

# CHAPTER 63

## RAILROADS AND COMMUNICATIONS

### ARTICLE 1

### ORGANIZATION AND MANAGEMENT OF RAILROADS

#### 63-1-1. [Formation of corporations.]

Railroad corporations may be formed by the voluntary association of any five or more persons, in the manner prescribed in this chapter. Such persons must be citizens of the United States.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 1; C.L. 1884, § 2622; C.L. 1897, § 3804; Code 1915, § 4653; C.S. 1929, § 116-101; 1941 Comp., § 74-101; 1953 Comp., § 69-1-1.

#### ANNOTATIONS

**Compiler's note.** - Laws 1878, ch. 1, consists of nine chapters with the word "title" appearing before each chapter designation in the printed act. A bracketed abbreviation reflecting the title designation has been inserted in the respective history notes.

**Meaning of "this chapter".** - The term "this chapter" refers to Laws 1878, ch. 1, ch. (tit.) 1, the provisions of which are presently compiled as 63-1-1 to 63-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 186 to 198; 65 Am. Jur. 2d Railroads §§ 8 to 13.

18 C.J.S. Corporations § 25 et seq.; 74 C.J.S. Railroads §§ 7, 8.

#### 63-1-2. [Articles of incorporation.]

Articles of incorporation must be prepared, setting forth:

- A. the name of the corporation;
- B. the purpose for which it is formed;
- C. the place where its principal business is to be transacted;
- D. the term for which it is to exist, not exceeding fifty years;
- E. the number of its directors, which shall not be less than five, nor more than eleven; and the names and residences of the persons who are appointed to act as such, until their successors are elected and qualified;

F. the amount of its capital stock, which shall not exceed the amount actually required for the purposes of the corporation, as estimated by competent engineers, and the number of shares into which it is divided;

G. the amount of capital stock actually subscribed, and by whom;

H. the termini of its road and intermediate branches;

I. the estimated length of its road and of each of its branches;

J. that at least ten percent of its capital stock subscribed, has been paid to the treasurer of the intended corporation, giving his name and residence.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 2; C.L. 1884, § 2623; C.L. 1897, § 3805; Code 1915, § 4654; C.S. 1929, § 116-102; 1941 Comp., § 74-102; 1953 Comp., § 69-1-2.

## ANNOTATIONS

**Subscription payment in checks never intended to be cashed.** - Where 10% of the subscriptions to the capital stock of a corporation, required by statute to be paid on the formation of the corporation, was paid in checks, which were never intended to be presented for payment, the obligation to pay dated from the date of filing of articles of incorporation. *Albright v. Texas, S.F. & N.R.R.*, 8 N.M. 110, 42 P. 73 (1895), rev'd on other grounds, 8 N.M. 422, 46 P. 448 (1896).

**Discovery of insufficient stock subscription.** - Where articles of incorporation stated that 10% of subscription to capital stock had been paid to company treasurer, and the treasurer made affidavit that the amount had been actually paid him, the fact that, at the time an indebtedness was incurred by the corporation, the creditor was informed by the treasurer that such subscription had not been paid in did not constitute such a discovery as to make the statute of limitations begin to run. *Albright v. Texas, S.F. & N.R.R.*, 8 N.M. 110, 42 P. 73 (1859), rev'd on other grounds, 8 N.M. 422, 46 P. 448 (1896).

**Liability of stockholders.** - Where stock subscribed on formation of a corporation was sold upon an assessment made thereon, the creditors of the corporation were not precluded thereby from recovering on the failure of the stockholders to pay the 10% of their subscriptions required by statute to be paid upon incorporation, nor could such failure be set up by the stockholders in avoidance of the statute to escape liability. *Albright v. Texas, S.F. & N.R.R.*, 8 N.M. 110, 42 P. 73 (1859), rev'd on other grounds, 8 N.M. 422, 46 P. 448 (1896).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 199 to 206; 65 Am. Jur. 2d Railroads §§ 8 to 13.

18 C.J.S. Corporations § 25 et seq.; 74 C.J.S. Railroads § 10.

### **63-1-3. [Execution of articles of incorporation.]**

The articles of incorporation must be subscribed by five or more persons, who must be citizens of the United States, and acknowledged by each of them before some officer authorized by the laws of this state to take and certify acknowledgments of conveyances of real property situate within this state. Each subscriber may subscribe said articles personally or by an attorney-in-fact, thereunto duly authorized in writing signed by said subscriber and acknowledged before some officer authorized by the laws of this state to take and certify acknowledgments of conveyances of real property situated within this state. All such powers of attorney must be securely attached to said articles of incorporation, and be filed therewith, as hereinafter provided.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 3; C.L. 1884, § 2624; C.L. 1897, § 3806; Code 1915, § 4655; C.S. 1929, § 116-103; 1941 Comp., § 74-103; 1953 Comp., § 69-1-3.

#### **ANNOTATIONS**

**Cross-references.** - For officers who may take acknowledgments, see 14-13-14 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations § 207.

18 C.J.S. Corporations § 25 et seq.; 74 C.J.S. Railroads § 10.

### **63-1-4. [Subscriptions to capital stock; minimum amount paid in.]**

The incorporators of each intended corporation, before filing articles of incorporation, must have actually subscribed to the capital stock of the corporation at least one thousand dollars [(\$1,000)] for each mile of its road and branches, and at least ten percent thereof must have been paid for the benefit of the corporation, to a treasurer appointed by the subscribers in its articles of incorporation, or their attorneys-in-fact as aforesaid.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 4; C.L. 1884, § 2625; C.L. 1897, § 3807; Code 1915, § 4656; C.S. 1929, § 116-104; 1941 Comp., § 74-104; 1953 Comp., § 69-1-4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 222, 578, 579.

Fraud in promissory statements to secure subscription, 51 A.L.R. 123, 68 A.L.R. 635, 91 A.L.R. 1295, 125 A.L.R. 879.

74 C.J.S. Railroads § 9.

### **63-1-5. [Affidavit stating amount of stock subscribed and amount paid.]**

There must be securely attached to said articles of incorporation, an affidavit of the treasurer named therein, that the requisite amount of the capital stock of the intended corporation has been actually subscribed, and that ten percent thereof has been actually paid to him for the benefit of said corporation, stating the amount of stock subscribed, and the amount actually paid in.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 5; C.L. 1884, § 2626; C.L. 1897, § 3808; Code 1915, § 4657; C.S. 1929, § 116-105; 1941 Comp., § 74-105; 1953 Comp., § 69-1-5.

### **63-1-6. [Articles filed with corporation commission; commencement of corporate existence.]**

Said articles of incorporation, with the powers of attorney mentioned in § 63-1-3 NMSA 1978, if any such there be, and the affidavit mentioned in § 63-1-5 NMSA 1978 must be filed in the office of the state corporation commission, and thereupon, the persons who have signed said articles, and their associates and successors, shall be a body politic and corporate, by the name stated in said articles, for the term of years therein specified.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 6; C.L. 1884, § 2627; C.L. 1897, § 3809; Code 1915, § 4667; C.S. 1929, § 116-115; 1941 Comp., § 74-106; 1953 Comp., § 69-1-6.

## **ANNOTATIONS**

**Cross-references.** - For fee for filing certificate of incorporation, see 53-2-1 NMSA 1978.

For amendment of certificate of incorporation, see 53-2-7 NMSA 1978.

**Compiler's note.** - The 1915 Code compilers substituted "state corporation commission" for "secretary of this territory" apparently to accord with N.M. Const., art. XI, § 6.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Corporations § 67; 18A Am. Jur. 2d Corporations § 208.

18 C.J.S. Corporations § 39.

### **63-1-7. [Certified copies of articles as prima facie evidence.]**

A copy of any articles of incorporation filed in pursuance of the provisions of this chapter, certified by the state incorporation [corporation] commission, or heretofore

certified by the secretary of the territory of New Mexico, must be received in all courts and other places as prima facie evidence of the facts therein stated.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 8; C.L. 1884, § 2629; C.L. 1897, § 3811; Code 1915, § 4669; C.S. 1929, § 116-117; 1941 Comp., § 74-107; 1953 Comp., § 69-1-7.

### **ANNOTATIONS**

**Compiler's note.** - The 1915 Code compilers substituted "state incorporation commission" for "secretary of this territory."

**Meaning of "this chapter".** - See same catchline in notes to 63-1-1 NMSA 1978.

### **63-1-8. [Owners of capital stock are stockholders.]**

The owners of shares of the capital stock of corporations formed under this chapter shall be called stockholders.

**History:** Laws 1878, ch. 1, ch. [tit.] 1, § 7; C.L. 1884, § 2628; C.L. 1897, § 3810; Code 1915, § 4668; C.S. 1929, § 116-116; 1941 Comp., § 74-108; 1953 Comp., § 69-1-8.

### **ANNOTATIONS**

**Compiler's note.** - The 1915 Code compilers substituted "this chapter" for "this act."

**Meaning of "this chapter".** - The term "this chapter" refers to Chapter 95 of the 1915 Code, the provisions of which are presently compiled as 63-1-1 to 63-1-42, 63-2-1 to 63-2-3, 63-2-6 to 63-2-17, 63-3-1, 63-3-2, 63-3-5 to 63-3-22, 63-3-24 to 63-3-28, 63-3-34, 63-5-1 to 63-5-4 and 63-6-1 to 63-6-7 NMSA 1978.

### **63-1-9. [Bylaws; adoption.]**

Every corporation formed under this chapter must, within three months after filing articles of incorporation, adopt a code of bylaws for its government, not inconsistent with the laws of this state. Bylaws may be adopted by stockholders representing a majority of all the subscribed capital stock, at a meeting of stockholders called for that purpose by order of the acting president, served upon them personally in writing, or by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, if there be one published therein, but if not, then in some paper published in some adjoining county. The time specified in said order for such meeting shall not be less than two weeks from the date thereof: provided, that the written assent of the holders of two-thirds of the subscribed capital stock shall be effectual to adopt a code of bylaws without a meeting of the stockholders for that purpose.

**History:** Laws 1878, ch. 1, ch. [tit.] 2, § 1; C.L. 1884, § 2630; C.L. 1897, § 3812; Code 1915, § 4670; C.S. 1929, § 116-118; 1941 Comp., § 74-109; 1953 Comp., § 69-1-9.

## ANNOTATIONS

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

**Meaning of "this chapter".** - See same catchline in notes to 63-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 310, 314, 315, 317.

18 C.J.S. Corporations §§ 111 to 121.

### 63-1-10. [Contents of bylaws.]

Where no other provision is especially made by this chapter, a railroad corporation may, by its bylaws, provide for:

- A. the time, place and manner of calling and conducting the meetings of its directors and stockholders;
- B. the number of stockholders constituting a quorum at meetings of stockholders;
- C. the mode of voting by proxy at meetings of stockholders;
- D. the time for holding annual elections for directors and the mode and manner of giving notice thereof;
- E. the compensation and duties of officers;
- F. the manner of election and the tenure of office of all officers other than the directors;
- G. suitable fines for violation of bylaws, not exceeding in any case one hundred dollars [(\$100)] for any one offense; and
- H. the mode and manner of collecting assessments, except as otherwise provided in this chapter.

**History:** Laws 1878, ch. 1, ch. [tit.] 2, § 2; C.L. 1884, § 2631; C.L. 1897, § 3813; Code 1915, § 4671; C.S. 1929, § 116-119; 1941 Comp., § 74-110; 1953 Comp., § 69-1-10.

## ANNOTATIONS

**Meaning of "this chapter".** - See same catchline in notes to 63-1-8 NMSA 1978.

## **63-1-11. [Book of bylaws; public inspection; amendment and repeal of bylaws.]**

All bylaws must be certified by a majority of the directors and the secretary of the corporation, and copied in a legible hand in a book to be kept in the office of the secretary of the corporation, to be known as the book of bylaws, which shall be open to public inspection during office hours of each day, except holidays. When recorded, as aforesaid, the bylaws shall take effect, unless otherwise therein provided. Bylaws may be amended or repealed, or new bylaws may be adopted at an annual meeting, or any other meeting of the stockholders, called by the directors for that purpose, by a vote representing two-thirds of the subscribed capital stock; or the power to amend or repeal or adopt new bylaws may, by a similar vote, at any such meeting, be delegated to the board of directors. Such power, when delegated, may be revoked by a similar vote at any regular meeting of the stockholders. Whenever an amendment or new bylaw is adopted, it shall be copied in the book of bylaws, immediately after the previous bylaws and shall not take effect until so recorded. If any bylaw be repealed, the fact and date of repeal shall be noted in the book of bylaws, and until so noted the repeal shall not take effect.

**History:** Laws 1878, ch. 1, ch. [tit.] 2, § 3; C.L. 1884, § 2632; C.L. 1897, § 3814; Code 1915, § 4672; C.S. 1929, § 116-120; 1941 Comp., § 74-111; 1953 Comp., § 69-1-11.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 317, 327 to 329.

18 C.J.S. Corporations §§ 111 to 121.

## **63-1-12. [Management by board of directors; number; quorum; vacancies.]**

The corporate powers, business and property of all railroad corporations must be exercised, conducted, controlled and managed by a board of not less than five nor more than eleven directors, to be elected from among the stockholders, who are citizens of the United States. Unless a quorum be present and acting, no business performed or act done, shall be valid or binding as against the corporation. Vacancies in the board of directors shall be filled by appointment by the board, unless otherwise provided by the bylaws of the corporation. Within the limits above specified, the number of directors may be increased or diminished by a vote of stockholders representing two-thirds of the subscribed capital stock, at any annual meeting of the stockholders.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 1; C.L. 1884, § 2633; C.L. 1897, § 3815; Code 1915, § 4673; C.S. 1929, § 116-121; 1941 Comp., § 74-112; 1953 Comp., § 69-1-12.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18B Am. Jur. 2d Corporations §§ 1345, 1347, 1349 to 1352, 1354 to 1358, 1400, 1401, 1470, 1471.

