.]**

That if said inspector or peace officer shall deem it necessary to sell said carcasses so taken, to prevent the loss of same by spoiling, they are empowered and authorized to so do, retaining the sale price thereof in their possession to be disposed of as hereinafter provided.

**History:** Laws 1929, ch. 87, § 6; C.S. 1929, § 4-2106; 1941 Comp., § 49-944; 1953 Comp., § 47-9-43.

#### **ANNOTATIONS**

**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 (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. 5716.

### **77-9-48. Return to owner; sale; disposition of proceeds.**

If within a period of ten days after an inspection required pursuant to Article 9 of The Livestock Code [this article] the ownership of the livestock or carcasses is shown and established, the livestock or carcasses or the proceeds from the sale of the livestock or carcasses shall be delivered to the owner. If, however, within the ten-day period the ownership of the livestock or carcasses is not shown or established, the money derived from the sale of the carcasses shall be paid to the board and applied to defraying the expenses of inspection under this act [77-9-41, 77-9-43 to 77-9-49 NMSA 1978]. The livestock shall be sold and disposed of in the manner now provided by law for the sale and disposition of stray animals, and the money resulting from the sale shall be paid to the board.

**History:** Laws 1929, ch. 87, § 7; C.S. 1929, § 4-2107; 1941 Comp., § 49-945; 1953 Comp., § 47-9-44; 1993, ch. 248, § 69.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the current catchline; inserted "after an inspection required pursuant to Article 9 of the Livestock Code" in the first sentence; deleted "Cattle Sanitary Board or the Sheep Sanitary" preceding "board" in the second sentence; substituted "money resulting from the sale shall be paid to the board" for "moneys resulting therefrom be paid into the Cattle Sanitary Board or the Sheep Sanitary board and applied to defraying the expense of inspection under this Act" at the end of the final sentence; and made minor stylistic changes.

### **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 repeals 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 Original Pamphlet.

### **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**

**Cross-references.** - As to stopping vehicles to demand inspection certificate, see 77-9-46 NMSA 1978.

### **77-9-52. [Sale of seized stolen carcasses to prevent loss by spoiling.]**

That if said inspector or peace officer shall deem it necessary to sell said carcasses so taken, to prevent the loss of same by spoiling, they are empowered and authorized to so do, retaining the sale price thereof in their possession to be disposed of as hereinafter provided.

**History:** Laws 1933, ch. 43, § 2; 1941 Comp., § 49-949; 1953 Comp., § 47-9-48.

### **77-9-53. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 248, § 80 repeals 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 Original Pamphlet.

### **77-9-54. Transportation of hides.**

A. It is unlawful for any person, firm, corporation or common carrier to transport or cause to be transported within or beyond the limits of this state any hides that have not been inspected by a duly authorized inspector of the New Mexico livestock board and tagged or marked as prescribed by regulation of the board. The board may provide by regulation 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 of hides shall keep a complete record of all inspections made by him and immediately forward to the director of the New Mexico livestock board, 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 thereon. 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.

## ANNOTATIONS

**Cross-references.** - As to tagging and marking carcasses, hides, and pelts upon inspection, see 77-9-44 NMSA 1978.

**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.

**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.

**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 & R.G.R.R., 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 & R.G.R.R., 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 & R.G.R.R., 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. 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. 38.

### **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

**Cross-references.** - For penalty for interfering with inspector, see 77-9-37 and 77-9-39 NMSA 1978.

As to transportation of hides, see 77-9-54 NMSA 1978.

### **77-9-56. [Purchase of hides; bill of sale; contents; offense; penalty.]**

Any person or persons, firm or corporation, in this state who shall purchase any hide or hides from neat cattle, horse, sheep, mule or burro, is hereby required to secure from the person or persons, firm or corporation, from whom said hide or hides are purchased, at the time of said purchase, a bill of sale witnessed by two witnesses, showing the brands and the marks, if any, on said hide or hides. Any person or persons, firm or corporation, violating the provisions hereof shall be deemed guilty of a misdemeanor and shall upon conviction be fined in a sum not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500) dollars, or be imprisoned not less than thirty (30) days nor more than six (6) months or [receive] both such fine and imprisonment in the discretion of the court.

**History:** Laws 1921, ch. 26, § 1; C.S. 1929, § 4-1443; 1941 Comp., § 49-953; 1953 Comp., § 47-9-52.

### **77-9-57. Magistrate jurisdiction.**

Magistrates are given jurisdiction over all persons, firms or corporations charged with a violation of The Livestock Code [this chapter].

**History:** Laws 1921, ch. 26, § 2; C.S. 1929, § 4-1444; 1941 Comp., § 49-954; 1953 Comp., § 47-9-53; 1993, ch. 248, § 71.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "Magistrates" for "Justices of the Peace"; substituted "The Livestock Code" for "this Act"; and made minor stylistic changes.

**Jurisdiction, etc., of justices of the peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978.

### **77-9-58. Interstate cattle transportation; cattle rest stations.**



It is unlawful for any person to unload cattle in interstate transit by truck for feed, rest and water except at cattle rest stations licensed by the board except in emergency situations, and in emergency situations, cattle in transit must be inspected by an inspector of the board before being reloaded.

**History:** 1953 Comp., § 47-9-54, enacted by Laws 1961, ch. 3, § 1; 1993, ch. 248, § 72.

#### **ANNOTATIONS**

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

#### **77-9-59. Cattle rest stations; licensing.**

The board shall license all cattle rest stations, which shall meet minimum regulations 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 approved by the attorney general in the amount of one thousand dollars (\$1,000) covering the faithful compliance by the licensee with all laws and regulations of the board pertaining to cattle rest stations.

**History:** 1953 Comp., § 47-9-55, enacted by Laws 1961, ch. 3, § 2; 1993, ch. 248, § 73.

#### **ANNOTATIONS**

**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.

#### **77-9-60. Regulations.**

The board may prescribe regulations covering the operation of cattle rest stations for cattle in transit by truck.

**History:** 1953 Comp., § 47-9-56, enacted by Laws 1961, ch. 3, § 3; 1993, ch. 248, § 74.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the current catchline and deleted "cattle sanitary" preceding "board".

#### **77-9-61. [Violation of Sections 77-9-58 to 77-9-61 NMSA 1978 or regulations of board; penalties.]**

Any person violating any of the provisions of this 1961 act [77-9-58 to 77-9-61 NMSA 1978] or any regulation of the cattle sanitary board [New Mexico livestock board] pertaining to cattle rest stations is guilty of a misdemeanor and upon conviction shall be 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.

**History:** 1953 Comp., § 47-9-57, enacted by Laws 1961, ch. 3, § 4.

### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

#### **77-9-62. Purpose.**

The purpose of this act [77-9-62, 77-9-63 NMSA 1978] is to protect the health of the citizens of this state from disease and contamination caused by truckers hauling livestock within this state who throw the carcasses of livestock along the public roads and highways of this state and in the cities of this state, and to prevent the inhumane treatment of livestock by requiring that livestock transported in this state be fed, rested and watered at reasonable intervals.

**History:** 1953 Comp., § 47-9-58, enacted by Laws 1969, ch. 124, § 1.

#### **77-9-63. Unloading livestock for feed, rest and water.**

A. All livestock, being transported by truck, that has been confined to the truck for a continuous period of twenty-four hours without feed, rest and water shall be unloaded at the nearest licensed cattle 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. The loading and unloading of in-transit cattle shall be subject to the provisions of Section 77-9-58 NMSA 1978.

B. Any inspector of the New Mexico livestock board or other peace officer may require any 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 an inspector of the New Mexico livestock board determines a truck moving livestock to be unsafe or overloaded, or if the conditions for the livestock are determined to be unsafe, then the inspector shall have the authority to remedy such a situation.

C. All expenses incurred in compliance with this section are the responsibility of the livestock owner or his agent.

**History:** 1953 Comp., § 47-9-59, enacted by Laws 1969, ch. 124, § 2; 1991, ch. 16, § 1.

## ANNOTATIONS

**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 SALES RINGS

### 77-10-1. Definitions.

As used in Chapter 77, Article 10 NMSA 1978:

A. "sales ring" means any place, establishment, auction market or facility conducted or operated for compensation or profit as a public 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 any person in control of the management or operation of a sales ring.

