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## West's New Mexico Statutes Annotated. Chapter 3. Municipalities. Article 18. Powers of Municipalities; Chapter 77. Livestock Code. Article 1. Dogs and Domesticated Animals.

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- **Primary Citation:** NMSA 1978, § 3-18-3; § 77-1-1 - 20; § 25-1-15
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These statutes comprise New Mexico's dog laws. Among the provisions include municipal powers to regulate dogs, vaccination requirements, and provisions related to dangerous dogs.

### Statute Text

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## **Chapter 3. Municipalities. Article 18. Powers of Municipalities.**

### **§ 3-18-3. Animals**

A. A municipality may:

(1) prohibit cruelty to animals;

(2) regulate, restrain and prohibit the running at large of any animal within the boundary of the municipality; and

(3) provide by ordinance for the impounding and disposition of animals found running at large. Prior to the time set for disposing of the animal as provided in the ordinance, the owner may regain possession of the animal by paying the poundmaster all costs incurred in connection with impounding the animal.

B. Dogs shall be further regulated as provided in Sections 47-1-2 through 47-1-8 New Mexico Statutes Annotated, 1953 Compilation.

C. A municipality may, by ordinance, provide for the animal control services enumerated in this section to be performed by a contractor and may enter into a contract for the services.

L. 1965, Ch. 300; L. 1971, Ch. 171, § 1.

## **Chapter 77. Livestock Code.**

### **Article 1. Dogs and Domesticated Animals.**

#### **§ 77-1-1. Dogs, cats, domesticated fowls, and birds deemed personal property [FN1]**

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.

[FN1] Caption added by Publisher.

L. 1912, Ch. 38, § 1.

#### **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.

L. 1901, Ch. 105, § 2; L. 1957, Ch. 131, § 1.

### **§ 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. [FN1] 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.

[FN1] Now the department of health.

L. 1959, Ch. 176, § 1; L. 1973, Ch. 170, § 1; L. 1977, Ch. 253, § 55; L. 1979, Ch. 194, § 1.

### **§ 77-1-4. Repealed by L. 1979, Ch. 194, § 9**

### **§ 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.

L. 1959, Ch. 176, § 3; L. 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 [FN1] 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.

[FN1] Now the department of health.

L. 1979, Ch. 194, § 2.

### **§§ 77-1-7, 77-1-8. Repealed by L. 1979, Ch. 194, § 9**

### **§§ 77-1-7, 77-1-8. Repealed by L. 1979, Ch. 194, § 9**

### **§ 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.

L. 1975, Ch. 352, § 1.

**§ 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 [FN1] for the protection of public health and safety.

[FN1] Now the department of health.

L. 1901, Ch. 105, § 3; L. 1959, Ch. 176, § 7; L. 1973, Ch. 170, § 7; L. 1977, Ch. 253, § 56; L. 1979, Ch. 194, § 3

**§ 77-1-11. Repealed by L. 1979, Ch. 194, § 9**

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

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

CREDIT(S)

L. 1901, Ch. 105, § 5; L. 1973, Ch. 170, § 9; L. 1979, Ch. 194, § 4; L. 2009, Ch. 103, § 1, eff. June 19, 2009.

**§ 77-1-13. Penalty**

Violation of Sections 77-1-3 and 77-1-10 NMSA 1978 and Section 6 [FN1] of this act or regulations or orders issued pursuant thereto shall be a misdemeanor.

[FN1] § 77-18-1.

L. 1979, Ch. 194, § 5.

**§§ 77-1-14, 77-1-15. Repealed by L. 1989, Ch. 242, § 5, eff. June 16, 1989**

**§§ 77-1-14, 77-1-15. Repealed by L. 1989, Ch. 242, § 5, eff. June 16, 1989**

**§ 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.

L. 1979, Ch. 194, § 7; L. 1989, Ch. 242, § 4.

**§ 77-1-16. Repealed by L. 1979, Ch. 194, § 9****§ 77-1-17. Abandoned dogs and cats; notice to owner; disposal without liability**

A. As used in this act, "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 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 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.