19 C.J.S. Corporations § 434 et seq.; 74 C.J.S. Railroads § 15.

### **63-1-13. [Election and term of directors.]**

The directors named in the articles of incorporation shall hold their offices for one year from and after the date of the filing of said articles as provided in Section 63-1-6 NMSA 1978, or until their successors are elected and qualified; thereafter, directors must be elected annually by the stockholders at such time as may be provided in the bylaws of the corporation: provided, that, if no time be fixed in the bylaws, such elections shall be had on the first Wednesday in July of each year.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 2; C.L. 1884, § 2634; C.L. 1897, § 3816; Code 1915, § 4674; C.S. 1929, § 116-122; 1941 Comp., § 74-113; 1953 Comp., § 69-1-13.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18B Am. Jur. 2d Corporations §§ 1362, 1363, 1365, 1395, 1396.

19 C.J.S. Corporations §§ 434 to 442.

### **63-1-14. [Ballots; majority required; voting rights.]**

All elections of directors must be by ballot, and a vote of stockholders representing a majority of the subscribed capital stock shall be necessary to a choice. At all such elections, and at all other elections, and at all meetings of stockholders, each stockholder shall be entitled to one vote for each share of the capital stock owned by him.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 3; C.L. 1884, § 2635; C.L. 1897, § 3817; Code 1915, § 4675; C.S. 1929, § 116-123; 1941 Comp., § 74-114; 1953 Comp., § 69-1-14.

### **63-1-15. [Directors' organization meeting; officers; majority.]**

The directors named in the articles of incorporation must meet within one week after the filing of said articles and organize by the election of the president, who shall be one of their number, a secretary and a treasurer; and their successors must so meet and organize immediately after their election. Directors must perform the duties enjoined upon them by law and the bylaws of the corporation. A majority of the directors shall constitute a board for the transaction of business, and every decision of a majority of the



directors forming such board, made when duly assembled and in session as such board, shall be valid as a corporate act.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 4; C.L. 1884, § 2636; C.L. 1897, § 3818; Laws 1899, ch. 29, § 1; Code 1915, § 4676; C.S. 1929, § 116-124; 1941 Comp., § 74-115; 1953 Comp., § 69-1-15.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations § 219; 18B Am. Jur. 2d Corporations §§ 1353, 1360, 1470, 1471, 1684.

### **63-1-16. [Meetings of directors; call; notice.]**

When no provision is made in the bylaws for regular meetings of the directors and the mode of calling special meetings, all meetings of the directors must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be no president, on the order of any two directors. Such orders and notice shall be recorded in the journal of the proceedings of the board of directors.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 16; C.L. 1884, § 2648; C.L. 1897, § 3830; Code 1915, § 4688; C.S. 1929, § 116-136; 1941 Comp., § 74-116; 1953 Comp., § 69-1-16.

## ANNOTATIONS

**Cross-references.** - For content of bylaws, see 63-1-10 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18B Am. Jur. 2d Corporations §§ 1452-1455, 1464, 1465, 1479.

19 C.J.S. Corporations §§ 462 to 466.

### **63-1-17. [Removal of directors; call and notice of meetings; filling vacancy.]**

Directors may be removed from office by a vote of stockholders holding two-thirds of the subscribed capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president or by a majority of the directors, or by stockholders holding at least one-half of the subscribed capital stock. Such calls must be in writing and addressed to the secretary who must thereupon give notice of the time, place and object of the meeting, and by whose order it is called. If the secretary refuses to give such notice, or if there be no secretary, the call may be addressed directly to the stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner prescribed in the bylaws. If, however, no provision has been made in the bylaws, then it shall be served

in the manner prescribed in Section 63-1-9 NMSA 1978. In case of removal, the vacancy may be immediately filled by election at the same meeting.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 6; C.L. 1884, § 2638; C.L. 1897, § 3820; Code 1915, § 4677; C.S. 1929, § 116-125; 1941 Comp., § 74-117; 1953 Comp., § 69-1-17.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 958 to 960, 963 to 966; 18B Am. Jur. 2d Corporations §§ 1400, 1434 to 1437.

Power of directors of private corporation to remove officers or fellow directors, 63 A.L.R. 776.

19 C.J.S. Corporations §§ 454 to 457.

### **63-1-18. [Declaring dividends; restrictions; liability of directors.]**

The directors must not make or declare dividends, except from the surplus profits arising from the business of the corporation; nor must they withdraw, divide or pay to the stockholders, or any of them, any part of the capital stock, nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the proceedings of the directors at the time, or were not present when the same did happen, shall be, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced or debt contracted; and no statute of limitations shall be a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock and property of the corporation which may remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its term of existence.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 5; C.L. 1884, § 2637; C.L. 1897, § 3819; Code 1915, § 4678; C.S. 1929, § 116-126; 1941 Comp., § 74-118; 1953 Comp., § 69-1-18.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 463 to 483; 18B Am. Jur. 2d Corporations §§ 1168 to 1170, 1173, 1175 to 1183, 1185.

18 C.J.S. Corporations §§ 293 to 304.

**63-1-19. [Calls for installment payment of subscriptions; notice of assessment; publication; form; default; suit or sale of shares.]**

The directors may call in and demand from the stockholders the sums by them subscribed, in installments of not more than ten percent per month: provided, that if the whole capital stock has not been paid in, and the corporation is unable to meet its liabilities, or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks in a newspaper published at the place designated as the principal place of business of the corporation, or if none be published there, in some newspaper nearest to such place, which notice shall be substantially in the following form:

Notice is hereby given that an assessment of ... dollars per share on the capital stock of .... corporation is due and payable at the office of the corporation in ..... (and at such other places as the directors may designate, naming them), within thirty days from date. All stockholders are requested to make payment on or before that time, or such assessments will be promptly collected in the manner prescribed by law, and the bylaws of said corporation.

(Signed)

.....

.....

Secretary.

If after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, the same may be collected by suit in any court of competent jurisdiction, in the name of the corporation; or so many of such shares may be sold as may be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the bylaws of the corporation: provided, that no sale shall be made except at public auction, to the highest bidder; and at such sale the person who will agree to pay the assessment so due, together with the expenses of advertisement and all other expenses of the sale, for the smallest number of whole shares, shall be deemed to be the highest bidder. All stock shall be liable to such sale, and all stockholders shall be liable to recovery by action at law, as aforesaid.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 1; C.L. 1884, § 2655; C.L. 1897, § 3837; Code 1915, § 4658; C.S. 1929, § 116-106; 1941 Comp., § 74-119; 1953 Comp., § 69-1-19.

## ANNOTATIONS

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 643 to 653, 660 to 680.

18 C.J.S. Corporations §§ 163 to 171; 74 C.J.S. Railroads § 14.

### **63-1-20. [Assessment remaining unpaid; requirements for new levy.]**

No assessment shall be levied while any portion of a previous one remains unpaid, unless:

A. the power of the corporation has been exercised in accordance with the provisions of this chapter, for the purpose of collecting such previous assessment;

B. the collection of the previous assessment has been enjoined; or

C. the assessment falls within the first proviso contained in the preceding section [63-1-19 NMSA 1978].

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 2; C.L. 1884, § 2656; C.L. 1897, § 3838; Code 1915, § 4659; C.S. 1929, § 116-107; 1941 Comp., § 74-120; 1953 Comp., § 69-1-20.

## ANNOTATIONS

**Meaning of "this chapter".** - The term "this chapter" refers to Laws 1878, ch. 1, ch. (tit.) 5, the provisions of which are presently compiled as 63-1-19 to 63-1-27 NMSA 1978. See also compiler's note to 63-1-1 NMSA 1978.

### **63-1-21. [Transfer of shares sold for assessment.]**

All shares sold for assessments, as provided in Section 63-1-19 NMSA 1978 shall be transferred to the purchaser on the transfer book of the corporation on payment of the assessment and costs.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 3; C.L. 1884, § 2657; C.L. 1897, § 3839; Code 1915, § 4660; C.S. 1929, § 116-108; 1941 Comp., § 74-121; 1953 Comp., § 69-1-21.

### **63-1-22. [Purchase by corporation of stock sold for assessments; procedure.]**

If, at the sale, no bidder offers the amount of the assessments, costs and charges due, the stock may be bid in and purchased by the corporation, through the secretary, president or any director thereof, at the amount of the assessments, costs and charges due; and the amount of the assessments, costs and charges shall be credited, as paid in full, on the books of the corporation, and an entry of the transfer of the stock to the corporation, must be made on the transfer book thereof. While the stock remains the property of the corporation, it shall not be assessable, nor shall any dividends be declared thereon; but all assessments and dividends shall be apportioned upon the stock held by the stockholders of the corporation.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 4; C.L. 1884, § 2658; C.L. 1897, § 3840; Code 1915, § 4661; C.S. 1929, § 116-109; 1941 Comp., § 74-122; 1953 Comp., § 69-1-22.

### **63-1-23. [Effect of corporation purchase.]**

All purchases of its own stock made by any corporation, as provided in the last section [63-1-22 NMSA 1978], shall vest the legal title to the same in the corporation; and the stock so purchased shall be held subject to the control of the stockholders, who may make such disposition of the same as they may deem proper, in accordance with the bylaws of the corporation, or by vote of the stockholders representing a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, as aforesaid, a majority of the remaining shares shall be a majority of the stock for all purposes of election, or voting on any question at the meeting of the stockholders.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 5; C.L. 1884, § 2659; C.L. 1897, § 3841; Code 1915, § 4662; C.S. 1929, § 116-110; 1941 Comp., § 74-123; 1953 Comp., § 69-1-23.

### **63-1-24. [Extension of time for assessment payment or stock sale; restrictions.]**

The dates fixed in any notice of assessment, or notice of delinquent sale, may be extended from time to time for not more than thirty days, by order of the directors, entered in the journal of their proceedings; but no order extending the time for the performance of any act specified in any notice shall be effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 6; C.L. 1884, § 2660; C.L. 1897, § 3842; Code 1915, § 4663; C.S. 1929, § 116-111; 1941 Comp., § 74-124; 1953 Comp., § 69-1-24.

### **63-1-25. [Errors in proceedings; effect.]**

No assessment shall be invalidated by a failure to make publication of the notice thereof, hereinbefore provided for, or any notice required by the bylaws of the corporation, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, shall be void, and publication shall be begun anew.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 7; C.L. 1884, § 2661; C.L. 1897, § 3843; Code 1915, § 4664; C.S. 1929, § 116-112; 1941 Comp., § 74-125; 1953 Comp., § 69-1-25.

### **63-1-26. [Actions to recover stock sold for assessments; restrictions.]**

No action shall be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect in the notice of sale, or in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold as the case may be, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action shall be sustained unless the same shall be commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale shall have been made.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 8; C.L. 1884, § 2662; C.L. 1897, § 3844; Code 1915, § 4665; C.S. 1929, § 116-113; 1941 Comp., § 74-126; 1953 Comp., § 69-1-26.

### **63-1-27. [Proof of publication of assessment or stock sale for default in payment.]**

The publication of notices required by Section 63-1-19 NMSA 1978 or by the bylaws of the corporation may be proved by the affidavit of the printer, foreman or principal clerk of the newspaper in which the same shall have been published; and the affidavit of the secretary or auctioneer shall be prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom and for what price and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary under the corporate seal shall be prima facie evidence of the facts therein stated, in all courts and other places.

**History:** Laws 1878, ch. 1, ch. [tit.] 5, § 9; C.L. 1884, § 2663; C.L. 1897, § 3845; Code 1915, § 4666; C.S. 1929, § 116-114; 1941 Comp., § 74-127; 1953 Comp., § 69-1-27.

### **63-1-28. [Stock shares; nature; transfer; restrictions.]**

Shares of the capital stock of any railroad corporation shall be personal property, and may be transferred, by endorsement, by the signature of the proprietor, or his attorney, or legal representative and delivery of the certificate; but such transfer shall not be valid, except between the parties thereto, until the same shall have been entered upon the transfer book of the corporation so as to show the names of the parties by, and to whom, transferred, the number or designation of the shares and the date of transfer: provided, no stock shall be transferred upon the transfer book of the corporation until all previous assessments thereon shall have been fully paid in, nor shall any such transfer be valid except as between the parties thereto, unless at least twenty percent shall have been paid thereon, and certificates issued therefor, and the transfer approved by the board of directors, except by consent of the board of directors.

**History:** Laws 1878, ch. 1, ch. [tit.] 4, § 1; C.L. 1884, § 2651; C.L. 1897, § 3833; Code 1915, § 4691; C.S. 1929, § 116-139; 1941 Comp., § 74-128; 1953 Comp., § 69-1-28.

## ANNOTATIONS

**Compiler's note.** - The 1915 Code compilers substituted "railroad corporation" for "corporation formed under this act."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 681, 682, 715 to 718.

18 C.J.S. Corporations §§ 217 to 292.

### **63-1-29. [Issuance of stock certificates.]**

Certificates for stock, when fully paid up, signed by the president and secretary, shall be issued to the owners thereof, and provision may be made in the bylaws for issuing certificates prior to full payment, under such restrictions, and for such purposes, as the bylaws may provide.