**History:** Laws 1937, ch. 59, § 1; 1941 Comp., § 49-1001; 1953 Comp., § 47-10-1; Laws 1969, ch. 175, § 1; 1993, ch. 248, § 75.

## ANNOTATIONS

**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 shall be unlawful for any person to operate a sales ring in this state unless he is the holder of an unexpired, uncanceled license issued by the board.

B. Any person, except as herein otherwise provided, on application to the board in such form as the board shall prescribe, wherein shall be set forth:

- (1) the name and address of the applicant;
- (2) the location of the sales ring for which application is made; and
- (3) a description of the facilities afforded by such sales ring;

and on the payment of a license fee of twenty-five dollars (\$25.00) and the filing and keeping on 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 conditioned that the principal shall comply with the 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 with all of the terms and conditions of this act [77-10-1 to 77-10-10 NMSA 1978], with some surety company authorized to do business in this state as surety, shall have issued to him by the board a license good for one year to operate a sales ring at the location specified in his application. Any license issued hereunder may be canceled by the board for violation of Sections 77-10-1 through 77-10-10 NMSA 1978 by the licensee, and the board may refuse to issue a license to any previous licensee 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, and it shall be unlawful for any operator to employ any such previous licensee or to operate any sales ring in which such previous licensee has an interest, directly or indirectly. The bond herein required shall be for the benefit of any person damaged by any breach of the condition thereof, and any such person shall be entitled to bring an action thereon in his own name. The board shall furnish a certified copy of any such bond to any person applying therefor on payment of a fee of one dollar (\$1.00).

**History:** Laws 1937, ch. 59, § 2; 1941 Comp., § 49-1002; 1953 Comp., § 47-10-2; Laws 1969, ch. 175, § 2.

### **ANNOTATIONS**

**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 on display in a conspicuous place at his sales ring an unexpired, uncanceled license issued by the board as herein provided;
- B. shall keep his sales ring clean and sanitary and, whenever required by the board or a veterinarian accredited by the board, shall disinfect the same, or any part thereof, and shall procure to be administered preventative or curative treatment of livestock in the possession of the operator, all under the supervision and direction of the board or its accredited veterinarian, and without expense to the board;
- C. shall allow the board and the members and officials thereof and its accredited inspectors and veterinarians to have convenient access to his sales ring and his books and records at all reasonable [reasonable] times, for the purpose of inspecting the same or any livestock that may be in the possession of the operator;
- D. shall post in a conspicuous place at his sales ring a schedule of all charges for services which he holds himself out as ready, able and willing to furnish at his sales ring to owners of livestock, and shall file a true copy thereof with the board, and such schedule shall be the sole basis for all such charges until a different schedule shall have been so posted and filed;
- E. immediately after the sale of any livestock at his sales ring, shall account and pay over to the owner thereof the entire proceeds of the sale thereof, less his applicable schedule charges;
- F. shall make promptly after each sale and thereafter shall keep for a period of three (3) years a complete record thereof, which shall contain a description of the livestock sold, the name of the owner and that of the purchaser thereof, the date of sale, the sale price and the amount and items of the operator's charges, and to open all such records to examination by the board or its duly accredited inspector at any time on request;
- G. shall be responsible for the wrongful acts or omissions of his agents and employees;

H. shall comply with and conform to all lawful rules and regulations of the board, and shall cooperate with the board in preventing the spread of contagious and infectious livestock diseases through the operation of his sales ring, and in the suppression of livestock theft.

**History:** Laws 1937, ch. 59, § 3; 1941 Comp., § 49-1003; 1953 Comp., § 47-10-3.

#### **77-10-4. Notice to board of receipt of livestock; contents; payment in lieu of fees.**

Immediately on receipt of any livestock at his sales ring, 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, and at the same time and in lieu of all fees required by law, the operator shall collect and remit to the board or agent for the board a sum not to exceed the amount prescribed by law for each head of cattle, horses, mules, asses, sheep or goats 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.

#### **ANNOTATIONS**

**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."

**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.

#### **77-10-5. Livestock inspected by board inspector.**

All livestock received at a sales ring shall be inspected by a duly accredited inspector of the board as soon as practicable after its receipt. The inspector shall satisfy himself as to the ownership of such livestock, and that the operator has been duly authorized by the owner thereof to receive the same, and as to the purpose for which it has been so

received. Before the removal thereof it shall be again inspected as to ownership by an accredited inspector of the board, and the inspector shall issue his certificate of inspection and deliver one copy thereof to the purchaser, or his agent, one copy to the operator and forward one copy to the board for filing. If the facts requisite for the issue of said inspection certificate be not furnished to the inspector, he shall hold the livestock not so certified for a period of five (5) days, unless the requisite facts be sooner furnished or said livestock sooner reclaimed by the true owner thereof, at the expiration of which time, if not then so certified or reclaimed, said livestock shall be deemed to be and shall be dealt with as estray.

**History:** Laws 1937, ch. 59, § 5; 1941 ch. 38, § 1; 1941 Comp., § 49-1005; 1953 Comp., § 47-10-5.

### **ANNOTATIONS**

**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, repeals 77-10-6 NMSA 1978, 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.

### **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 to 77-10-10 NMSA 1978].

**History:** Laws 1937, ch. 59, § 8; 1941 Comp., § 49-1008; 1953 Comp., § 47-10-8.

### **77-10-9. Sheep and goats; owners bound by regulations.**

Whenever any owner of sheep or goats avails himself of the provisions of Sections 77-10-1 through 77-10-10 NMSA 1978, he shall be bound by rules and regulations as may be prescribed by the board as to health and ownership.

**History:** Laws 1937, ch. 59, § 81/2; 1941 Comp., § 49-1009; 1953 Comp., § 47-10-9; 1993, ch. 248, § 77.

## **ANNOTATIONS**

**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. [Violation of statute, rule or regulation; penalty.]**

Violation of this act [77-10-1 to 77-10-10 NMSA 1978] 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 fifty dollars (\$50.00) nor more than one hundred dollars (\$100), and each day's violation shall constitute a separate offense.

**History:** Laws 1937, ch. 59, § 9; 1941 Comp., § 49-1010; 1953 Comp., § 47-10-10.

## **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**

**Cross-references.** - For penalty for driving cattle not properly marked, see 77-9-1 NMSA 1978.

As to 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 § 49 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**

**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.

#### **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 to 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.

#### **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 to 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.

#### **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.

#### **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).

**But 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).

**And 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.

### **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.

## **ARTICLE 12 HERD LAW DISTRICTS**

### **77-12-1. ["Person" defined.]**

Whenever the word "person" is used in this act [77-12-1 to 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**

**Compiler's note.** - 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. 11.

**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 § 49 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 [77-12-1 to 77-12-12 NMSA 1978], it shall enter an order declaring that all of said tracts of land embraced in said proposed district, from and after thirty days from the date of said order, shall be a herd law district within the meaning of this act, and shall cause a notice thereof, accurately defining the boundaries of said district, and stating that said district from and after the expiration of thirty days from the date of said order shall be a herd law district within the meaning of this act, to be published in two consecutive issues of the same newspaper as the notice of said hearing. The last of such publications shall be not less than ten days prior to the date said order shall take effect. Provided, however, that no such herd law district shall be created unless at least one-fourth of the land embraced therein is being used for agricultural purposes.

**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**

**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. 174.

**"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. 174.

**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. 76.

**And 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. 174.

**Am. Jur. 2d, A.L.R. and C.J.S. references**. - 4 Am. Jur. 2d Animals § 51.

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.

#### **77-12-4. [Publications; language.]**

The publications required by this act [77-12-1 to 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.

#### **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**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 112.

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 stock for damages.]**

Such person so damaged by trespassing livestock may hold and distrain such trespassing livestock until the damages which he has suffered thereby, and the costs, including the sum of fifty cents (\$.50) per head per day for feeding and caring for such livestock during the time such livestock is so distrained are paid, or legally tendered. The person distraining such livestock shall give notice to the owner, if known or ascertainable, within forty-eight (48) hours after such distraint.

**History:** Laws 1923, ch. 68, § 6; C.S. 1929, § 4-406; 1941 Comp., § 49-1306; 1953 Comp., § 47-13-6.

### **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**

**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. 77.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 55 to 60.

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.

### **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**

**Cross-references.** - As to legal fences, see 77-16-1 to 77-16-9 NMSA 1978.



As to cattle guards and gates required in fences crossing highways, see 67-7-10 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. New Mexico 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 §§ 50, 51.