L. 1973, Ch. 94, § 1.

**§ 77-1-18. Short title**

This act may be cited as the "Pet Sterilization Act." [FN1]

[FN1] §§ 77-1-18 to 77-1-20.

L. 1993, Ch. 43, § 1.

**§ 77-1-19. Definitions**

As used in the Pet Sterilization Act:

- A. "animal" means a cat or dog;
  - B. "animal shelter" means any animal facility operated privately or by or for a municipality or county, in which stray, lost or unwanted animals are kept and released for adoption;
  - C. "sterilization" means rendering an animal unable to reproduce, either by the spaying of a female animal or by the neutering of a male animal; and
  - D. "sterilization deposit" means that portion of the adoption fee charged by the animal shelter when a person adopts an unsterilized animal; the "sterilization deposit" is refunded when the animal is sterilized.
- L. 1993, Ch. 43, § 2.

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

- A. No animal shall be released from an animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been paid, as provided in Subsections C and D of this section.
  - B. In addition to any adoption fee charged, a sterilization deposit of at least twenty-five dollars (\$25.00) shall be imposed on the adoption of each animal from an animal shelter.
  - C. Animals less than six months of age shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the adopted animal sterilized when it is no older than six months of age.
  - D. Adult animals over the age of six months shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the animal sterilized within thirty days of the date of adoption.
  - E. The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized.
  - F. An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the twenty-five dollars (\$25.00) for the sterilization deposit and impoundment fees imposed by the shelter, and the owner shall sign an agreement stating he will sterilize the animal within thirty days after release or will obtain a breeder permit or its equivalent. The sterilization deposit shall be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized.
- L. 1993, Ch. 43, § 3.

### **Article 1A. Dangerous Dog**

#### **§ 77-1A-1. Short title**

This act may be cited as the "Dangerous Dog Act".

Added by L. 2005, Ch. 61, § 1, eff. June 17, 2005.

#### **§ 77-1A-2. Definitions**

As used in the Dangerous Dog Act:

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

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

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

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

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

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

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

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

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

Added by L. 2005, Ch. 61, § 2, eff. June 17, 2005.

#### **§ 77-1A-3. Exceptions**

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

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

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

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

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

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

C. the dog was:

(1) responding to pain or injury;

(2) protecting itself or its offspring; or

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

Added by L. 2005, Ch. 61, § 3, eff. June 17, 2005.

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

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

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



warrant to seize the animal.

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

D. After seizure:

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

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

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

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

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

Added by L. 2005, Ch. 61, § 4, eff. June 17, 2005.

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

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

(1) the owner is able to keep the dog under control at all times;

(2) a license, if applicable, has been issued pursuant to the requirements of the jurisdiction;

(3) the dog has a current rabies vaccination;

(4) the owner has a proper enclosure for the dog;

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

(6) the dog has been spayed or neutered;

(7) the dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority; and

(8) the owner has entered the dog in a socialization and behavior program approved or offered by the animal control authority.

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

C. An animal control authority shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the

requirements of Subsection A of this section, establishes that:

- (1) the owner has paid an annual fee, if applicable, established by the animal control authority to register a dangerous dog;
- (2) the owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable;
- (3) the dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination;
- (4) when the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four feet, and the dog shall be under complete control at all times;
- (5) the dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and
- (6) a clearly visible warning sign with a conspicuous warning symbol indicating that there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from fifty feet, whichever is less.

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

Added by L. 2005, Ch. 61, § 5, eff. June 17, 2005.

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

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

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

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

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

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

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

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

(1) an owner knew of the propensity of a dog to inflict serious injury; or

(2) the dog had previously been found by a court to be a dangerous or potentially dangerous dog.

Added by L. 2005, Ch. 61, § 6, eff. June 17, 2005.

## **Article 1B. Animal Sheltering Act**

### **§ 77-1B-1. Short title**

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 1, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 3, eff. June 19, 2009.