**History:** Laws 1878, ch. 1, ch. [tit.] 4, § 2; C.L. 1884, § 2652; C.L. 1897, § 3834; Code 1915, § 4692; C.S. 1929, § 116-140; 1941 Comp., § 74-129; 1953 Comp., § 69-1-29.

### **63-1-30. [Transfer of nonresident's shares of stock.]**

When shares of stock are owned by persons residing out of the state, the president, secretary or directors of the corporation, before entering any transfer thereof on the books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the nonresident owner, or from the person claiming under the transfer, an affidavit or other evidence that the nonresident owner was alive at the date of the transfer, and that his signature to the transfer is genuine; and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent or claimant, a bond of indemnity with two sureties, satisfactory to the board of directors; or if not so satisfactory, then one approved by a district or county judge of the county in which the

principal office of the corporation is situated, conditioned to protect and indemnify the corporation against any liability to the nonresident owner or his or her legal representatives, in case of his or her death before the transfer, and if such affidavit or other evidence, or bond, be not furnished when required as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

No person holding stock as executor, guardian or trustee, or holding it as collateral security or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian or trustee, shall be liable in like manner to the same extent as testator or intestate, or as the ward or person interested in the trust fund would have been if he had been living and competent to act and hold the stock in his own name.

**History:** Laws 1878, ch. 1, ch. [tit.] 4, § 4; C.L. 1884, § 2654; C.L. 1897, § 3836; Laws 1899, ch. 29, § 4; Code 1915, § 4694; C.S. 1929, § 116-142; 1941 Comp., § 74-131; 1953 Comp., § 69-1-31.

### **63-1-31. [Call for stockholders' meeting when authority is lacking; warrant of magistrate.]**

Whenever, from any cause, there is no person authorized to call or preside at a meeting of the stockholders, any justice of the peace [magistrate] of the county where the principal place of business of the corporation is established, may, on written application of three or more of the stockholders, issue a warrant to one of the stockholders directing him to call a meeting of the stockholders, by giving the notice required in other cases; and said justice [magistrate] may in the same warrant direct such stockholder to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 7; C.L. 1884, § 2639; C.L. 1897, § 3821; Code 1915, § 4679; C.S. 1929, § 116-127; 1941 Comp., § 74-132; 1953 Comp., § 69-1-32.

### **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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 958, 989.

### **63-1-32. [Quorum for stockholders' meeting; adjournment; record.]**



At all meetings of the stockholders for any purpose, a majority of the subscribed capital stock must be represented by the holders thereof, in person or by proxy, in writing. Every person acting thereat, in person, or by proxy, or by representative, must be a bona fide stockholder, having stock in his own name on the stock books of the corporation, at least ten days prior to the meeting. Any election or vote had, other than in accordance with the provisions of this chapter, shall be voidable at the instance of absent stockholders, and may be set aside upon petition to the district court for the county where the same was had. Any regular or called meeting of the stockholders may be adjourned from day to day, or from time to time, if, for any cause, there are not present stockholders representing a majority of the subscribed stock, or no election or majority vote had. Such adjournments, and the reasons therefor, shall be noted in the minutes of the proceedings of the meeting, which shall be recorded in the journal of proceedings of the board of directors.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 8; C.L. 1884, § 2640; C.L. 1897, § 3822; Code 1915, § 4680; C.S. 1929, § 116-128; 1941 Comp., § 74-133; 1953 Comp., § 69-1-33.

## ANNOTATIONS

**Meaning of "this chapter".** - The term "this chapter" refers to Laws 1878, ch. 1, ch. (tit.) 3, the provisions of which are presently compiled as 63-1-12 to 63-1-18 and 63-1-31 to 63-1-40 NMSA 1978. See also compiler's note to 63-1-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 993 to 998, 1012 to 1014, 1026, 1029, 1069; 18B Am. Jur. 2d Corporations §§ 1372, 1373.

18 C.J.S. Corporations § 370.

### **63-1-33. [Postponement of election.]**

If from any cause an election does not take place on the day appointed in the bylaws, or if no day be appointed in the bylaws, then on the day appointed in Section 63-1-13 NMSA 1978, it may be held on any day thereafter as is provided for in such bylaws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in Section 63-1-17 NMSA 1978.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 10; C.L. 1884, § 2642; C.L. 1897, § 3824; Code 1915, § 4682; C.S. 1929, § 116-130; 1941 Comp., § 74-135; 1953 Comp., § 69-1-35.

### **63-1-34. [Court review of elections; notice.]**

Upon the application of any person or body corporate aggrieved by any election held by any railroad corporation, or any proceedings thereof, the district judge of the district in which such election has been held must proceed forthwith, summarily to hear the

allegations and proofs of the parties, or otherwise inquire into the matters complained of; and thereupon confirm the election, order a new one or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 11; C.L. 1884, § 2643; C.L. 1897, § 3825; Code 1915, § 4683; C.S. 1929, § 116-131; 1941 Comp., § 74-136; 1953 Comp., § 69-1-36.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations § 1159.

#### **63-1-35. [Waiver of notice of stockholders' meeting.]**

When all the stockholders are present at any meeting, however called or notified, and sign a written consent thereto, on the record of such meeting, the doings of such meeting shall be as valid as if had at a meeting otherwise legally called and noticed.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 13; C.L. 1884, § 2645; C.L. 1897, § 3827; Code 1915, § 4685; C.S. 1929, § 116-133; 1941 Comp., § 74-137; 1953 Comp., § 69-1-37.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 980, 981; 18B Am. Jur. 2d Corporations § 1370.

18 C.J.S. Corporations § 367.

#### **63-1-36. [Validity of proceedings where notice of meeting is waived.]**

The stockholders, when assembled, as provided in the last section [63-1-35 NMSA 1978], may elect officers to fill all vacancies then existing, and may act upon such other business as may lawfully be transacted at regular meetings of the stockholders.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 14; C.L. 1884, § 2646; C.L. 1897, § 3828; Code 1915, § 4686; C.S. 1929, § 116-134; 1941 Comp., § 74-138; 1953 Comp., § 69-1-38.

#### **63-1-37. [Place for stockholders' meeting.]**

The meetings of stockholders must be held at the office or principal place of business of the corporation: provided, that nothing in this chapter shall be construed to prevent or prohibit any railroad corporation from holding the meetings of its stockholders or board

of directors at the principal place of business of such corporation in any other state or territory where a majority of the stock of such corporation is held or owned therein.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 15; C.L. 1884, § 2647; C.L. 1897, § 3829; Laws 1899, ch. 29, § 2; Code 1915, § 4687; C.S. 1929, § 116-135; 1941 Comp., § 74-139; 1953 Comp., § 69-1-39.

## ANNOTATIONS

**Compiler's note.** - The 1915 Code compilers substituted "this chapter" for "this act."

**Meaning of "this chapter".** - See same catchline in notes to 63-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 956, 957.

18 C.J.S. Corporations § 363.

### **63-1-38. [Change of principal place of business.]**

Every railroad corporation may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state. Before such change is made, the assent, in writing, of the holders of two-thirds of the subscribed capital stock must be obtained and filed in the office of the secretary of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published at least once a week for three successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper published in an adjoining [adjoining] county, giving [giving] the name of the county or city or town where it is situated, and that to which it is intended to remove it.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 17; C.L. 1884, § 2649; C.L. 1897, § 3831; Code 1915, § 4689; C.S. 1929, § 116-137; 1941 Comp., § 74-140; 1953 Comp., § 69-1-40.

## ANNOTATIONS

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

### **63-1-39. [Corporate records; debts of corporation; minutes of all meetings; list of stockholders; stock transfer book.]**

The directors must cause a book to be kept by the secretary to be called, record of corporation debts, in which the secretary shall record all written contracts of the directors, and a succinct statement of the debts of the corporation, the amount thereof and to whom contracted, which book shall at all times be open to inspection by any stockholder or other party in interest. When any contract or debt shall be paid or

discharged, the secretary shall make a memorandum thereof in the margin, or in some other convenient place in the record where the same is recorded. They must also cause a complete record to be kept by the secretary, of the proceedings of all meetings of the board of directors and of the stockholders, in a book provided specially for that purpose. Such record must show the name of each director present at the opening of each meeting of the board and at what stage of the proceedings any director not present at the opening appeared, and also at what stage of the proceedings any director may absent himself on leave or otherwise. The record must also show the name of each director voting against any proposition, whenever any director may require the same to be placed upon the record. Prior to the adjournment of each meeting of the board or of the stockholders, as the case may be, the record of the proceedings of such meeting must be read and approved. The directors must also cause such other books to [be] kept by the secretary as may be deemed necessary, or prescribed by the directors, in which all the business transactions of the corporation must be plainly and accurately entered and kept; also a book to be labeled, book of stockholders, which shall contain the names of all persons alphabetically arranged, who are, or shall have been, stockholders of the corporation, showing their places of residence, if known, the number of shares of stock held by them respectively, the time when they, respectively, became the owners of such shares, the amount of cash actually paid to the company by them respectively for their stock and also the time when they may have ceased to be stockholders. Said book of stockholders, during the office hours of the secretary, shall be open to the inspection of stockholders and creditors of the corporation and their personal representatives. The directors must also cause to be kept by the secretary a book to be labeled, transfer book, in which all transfers of stock must be entered. Said transfer book, shall be received in all courts and places as prima facie evidence of the facts therein stated.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 18; C.L. 1884, § 2650; C.L. 1897, § 3832; Code 1915, § 4690; C.S. 1929, § 116-138; 1941 Comp., § 74-141; 1953 Comp., § 69-1-41.

## ANNOTATIONS

**Compiler's note.** - The bracketed word "be" was inserted by the compiler. It was apparently omitted inadvertently by the 1915 Code compilers.

**Use of oral testimony where no records kept.** - Although this section requires the record of proceedings of directors to be kept in a special book, the admission of oral testimony of the chief engineer of a railway company to prove adoption by the board of directors of a proposed railway line was not error, no record of the adoption having been made. *Denver & R.G.R.R. v. Arizona & C.R.R.*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 333 to 338, 348 to 352, 357 to 362, 715, 951, 952, 1029 to 1031; 18B Am. Jur. 2d Corporations § 1479.

18 C.J.S. Corporations §§ 110, 272, 306, 371.

### **63-1-40. [False entries or reports; liability.]**

Any officer of a railroad corporation who wilfully gives a certificate, or wilfully makes an official report, or gives public notice, or makes an entry in any of the records or books of the corporation concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom, to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable for such damages.

**History:** Laws 1878, ch. 1, ch. [tit.] 3, § 12; C.L. 1884, § 2664; C.L. 1897, § 3826; Code 1915, § 4684; C.S. 1929, § 116-132; 1941 Comp., § 74-142; 1953 Comp., § 69-1-42.

### **63-1-41. [Annual report to corporation commission.]**

Every railroad corporation must make an annual report to the state corporation commission of the operations of the year ending on the thirty-first day of December, which report shall be verified by the president or general superintendent, and the secretary and treasurer of the corporation. Such report must be filed in the office of said commission on or before the first day of March next ensuing, and shall state:

- A. the capital stock, and the amount thereof actually paid in;
- B. the amount paid for the purchase of lands for the construction of the road, for buildings, engines and cars, respectively;
- C. the amount and nature of the indebtedness of the corporation, and the amount due to it;
- D. the amount received for the transportation of passengers, property, mails, express matter, respectively, and the amount received from any other sources;
- E. the amount of freight transported, specifying the quantity in tons;
- F. the amount paid for the repair of engines, cars, buildings and other expenses, in gross, showing the current expense of running its road;
- G. the number and amount of dividends, and when paid;
- H. the number of engine houses and shops, of engines and cars and their character.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 22; C.L. 1884, § 2686; C.L. 1897, § 3875; Code 1915, § 4695; C.S. 1929, § 116-143; 1941 Comp., § 74-143; 1953 Comp., § 69-1-43.

## ANNOTATIONS

**Cross-references.** - For Corporate Reports Act, see 53-5-1 to 53-5-9 NMSA 1978.

**Compiler's note.** - The 1915 Code compilers substituted "state corporation commission" and "said commission" for "secretary of this territory" in the preliminary paragraph.

### **63-1-42. [Change of corporate name; filing of certificate.]**

Any corporation heretofore or hereafter formed under the laws of this state may at any time by resolution of their [its] stockholders, at a regular or special meeting, change its corporate name. After said resolution shall have been adopted, the president of said company or corporation seeking to change its name, and the secretary thereof, shall sign a certificate, attested with the seal of said company, which shall state, substantially, that said company or corporation, by resolution duly adopted, agreed to change the original corporate name of such corporation, to whatever name has been agreed on, and under such new corporate name such corporation proposes, from and after the date of said certificate, to do, carry on and transact all business pertaining to said corporation, which shall be filed in the office of the state corporation commission, and immediately upon the filing of said certificate as aforesaid, the name of the corporation shall be changed to the name set forth in said certificate.

**History:** Laws 1871-1872, ch. 13, § 8; C.L. 1884, § 2708; C.L. 1897, § 3897; Code 1915, § 4732; C.S. 1929, § 116-701; 1941 Comp., § 74-144; 1953 Comp., § 69-1-44.

## ANNOTATIONS

**Compiler's note.** - The 1915 Code compilers substituted "state corporation commission" for "secretary of the territory."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18A Am. Jur. 2d Corporations §§ 287, 288.