3A C.J.S. Animals § 140.

### **77-12-10. [Failure to close gate; penalty.]**

Any person who shall open and fail to close any such gate shall be guilty of a misdemeanor and on conviction shall be fined not less than five dollars [(\$5.00)] nor more than fifty dollars [(\$50.00)].

**History:** Laws 1923, ch. 68, § 10; C.S. 1929, § 4-410; 1941 Comp., § 49-1310; 1953 Comp., § 47-13-10.

### **77-12-11. [Livestock at large in road within district; misdemeanor; penalty.]**

Any owner or holder of livestock described in Section six [77-12-6 NMSA 1978] of this act who shall permit such livestock to run at large on any public road within any such herd law district, shall be guilty of a misdemeanor and on conviction shall be fined not less than five dollars [(\$5.00)] nor more than fifty dollars [(\$50.00)].

**History:** Laws 1923, ch. 68, § 11; C.S. 1929, § 4-411; 1941 Comp., § 49-1311; 1953 Comp., § 47-13-11.

## **ANNOTATIONS**

**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. 5864.

**And 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).

**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 to 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 to 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.

## **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.** - As to unbranded animals or those unaccompanied by bill of sale as estrays, see 77-9-40 NMSA 1978.

As to 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).

**Wild horses on the White Sands Missile Range** are classified as "estrays" under New Mexico law and should be handled and disposed of by the New Mexico Livestock Board. 1990 Op. Att'y Gen. No. 90-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 46.

3A C.J.S. Animals § 123.

## **77-13-2. Impoundment of estray animals.**

A. No person shall impound an estray animal except when such animal is found on property the person owns or controls. When any person impounds an estray, he or she shall, within five days of the impoundment, notify the director of the New Mexico livestock board or any livestock inspector of the board of the impoundment.

B. Any person having knowledge of any estray animal or animals upon any public or private range, fenced or unfenced, may notify the director of the New Mexico livestock board or any authorized livestock inspector of the board, giving description of the estray or estrays, and upon instructions from the board or from an authorized livestock inspector of the board, said estrays shall be turned over to a duly authorized livestock inspector of the board for disposition as the board may direct according to law.

C. It is lawful for any person having knowledge of any estray horse, mule or ass 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 authorized agent of the New Mexico livestock board to impound and detain such estray animal or animals for the purpose of ascertaining ownership by brand or other means of identification. The owner or owners of such estray animal found to be in trespass shall be allowed forty-eight hours from receipt of notice of impoundment within which to claim the animal or animals and make settlement for trespass damage. If the owner or owners fail to claim such animal or animals and effect a settlement for trespass damages within the time allowed, the estray animals detained shall be turned over to a duly authorized inspector or agent of the New Mexico livestock board for disposition in the same manner as provided for other estray animals under this article.

**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.

## ANNOTATIONS

**The 1977 amendment** rewrote this section, which formerly dealt with reporting the taking up of stray animals to the secretary of the cattle sanitary board.

**Meaning of "this article".** - 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.

**Board may sell unclaimed animals.** - The cattle sanitary board of New Mexico (now New Mexico 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. 5954.

**Wild horses on the White Sands Missile Range** are classified as "estrays" under New Mexico law and should be handled and disposed of by the New Mexico Livestock Board. 1990 Op. Att'y Gen. No. 90-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 48.

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 any stray animal or animals, it is the duty of the director of the New Mexico livestock board to 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 forthwith notify the owner of the impoundment of such stray or estrays, and upon said owner proving to the satisfaction of the board that the stray animal or animals are lawfully his, the board shall issue to him an order to receive the same upon payment of any reasonable charges which may have been incurred in the care of the animal or animals or [sic] 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.

## ANNOTATIONS

**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 stray or strays, he shall publish at least once in some publication in general circulation in the county in which the stray animal was picked up, said publication to be designated by the New Mexico livestock board, a notice of such stray, 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.** - As to impounding of animals running at large in irrigation districts, see 77-14-25 to 77-14-34 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 strays.

### **77-13-5. Sale of unclaimed strays; bill of sale; effect; sale without advertisement; conditions.**

If an stray animal or animals is not claimed within five days after the last publication of notice, they shall be sold by the New Mexico livestock board through an authorized livestock inspector of the board, in such manner as the board may direct. It is the duty of the livestock inspector making such sale to give a bill of sale to the purchaser from the New Mexico livestock board, signed by himself as inspector for the board, which bill of sale shall be legal evidence of the ownership of the animal or animals by the purchaser thereof, and shall be a legal and valid title to said animal or animals. Where the director of the New Mexico livestock board determines that it is impractical to publish notice, the stray animal or animals shall be sold immediately without notice. In such case, the board shall thereafter publish notice of the proceeds from the sale of the stray animal or animals in the same manner and for the same length of time as provided for the notice of the sale of the animals and shall hold and distribute the proceeds from the sale of the animals 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.

### ANNOTATIONS

**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 stray animals must be strictly in accordance with statute,** and brands must be correctly given in the advertisement. 1912-13 Op. Att'y Gen. 158.

**Law silent on branding of estrays by board.** - The law is apparently absolutely silent on whether the cattle sanitary 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. 149.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 48.

3A C.J.S. Animals § 130.

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

The livestock inspector making the sale of such stray or estrays shall return the proceeds of the sale to the New Mexico livestock board which shall pay the expenses incurred in the impounding, publishing of notice and selling of such animal or animals 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 animal and giving the amount realized from the sale of the same [stray or estrays], which record shall be open to the inspection of the public. Should the lawful owner of an stray or estrays which have been so sold be found within two years after the sale of such animal or animals, the net amount received from the sale of the stray or estrays, 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 New Mexico livestock 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.

### **ANNOTATIONS**

**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 stray, to be retained by the cattle sanitary board" in the second sentence and made other minor changes.

**The 1981 amendment** substituted "prescribed by law" for "of five dollars (\$5.00)" in the second sentence.

### **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 § 46.

3A C.J.S. Animals § 127.

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

It is unlawful for any person other than an authorized inspector of the New Mexico livestock board to impound or retain possession of any estray animal or animals, except as provided in Sections 77-13-2 and 77-13-7 NMSA 1978. Any person who impounds an estray contrary to the provisions of this article shall be guilty of a misdemeanor, and upon conviction, may be fined one hundred dollars (\$100) for each and every 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.

#### **ANNOTATIONS**

**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.

**Meaning of "this article".** - See same catchline in notes to 77-13-2 NMSA 1978.

**Board may impound livestock upon roads within herd law districts.** - The cattle sanitary board of New Mexico (now 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. 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**

**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.

**Meaning of "this article".** - See same catchline in notes to 77-13-2 NMSA 1978.

**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**

**The 1977 amendment** substituted "municipalities" for "cities and towns" in the catchline of this section and "municipality" for "town or city" in this section.



**Meaning of "this article".** - See same catchline in notes to 77-13-2 NMSA 1978.

## **ARTICLE 14 TRESPASS AND RUNNING AT LARGE**

### **77-14-1. [Trespass within inclosure for occupation or pasturage prohibited.]**

It shall not be legal for any traveler to occupy, nor to pasture within any inclosure found or considered as private property of any citizen in this state.

**History:** Laws 1882, ch. 42, § 5; C.L. 1884, § 874; C.L. 1897, § 1299; Code 1915, § 2346; C.S. 1929, § 50-108; 1941 Comp., § 49-1601; 1953 Comp., § 47-15-1.

#### **ANNOTATIONS**

**Cross-references.** - As to trespassing in herd law districts, see 77-12-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 40.

What constitutes willful trespass by stock on land not inclosed by legal fence, 158 A.L.R. 375.

Liability for personal injury or death caused by trespassing or intruding livestock, 49 A.L.R.4th 710.

3A C.J.S. Animals § 137.

### **77-14-2. Definition[s].**

As used in Article 77, Chapter 14 NMSA 1978 [Chapter 77, Article 14 NMSA 1978]:

A. "livestock" means domestic animals such as cattle, horses, sheep, hogs, goats and buffaloes; and

B. "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.

#### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference in the introductory language was inserted by the compiler to correct an apparently erroneous reference. The bracketed material was not enacted by the legislature and is not part of the law.

**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 any person, company or corporation or its agents or employees having charge of any livestock or other animals 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 apply not only to titled lands in this state but to any lands upon which any person may have a valid existing filing under the laws of the United States or any lands which may be leased by any person from the state.