### **§ 77-1B-2. Definitions**

As used in the Animal Sheltering Act:

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

B. “animal shelter”:

(1) means:

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

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

(2) does not include a municipal zoological park;

C. “board” means the animal sheltering board;

D. “department” means the regulation and licensing department;

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

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

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

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

I. "euthanasia drugs" means non-narcotic schedule II or schedule III substances and chemicals as set forth in the Controlled Substances Act [FN1] that are used for the purposes of euthanasia and pre-euthanasia of animals;

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

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

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

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

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

O. "veterinarian" means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act. [FN2]

#### CREDIT(S)

Added by L. 2007, Ch. 60, § 2, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 4, eff. June 19, 2009.

[FN1] NMSA 1978, § 30-31-1 et seq.

[FN2] NMSA 1978, § 61-14-1 et seq.

### **§ 77-1B-3. Animal sheltering board created; members; qualifications; terms; vacancies; removal**

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

(1) one euthanasia agency employee with training and education in euthanasia;

(2) one veterinarian who has provided paid or unpaid services to an animal shelter;

(3) one representative from a nonprofit animal advocacy group;

(4) one member of the public;

(5) a manager or director of a New Mexico facility that provides shelter to animals on a regular basis, provided that the manager or director selected is trained in animal shelter standards;

(6) one representative of the New Mexico association of counties;

(7) one representative of the New Mexico municipal league;

(8) one member of a rescue organization; and

(9) one member of the domestic pet breeder community.

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

C. The board is administratively attached to the department.

D. The board and its operations are governed by the Uniform Licensing Act. [FN1] If the provisions of the Uniform Licensing Act

conflict with the provisions of the Animal Sheltering Act, the provisions of the Animal Sheltering Act shall prevail.

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

F. Members of the board shall be reimbursed for per diem and mileage as provided in the Per Diem and Mileage Act [FN2] and shall receive no other compensation, perquisite or allowance, but shall be permitted to attend at least one conference or seminar per year relevant to their board positions as the board's budget will allow.

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

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

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

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

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

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 3, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 5, eff. June 19, 2009.

[FN1] NMSA 1978, § 61-1-1 et seq.

[FN2] NMSA 1978, § 10-8-1 et seq.

#### **§ 77-1B-4. Animal care and facility fund created; administration**

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

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

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

D. Each fiscal year, an amount of money in the fund appropriated pursuant to this section that is equal to the total amount of money credited to the fund for that fiscal year from special registration plates issued pursuant to Section 66-3-424.3 NMSA 1978 shall be administered so that spay and neuter programs in a county receive money attributable to the number of those special registration plates issued in that county.

E. A disbursement from the fund shall be made only upon a warrant drawn by the secretary of finance and administration pursuant to a

voucher signed by the superintendent of regulation and licensing or the superintendent's designee.

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 4, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 6, eff. June 19, 2009; L. 2009, Ch. 192, § 2, eff. July 1, 2009.

### **§ 77-1B-5. Board powers and duties**

The board shall:

- A. provide board-recommended standards regarding the infrastructure for all animal shelters;
- B. provide board-recommended operating standards for all animal shelters;
- C. adopt methods and procedures acceptable for conducting emergency field euthanasia;
- D. adopt, promulgate and revise rules necessary to carry out the provisions of the Animal Sheltering Act;
- E. have authority to issue licenses and certificates pursuant to the Animal Sheltering Act;
- F. establish the types of licenses and certificates that may be issued pursuant to the Animal Sheltering Act and establish criteria for issuing the licenses and certificates;
- G. prescribe standards and approve curricula for educational programs that will be used to train and prepare persons for licensure or certification pursuant to the Animal Sheltering Act;
- H. implement continuing education requirements for licensees and certificate holders pursuant to the Animal Sheltering Act;
- I. conduct administrative hearings upon charges relating to violations of provisions of the Animal Sheltering Act or rules adopted pursuant to that act in accordance with the Uniform Licensing Act;
- J. provide for all examinations and for issuance and renewal of licenses and certificates;
- K. establish fees not to exceed one hundred fifty dollars (\$150) for licenses and certificates pursuant to the Animal Sheltering Act;
- L. establish committees as the board deems necessary to effect the provisions of the Animal Sheltering Act;
- M. apply for injunctive relief to enforce the provisions of the Animal Sheltering Act;
- N. conduct national criminal background checks on applicants seeking licensure or certification under the Animal Sheltering Act;
- O. keep a record of all proceedings;
- P. make an annual report to the legislature and to the governor;
- Q. provide for the inspection of animal shelters and euthanasia agencies;
- R. develop mechanisms to address complaints of misconduct at animal shelters and euthanasia agencies and noncompliance with the provisions of the Animal Sheltering Act or rules adopted pursuant to that act;
- S. develop mechanisms to address complaints of licensee and certificate holder misconduct and noncompliance;
- T. develop and recommend dog and cat spay and neuter plans and community outreach plans in support of and in conjunction with animal shelters and euthanasia agencies;