18 C.J.S. Corporations § 103.

## **ARTICLE 2 POWERS AND CONSTRUCTION OF ROADS**

### **63-2-1. [Corporate powers.]**

Every railroad corporation as such shall have power:

A. of succession by its corporate name for the period limited in its articles of incorporation;

B. to sue and be sued in any court;

C. to make and use a common seal, and alter the same at pleasure;

D. to acquire, purchase, hold and convey such real and personal estate as the purposes of the corporation may require;

E. to appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

F. to make bylaws, not inconsistent with any existing law, for the management of its business and property, the regulation of its affairs and for the transfer of its stock;

G. to admit stockholders and to sell their stock or shares for the payment of assessments or installments;

H. to construct, maintain and operate telegraph lines in connection with its railroad and branches;

I. to enter into any obligations or contracts necessary or convenient to the transaction of its ordinary affairs, or for carrying out the purposes of the corporation; and generally, such corporation shall have and possess, for the purpose of construction, maintaining and operating its railroads and telegraph lines, and carrying on its business, all the rights, powers and privileges which are enjoyed by natural persons;

J. to construct such branches from its main line or intermediate branches as it may from time to time deem necessary to increase its business and accommodate the trade or travel of the public.

**History:** Laws 1878, ch. 1, ch. [tit.] 6, § 1; C.L. 1884, § 2664; C.L. 1897, § 3846; Laws 1899, ch. 29, § 3; Code 1915, § 4696; C.S. 1929, § 116-201; 1941 Comp., § 74-201; 1953 Comp., § 69-2-1.

## ANNOTATIONS

**Trustees in bankruptcy subject to franchise tax.** - Trustees in bankruptcy of a foreign corporation are subject to a state franchise tax for doing business or continuing in business exactly the same as if the bankrupt corporation was conducting the business. *Lowden v. SCC*, 42 N.M. 254, 76 P.2d 1139 (1938).

**Common seal may be altered by board of directors only,** and not by the corporation solicitor. *Saxton v. Texas, S.F. & N.R.R.*, 4 N.M. (Gild.) 378, 16 P. 851 (1888).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18B Am. Jur. 2d Corporations §§ 1990 to 2008; 65 Am. Jur. 2d Railroads § 12.

Right to give exclusive privilege of soliciting patronage at railroad stations or on trains, 15 A.L.R. 356.

Injunction against repeated or continuous trespasses on railroad property, 32 A.L.R. 544, 60 A.L.R.2d 310.

Proper remedy for interference with right-of-way, 47 A.L.R. 563.

Power of corporation after expiration or forfeiture of its charter, 47 A.L.R. 1288, 97 A.L.R. 477.

Right of railroad company to use right-of-way for housing or boarding employees or others, 59 A.L.R. 1287.

Right of railroad company to use or grant use of land in right-of-way for other than railroad purposes, 94 A.L.R. 522, 149 A.L.R. 378.

Adverse possession or prescription nature, and extent of interest acquired by railroad in right-of-way by, 127 A.L.R. 517.

Title or interest acquired by railroad in exercise of eminent domain as fee or easement, 155 A.L.R. 381.

What losses are within clause of contract purporting to relieve the railroad from liability, 2 A.L.R.2d 1074.

74 C.J.S. Railroads § 16.

### **63-2-2. [Additional powers of corporations.]**

In addition to the foregoing, every railroad corporation shall have the following powers:

A. to cause such examinations and surveys to be made as may be necessary to the selection of the most suitable routes for its railroad and telegraph lines, and for that purpose, by its officers and agents, to enter upon the lands and waters of the state, of private persons and of private and public corporation [corporations], subject, however, to responsibility for all damages which it may do thereto;

B. to take, hold and convey, by deed or otherwise, the same as a natural person, such voluntary grants and donations of real and personal property as may be made to aid the construction and maintenance, and to provide for the accommodation of its railroad and telegraph lines, or either thereof;

C. to purchase, and, by voluntary grants and donations, to receive and take, and by its officers, engineers, surveyors and agents, to enter upon, possess, hold and use in any manner it may deem proper, all such lands and other property as its directors may



deem necessary, proper and convenient, for the construction, maintenance and operation of its railroad and telegraph lines, or either thereof, and for the erection of stations, depots, water tanks, sidetracks, turnouts, turntables, yards, workshops, warehouses, and for all other purposes necessary or convenient to said corporation in the transaction of its business;

D. to lay out its railroad and branches, not exceeding two hundred feet wide, and to construct and maintain the same, with single or double track, with such appendages as its directors may deem necessary for the convenient use thereof. For the purpose of making embankments, excavations, ditches, drains, culverts and the like, and of procuring timber, stone, gravel and other materials for the proper construction and security of its railroad and branches, such corporation may take and occupy as much more land as its directors may deem necessary or convenient for the purposes aforesaid;

E. to construct its railroads and telegraphs across, along or upon any stream of water, watercourse, street, avenue or highway, or across any railway, canal, ditch or flume which its railroad and telegraph, or either thereof, shall intersect, cross or run along but such corporation shall restore such stream, watercourses, streets, avenues, highways, railways, canals, ditches and flumes, so intersected, to their former state, as near as may be, so as not to unnecessarily impair their use or injure their franchises and wherever its road shall cross a navigable stream or body of water, the bridge shall be constructed with a draw, if a draw be necessary, to avoid obstructing the navigation of such stream or body of water;

F. to cross, intersect, join and unite its railroad with any other railroads that have been heretofore constructed, or that may be hereafter constructed, at any point or points on the routes thereof, and upon the grounds of such other railroad companies, with the necessary turnouts, sidings and switches and such other conveniences and appliances as may be necessary to make and complete said crossings, intersections and connections and such other railroad companies shall unite with the directors of such corporation in making said crossings, intersections and connections, and shall grant the facilities therefor upon such terms and conditions as may be agreed upon between them but if they are unable to agree upon the compensation to be made therefor, or the points at which, or the manner in which such crossings, intersections and connections shall be made, the same shall be ascertained, determined and declared in the manner and by the proceedings hereinafter provided, for the taking of private property for the use of such corporation;

G. to purchase or take by donation, or otherwise, lands, timber, stone, gravel or other materials to be used in the construction and maintenance of its railroads and telegraphs, or either thereof and if the same cannot be obtained by agreement with the owners thereof, to take the same by the proceedings and in the manner hereinafter provided for the taking of private property for the use of such corporation;

H. to take, transport, carry and convey persons and property on its railroads by the force and power of steam, of animals or any other mechanical power, or by any combination thereof, and to collect and receive tolls or compensation therefor;

I. to erect and maintain all necessary and convenient buildings, stations, depots, watering places, fixtures and machinery for the accommodation of its passengers, freight and business, and to obtain and hold, by purchase, donation or condemnation, as hereinafter provided, lands and other property necessary therefor;

J. to take, possess and enjoy, by purchase, donation or condemnation, such natural springs and streams of water, or so much thereof as may be necessary for its uses and purposes in operating its railroads, together with the right-of-way thereto for pipes, ditches, canals or aqueducts for the conveyance thereof;

K. to regulate the time and manner in which passengers and property shall be transported over its roads, and the tolls or compensation to be paid therefor: provided, that it shall be unlawful for such corporation to charge more than six cents [ (\$.06) ] per mile for each passenger, and fifteen cents [ (\$.15) ] per mile for each ton of two thousand pounds, or forty cubic feet, of freight transported on its roads: provided, further, that in no case shall such corporation be required to receive less than twenty-five cents [ (\$.25) ] for any one lot of freight for any distance: provided, further, that such corporation shall not be required to transport domestic animals, nitroglycerine compounds, gunpowder, acids, phosphorus and other explosive or destructive combustible materials, except upon such terms, conditions and rates of freightage as its board of directors may from time to time prescribe and establish;

L. to regulate the force and speed of its locomotive, cars, trains or other machinery used on its roads, and to establish, execute and enforce all needful and proper rules and regulations for the management of its trains, the conduct of its business, and to secure the safety, comfort and good behavior of its passengers and employes and agents and for the prevention and suppression of gambling of every kind and description on its cars, or within its depots or station grounds;

M. to expel from its cars at any stopping place, using no more force than may be necessary, any passenger who, upon demand, shall refuse to pay his fare, or shall behave in a rude, riotous or disorderly manner toward other passengers, or the employes of such corporations in charge of such cars or, upon his attention being called thereto, shall persist in violating the rules of the corporation against gambling upon its cars;

N. to borrow on the credit of the corporation and under authority of its board of directors or in such manner as said board may prescribe under regulation, resolution, or otherwise, such sums of money as may be necessary for constructing and equipping its railroad and telegraph lines or for making extensions or additions thereto, or betterments or improvements thereof, or for funding or refunding its outstanding indebtedness, or retiring its obligations, and for such other purposes as may be deemed

proper in the conduct of its business or in the execution of its powers, and to issue and dispose of its bonds and promissory notes or obligations therefor in denominations of not less than one hundred dollars [(\$100)] or any multiple thereof, and at a rate of interest not exceeding ten percent per annum, and for such amounts as the board of directors may deem proper, although in excess of its capital stock; and to secure the payment of such bonds, notes or obligations, or the bonds or obligations of any other corporation which may be issued in its interest, or for any of the above purposes, or to raise funds therefor, it may mortgage or convey in trust its corporate property or any part thereof, and the rights, privileges, powers and franchises in connection therewith or appurtenant thereto;

O. to grant to any railroad corporation the right to use in common with it, its railroad and telegraph lines, or any part thereof. In making such grants, and in agreeing upon, and prescribing the terms and conditions thereof, the amount and nature of the consideration therefor, such corporation shall have all the rights, powers, capacities and abilities which are enjoyed by natural persons;

P. to take grants of the right to use in common railroad and telegraph lines of other railroad corporations and, in taking and receiving such grants, to have and enjoy the same rights, powers, capacities and abilities, which are granted in said last preceding subdivision of this section;

Q. to change the line of its road, in whole or in part, whenever a majority of its directors may so determine: provided, no such change shall vary the general route of such road, as described in its articles of incorporation. The land required for such new line may be acquired by contract with the owners thereof, or by condemnation, as provided by law, as in the case of the original line;

R. to increase or diminish its capital stock, if at any time it shall appear that the amount thereof, as fixed in its articles of incorporation, is either more or less than is actually required for constructing, equipping, operating and maintaining its road and telegraph lines. Such increase or decrease shall not be made, except by a vote of stockholders representing at least two-thirds of the subscribed capital stock. A certified copy of the proceedings of the meeting, and its action in the premises, under the seal of the corporation, must be filed in the office of the state corporation commission, and be by said commission attached to the articles of incorporation on file in its office;

S. to consolidate with one or more railroad corporations, or under the laws of any other state or territory, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, upon such terms and in such manner as may be agreed upon by the respective boards of directors: provided, no such consolidation shall take effect until the same shall have been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths of the subscribed capital stock of their respective corporations. In case of such consolidation, articles of incorporation and consolidation, must be prepared setting forth:

- (1) the name of the new corporation;
- (2) the purpose for which it is formed;
- (3) the place where its principal business is to be transacted;
- (4) the term for which it is to exist, which shall not exceed fifty years;
- (5) the number of its directors, which shall not be less than five nor more than eleven, and the names and residences of the persons appointed to act as such until their successors are elected and qualified;
- (6) the amount of its capital stock, which shall not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers, and the number of shares into which it is divided;
- (7) the amount of stock actually subscribed, and by whom;
- (8) the termini of its road or roads, and branches;
- (9) the estimated length of its road or roads, and branches;
- (10) that at least ten percent of its subscribed capital stock has been paid in;
- (11) the names of the constituent [constituent] corporations and the terms and conditions of consolidation in full.

Said articles of incorporation and consolidation must be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There must be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. When completed, as aforesaid, said articles must be filed in the office of the state corporation commission, and thereupon the constituent corporations named therein must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, assets, choses and rights in action, of every kind and description, both at law and in equity, and to be entitled to possess, enjoy and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done, had no consolidation taken place. Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations and liabilities of every kind and nature, to any persons, corporations or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and

be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued, at law or in equity, had no such consolidation been made. Such consolidated or new corporation shall possess, enjoy and exercise all its franchises, properties, powers, privileges, abilities, rights and immunities, under the provisions of this chapter, and shall conduct its business according to its provisions, and be subject to all its pains and penalties. Nothing in this subdivision contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent, which was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation;

T. every railroad corporation, in addition to the foregoing, shall have such further powers as may be necessary or convenient to enable it to exercise and enjoy, fully and completely, all the powers granted by this chapter; and, generally all such powers as are usually conferred upon, required and exercised by railroad corporations; and in the exercise of its powers and every thereof, shall have and enjoy all the rights, privileges, abilities and capacities which are enjoyed by natural persons.

**History:** Laws 1878, ch. 1, ch. [tit.] 6, § 2; C.L. 1884, § 2665; C.L. 1897, § 3847; Laws 1913, ch. 31, § 1; Code 1915, § 4697; Laws 1915, ch. 20, § 1; C.S. 1929, § 116-202; 1941 Comp., § 74-202; 1953 Comp., § 69-2-2.

## ANNOTATIONS

**Cross-references.** - For power to fix rates, see N.M. Const., art. XI, § 7.

**Compiler's note.** - In Subdivision Eleventh (now Subsection K), the original act provided for a maximum passenger rate of \$.10 per mile. This was changed to \$.06 per mile in the 1897 Compilation in conformity with Laws 1882, ch. 60, § 1 (63-3-9 NMSA 1978) which fixed a limitation on fares to be charged.