B. Any person, company, corporation or representative of a military reservation or enclave who may claim 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.

### **ANNOTATIONS**

**Cross-references.** - As to stray bulls in herd, see 77-11-9 NMSA 1978.

As to 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.

As to trespass on mining claims or millsites, see 69-3-27 NMSA 1978.

**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.

**Compiler's note.** - Laws 1905, ch. 130, § 1, repeals Laws 1901, ch. 28, § 2, providing penalties for violation of Laws 1901, ch. 28, § 1.

**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.

#### **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 of New Mexico (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. 5864 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 41.

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 §§ 41, 51.

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 such order, it is unlawful for the owners of any livestock to allow the livestock to run at large within the town or within the conservancy district or irrigation district or within the military reservation or enclave. Any owner willfully allowing any livestock to run at large in violation of the order is guilty of a misdemeanor and upon conviction before a magistrate shall be punished by a fine not exceeding ten dollars (\$10.00) for each offense.

B. It is the duty of the sheriff or other peace officer in the town or county or the proper military authority at a military reservation or enclave to impound any livestock found running at large in the town, district or military reservation or enclave and to 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 enclave, the sale shall be conducted by the New Mexico livestock board pursuant to the procedure set forth in Section 77-14-36 NMSA 1978. The proceeds up to the amount of five dollars (\$5.00) for each animal shall be retained by the officer to cover his expense and fees. The balance, if any, shall be paid to general fund.

C. Notwithstanding any other provision of law, the owner of any livestock so impounded may redeem the livestock at any time prior to sale by paying to the officer one dollar (\$1.00) 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. Any party 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.

## ANNOTATIONS

**Cross-references.** - As to unlawfully permitting livestock upon highways, see 30-8-13 NMSA 1978.

**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 §§ 42 to 45, 55 to 67.

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; petition to impound trespassing animals; animals included.]**

Whenever a majority of the resident landowners, who are qualified voters in any political subdivision of an irrigation section, petition the board of county commissioners in which said subdivision is located, for an order permitting trespassing cattle, horses, mules, goats, sheep and burros to be restrained [restrained] and held for damages under the terms set forth in this act [77-14-8 to 77-14-24 NMSA 1978], it shall be the duty of said county commissioners at their first regular session after the filing of said petition with the county clerk, to grant the request in said petition and cause an order to that effect to be duly entered. This law shall also apply to such animals as are kept, fed, pastured and are maintained outside of said political subdivision, and shall include animals running on the range outside of, or kept, fed, pastured and maintained outside of said 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.

### **ANNOTATIONS**

**Cross-references.** - As to poundmaster for irrigation district formed to cooperate with federal reclamation laws, see 77-14-25 to 77-14-33 NMSA 1978.

**Compiler's note.** - This act (77-14-8 to 77-14-24 NMSA 1978) is not affected by 77-12-1 to 77-12-12, 77-16-4 and 77-16-5 NMSA 1978.

**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 to 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

**Cross-references.** - As to poundmaster for irrigation district formed to cooperate with federal reclamation laws, see 77-14-25 to 77-14-33 NMSA 1978.

**Compiler's note.** - 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

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



## **77-14-11. [Right to take and hold animals in irrigation district; fences.]**

After said order has taken effect any person within said subdivision finding any such animals trespassing upon his premises shall have the right to take up, hold and restrain the same for such damages as they may have inflicted, or he may deliver the same to the nearest justice of the peace [magistrate] to be held and impounded under the conditions hereinafter set forth. Provided, that no one shall have the right under this chapter [77-14-8 to 77-14-24 NMSA 1978] to hold and restrain said animals for damages who, at the time of said trespass did not have surrounding his premises a fence equivalent to the following:

posts set firmly in the ground and projecting above the ground not less than forty-five inches, said posts not to be less than two inches in diameter at their smallest dimension, and to be set not over thirty feet apart, three barbed wires to be strung firmly and securely fastened to said posts, the bottom wire to be placed approximately twenty-one inches from the bottom, the second wire to be approximately one foot above the bottom wire and the third wire to be approximately one foot above the second wire, said wires to be held in position by stays set not less than ten feet apart between said posts. Any fence greater or equivalent to said fence in strength and resisting power, constructed of other material shall be considered sufficient for the purposes of this act [77-14-8 to 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.

### **ANNOTATIONS**

**Cross-references.** - As to legal fences, see 77-16-1 to 77-16-8 NMSA 1978.

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 43.

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 to 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**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 55 to 58.

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**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 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.** - As to replevin before magistrate, see 35-11-1 and 35-11-3 NMSA 1978.

As to 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 to 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

**Compiler's note.** - The wording of this section is confusing. The phrase following "judgment" may have been intended to read "will equal the value of said animals."

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 59.

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 to 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**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 59.

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**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 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 to 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**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 43, 44, 59.

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**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**77-14-20. [Fees of magistrate and arbitrators; authority to appoint poundkeeper.]**

The justice of the peace [magistrate] shall receive as fees for entering orders and issuing papers and performing other duties relating to this chapter [77-14-8 to 77-14-24 NMSA 1978], the same as are provided by law in civil cases for similar services, and all persons serving papers herein shall be allowed the same fees as are allowed in civil cases for similar services. Arbitrators selected under the terms of this chapter shall be allowed the sum of one dollar [(\$1.00)] each for their services.

The justice of the peace [magistrate] shall be allowed fifteen cents [(\$.15)] per head each day for caring for said animals. He shall feed and care for them while held by him, and shall be allowed for feed the market price thereof, providing that the costs of feed shall not exceed fifty cents [(\$.50)] a day per head. The justice of the peace [magistrate] shall have authority to appoint some other person to act as poundkeeper, who shall hold said animals subject to the orders of said justice of the peace [magistrate], and shall receive the same fees and costs as are provided herein for said justice of the peace [magistrate] in caring for and feeding said animals.

**History:** Laws 1919, ch. 88, § 14; C.S. 1929, § 4-714; 1941 Comp., § 49-1620; 1953 Comp., § 47-15-20.

**ANNOTATIONS**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**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 to 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**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals § 91.

**77-14-22. [Sale of animals; disposition of surplus funds; costs and expenses of sale on execution in irrigation district.]**

The justice of the peace [magistrate], after paying all costs, fees and claims from the proceeds of any sale which shall be made under his direction, as hereinbefore provided, shall pay over the remainder to the owner of said animals. If the owner is unknown he shall deposit the proceeds of said sale, after paying all such costs and claims, 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. Provided, that in case the sale is made under execution, as hereinbefore provided, the justice of the peace [magistrate] shall file with the officer making such sale a certified statement of all costs and expenses that may have accrued, which shall be paid by the officer selling the same 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.

**ANNOTATIONS**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**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.

**77-14-24. [Application of act.]**

This chapter [77-14-8 to 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.

### **77-14-25. [Irrigation districts organized for purpose of cooperating with United States; poundkeeper.]**

That there is hereby created the office of poundkeeper in every precinct which lies, either wholly or partially, within any irrigation districts organized for the purpose of cooperating with the government of the United States under the terms of the federal reclamation laws and other federal laws in this state, and the constable of such precinct shall be ex-officio poundkeeper of such precinct.

**History:** Laws 1927, ch. 50, § 1; C.S. 1929, § 4-601; 1941 Comp., § 49-1625; 1953 Comp., § 47-15-25.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals §§ 333, 334, 338.

### **77-14-26. [Bond of poundkeeper.]**

That the poundkeeper, as provided for in Section 1 [77-14-25 NMSA 1978] hereof, shall, before entering upon the discharge of his duties, enter into a good and sufficient bond in the sum of five hundred dollars (\$500), conditioned for the faithful performance of his duties, which bond may either be a surety bond, or a personal bond signed by two landowners in the precinct, to be approved by the board of county commissioners.

**History:** Laws 1927, ch. 50, § 2; C.S. 1929, § 4-602; 1941 Comp., § 49-1626; 1953 Comp., § 47-15-26.

#### **ANNOTATIONS**

**Poundkeeper may make two bonds.** - Two specific statutes (36-1-7, 1953 Comp. (now repealed) and this section) require separate bonds, thereby requiring a constable serving as poundkeeper to make two bonds, one as constable and one as poundkeeper. 1945-46 Op. Att'y Gen. No. 4699 (opinion rendered under former law).