U. disburse money from the animal care and facility fund;

V. provide board-recommended standards for maintaining records concerning health care and disposition of animals; and

W. refer to national animal control association standards in determining its regulations.

CREDIT(S)

Added by L. 2007, Ch. 60, § 5, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 7, eff. June 19, 2009.

#### **§ 77-1B-6. Euthanasia technician; license**

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

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

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

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

(1) have passed the examination to qualify as a euthanasia technician;

(2) hold a certificate of completion in a training course in euthanasia issued within three years of the date that the euthanasia technician examination is successfully completed;

(3) have attained an age of at least eighteen years;

(4) not be guilty of fraud or deceit in procuring or attempting to procure a license;

(5) pay the required fee to be determined by the board, but not to exceed fifty dollars (\$50.00); and

(6) comply with all other requirements established by the board.

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

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 6, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 8, eff. June 19, 2009.

#### **§ 77-1B-6.1. Euthanasia technician authority defined**

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

## CREDIT(S)

Added by L. 2009, Ch. 102, § 9, eff. June 19, 2009.

**§ 77-1B-7. Euthanasia instructors; certification**

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

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

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

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

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

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

(5) pay the required fee.

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

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

## CREDIT(S)

Added by L. 2007, Ch. 60, § 7, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 10, eff. June 19, 2009.

**§ 77-1B-8. Euthanasia agencies; inspections; exemptions**

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

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

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

D. The board shall establish policies and procedures for record keeping and for securing, using and disposing of euthanasia drugs in accordance with requirements of the Controlled Substances Act, [FN1] the United States drug enforcement administration's Controlled Substances Act and the rules of the board of pharmacy.

E. Euthanasia agencies using controlled substances shall have on staff or under contract a consulting pharmacist as that position is defined in the Pharmacy Act.

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

G. Nothing in Chapter 77, Article 1B NMSA 1978 shall be construed as allowing a euthanasia technician or a euthanasia instructor to



engage in the practice of veterinary medicine when performing the duties set forth in that act.

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

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

J. A veterinary clinic serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of Chapter 77, Article 1B NMSA 1978; provided that the veterinary clinic is subject to licensure and rules adopted pursuant to the Veterinary Practice Act. [FN2]

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 8, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 11, eff. June 19, 2009; L. 2009, Ch. 103, § 2, eff. June 19, 2009.

### **§ 77-1B-9. Violations**

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

- (1) perform euthanasia for a euthanasia agency or an animal shelter in this state without possessing a valid license pursuant to the Animal Sheltering Act;
- (2) solicit, advertise or offer to perform an act for which licensure or certification is required pursuant to the Animal Sheltering Act, unless the person holds a license or certification;
- (3) refuse to comply with a cease and desist order issued by the board;
- (4) refuse or fail to comply with the provisions of the Animal Sheltering Act;
- (5) make a material misstatement in an application for licensure or certification;
- (6) intentionally make a material misstatement to the department during an official investigation;
- (7) impersonate an official or inspector;
- (8) refuse or fail to comply with rules adopted by the board or with a lawful order issued by the board;
- (9) aid or abet another in violating provisions of the Animal Sheltering Act, or a rule adopted by the board;
- (10) alter or falsify a certificate of inspection, license or certification issued by the board;
- (11) fail to carry out the duties of a euthanasia technician in a professional manner;
- (12) abuse the use of a chemical substance or be guilty of habitual or excessive use of intoxicants or drugs;
- (13) sell or give chemical substances used in euthanasia procedures to an unlicensed person; and
- (14) assist an unlicensed or unauthorized person in euthanizing animals, except during a board-approved course in euthanasia.