In the original act, Subdivision Fourteenth (now Subsection N) read: "To borrow, on the credit of the corporation, and under such regulations and restrictions as the directors thereof, by unanimous concurrence may impose, such sums of money as may be necessary for constructing and equipping its railroad and telegraph lines, and to issue and dispose of its bonds or promissory notes therefor in denominations of not less than five hundred dollars, and at a rate of interest not exceeding ten percent, per annum. And also to issue its bonds or promissory notes of the same denomination and rate of interest in payment of any debts or contracts for constructing, equipping, and completing its railroad and telegraph lines, and all else relating thereto. The amount of bonds or promissory notes issued for such purposes shall not exceed in all the amount of its capital stock; and to secure the payment of such bonds or notes, it may mortgage its corporate property and franchises."

The 1915 Code compilers substituted "railroad corporation" for "every corporation formed under this act" in the preliminary clause of this section, deleted the first clause of present Subsection O which read: "To lease the whole or any portion of its railroad and telegraph lines to any other corporation formed under this act, or to any corporation formed under the laws of any other state or territory, with the road of which its road may connect and form a continuous line of travel and transportation," deleted a reference to such clause in Subsection P, substituted "state corporation commission" for "secretary of this territory" in Subsection S and in Paragraph XI of Subsection T, and substituted "railroad corporation" for "corporation formed under this act" and "this chapter" for "this act" in the final paragraph.

**Meaning of "this chapter".** - See same catchline in notes to 63-1-8 NMSA 1978.

**Converging lines of a railroad were properly connected** by constructing a connecting line at a short distance from the converging point, even though this involved abandonment of one of the lines extending between the connecting line and the former converging point. *Territory v. Eastern Ry.*, 15 N.M. 591, 110 P. 852 (1910).

**Abutting property owner is entitled to compensation for damages** resulting from construction of railroad on a street. *New Mexican R.R. v. Hendricks*, 6 N.M. 611, 30 P. 901 (1892).

**In computing damages resulting to abutting property owner** from construction of a railroad on a street, the damages are determined by comparing the value of the property immediately before and after the construction of the road. *New Mexican R.R. v. Hendricks*, 6 N.M. 611, 30 P. 901 (1892).

**Rate-making power of state corporation commission to control.** - The power granted in Subsection K yields to the rate-making power of the state corporation commission. *San Juan Coal & Coke Co. v. Santa Fe, S.J. & N. R.R.*, 35 N.M. 512, 2 P.2d 305 (1931).

**Nature of rates fixed below maximum.** - In view of this section and N.M. Const., art. XI, intrastate freight rates specified in a regularly filed and published tariff schedule, if below the maximum fixed by the legislature, and remaining uncanceled, are legislature-made or commission-made rates, as distinguished from purely carrier-made rates. *Kemp Lumber Co. v. Atchison, T. & S.F. Ry.*, 36 N.M. 126, 9 P.2d 387 (1932).

**Sufficiency of pleadings.** - Averment by railroad in trespass action that it had "adopted such location" was sufficient against demurrer, without allegation that it was done by its board of directors. *Arizona & C.R.R. v. Denver & R.G.R.R.*, 13 N.M. 345, 84 P. 1018 (1906), *aff'd*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

**Generally, as to recovery where statute sets maximum rates.** - A statute fixing maximum rates amounts to a declaration that rates below maximum are just and reasonable. For a shipper to recover damages for overcharges, it must establish that

rates exceed the schedule. *Kemp Lumber Co. v. Atchison, T. & S.F. Ry.*, 36 N.M. 126, 9 P.2d 387 (1932).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18B Am. Jur. 2d Corporations §§ 1990 to 2008; 65 Am. Jur. 2d Railroads § 12.

Effect of grant of land in fee for railroad purposes on right to underlying minerals, 5 A.L.R. 1501, 39 A.L.R. 1340.

Liability of lessee of railroad for debts of predecessor, 15 A.L.R. 1165, 30 A.L.R. 558, 39 A.L.R. 143, 40 A.L.R. 273, 149 A.L.R. 787.

Liability for injuries caused by breach by lessee of positive duties correlative to corporate franchise, 28 A.L.R. 140.

Public utility commission's power to require company to grant or renew leases or other privileges on railroad right-of-way, 47 A.L.R. 109.

Judicial power in respect to consolidation or merger of railroads, 51 A.L.R. 1249.

Right of railroad company to use, or grant use of, land on right-of-way for other than railroad purposes, 94 A.L.R. 522, 149 A.L.R. 378.

74 C.J.S. Railroads § 16.

### **63-2-3. [Sale to railroad of property of infant or insane person; approval by probate court.]**

If it shall become necessary, for any of the aforesaid purposes of such corporation, to acquire any land, or any right, title, interest or estate therein, which is the property of an infant, idiot or insane person, the guardian, executor or administrator, as the case may be, may sell and convey the same to such corporation, but such sale and conveyance shall not be valid, unless approved by the probate court, or the judge thereof, within whose jurisdiction such lands shall be situated; and the judge of such court is hereby authorized to examine into the terms and conditions of such sales and conveyances, and if he finds them to be just, fair and proper, he shall enter his approval upon the records of said court, and endorse the same upon such conveyances, and thereupon, such conveyances shall have the same force and effect as conveyances made by persons competent to convey in their own names. Should there be no guardian, executor or administrator competent to make such sale and conveyance, it shall be the duty of such judge, upon the petition of any relative or friend acting for the benefit and in the interest of such infant, idiot or insane person, to appoint a guardian for the purpose of making such sale and conveyance, who shall be required to give a bond, with sureties, to be approved by said judge, for the faithful performance of his trust. For the purpose of transacting the business provided for in this section, said court shall be

deemed to be always open, and a complete record of its proceedings therein shall be kept as in other cases.

**History:** Laws 1878, ch. 1, ch. [tit.] 6, § 3; C.L. 1884, § 2666; C.L. 1897, § 3848; Code 1915, § 4698; C.S. 1929, § 116-203; 1941 Comp., § 74-203; 1953 Comp., § 69-2-3.

#### **63-2-4. [Power to use highway, air and water transports; limitations.]**

Every corporation now or hereafter incorporated under the laws of the state of New Mexico, or under the laws of any other state and lawfully authorized and admitted to do business in the state of New Mexico, which is now or may hereafter be authorized by law to own and/or operate railroads in the state of New Mexico, shall, in addition to the powers now conferred by the statutes of the state of New Mexico, have power and authority to engage in the transportation of persons, property and mail by highway transport, air transport and water transport; provided, that any such corporation so engaged in the transportation of persons, property and mail by highway transport, air transport and water transport, shall, in the exercise of any and all of such rights and powers, be subject to all lawful regulations and requirements as are now or may hereafter be prescribed by the statutes of the state of New Mexico relating to certificates of convenience and necessity, permits, registration and public regulations governing the operation of like transportation service and facilities by any person or corporation; and, provided further, than any such corporation organized under the laws of the state of New Mexico for the purpose of owning and/or operating railroads, may exercise in any other state any power hereby granted only in conformity with and to the extent permitted by the laws of such other state.

**History:** Laws 1933, ch. 183, § 1; 1941 Comp., § 74-204; 1953 Comp., § 69-2-4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 22, 23.

#### **63-2-5. [Methods of exercising rights and powers.]**

Any corporation so authorized by law to own or operate railroads in the state of New Mexico, may exercise the rights and powers hereby granted by one or more of the following methods:

A. by direct operation of equipment and facilities owned, leased and/or otherwise held or controlled by it;

B. through operations conducted by a corporation owned or controlled in whole or in part by such corporation authorized by law to own and/or operate railroads in the state of New Mexico, either through stock ownership or otherwise, with equipment and facilities owned, leased and/or otherwise held by either or both of such corporations;



C. by operations conducted under contract with such corporation authorized by law to own and/or operate railroads in the state of New Mexico, by a corporation independently owned or controlled, or by an individual or association of individuals, with equipment owned, leased and/or otherwise held or controlled by either or both of the parties to such contract.

**History:** Laws 1933, ch. 183, § 2; 1941 Comp., § 74-205; 1953 Comp., § 69-2-5.

### **63-2-6. [Power to borrow, purchase and mortgage.]**

Any railroad company heretofore or hereafter organized under the laws of New Mexico, shall have power to borrow money and purchase property, real and personal, for the use of the corporation, and to mortgage and pledge all or any part of its corporate franchises and property in possession or subsequently to be acquired, as security for the payment of the money so borrowed and for the payment of the purchase money for the property so purchased.

**History:** Laws 1871-1872, ch. 13, § 1; C.L. 1884, § 2700; C.L. 1897, § 3890; Code 1915, § 4733; C.S. 1929, § 116-702; 1941 Comp., § 74-206; 1953 Comp., § 69-2-6.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 149 to 159.

74 C.J.S. Railroads §§ 246, 282.

### **63-2-7. [State lands; granting right-of-way over and right to appropriate water thereon.]**

There is hereby granted to every railroad corporation formed under the laws of New Mexico a right-of-way for its railroads and telegraphs to the width of one hundred feet on each side of the center line of the track over and through any of the swamp or overflowed lands or other lands, which belonged to the territory of New Mexico, and in cases where deep excavations, or heavy embankments, or other cuttings, ditches, drains, canals, culverts or structures to protect the road beds and to facilitate the use and enjoyment of the same, is or may be required for the grade or other uses of said roads, then, at such places, a greater width of such lands may be taken by such corporation, and the same is hereby further granted to such corporation, not exceeding, in addition, five hundred feet wide. And the right is hereby further granted to such corporation to locate, occupy and hold so much of said lands as may be necessary for sites and grounds for watering places, depots, stations or other buildings or structures, along the line of said railroads necessary for the accommodation of the public, the operating of said roads and the transaction of the business of such corporation. And the further right is hereby granted to such corporation to appropriate to its use, by means of pipes, ditches, aqueducts or other conduits, so much of the waters of any springs or streams on said lands as may be necessary to the operating of the roads and the

transaction of the business of such corporation, together with the right-of-way over said lands to such springs or streams for such pipes, ditches, aqueducts or other conduits.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 1; C.L. 1884, § 2689; C.L. 1897, 3878; Code 1915, § 4700; C.S. 1929, § 116-301; 1941 Comp., § 74-209; 1953 Comp., § 69-2-9.

## ANNOTATIONS

**Cross-references.** - As to state and municipalities not to aid private enterprise, see N.M. Const., art. IX, § 14.

For fencing of railroads and liability for animals killed, see 77-16-16 to 77-16-18 NMSA 1978.

**Compiler's note.** - On July 3, 1914, the attorney general held that this section had been superseded by Laws 1899, ch. 74, § 11, Laws 1905, ch. 111, § 13, Laws 1907, ch. 104, § 30, as amended by Laws 1909, ch. 25, § 1, and by Laws 1912, ch. 82, § 53 (19-7-57 NMSA 1978). The 1915 Code compilers substituted "which belonged to the territory of New Mexico" for "which now belong to this territory or may hereafter become the property of this territory," making this section applicable to former territorial lands, while 19-7-57 NMSA 1978 might be applicable only to other state lands. However, insofar as land granted to the territory by the federal government is concerned, the same opinion of the attorney general appears still applicable, since it holds that such lands cannot be given away but must be used for the purposes and in the manner provided by the acts of congress which made the donations.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Construction of statutes requiring railroads to provide for the drainage or flow of waters, 19 A.L.R.2d 967.

Railroads' liability for obstruction of stream by debris or waste causing damage by flooding or the like, 29 A.L.R.2d 447.

### **63-2-8. [Municipalities may grant use of streets.]**

Any county, city or town in this state is empowered, by vote of its governing body, to give, grant or donate to any such railroad corporation, the use of any of the streets or highways which may be necessary or convenient to enable such corporation to reach an accessible point for a depot or station in such county, city or town, or to pass through the same on as direct a route as possible so as to accommodate the traveling and commercial interests of such county, city or town.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 2; C.L. 1884, § 2690; C.L. 1897, § 3879; Code 1915, § 4701; C.S. 1929, § 116-302; 1941 Comp., § 74-210; 1953 Comp., § 69-2-10.

## ANNOTATIONS

**Cross-references.** - For assessments for street improvements, see 3-33-20 NMSA 1978.

### **63-2-9. [Maps and profiles must be filed.]**

Every corporation formed under this chapter within a reasonable time after its road shall have been finally located, must cause a map and profile thereof, and of the land required and taken for the use thereof, and the boundaries of the several counties through which the same may run, to be made, and file the same in the office of the state corporation commission, and also similar maps of the parts thereof located in different counties, and file the same in the office of the county clerk of the county in which such parts of the road shall be situated, there to remain on record forever. In case the line of the road be changed at any time, as in this chapter provided, similar maps of the new line must be made and filed, as aforesaid. Said maps and profiles must be certified by the chief engineer of the corporation, and copies of the same, so filed and certified, must be kept in the office of the secretary of the corporation, subject to examination by all persons interested. Copies of such maps and profiles, certified by any secretary of the territory of New Mexico or by said commission, shall be received as prima facie evidence of what they contain, in all courts and places within this state.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 19; C.L. 1884, § 2683; C.L. 1897, § 3874; Code 1915, § 4702; C.S. 1929, § 116-303; 1941 Comp., § 74-211; 1953 Comp., § 69-2-11.