### **77-14-27. [Impounding animals; notices to cattle inspector and owner.]**

It shall be the duty of such poundkeeper to take into his charge and care for all cattle, horses, mules, burros, sheep, goats or swine found unlawfully running at large either upon public or privately owned land in the irrigation district in his precinct. Within 24 hours after impounding any such animal the constable shall notify the district cattle inspector giving description of animals with brands, if any, and said inspector shall



thereupon immediately notify in writing the owner of the brand, on any such animal, with whom and the place where the same is impounded.

**History:** Laws 1927, ch. 50, § 3; C.S. 1929, § 4-603; Laws 1939, ch. 18, § 1; 1941 Comp., § 49-1627; 1953 Comp., § 47-15-27.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals § 339.

#### **77-14-28. [Sale; publication of notice; conduct; redemption.]**

The poundkeeper shall once each week publish in a newspaper, published in the county, a notice containing a description, including brands, if any, of all animals held by him as poundkeeper, which notice shall also state that at a certain hour of a certain day, which day shall not be less than ten days from the date of publication of the notice, he will sell the animals described in such notice to the highest and best bidder for cash.

On the day and at the hour mentioned in said notice, the poundkeeper shall proceed to sell said animals described in said notice to the highest and best bidder for cash, but no animals shall be sold for less than enough to pay the poundkeeper's charges and the cost of publication of the notice. The poundkeeper shall give to the purchaser of any animal a bill of sale for the animal or animals purchased, which bill of sale shall vest title in the purchaser to such animals; provided that any owner can redeem any animal so sold at any time within thirty days from date of sale by paying to the purchaser the amount of his bid together with interest to [at] twelve percent per annum from date of sale.

**History:** Laws 1927, ch. 50, § 4; C.S. 1929, § 4-604; 1941 Comp., § 49-1628; 1953 Comp., § 47-15-28.

### **ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals §§ 339, 342.

#### **77-14-29. [Impounded animals; recovery before sale.]**

The owner of any animal held by the poundkeeper under this act [77-14-25 to 77-14-34 NMSA 1978] shall have the right to recover possession of the same at any time before sale, by paying to the poundkeeper his lawful charges against the same.

**History:** Laws 1927, ch. 50, § 5; C.S. 1929, § 4-605; 1941 Comp., § 49-1629; 1953 Comp., § 47-15-29.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals § 164.

### **77-14-30. [Disposition of unsold animals.]**

If no bid shall be made for any animal offered for sale as provided in Section 4 [77-14-28 NMSA 1978] hereof, sufficient to pay the charges of the poundkeeper and cost of publication, the poundkeeper shall kill such animal and dispose of the carcass.

**History:** Laws 1927, ch. 50, § 6; C.S. 1929, § 4-606; 1941 Comp., § 49-1630; 1953 Comp., § 47-15-30.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals § 342.

### **77-14-31. [Disposition of excess funds.]**

If any animal shall be sold for more than enough to pay the charges of the poundkeeper, the excess shall be paid to the county clerk for the benefit of the owner. If the owner shall fail to claim such excess within six months, the county clerk shall transfer the same to the county treasurer who shall place the same to the credit of the general school fund.

**History:** Laws 1927, ch. 50, § 7; C.S. 1929, § 4-607; 1941 Comp., § 49-1631; 1953 Comp., § 47-15-31.

### **77-14-32. [Poundkeeper's charges.]**

The poundkeeper shall be entitled to charge and receive one dollar [(\$1.00)] per day for each day, or fraction thereof, on each head of horses, cattle or mules held by him under this act [77-14-25 to 77-14-34 NMSA 1978] and fifty cents [(\$.50)] per day for each day, or fraction thereof, on each head of burros, sheep, goats or swine held by him under this act.

**History:** Laws 1927, ch. 50, § 8; C.S. 1929, § 4-608; 1941 Comp., § 49-1632; 1953 Comp., § 47-15-32.

### **77-14-33. [Poundkeeper; statements to be filed.]**

The poundkeeper shall on the first day of January, April, July and October file with the county clerk a full and complete statement of all moneys received by him as poundkeeper.

**History:** Laws 1927, ch. 50, § 9; C.S. 1929, § 4-609; 1941 Comp., § 49-1633; 1953 Comp., § 47-15-33.

### **77-14-34. [Constable; failure to comply; removal from office.]**

If any constable shall fail to make the bond herein required, within thirty days after this act shall become effective, or after making such bond shall fail to properly discharge the duties herein imposed, upon a complaint made to the district judge, the district judge shall hear the evidence and if either ground is established to the satisfaction of the judge, he shall enter an order removing such constable from office and the board of county commissioners shall fill the vacancy, so created, by appointment.

**History:** Laws 1927, ch. 50, § 10; C.S. 1929, § 4-610; 1941 Comp., § 49-1634; 1953 Comp., § 47-15-34.

### **ANNOTATIONS**

**Cross-references.** - As to bond of constable as poundkeeper, see 77-14-26 NMSA 1978.

For removal of officers, see 10-4-1 to 10-4-29 NMSA 1978.

**Constable automatically becomes poundkeeper**, regardless of the filing of a bond, since the requirement that he be removed on failure to file bond within thirty days, would otherwise be unnecessary. 1945-46 Op. Att'y Gen. No. 4699.

### **77-14-35. [Hogs, swine or goats not to run at large in municipalities; trespass; damages; penalty.]**

No hog, swine or goat shall 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, and the owner of any hog, swine or goat allowing the same to run at large within the limits of any city, town or village, incorporated or unincorporated, or to trespass upon the property of another, shall be guilty of a misdemeanor and shall be liable for treble the damage occasioned by such trespass and may be brought before any justice of the peace [magistrate] 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 [magistrate]. And no owners of any property trespassed upon as herein mentioned shall be liable for the injury, death or loss of any hog, swine or goat resulting during expulsion from or impounding upon his property of any hog, swine or goat actually trespassing thereon.

**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.

### **ANNOTATIONS**

**Jurisdiction, etc., of justices of the peace transferred.** - See same catchline in notes to 77-14-7 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 40, 41.

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 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.

**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 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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 43, 44.

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. [Stallions running at large; mustangs and inferior stallions; definition.]**

No mustang or other inferior stallion over the age of eighteen (18) months shall be permitted to run at large, nor shall any stallion over the age of eighteen (18) months be permitted to run at large within three miles of any town, city or village. It shall be lawful for any person to castrate or cause to be castrated any such animal or animals found running at large contrary to the provisions of this section. Stallions possessing one-fourth mustang or broncho [bronco] blood shall be deemed mustang or inferior stallions.

**History:** Laws 1921, ch. 76, § 1; C.S. 1929, § 4-341; 1941 Comp., § 49-1636; 1953 Comp., § 47-15-36.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 40.

3A C.J.S. Animals §§ 137, 138, 157.

### **77-14-38. [Impounding stallion; notices; publication; contents; maximum charge; lien; enforcement.]**

Any person who shall find any stallion running at large, as described in the next preceding section [77-14-37 NMSA 1978] may take up such animal and keep the same in some secure inclosure, and take good care of such animal; and it shall be the duty of such person to immediately notify the owner of such animal, if such owner is known, and the secretary of the cattle sanitary board [executive director of the New Mexico livestock board], and, if said owner is unknown to said person, to immediately give notice by publication in some newspaper in the county in which such animal shall have been taken up for a period of four successive weeks, and which notice shall contain a full description of all marks and brands, if any there be on such animal, and that unless the owner of such animal makes claim for the same within six weeks from the date of its first publication, said animal will be castrated. The notice shall be signed by the person or persons having taken up the same. Said notice, keeping and caring for such animal shall be paid for by the owner of such animal. Provided, however, that such charge shall not exceed 50¢ per day, and until paid the person taking up the same shall have a lien upon such animal for his or their claims; and in case of the owner refusing or failing to pay for such notice, keeping and caring for, within a reasonable time, the person having such claim shall be entitled to recover the same in the same manner as an agistor's lien.

**History:** Laws 1921, ch. 76, § 2; C.S. 1929, § 4-342; Laws 1933, ch. 29, § 1; 1941 Comp., § 49-1637; 1953 Comp., § 47-15-37.

#### **ANNOTATIONS**

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "executive director" and "New Mexico livestock board" were inserted in brackets.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 43, 44.

3A C.J.S. Animals §§ 159 to 165.