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

- (1) refuse to permit entry or inspection of its facilities by the board or its designees;
- (2) sell, offer for sale, barter, exchange or otherwise transfer animals that are prohibited by the department of game and fish, the

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

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

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

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 9, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 12, eff. June 19, 2009.

### **§ 77-1B-10. Enforcement and injunctions**

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

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

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 10, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 13, eff. June 19, 2009.

### **§ 77-1B-11. Disciplinary actions; euthanasia technicians, euthanasia agencies and euthanasia instructors; hearings; penalties**

A. The provisions of the Uniform Licensing Act [FN1] apply to all disciplinary procedures and hearings of the board.

B. The board may:

(1) deny, suspend, revoke, reprimand, place on probation or take other action against a license or certificate held or applied for pursuant to the Animal Sheltering Act, including imposing an administrative penalty, upon a finding by the board that the licensee, certificate holder or applicant has performed acts in violation of the Animal Sheltering Act or a rule adopted pursuant to that act; and

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

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

- (1) has refused or failed to comply with a provision of the Animal Sheltering Act, a rule adopted pursuant to that act or an order of the board;
- (2) is guilty of cruelty to animals pursuant to a statute of this state or another state;
- (3) has had an equivalent license or certificate denied, revoked or suspended by an authority;
- (4) has refused to provide the board with reasonable, complete and accurate information regarding the care or euthanasia of animals when requested by the board; or
- (5) has falsified information requested by the board or the board's designee.

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

Added by L. 2007, Ch. 60, § 11, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 14, eff. June 19, 2009.

[FN1] NMSA 1978, § 61-1-1 et seq.

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

The animal sheltering board is terminated on July 1, 2019 pursuant to the Sunset Act.<sup>1</sup> The board shall continue to operate according to the provisions of the Animal Sheltering Act until July 1, 2020. Effective July 1, 2020, the Animal Sheltering Act is repealed.

Credits

Added by L. 2007, Ch. 60, § 12, eff. June 15, 2007. Amended by L. 2009, Ch. 102, § 15, eff. June 19, 2009; L. 2011, Ch. 172, § 1, eff. June

17, 2011; L. 2013, Ch. 166, § 9, eff. June 14, 2013.

[FN1] NMSA 1978, § 12-9-11 et seq.

## **Chapter 25. Food. Article 1. Food Service Sanitation.**

### **§ 25-1-15. Pet dogs in outdoor dining areas; requirements**

A. A food service establishment may allow pet dogs in designated outdoor dining areas of the establishment if the following requirements are met:

- (1) no pet dog shall be allowed in any area where food is prepared;
- (2) patrons shall keep their pet dogs on a leash at all times and keep their pet dogs under reasonable control;
- (3) pet dogs shall not be allowed on chairs, tables or other furnishings; and
- (4) a sign or signs shall be posted to place the public on notice that the designated outdoor dining area is available for the use of patrons with pet dogs. Signs shall be at a minimum eight and one-half inches by eleven inches in size and use type that is uniform in size and no smaller than necessary to fill the sign to within two inches of the borders. The signs shall contain language reasonably designed to inform the public that dogs are permitted and may be present. Signs shall be posted prominently and be easily visible in both the area where dogs are permitted and at the entrance of the establishment. The board shall promulgate by rule the specific language to be included in the signs pursuant to Section 74-1-9 NMSA 1978.

B. Employees shall:

- (1) wash their hands immediately after touching, petting or otherwise handling pet dogs; and
- (2) immediately clean up accidents involving pet waste and sanitize the area.

C. A food service establishment may in its discretion prohibit pet dogs in outdoor dining areas. If a food service establishment allows pet dogs in a designated outdoor dining area, the food service establishment shall have the right to refuse to serve the owner of a pet dog if the owner fails to exercise reasonable control over the pet dog or the pet dog is otherwise behaving in a manner that compromises or threatens to compromise the health or safety of any person present in the restaurant.

Credits

Added by L. 2011, Ch. 151, § 1, eff. July 1, 2011.

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