### **ANNOTATIONS**

**Cross-references.** - For regulation of crossing gas pipelines under railway, see 70-3-4 NMSA 1978.

**Compiler's note.** - The 1915 Code compilers substituted "state corporation commission" for "secretary of this territory" and "any secretary of the territory of New Mexico or by said commission" for "the secretary of this territory."

**Meaning of "this chapter".** - See same catchline in notes to 63-1-8 NMSA 1978.

**To constitute a valid location of a proposed railroad,** there must be first a survey and actual staking of the proposed line upon the ground and second the adoption of such survey by the board of directors as its permanent line or right-of-way. *Arizona & C.R.R. v. Denver & R.G.R.R.*, 16 N.M. 281, 117 P. 730 (1911), *aff'd*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

**Railroad is entitled to protection of its right-of-way** as soon as its final location is complete, without having recorded map of road as required by this section. *Denver & R.G.R.R. v. Arizona & C.R.R.*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

**Failure to file a map** will not cause a railroad to lose its interest in a stake-out location for a road, which interest is sufficient to maintain an action of trespass, until a

reasonable time after final location. *Arizona & C.R.R. v. Denver & R.G.R.R.*, 13 N.M. 345, 84 P. 1018 (1906), *aff'd*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

### **63-2-10. [Time limit on commencement and completion of road.]**

Every corporation formed under this chapter must commence the construction of its road within two years after the date of the filing of its articles of incorporation in the office of the state corporation commission, and must finish and put the same in full operation within six years thereafter, or its right to further complete the same, in the discretion of the legislature of this state, may be forfeited.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 24; C.L. 1884, § 2688; C.L. 1897, § 3877; Code 1915, § 4703; C.S. 1929, § 116-304; 1941 Comp., § 74-212; 1953 Comp., § 69-2-12.

### **ANNOTATIONS**

**Compiler's note.** - The 1915 Code compilers substituted "state corporation commission" for "secretary of this territory."

**Meaning of "this chapter".** - See same catchline in notes to 63-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 C.J.S. Railroads § 123.

### **63-2-11. [Gauge of track; quality; exception.]**

All such railroads may be of such gauge as the board of directors may determine. They must be constructed of the best quality of iron or steel rail, known as T or H rail, or other pattern of equal utility, until otherwise permitted by law: provided, the provisions of this section shall not apply to railroad tracks used exclusively for carrying freight, or for mining purposes.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 23; C.L. 1884, § 2687; C.L. 1897, § 3876; Code 1915, § 4704; C.S. 1929, § 116-305; 1941 Comp., § 74-213; 1953 Comp., § 69-2-13.

### **63-2-12. [Aiding other roads; operating jointly; assent of stockholders.]**

Any railroad company organized under the laws of this state, may at any time by means of subscription to the capital of any other company or otherwise aid such company in the construction of its railroad within or without the state, for the purpose of forming a connection with the said last mentioned road with the road owned by the company furnishing such aid, or any railroad organized in pursuance of law, either within this state or any other state or territory, may lease or purchase any part or all of any railroad constructed, owned or leased by any other company, upon such terms and conditions as may be agreed on between such companies respectively, or any two or more

railroad companies may enter into any arrangement for their common benefit consistent with, and calculated to promote the objects for which they were created: provided, that no such aid shall be furnished, nor any purchase, lease, subletting or arrangements be perfected until a meeting of stockholders of such company of this state, party to such agreement, shall have been called by the directors thereof, at such time and place and in such manner as they shall designate, and the holders of at least two-thirds of the stock of such company represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto.

**History:** Laws 1871-1872, ch. 13, § 2; C.L. 1884, § 2701; C.L. 1897, § 3891; Code 1915, § 4699; C.S. 1929, § 116-204; 1941 Comp., § 74-214; 1953 Comp., § 69-2-14.

### **63-2-13. [Powers granted to corporations organized under former act.]**

All the powers, privileges and exemptions conferred upon corporations organized under the preceding sections of this chapter, are conferred upon all corporations incorporated under the laws of this state, for the purpose of constructing railroads, and also upon all corporations organized for railroad purposes that have registered in the office of the state corporation commission the original, or a certified copy, of their articles of incorporation, in accordance with an act entitled, "An act to amend an act entitled 'An act to create a general incorporation law, permitting persons to associate themselves together as bodies, corporate, for mining, manufacturing and other industrial pursuits,' and to repeal the sixteenth section of said act," approved January 30th, 1868.

**History:** Laws 1878, ch. 3, § 1; C.L. 1884, § 2727; C.L. 1897, § 3908; Code 1915, § 4734; C.S. 1929, § 116-703; 1941 Comp., § 74-215; 1953 Comp., § 69-2-15.

### **ANNOTATIONS**

**Compiler's note.** - The 1915 Code compilers substituted "the preceding sections of this chapter" for "An act entitled 'An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto,' approved February 2d, A. D. 1878." The reference is to Laws 1878, ch. 1, presently compiled as 63-1-1 to 63-1-41, 63-2-1 to 63-2-3, 63-2-7, 63-2-11, 63-2-13, 63-3-1, 63-3-2, 63-3-5 to 63-3-8, 63-3-11, 63-3-12, 63-3-20, 63-3-24 and 63-3-34 NMSA 1978.

**Protection under burglary law not a privilege.** - By conferring the "privileges" granted corporations organized under Laws 1878, ch. 1, as railroad corporations organized under the prior general incorporation act, this section did not extend the former railroad burglary section, Laws 1878, ch. 1, ch. [tit.] 8, § 8, to railroad cars of corporations not organized under the Act of 1878, since the protection of a burglary law is not a privilege. *Territory v. Stokes*, 2 N.M. (Gild.) 161 (1881).

### **63-2-14. [Extensions into other states; power to purchase, lease and sell.]**

Any railroad company may construct and extend its line of railroad into or through any other state, territory or foreign country upon such terms and regulations as may be prescribed by the laws of such other state, territory or foreign country, and such railroad company may purchase or lease the railroad constructed or to be constructed, and other property of any railroad company now or hereafter existing under the laws of this, or of any other state, territory, or of the United States or of any foreign country, with all rights, powers and franchises thereto in anywise appertaining or belonging, or may buy the stock and bonds or either of them, of any such company, and any railroad company now or hereafter existing under the laws of this state may, with the consent of the holders of two-thirds of its entire capital stock, given by a vote at a meeting, or in writing without a meeting, sell or lease its railroad, lands, rights, franchises, powers and appurtenances to any railroad corporation organized under the laws of New Mexico, or of any other state, territory or foreign country, subject to the restrictions and limitations imposed by law upon railroad corporations in this state.

**History:** Laws 1897, ch. 18, § 1; C.L. 1897, § 3921; Laws 1909, ch. 35, § 1; Code 1915, § 4736; C.S. 1929, § 116-705; 1941 Comp., § 74-216; 1953 Comp., § 69-2-16.

#### **ANNOTATIONS**

**Compiler's note.** - The 1915 Code compilers deleted the phrase "heretofore or hereafter incorporated or consolidated or existing under the laws of this territory."

### **63-2-15. [Extensions, branches, sidings and switches of foreign companies; eminent domain.]**

Any railroad company organized under the laws of another state or territory, which, by a compliance with the laws of this state relating to foreign railroad companies, has purchased or may purchase a line of railroad constructed by another company within this state, may extend such line of railroad, and project and build branches to the same, and sidetracks and switches connecting therewith, and otherwise improve the same, and for such purpose exercise the right of eminent domain to the same extent and in like manner as may be done by a domestic railroad corporation. And any railroad company organized under the laws of this state shall also have the right to extend its line of railroad, to project and build branches, sidetracks and switches, to improve the same and to exercise the right of eminent domain in acquiring lands, right-of-way and other privileges therefor to the same extent as provided by law for the main line of such railroad.

**History:** Laws 1901, ch. 9, § 1; 1907, ch. 27, § 1; Code 1915, § 4737; C.S. 1929, § 116-706; 1941 Comp., § 74-217; 1953 Comp., § 69-2-17.

#### **ANNOTATIONS**

**Cross-references.** - As to eminent domain, see 42A-1-1 NMSA 1978.

### **63-2-16. [Foreign companies must file declaration of intent to extend roads; time limit on commencement and completion.]**

Any such railroad corporation owning or operating a line of railroad in this state, projecting one or more extensions or branches of such line of railroad in this state, shall file in the office of the state corporation commission, and in the office of the county clerk of each county through or in which the line of any such extension or branch shall be located, a declaration, subscribed by its president or vice president and attested under its corporate seal, of its intention to construct such extension or branch line, stating the places from and to which it is intended to build the same, together with a map or plat showing the surveyed line or route thereof. The filing of such declaration and map or plat shall entitle such railroad corporation to a prior right to construct such extension or branch line along the line or route described therein; provided, such corporation shall commence construction within four years after date of such filing in the office of state corporation commission, and complete the same within six years, and; provided, further, that it shall comply with the laws of this state for acquiring lands for right-of-way. Nothing in this or the preceding section [63-2-15 NMSA 1978] shall be deemed to exclude the jurisdiction of this state over the control of all railroads or parts thereof situate within the boundaries of this state.

**History:** Laws 1901, ch. 9, § 2; 1907, ch. 94, § 1; 1909, ch. 44, § 1; Code 1915, § 4738; C.S. 1929, § 116-707; 1941 Comp., § 74-218; 1953 Comp., § 69-2-18.

### **ANNOTATIONS**

**Compiler's note.** - The 1915 Code compilers substituted "state corporation commission" for "secretary of the territory," "county clerk" for "county recorder" and "office of the state corporation commission" for "secretary's office."

### **63-2-17. [Contracts against public policy declared void.]**

All contracts between railroad companies, or between any parties whatever, restricting, or abridging, or purporting or intending to restrict or abridge the right, privilege, franchise or power of any railroad company or companies to build or operate its, or their, road or roads, or any part thereof within this state, or any part thereof, in any direction or directions, or to any part thereof within this state, or any part thereof, in any direction or directions [sic], or to any extent whatever; or to make any railroad connections, or to cooperate with any corporation or person in any railroad or other business, or to promote the construction or operation of any railroad, or to establish any parallel or competing line or branch, or to establish or promote any competitive business, or to deal with any railroad corporation or other corporation, firm or individual, or to waive any corporate duty, object or franchise, being contrary to public policy, are hereby declared to be null, void and inoperative in this state; and no suit, action or proceeding in law or

equity shall be brought or maintained in any court to enforce any such contract, or to recover damages for any breach or nonperformance thereof.

**History:** Laws 1882, ch. 59, § 1; C.L. 1884, § 2730; C.L. 1897, § 3910; Laws 1901, ch. 15, § 1; 1905, ch. 113, § 1; Code 1915, § 4735; C.S. 1929, § 116-704; 1941 Comp., § 74-219; 1953 Comp., § 69-2-19.

### **63-2-18. [Peace officers; appointment; bond; no authority in labor troubles.]**

The governor of this state is hereby authorized and empowered, upon the application of any railroad company, to appoint, and to commission to serve, during his pleasure, one or more persons designated by such company, to serve at the sole expense of such company, as peace officers with all the powers of regular peace officers, and to give a good and sufficient bond to the state of New Mexico in the penal sum of five thousand dollars (\$5,000.00) for the faithful performance of their duties. The company designating such person or persons shall be responsible civilly for any abuse of his or their authority; provided, that such peace officers so appointed shall not have authority as such to act or perform any service or to be used as peace officers with reference to strikes or labor troubles.

**History:** Laws 1921, ch. 141, § 1; C.S. 1929, § 116-901; 1941 Comp., § 74-220; 1953 Comp., § 69-2-20.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Special railroad policeman as public officer, 84 A.L.R. 315, 156 A.L.R. 1356.

## **ARTICLE 3 OPERATION AND REGULATIONS GENERALLY**

### **63-3-1. [Schedules; accommodations; persons who may be refused transportation.]**

Every railroad corporation shall start and run its cars for the transportation of persons and property at such regular times as it shall fix by public notice, and shall furnish sufficient accommodations for all such persons and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and the junction of other railroads and stopping places established for taking and leaving persons and property, and shall transport between such places all such persons and property on the payment of its lawful charges therefor: provided, such corporation may decline to receive any person afflicted with any contagious disease, or otherwise unfit to be admitted into its cars.



**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 4; C.L. 1884, § 2671; C.L. 1897, § 3862; Code 1915, § 4708; C.S. 1929, § 116-309; 1941 Comp., § 74-301; 1953 Comp., § 69-3-1.

## ANNOTATIONS

**Cross-references.** - For ticket fraudulently obtained at discount, fourth degree felony, see 30-16-13 NMSA 1978.

For registration for transportation of alcoholic liquors, see 60-6A-13 NMSA 1978.

For unlawful transportation of alcoholic liquors, see 60-7A-3 NMSA 1978.

As to cotton shipping regulations, see 76-14-3 to 76-14-7 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Carriers §§ 235 to 250; 14 Am. Jur. 2d Carriers §§ 859 to 870; 65 Am. Jur. 2d Railroads § 345.

Duty of carrier to deliver goods on siding or private track of consignee, 1 A.L.R. 1425.

Rights as passenger of child traveling free of charge, 1 A.L.R. 1452.

Liability of railroad for delivery of goods to one whose authority to act for consignee has ceased, 2 A.L.R. 279.

Evidence of right to free transportation on public conveyance, 3 A.L.R. 387.

Liability for injury to passenger by articles belonging to carrier on the floor or in the aisles, 3 A.L.R. 640, 12 A.L.R. 1366.