#### **77-14-39. [Liability for illegal castration of stallion.]**

If any person shall castrate any stallion and it shall, on proper evidence before a competent court, be proven to the satisfaction of the court that such animal was not of a class of stock prohibited from running at large by the next two preceding sections [77-14-37, 77-14-38 NMSA 1978], or that the foregoing section [77-14-38 NMSA 1978] was not strictly complied with, said person shall be liable for damages to the amount of the actual value of said animal so castrated, and costs of suit.

**History:** Laws 1921, ch. 76, § 3; C.S. 1929, § 4-343; Laws 1933, ch. 29, § 2; 1941 Comp., § 49-1638; 1953 Comp., § 47-15-38.

## **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**

**Cross-references.** - As to Taylor Grazing Act funds for control of rodents and predatory animals, see 6-11-6 NMSA 1978.

**Bureau of biological survey.** - 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.

**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. 89.

**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**

**Compiler's note.** - 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.

**New Mexico state university.** - 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.

**Bureau of biological survey.** - See same catchline in 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 note.** - 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

**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."

**Compiler's note.** - 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.

**Bureau of biological survey.** - See same catchline in notes to 77-15-1 NMSA 1978.

**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. Board 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 to 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

**Assistant of the biological survey.** - See catchline, "Bureau of biological survey," in notes 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

**New Mexico state university.** - See same catchline in notes to 77-15-2 NMSA 1978.

**Bureau of biological survey.** - See same catchline in 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. 71.

**And 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. 148.

**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 to 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  
.....(nam  
e 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. .... 3.  
.....  
2. .... 4.  
.....  
5. ....  
Date Nam  
e Under  


---

Limitation  
Signed Signature Address which  
assessed

---

(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 to 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.**

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 which will produce not more than the rate limitation set on the petition, and, in no event, more than twenty-five cents (\$.25) 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.

The amount of the levy shall be stated on the petition and the county board of predator control shall certify it to the board of county commissioners on or before the first Monday in August following their appointment. The special levy shall be assessed, levied and collected as other taxes in the county, and at the expense of the county.

The owners of fifty-one percent of the animals assessed under this County Predator Control Act [77-15-6 to 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.

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 such 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.

### **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 to 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 to 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**

**Cross-references.** - As to fences along exterior of herd law districts, see 77-12-9 NMSA 1978.

As to fences within irrigation districts, see 77-14-11 NMSA 1978.

As to unlawful fences, see 77-16-4, 77-16-6 and 77-16-7 NMSA 1978.

**This section does not repeal 77-14-3 NMSA 1978.** 1915-16 Op. Att'y Gen. 340.

**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).

**So 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. 1909-12 Op. Att'y Gen. 220; 1915-16 Op. Att'y Gen. 55, 141, 221, 328 and 340.

**But 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).

**And 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).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 50; 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.

### **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**

**Meaning of "preceding section".** - The words "preceding section" at the end of this section refer to Laws 1909, ch. 70, § 1, presently compiled as 17-16-1 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.

**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 § 50.

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 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**

**This section does not repeal 77-14-3 NMSA 1978.** 1915-16 Op. Att'y Gen. 340.

**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).

**And 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).

**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 to 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**

**Meaning of "preceding section".** - 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.

### **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.

### **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**

**Compiler's note.** - 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.

### **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**

**Compiler's note.** - 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.

### **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**

**Compiler's note.** - 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 for leaving gate open.]**

That in addition to the damage as provided for in the preceding section [77-16-14 NMSA 1978], such person, or persons, violating the provisions thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof before any justice of the peace [magistrate], shall be fined in a sum not less than five [(\$5.00)], nor more than ten dollars [(\$10.00)].

**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.

#### **ANNOTATIONS**

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 77-16-10 NMSA 1978.

### **77-16-16. [Railroads; fencing of lines; damages for injury to livestock.]**

Every railroad in this state whose lines of road, or any part thereof, are open for use, and every railroad company formed or to be formed, shall, within six months after the lines of such railroad or any part thereof are open, erect and thereafter maintain fences on the sides of their said railroad, or the part thereof so open for use, suitably and amply sufficient to prevent cattle, horses, sheep, mules, burros and hogs from getting on the said railroad, except at the crossings of public roads and highways, and within the limits of towns, cities and villages, and shall also construct, where the same has not already been done, and maintain, at all public road crossings, now existing or hereafter



established, cattle guards suitable and sufficient to prevent cattle, horses, sheep, burros, mules and hogs from getting onto said railroad. If any railroad shall fail to construct and maintain such fences and cattle guards as herein directed, such railroad shall be liable to the owner for all damages resulting from injury or death caused to any such livestock, including a reasonable attorney fees [attorney's fee] on order of the court should legal proceedings be commenced by such owner; provided, further, that should the cattle sanitary board [New Mexico livestock board] be unable to determine ownership of livestock crippled or killed by the railroad within thirty (30) days of the date it first receives notice of such injury or death, by report or otherwise, then the board may institute legal proceedings in the name of such unknown owner in any court of competent jurisdiction and recover damages as herein provided, and the proceeds disposed of as provided for under the laws pertaining to estrays.

**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.

## ANNOTATIONS

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

**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. & P. Ry.*, 43 N.M. 122, 86 P.2d 1037 (1939).

**But 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.*, 15 N.M. 270, 106 P. 376 (1910); *Pecos Valley & N.E. Ry. 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).

**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).

**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**

**Meaning of "preceding two sections".** - 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

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

## ARTICLE 17 ABATTOIRS, MEAT DEALERS AND STORAGE PLANTS

### 77-17-1. License and bond required.

No person shall conduct or carry on the trade of butcher, slaughterer of neat cattle, horses, mules, asses, hogs, sheep or goats, or as a dealer in fresh meats, or as a manufacturer or processor of meat or poultry products, or operate a rendering plant, or operate a cold storage locker plant in which cold storage lockers are rented or leased to other persons in this state without having first obtained a license and filed a bond as hereinafter required.

**History:** Laws 1939, ch. 115, § 1; 1941 Comp., § 49-2201; 1953 Comp., § 47-20-1; Laws 1969, ch. 117, § 1; 1973, ch. 126, § 1.

### ANNOTATIONS

**Cross-references.** - For inspection of slaughterhouses, see 77-9-33 NMSA 1978.

For inspection of hides and ears, see 77-17-12 NMSA 1978.

For license for peddling fresh meat, see 25-4-1 NMSA 1978.

**No restriction on state health department.** - Sections 77-17-1 to 77-17-6 NMSA 1978 do not restrict powers of the state health department in regulating the safety and sanitation of horse and other animal meats for sale by butcher shops for consumption by pets. 1941-42 Op. Att'y Gen. No. 4196.

**Scope of "dealer".** - It is clear from the act that any person who sells fresh meat is covered. It is not required that the person selling the meat actually engage in slaughtering or butchering his own meat. Any person, firm or organization selling or otherwise distributing fresh meats is a "dealer" within the meaning of the statutes, and must be licensed and bonded accordingly. 1961-62 Op. Att'y Gen. No. 61-136.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 54; 51 Am. Jur. 2d Licenses and Permits § 1 et seq.; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 12 et seq., 23 et seq., 28 et seq., 139, 140; 78 Am. Jur. 2d Warehouses § 1 et seq.

Power to prescribe the manner or conditions under which slaughterhouse shall serve public, 46 A.L.R. 1486.

3A C.J.S. Animals §§ 49, 76, 117, 118; 53 C.J.S. Licenses § 1 et seq.; 93 C.J.S. Warehouses and Safe Depositories § 1 et seq.

**77-17-2. Licenses; butcher or slaughterer; dealer in fresh meat or livestock or poultry meat products or meat from other birds and animals used for human consumption; cold storage locker; rendering plant.**

A. Every person carrying on, or desiring to carry on, the business of butcher or slaughterer of cattle, horses, mules, asses, hogs, sheep, goats, poultry or other birds or animals used for human consumption shall procure a license from the New Mexico livestock board prior to carrying on the business and shall pay a yearly license fee of twenty-five dollars (\$25.00).

B. In addition such persons may be charged reasonable fees for meat inspection service over and above the inspector's normal working assignment under the rules and regulations of the board pertaining to meat inspection.