Duty to notify consignor when consignee, or person to be notified, refuses to accept goods, 4 A.L.R. 1285.

Duty of carrier as to suitability, condition or equipment of cars furnished by shipper, 5 A.L.R. 108, 72 A.L.R. 885.

Right of passenger who has been ejected to reenter car or train, 5 A.L.R. 352.

Carrier's liability for misinformation as to running and destination of train, 8 A.L.R. 1183.

Carrier's duty to passenger while train is going through tunnel, 9 A.L.R. 96.

Casual or temporary condition of station or its approaches causing injury, 10 A.L.R. 259.

Shortage of cars as affecting liability of carrier for failure to furnish cars, 10 A.L.R. 342.

Liability of carrier for assault by or other misconduct of news agent, 10 A.L.R. 723.

Liability for injury to passengers by sparks or cinders, 11 A.L.R. 1076.

Recovery by passenger for physical consequences of freight resulting in physical injury, 11 A.L.R. 1119, 40 A.L.R. 983, 76 A.L.R. 681, 98 A.L.R. 402.

Insanity of passenger as ground for ejection, 12 A.L.R. 242.

Liability of carrier, for injury to one whom employee, in violation of instructions, permits to ride on train, 14 A.L.R. 151, 62 A.L.R. 1167, 74 A.L.R. 163.

Liability of carrier when passenger misled by inaccuracy of timepiece maintained by carrier, 14 A.L.R. 701.

Status of passenger in ordinary coach who enters Pullman coach for temporary purpose, 18 A.L.R. 71.

Acts of employee, in procuring warrant or aiding prosecution, as within scope of employment so as to render carrier liable for malicious prosecution, 18 A.L.R. 413.

Duty of railroad to operate side and switch tracks and spurs, 18 A.L.R. 722.

Liability to passenger due to obstruction of aisle or platform by property of another passenger, 19 A.L.R. 1372.

Duty and liability of carrier as to "step box" or other device to facilitate entering and leaving car, 20 A.L.R. 914.

Right to damages because of abandonment of depots and stations, 23 A.L.R. 555.

Delivery without collecting charge as stipulated or directed as affecting liability, 24 A.L.R. 1163, 78 A.L.R. 926, 129 A.L.R. 213.

Liability for injury to passenger by car door, 25 A.L.R. 1061, 41 A.L.R. 1089.

Liability of carrier for delay, or damages incident to delay, in transportation, due to strike, 28 A.L.R. 503, 45 A.L.R. 919.

Duty of carrier to guard young children against danger of falling from car, 28 A.L.R. 1035.

Independent contractor's acts or omissions causing injury to passenger, 29 A.L.R. 783.

Liability for injury to passenger by car window, 29 A.L.R. 1262, 45 A.L.R. 1541.

Duty of carrier to render special service to protect goods en route when not provided for by published tariffs, 32 A.L.R. 111.

Duty of carrier to receive freight on or along a private switch, spur or siding, 32 A.L.R. 193.

Duty of carrier as to heating of cars, 33 A.L.R. 168.

Liability of carrier to passenger for conditions on roadway or at stations of another carrier over whose line it detours, 33 A.L.R. 820.

Duty and liability to passenger temporarily leaving train, 35 A.L.R. 757, 61 A.L.R. 403.

Attractive-nuisance doctrine as applied to depots and stations, 36 A.L.R. 241, 39 A.L.R. 486, 45 A.L.R. 982, 53 A.L.R. 1344, 60 A.L.R. 1444.

Liability for injury to passenger while passing through turnstile, door or gate, 40 A.L.R. 828.

Liability for personal injury to passenger in Pullman car, 41 A.L.R. 1397.

Duty of railroad to keep trespassing children from getting on cars, 43 A.L.R. 38.

Delay in transportation or delivery as affecting carrier's liability for loss of, or damage to, goods by act of God, 46 A.L.R. 302.

Liability for injury to passenger due to construction of floor of car on different levels, 48 A.L.R. 1424.

Liability to passenger for failure to keep trains on schedule, 52 A.L.R. 1332.

Liability of carrier for delivery by carrier to impostor, 54 A.L.R. 1330.

Duty and liability of carrier as to assisting passenger to board or alight from car or train, 55 A.L.R. 389, 59 A.L.R. 940.

Liability of carrier or other bailee because of misinformation as to time or place of arrival or storage of goods, 56 A.L.R. 1382.

Liability of proprietor or operator of private railroad for injury to one other than employee riding thereon, 57 A.L.R. 818.

Carrier's liability for injury to passenger by heating apparatus, 58 A.L.R. 692.

Duty of carrier as to notifying passenger of approach to or arrival at destination, 58 A.L.R. 1064.

Liability of one not named as consignor or consignee for freight on goods delivered to and accepted by him, 61 A.L.R. 422.

Right of shipper or consignee to divert shipment, 61 A.L.R. 1309.

Jurisdiction of state court of action for failure to furnish cars for interstate shipment, 64 A.L.R. 351.

Custom as standard of care, 68 A.L.R. 1401.

Improper packing or preparation of goods for shipping as affecting carrier's liability, 81 A.L.R. 811.

Duty and liability of carrier toward one accompanying departing passenger or present to meet incoming one, with respect to conditions at or about station, 92 A.L.R. 614.

Remedy as against carrier, or consignor or consignee, who wrongfully refuses to accept goods and pay freight because of damages for which carrier is responsible, 96 A.L.R. 774.

Presumption as to carrier's responsibility for perishable goods received in good condition and delivered to consignee in bad condition, 106 A.L.R. 1164.

Changed conditions as affecting duty, or enforcement of duty, as to maintenance of stations imposed upon railroad by charter or statute, 111 A.L.R. 57.

What constitutes delivery of freight to carrier, 113 A.L.R. 1459.

When relation of carrier and passenger commences as between railway company and one intending to take train or car not at a regular stopping place, 116 A.L.R. 756.

Liability of carrier for injury to passenger as result of ice, snow or rain on exposed or interior portions of car, 117 A.L.R. 522.

Duty of carrier to discover abnormal condition of passenger, 124 A.L.R. 1428.

Carrier's liability for injury to passenger due to rushing or crowding of passengers, 155 A.L.R. 634.

Contributory negligence in entering dark place on familiar railroad car, 163 A.L.R. 613.

Carrier's liability to person in street or highway for purpose of boarding its vehicle, 7 A.L.R.2d 549.

Defense to cause of action based upon violation of statute imposing duty on railroad, 10 A.L.R.2d 853.

Liability for injury to customer or patron from defect in or fall of seat, 21 A.L.R.2d 420.

Carrier's liability for conversion by delivery in violation of provision in bill of lading prohibiting or limiting consignee's right to inspect goods shipped, 25 A.L.R.2d 770.

Contributory negligence of physically handicapped or intoxicated person in boarding or alighting from standing train or car, 30 A.L.R.2d 334.

Duty of railroad to children walking longitudinally along railroad tracks or right-of-way, 31 A.L.R.2d 789.

Attempt to board moving car or train as contributory negligence or assumption of risk, 31 A.L.R.2d 931.

Deviation by carrier in transportation of property, 33 A.L.R.2d 145.

Duty of railroad to passengers to keep steps or vestibule of car free from debris or foreign substances other than snow or ice, 34 A.L.R.2d 360.

Carrier's liability to passenger injured by landslide or the like, 34 A.L.R.2d 831.

Liability of carrier to one injured by article thrown from conveyance by passenger, 35 A.L.R.2d 788.

Carrier-passenger relationship as between railroad and express company employees, 36 A.L.R.2d 1412.

Carrier's liability for loss through weight deficiency of goods shipped, 39 A.L.R.2d 325.

Railroad's liability for injury or damage from collision of road vehicle with train or car at place other than crossing, 44 A.L.R.2d 680.

Liability of carrier by land for damage to goods shipped resulting from improper loading, 44 A.L.R.2d 993.

Liability of landowner for injury or death of adult falling down unhoused well, cistern, mine shaft or the like, 46 A.L.R.2d 1069.

Carrier's liability to passenger injured while using washroom or lavatory facilities on conveyance, 50 A.L.R.2d 1071.

Carrier's liability as warehouseman for injury to or destruction of stored goods from floods, heavy rains or the like, 60 A.L.R.2d 1097.

Sleeping-car company's liability for ejection of passenger by employee, 60 A.L.R.2d 1115.

Contributory negligence of adult struck by train while walking or standing beside railroad track, 63 A.L.R.2d 1226.

Shipper's liability to carrier for damage to vehicle or to other cargo resulting from defects in shipper's containers, 65 A.L.R.2d 770.

Liability of carrier to passenger injured through fall of baggage or other object from overhead repository, 68 A.L.R.2d 667.

Liability of carrier by land for damage to goods resulting from improper packing by carrier, 7 A.L.R.3d 723.

Contributory negligence of child injured while climbing over or through railroad train blocking crossing, 11 A.L.R.3d 1168.

Validity and construction of stipulation exempting carrier from liability for loss or damage to property at nonagency station, 16 A.L.R.3d 1111.

Liability in connection with fire or explosion incident to bulk storage, transportation, delivery, loading or unloading of petroleum products, 32 A.L.R.3d 1169.

Liability for injury to or death of passenger from accident due to physical condition of carrier's employee, 53 A.L.R.3d 669.

Width or design of lateral space between loading platform and car entrance as affecting carrier's liability to passenger for injuries incurred from falling into space, 28 A.L.R.4th 748.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carrier's vehicle or premises, 34 A.L.R.4th 1054.

Liability of land carrier to passenger who becomes victim of another passenger's assault, 43 A.L.R.4th 189.

Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation, 78 A.L.R.4th 1127.

13 C.J.S. Carriers §§ 386, 387, 493; 74 C.J.S. Railroads § 419.

### **63-3-2. [Damages in case of refusal of transportation.]**

In case any railroad corporation shall refuse to transport persons or property as provided in the preceding section [63-3-1 NMSA 1978], or to leave the same at the place of destination, it shall pay to the party aggrieved all damages he or she shall sustain thereby.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 5; C.L. 1884, § 2672; C.L. 1897, § 3863; Code 1915, § 4709; C.S. 1929, § 116-310; 1941 Comp., § 74-302; 1953 Comp., § 69-3-2.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Carriers §§ 251 to 254; 14 Am. Jur. 2d Carriers §§ 862, 863.

Liability of carrier for ejection of passenger who boarded train mistakenly, due to misinformation as to its destination, 8 A.L.R. 1183.

Right to recover for mental pain and anguish resulting from being carried by station, apart from other damages, 23 A.L.R. 389, 44 A.L.R. 428, 56 A.L.R. 657.

Carrier's liability to passenger for consequences of ejection or threatened ejection by one employee due to fault of another employee, 36 A.L.R. 1018.

Liability of carrier responsible for passenger leaving train at station other than his destination, 118 A.L.R. 1327.

13 C.J.S. Carriers §§ 386, 494; 74 C.J.S. Railroads § 447.

### **63-3-3. [Receiving livestock for shipment required; exceptions.]**

It is unlawful for any railroad company, receiver, trustee, lessee, agent or other person, company or association operating any line of railroad in this state to fail or refuse to receive, to fail to transport within twelve hours after being offered for transportation by consignors thereof within this state or to discriminate in any manner in the transportation of livestock from a regular or appointed loading yard or place; provided, however, that upon application to the state corporation commission, any such railroad, or person, company or association operating the same, may in special cases, to prevent manifest injustice and upon good cause shown, be authorized by the commission to forego receiving and transporting livestock from particular areas or localities.

**History:** 1941 Comp., § 74-341, enacted by Laws 1947, ch. 49, § 1; 1953 Comp., § 69-3-3.

## ANNOTATIONS

**Cross-references.** - For fine for transportation of sheep without certificate, see 77-8-8 NMSA 1978.

For livestock to be inspected before receiving for shipment out of state, see 77-9-37 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Carriers §§ 235, 346, 367.

Duty of carrier to shipper as to condition of stock pens or yards provided livestock, 15 A.L.R. 200.

Carrier's liability for furnishing unwholesome water or food to livestock, 18 A.L.R. 1116.

What constitutes delivery of livestock to carrier for transportation, 22 A.L.R. 996, 113 A.L.R. 1459.

Carrier's employees as agents of shipper or consignee in unloading or caring for livestock at destination, 62 A.L.R. 525.

13 C.J.S. Carriers §§ 386, 387.

### **63-3-4. [Penalty for violation; damages.]**

Any railroad company, receiver, trustee, lessee, agent or other person, company or association operating any line of railroad in this state adjudged guilty of causing or permitting unreasonable delay in receiving or transporting livestock shall for each offense pay to the state of New Mexico a penalty of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00) and shall be liable to the persons aggrieved for all damages to them by reason thereof, with costs of suit.

**History:** 1941 Comp., § 74-342, enacted by Laws 1947, ch. 49, § 2; 1953 Comp., § 69-3-4.

### **ANNOTATIONS**

**Severability clauses.** - Laws 1947, ch. 49, § 3, 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.** - 13 Am. Jur. 2d Carriers § 378.

### **63-3-5. [Tickets; necessity for furnishing; stations to be shown thereon.]**

Every railroad corporation must provide, and on being tendered the fare therefor, furnish to every person desiring a passage on its cars, a ticket which shall entitle the purchaser to a continuous ride and to the accommodations provided on its cars, from the station where the same shall be purchased to any other station on the line of its road which the purchaser may designate. The station of departure and the station of destination shall be designated on the face of the ticket.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 14; C.L. 1884, § 2678; C.L. 1897, § 3869; Code 1915, § 4715; C.S. 1929, § 116-316; 1941 Comp., § 74-303; 1953 Comp., § 69-3-5.