C. Application for the licenses prescribed in Subsection A of this section shall be made upon a form prescribed by the New Mexico livestock board and shall be accompanied by the amount of the license fee provided in this section. The license fees shall not be prorated on account of the applicant doing business for less than a full calendar year, and a license renewal fee in these same amounts shall be paid for each calendar year in which any person, firm or corporation engages in the business and [shall] be paid at the time prescribed by regulations of the New Mexico livestock board.

D. Every person carrying on, or desiring to carry on the business of selling or dealing in the fresh meat of birds or animals used for human consumption or livestock or poultry meat products or manufacturing or processing of meat or poultry products, or operating a rendering plant, or operating a cold storage locker plant in which cold storage lockers are rented or leased to other persons, shall obtain a license to engage in the business from the New Mexico livestock board after making application upon forms prescribed by

the board and upon payment of an annual license fee in an amount set by the board not to exceed ten dollars (\$10.00). Annual renewal fees are payable at times prescribed by regulation of the board. No bond or bond filing fee is required for any person licensed under this subsection.

E. No licenses provided for in this section shall be issued to any person not of good moral character and, in the opinion of the board, not a proper person to conduct the business. For good cause shown, the New Mexico livestock board may, after notice to the holder of any license provided for in this section, and after a reasonable hearing, revoke any license issued.

**History:** Laws 1939, ch. 115, § 2; 1941 Comp., § 49-2202; 1953 Comp., § 47-20-2; Laws 1963, ch. 252, § 5; 1967, ch. 228, § 1; 1969, ch. 117, § 2; 1973, ch. 126, § 2; 1977, ch. 166, § 1.

## ANNOTATIONS

**The 1977 amendment** substituted "dealer in fresh meat or livestock or poultry meat products or meat from other birds and animals used for human consumption" for "fresh meat dealer" in the catchline of this section, deleted "meat" preceding "cattle" in Subsection A, deleted "or" preceding "goats" in that subsection, inserted "poultry or other birds or animals used for human consumption" in that subsection, substituted "the fresh meat of birds or animals used for human consumption or livestock or poultry meat products" for "fresh meats," near the beginning of Subsection D and substituted "in an amount set by the board not to exceed ten dollars (\$10.00)" for "of two dollars fifty cents (\$2.50)" at the end of the first sentence of that subsection.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 58 Am. Jur. 2d Occupations, Trades and Professions §§ 12 to 119.

53 C.J.S. Licenses § 34.

### **77-17-3. Bond for licenses.**

A. Except as provided in Subsection D of Section 77-17-2 NMSA 1978, no person, firm or corporation shall carry on any of the businesses set forth in Section 77-17-1 NMSA 1978 without filing with the New Mexico livestock board a bond in the sum of one thousand dollars (\$1,000), payable to the New Mexico livestock board and conditioned that the principal:

(1) will keep a correct record, in a book kept for that purpose, of all cattle or other animals purchased or slaughtered by him with a description of each animal including marks, brands, age and weight, from whom purchased and the date of its slaughter; and

(2) will not slaughter or cause to be slaughtered any animal at any place other than the place of slaughter named in his application for license; and

(3) will keep the hides of all animals slaughtered by him at the place of slaughter until inspected by an authorized inspector of the New Mexico livestock board and until a hide inspection fee is paid to the board in a sum fixed by the board pursuant to law.

B. The bond shall be signed by the person, firm or corporation engaging in the business, together with a corporate surety company authorized to do business in this state, and approved by the New Mexico livestock board or its representatives.

C. The bond shall be executed in duplicate, one copy filed with the New Mexico livestock board and the other copy after being approved by the board posted in the place of business of the principal where it can easily be seen by persons interested.

D. In the opinion of the New Mexico livestock board, if the bond appears at any time to be insecure, exhausted or otherwise doubtful, an additional or new bond of not more than one thousand dollars (\$1,000) satisfactory to the New Mexico livestock board shall be filed by the licensee within ten days after written demand upon the licensee by the board. Upon failure of the licensee to file the additional or new bond the license shall be revoked by the New Mexico livestock board.

**History:** Laws 1939, ch. 115, § 3; 1941 Comp., § 49-2203; 1953 Comp., § 47-20-3; Laws 1963, ch. 252, § 6; 1969, ch. 117, § 3; 1977, ch. 142, § 2; 1981, ch. 357, § 15.

## ANNOTATIONS

**The 1977 amendment** increased the inspection fee per head for cattle and horses in Paragraph (3) of Subsection A from fifteen cents to twenty cents.

**The 1981 amendment** substituted "pursuant to law" for "not to exceed twenty cents (\$.20) per head for cattle and horses, or not to exceed eight cents (\$.08) per head for sheep or goats" in Subsection A(3).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 140.

53 C.J.S. Licenses § 42.

### **77-17-4. Criminal offender's character evaluation.**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 77-17-1 through 77-17-16 NMSA 1978.

**History:** 1953 Comp., § 47-20-3.1, enacted by Laws 1974, ch. 78, § 8.

### **77-17-5. Disposition of license fees.**

The proceeds from the license fees shall be paid into the New Mexico livestock board general fund and shall be expended by the board for the same purposes and in a like manner as other money in the New Mexico livestock board general fund.

**History:** Laws 1939, ch. 115, § 4; 1941 Comp., § 49-2204; 1953 Comp., § 47-20-4; 1993, ch. 248, § 79.

## **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the current catchline; substituted "New Mexico livestock board general fund" for " 'cattle indemnity fund' "; substituted "board" for "Cattle Sanitary Board of New Mexico"; substituted "money in the New Mexico livestock board general fund" for "monies in said fund" at the end of the section; and made a minor stylistic change.

### **77-17-6. [Violation of license statute; penalty.]**

Any person, firm or corporation, violating any of the provisions of this act [77-17-1 to 77-17-3, 77-17-5 and 77-17-6 NMSA 1978] shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than \$20.00 nor more than \$100 for each offense, or by imprisonment for not less than twenty nor more than one hundred days, or by both such fine and imprisonment.

**History:** Laws 1939, ch. 115, § 5; 1941 Comp., § 49-2205; 1953 Comp., § 47-20-5.

### **77-17-7. Definitions.**

As used in this act [77-17-7, 77-17-8 NMSA 1978]:

- A. "person" includes an individual, a partnership, a corporation and a business association;
- B. "slaughterhouse" means an abattoir, or a place where neat cattle, horses, mules, asses, sheep or hogs are slaughtered; and
- C. "residential dwelling house" means a house which is occupied, as a rule, for permanent-residence purposes and which is either owned, rented, leased, let or hired out, to be occupied as the residence or home for a family.

**History:** 1953 Comp., § 47-20-5.1, enacted by Laws 1965, ch. 127, § 1.

### **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. [Records of cattle purchased and slaughtered; hides and horns; failure to keep; penalty.]**

Every person who shall carry on the business of butcher or slaughterer of horned cattle, and shall fail to keep a true and faithful record, in a book kept for the purpose, of all cattle purchased or slaughtered by him, together with a description of each animal, including marks, brands, age, weight and from whom purchased, and the date thereof, or fail to keep the hide and horns of such animal or animals for thirty days after such animal is slaughtered, shall be deemed guilty of a misdemeanor, and for each offense fined in a sum not less than ten [(\$10.00)] nor more than one hundred dollars [(\$100)], to be recovered as provided in the preceding section.

**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.

### ANNOTATIONS

**Cross-references.** - As to hides and ears to be kept, see 77-17-12 NMSA 1978.

As to exhibition of hides upon sale of meat, see 77-17-16 NMSA 1978.

As to notice of intention to slaughter, see 7-23-1 NMSA 1978.

**Compiler's note.** - The words "to be recovered as provided in the preceding section" refer to Code 1915, § 545, which provided that penalties were recoverable before a justice of the peace (magistrate) or by indictment in a district court. Code 1915, § 545, was repealed by Laws 1939, ch. 115, § 6.

**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 records, hides and horns; refusal to permit; penalty.]**

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 [(\$10.00)] nor more than twenty-five dollars [(\$25.00)] for each offense, to be recovered as provided in the preceding sections.

**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.

### **ANNOTATIONS**

**Cross-references.** - For inspection of hides, see 77-17-12 NMSA 1978.

**Compiler's note.** - The words "preceding sections" refer to Code 1915, §§ 545 and 546. Code 1915, § 545, was repealed by Laws 1939, ch. 115, § 6. Code 1915, § 546, is compiled as 77-17-9 NMSA 1978 but refers to repealed Code 1915, § 545, so far as recovery of penalties is concerned.

**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. [Fines and penalties; disposition.]**

All fines and penalties so recovered under this chapter shall be paid into the county treasury of the proper county, and the offender and his sureties shall be liable on the bond provided for in Section 544 for all fines, penalties and costs adjudged against him under the provisions of this chapter. Said bond may be sued on in the name of the people in any court of competent jurisdiction.

**History:** Laws 1884, ch. 47, § 22; C.L. 1884, § 75; C.L. 1897, § 88; Code 1915, § 548; C.S. 1929, § 19-105; 1941 Comp., § 49-2208; 1953 Comp., § 47-20-8.

### **ANNOTATIONS**

**Cross-references.** - As to fines and forfeitures collected for school fund, see N.M. Const., art. XII, § 4.

**Compiler's note.** - Section 544, referred to in this section, is Code 1915, § 544 and was repealed by Laws 1939, ch. 115, § 6.

**Meaning of "this chapter".** - The compilers of the 1915 Code substituted the words "this chapter" for "this act" in reference to Chapter 16 of the Code of 1915, the present provisions of which are compiled as 25-4-1, 25-4-2 and 77-17-9 to 77-17-16 NMSA 1978.

**77-17-12. [Hides, pelts and ears of cattle and sheep to be kept; inspection; killing at roundups included.]**

Any person killing or causing to be killed any bovine cattle or sheep for his own use, or for the use of others, or for the purpose in whole or in part of sale or exchange, is hereby required to keep in his own possession, unchanged and unmutilated, and in condition to be easily inspected and examined, all hides and pelts of such bovine animals, including the ears, for the period of thirty days after the killing, and of sheep ten days after the killing, and shall at any time while such hides or pelts remain in his possession, permit the same to be inspected and examined by any sheriff, deputy sheriff or constable, or by any board, or inspector or other officer authorized by law to inspect any hides and pelts or animals, whether dead or alive: 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.

**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.

**ANNOTATIONS**

**Cross-references.** - For inspection of slaughterhouses, see 77-9-33 NMSA 1978.

As to keeping records, hides and horns, see 77-17-9 NMSA 1978.

As to refusal to permit inspection of records, hides and horns, see 77-17-10 NMSA 1978.

For penalties for violation of this section, see 77-17-13 NMSA 1978.

For exhibition of hides upon sale of meat, see 77-17-16 NMSA 1978.

**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).

**So 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. [Failure to retain hides, pelts and ears; penalty.]**

Any person violating the provisions of Section 77-17-12 NMSA 1978 shall be guilty of a felony and upon the first conviction thereof shall be confined in the penitentiary not less than one year nor more than two years, or fined not less than five hundred dollars [(\$500)], nor more than five thousand dollars [(\$5,000)], or suffer both such fine and imprisonment in the discretion of the court; but upon a second conviction of the crime herein defined or upon any conviction of such crime subsequent to the first conviction thereof, and whether the first conviction had been had in the courts of this or any other state, such person so convicted shall be confined in the penitentiary for not less than two nor more than ten years in the discretion of the court.

**History:** Laws 1891, ch. 45, § 2; C.L. 1897, § 90; Code 1915, § 550; Laws 1919, ch. 53, § 1; C.S. 1929, § 19-107; 1941 Comp., § 49-2210; 1953 Comp., § 47-20-10.

### **ANNOTATIONS**

**Constitutionality of amendment.** - The amendment of this section by Laws 1919 was accomplished in full compliance with constitutional restrictions and direction. The 1919 act does not purport to revise or amend or extend or otherwise deal with any section of the law other than this section, and this section as revised and amended is set out in full in the amending act. State v. Knight, 34 N.M. 217, 279 P. 947 (1929).

### **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**

**Cross-references.** - For larceny of livestock, see 30-16-1 NMSA 1978.

As to receiving stolen property, see 30-16-11 NMSA 1978.

#### **77-17-15. [Purchase of dressed meats; seller to exhibit hides; keeping of records.]**

That hereafter persons engaged in the business of butchers or of buying and selling dressed meats in the state of New Mexico, shall not buy from any person or persons any dressed beef, or the carcasses or portions thereof of any sheep or goat, unless the person offering such meats or any of them for sale, shall at the same time exhibit to said butcher or dealer in such meats, the hide or hides of the animal or animals from which said meat was taken and until such butcher or dealer in dressed meats shall have entered in a book, to be kept by him for that purpose, a full and complete description of such hides, giving the earmarks, brands of each hide so exhibited separately and also the color, character and age of the animal from which each of such hides was taken, as nearly as possible, at the time.

**History:** Laws 1899, ch. 44, § 1; Code 1915, § 555; C.S. 1929, § 19-112; 1941 Comp., § 49-2212; 1953 Comp., § 47-20-12.

#### **77-17-16. [Records of dealer in meat; inspection; persons other than licensed retailer to exhibit hides; penalty.]**

That the record of marks and brands and description of hides of animals, the meat of which is purchased by butchers or dealers in fresh meats, as provided for in the preceding section [77-17-15 NMSA 1978], shall be preserved by him and at all times kept in a convenient place for the inspection of the inspectors appointed by the sanitary board [New Mexico livestock board], of the cattle owners and of any other person who may be interested in such hides, or the animals from which the same were taken, and to the officers of the law.

Provided, any person not a regular licensed retailer selling or offering for sale any fresh meats, the same having been killed within the state, shall produce at the time of [sic] said sale or offer for sale is made, the hide of the animal or animals, the meat of which he sells or offers to sell. And if such person shall upon the demand of any hide or cattle inspector of the cattle sanitary board [livestock board], or any peace officer or any other person, fail to produce and exhibit the hide or hides of such animal or animals, at the time of [sic] such sale, or offer for sale is made, he shall be deemed guilty of a felony and upon conviction thereof in any of the courts of this state having jurisdiction of such cause, shall be fined in any sum not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300), or by imprisonment for a term of not less than six (6) months nor more than two (2) years or by both fine and imprisonment, in the discretion of the court trying said cause, except as herein further provided, that all dealers in dressed meats shall make and keep subject to inspection by brand inspector, or any peace officer, a correct record of the number and class of all carcasses or parts of carcasses of all meat animals purchased by them, whether purchased from a licensed butcher or other vendor.

**History:** Laws 1899, ch. 44, § 2; 1905, ch. 14, § 1; Code 1915, § 556; Laws 1927, ch. 71, § 3; C.S. 1929, § 19-113; 1941 Comp., § 49-2213; 1953 Comp., § 47-20-13.

## ANNOTATIONS

**Cross-references.** - For hides required to be kept, see 77-17-9 and 77-17-12 NMSA 1978.

As to sellers of beef, veal or mutton to have hide in possession, see 7-23-1 NMSA 1978.

**Compiler's note.** - Pursuant to 77-2-2 NMSA 1978, "New Mexico livestock board" was inserted in brackets.

## 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 reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**Severability clauses.** - Laws 1979, ch. 194, § 8, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 2, 4, 14 et seq., 27 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 has reason to believe that livestock are being cruelly treated by depriving them of necessary sustenance, he may apply to a magistrate court in the county where the livestock are located for a warrant to seize the cruelly treated livestock.

B. On a showing of probable cause to believe that the livestock are being cruelly treated by depriving them of necessary sustenance, the magistrate court shall issue a warrant and set a time within ten days of the seizure for a hearing to determine whether the livestock are being so cruelly treated. Seizure as authorized by this section shall be restricted to only those livestock being cruelly treated. The magistrate executing the warrant shall notify the New Mexico livestock board, have the livestock impounded and give written notice to the owner of the livestock of the time and place of the magistrate court hearing. After all interested parties have been given an opportunity to present evidence at the hearing and if the court finds that the owner is guilty of cruelly treating the livestock by depriving them of necessary sustenance, the court shall order 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. If the court does not find that the owner has so cruelly treated the livestock, the court shall order the livestock returned to the owner.

C. If the court orders a public sale of the livestock 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. A bid by the owner of the livestock or his representative shall not be accepted at the auction.

D. Proceeds from the sale of the livestock shall be forwarded to the magistrate ordering the sale. From these proceeds, the magistrate 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 owner convicted of so cruelly treating the livestock.

E. As used in this section, "livestock" means domestic animals such as cattle, horses, sheep, hogs and goats and includes burros.

**History:** Laws 1987, ch. 151, § 1.

### **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] 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.