### **ANNOTATIONS**



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14 Am. Jur. 2d Carriers §§ 799 to 802.

13 C.J.S. Carriers § 499.

### **63-3-6. [Injury to passenger; contributory negligence; insufficient room.]**

If a passenger be injured while on the platform of any car, or while in any mail, express, baggage or freight car, or on the locomotive, or while his or her head, limbs or body is projected outside the window or door of any passenger car, in violation of the printed regulations of said corporation posted up at the time, in a conspicuous place inside of the passenger cars then in the train, or in violation of any verbal instructions given by any officer of the train, such passenger shall be deemed guilty of contributory negligence, and such corporation shall not be liable for such injury: provided, that there was, at the time, inside of its passenger cars, room sufficient for the accommodation of such passenger.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 7; C.L. 1884, § 2674; C.L. 1897, § 3865; Code 1915, § 4711; C.S. 1929, § 116-312; 1941 Comp., § 74-304; 1953 Comp., § 69-3-6.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 460 to 476.

Liability for injury to passenger by car door, 25 A.L.R. 1061, 41 A.L.R. 1089.

Duty of carrier to guard young children against danger of falling from car, 28 A.L.R. 1035.

Liability for injury to passenger by car window, 29 A.L.R. 1262, 45 A.L.R. 1541.

Carrier's liability for injury to passenger due to rushing or crowding of passengers, 155 A.L.R. 634.

Contributory negligence of physically handicapped or intoxicated person in boarding or alighting from standing train or car, 30 A.L.R.2d 334.

Carrier's duty and liability to its passenger injured on platform or the like of station or terminal owned by another company, 41 A.L.R.2d 1286.

Width or design of lateral space between passenger loading platform and car entrance as affecting carrier's liability to passenger for injuries incurred from falling into space, 28 A.L.R.4th 748.

75 C.J.S. Railroads §§ 943, 944.

### **63-3-7. [Baggage checks; refusal to furnish; nondelivery of baggage; damages.]**

A check shall be affixed to every package or parcel of baggage when taken for transportation by such corporation, and a duplicate thereof shall be given to the passenger delivering the same for transportation, and, if such check be refused on demand, such corporation shall pay to such passenger the sum of twenty dollars [(\$20.00)], to be recovered by action in any court of competent jurisdiction and in addition to the foregoing, no fare or toll shall be collected from such passenger; and if such passenger shall have paid his or her fare, he or she shall be entitled, upon demand, to a return thereof. Upon the production of such check at his or her place of destination, such passenger shall be entitled to receive his or her baggage, and if the same be not delivered within a reasonable time, he or she may be a witness in any action brought on account of such nondelivery, to prove the contents and value thereof: provided, that all actions to recover such baggage, or the value thereof, shall be barred at the expiration of three months after the same shall have accrued.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 2; C.L. 1884, § 2669; C.L. 1897, § 3860; Code 1915, § 4706; C.S. 1929, § 116-307; 1941 Comp., § 74-305; 1953 Comp., § 69-3-7.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14 Am. Jur. 2d Carriers §§ 1222, 1234.

Extra or excess baggage, 2 A.L.R. 109.

Carrier's liability in respect to baggage checked in parcel room, 7 A.L.R. 1234, 27 A.L.R. 157, 37 A.L.R. 762.

Regulation by public service commission as to checking and handling of baggage, 21 A.L.R. 323.

Liability of carrier for baggage not accompanied by passenger, 23 A.L.R. 1446.

Responsibility of carrier for acts or omission of red caps or porters other than train employees, 59 A.L.R. 126.

Discrimination by carrier between passengers as regards checking and handling of baggage, 59 A.L.R. 329.

Tort liability of master for theft by servant, 15 A.L.R.2d 829, 39 A.L.R.4th 543.

Railroad carrier's liability for loss of baggage or effects accompanying passenger, 32 A.L.R.2d 630.

Liability of carrier for loss of passenger's baggage or packages, 68 A.L.R.2d 1350.

13 C.J.S. Carriers § 597.

### **63-3-8. [Unclaimed baggage; sale after three months' period; proceeds of sale.]**

Every railroad corporation shall safely and securely keep, as warehouseman, all unclaimed baggage for the space of three months, at the expiration of which time it may sell the same, if not previously called for, at public auction, after ten days' public notice by publication in some newspaper of general circulation; or if there be no such paper in the vicinity, then by posting written or printed notices in three conspicuous places in the neighborhood in which such sale is to be made. For the purpose of making such sale, it shall be lawful to open each trunk, package or parcel, and make known the contents thereof. A true account of the sale shall be kept, showing the price at which each parcel was sold, and the number thereof, which shall be the same as the number stamped upon the check thereto attached; and if there be any name, initial letters or other marks upon such parcel, the same shall also be noted in said account. The proceeds of such sale shall be paid, less expenses of the sale, to the owner, upon demand and proof of ownership, at any time within sixty days after the sale, after which date all right of action therefor shall be barred.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 3; C.L. 1884, § 2670; C.L. 1897, § 3861; Code 1915, § 4707; C.S. 1929, § 116-308; 1941 Comp., § 74-306; 1953 Comp., § 69-3-8.

#### **ANNOTATIONS**

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

### **63-3-9. [Passenger fares; maximum rates; railroads chartered by congress.]**

No railroad doing business in this state shall charge more than six cents [(\$.06)] per mile for the transportation of any passenger with ordinary baggage, not exceeding one hundred pounds, and not more than three cents [(\$.03)] per mile for children between the ages of six and twelve years; and when children under the age of six years are traveling with their parents, guardian or person in charge, the compensation of six cents [(\$.06)] per mile paid by the parent, guardian or person in charge shall be taken as full compensation for said parent, guardian or person in charge and children under the age of six years: provided, that this section is not intended to apply to any railroad company chartered by the congress of the United States whose charter authorizes the fares, tolls and charges for the transportation of persons and property to be regulated by the directors or other officer of such company.

**History:** Laws 1882, ch. 60, § 1; C.L. 1884, § 2721; C.L. 1897, § 3902; Code 1915, § 4741; C.S. 1929, § 116-710; 1941 Comp., § 74-310; 1953 Comp., § 69-3-12.

## ANNOTATIONS

**Cross-references.** - As to rate-fixing power of state corporation commission, see N.M. Const., art. XI, § 7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14 Am. Jur. 2d Carriers § 783.

Excess fare for passenger not purchasing ticket, 48 A.L.R. 330.

Liability of carrier for overcharging passenger, 56 A.L.R. 771.

13 C.J.S. Carriers §§ 495 to 498.

### **63-3-10. [Penalty for excessive fares; personal damages.]**

If any railroad company shall demand or receive higher rates for such transportation than are established by the preceding section [63-3-9 NMSA 1978], it shall be deemed to have misused its powers, and such railroad company shall forfeit and pay to every person from whom such higher rates may have been demanded or received by it or by its agent or agents, the sum of five hundred dollars [(\$500)], which amount shall be recovered by the person from whom the said higher rates of transportation were demanded or received by an action of debt: provided, that the provisions of this section shall not in any manner affect the right of action or remedy for any claim for personal damages against such railroad companies.

**History:** Laws 1882, ch. 60, § 2; C.L. 1884, § 2722; C.L. 1897, § 3903; Code 1915, § 4742; C.S. 1929, § 116-711; 1941 Comp., § 74-311; 1953 Comp., § 69-3-13.

### **63-3-11. [Rates not to be reduced before surplus earnings exceed ten percent of cost.]**

The maximum charges for fares and freightages, as fixed by this chapter, shall not be reduced so as to affect any corporation formed under the railroad laws of New Mexico until the surplus earnings of its roads and telegraphs shall exceed ten percent upon the cost of the construction and equipment of its roads and telegraphs, including the cost of right-of-way, depots, shops, water rights and stations.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 3; C.L. 1884, § 2691; C.L. 1897, § 3880; Code 1915, § 4739; C.S. 1929, § 116-708; 1941 Comp., § 74-312; 1953 Comp., § 69-3-14.

## ANNOTATIONS

**Cross-references.** - As to rate-fixing power of state corporation commission, see N.M. Const., art. XI, § 7.

**Compiler's note.** - The 1915 Code compilers substituted "this chapter" for "this act." The original words "as fixed by this act" presumably referred specifically to Laws 1878, ch. 1, ch. [tit.] 6, § 2 (69-2-2, 1953 Comp.), which originally provided for a maximum passenger fare of \$.10 per mile and a maximum freight rate of \$.15 per mile for a ton or 40 cubic feet.

The 1915 Code compilers deleted the first portion of this section which read: "To aid and encourage the construction of railroads in this territory, all the property of every kind and description of every corporation formed under this act shall be exempt from taxation of every kind and description until the expiration of six years from and after the completion of its road or roads."

**Meaning of "this chapter".** - See same catchline in notes to 63-1-8 NMSA 1978.

**Constitutional rate-making power of corporation commission to control.** - The provisions of this section and Subdivision Eleventh of 69-2-2, 1953 Comp. (now 63-2-2K NMSA 1978) yield to constitutional rate-making power of state corporation commission. *San Juan Coal & Coke Co. v. Santa Fe, S.J. & N.R.R.*, 35 N.M. 512, 2 P.2d 305 (1931).

**Rate-making power of corporation commission is plenary,** except as restricted by those principles of constitutional law which would have limited its exercise if it had been entrusted to the legislature. *San Juan Coal & Coke Co. v. Santa Fe, S.J. & N.R.R.*, 35 N.M. 512, 2 P.2d 305 (1931).

### **63-3-12. [Unpaid fares and charges; lien on baggage and freight; sale; perishable freight.]**

Every railroad corporation may lawfully demand the payment of fares and freightages in advance; and if they be not paid in advance, such corporation shall have a lien upon the luggage of the passenger for his fare, and upon the freight for freightage due thereon, and may retain possession of such luggage and freight until such fare or freightage shall have been paid. If such fare or freightage be not paid within ten days after the same is due, such luggage [luggage] or freight may be sold by such corporation, in the same manner and with the same consequences as are provided for the sale of unclaimed baggage, in Section 63-3-8 NMSA 1978; provided, that if such freight be perishable, it may be sold forthwith at public auction without notice to the owner.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 18; C.L. 1884, § 2682; C.L. 1897, § 3873; Code 1915, § 4719; C.S. 1929, § 116-320; 1941 Comp., § 74-313; 1953 Comp., § 69-3-15.

## **ANNOTATIONS**

**Cross-references.** - As to carriers' liens, see 48-3-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Carriers §§ 497 to 506; 14 Am. Jur. 2d Carriers § 782.

Right of carrier to lien on goods shipped without owner's authority, 39 A.L.R. 168.

Dispute over payment of fare as justifying arrest of passenger, 39 A.L.R. 862.

Reconsignment of shipment by consignee as affecting his liability for freight charges, 105 A.L.R. 1216.

13 C.J.S. Carriers §§ 496, 610.

### **63-3-13. [Charges to be uniform; special concessions prohibited.]**

No railroad company shall charge any person, company or corporation for the transportation of any property, a greater sum than it shall at the same time charge and collect from any other person, company or corporation for a like service from the same place, and upon like conditions, and all concessions of rates, drawbacks and contracts for special rates founded upon the demands of commerce and transportation shall be open to all persons, companies and corporations alike.

**History:** Laws 1882, ch. 59, § 2; C.L. 1884, § 2731; C.L. 1897, § 3911; Code 1915, § 4743; C.S. 1929, § 116-712; 1941 Comp., § 74-314; 1953 Comp., § 69-3-16.

#### **ANNOTATIONS**

**A carrier may waive a time limitation** on shipper's right to sue for damages, contained in the bill of lading. *Mersfelder v. Atchison, T. & S.F. Ry.*, 24 N.M. 518, 174 P. 989 (1918).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Carriers §§ 176, 202 to 206; 14 Am. Jur. 2d Carriers § 784.

Right of railroad to discriminate in respect of switching charges, 2 A.L.R. 585.

Franchise provisions for free transportation as within constitutional or statutory provisions prohibiting discrimination, 10 A.L.R. 504, 15 A.L.R. 1200.

Conspiracy to violate interstate commerce act by giving and receiving rebates, 11 A.L.R. 199, 104 A.L.R. 1430.

Who may maintain action to recover back excessive freight charge, 13 A.L.R. 289.

Discrimination by carrier between shippers as to use of right-of-way, 44 A.L.R. 1526.

Right to maintain action against carrier on ground of excessiveness of rates filed and published by carrier pursuant to law, 97 A.L.R. 420.

Carrier's understatement of charges where discrimination is forbidden, 88 A.L.R.2d 1375.

Interstate Commerce Commission's exercise of authority under § 223 of Staggers Rail Act of 1980 (49 USCS § 11103(c)) to require rail carriers to enter into reciprocal switching agreement, 105 A.L.R. Fed. 637.

13 C.J.S. Carriers §§ 367, 368, 370.

### **63-3-14. [Freight and passengers from other railroads; fares and charges.]**

Every railroad corporation shall receive all freights and passengers offered, by coming to or going from the cars or road of any other railroad corporation, and shall transport the same on the same terms, freights, rates, fares and charges per mile, as it shall establish on its own line for its own business.

**History:** Laws 1882, ch. 59, § 3; C.L. 1884, § 2732; C.L. 1897, § 3912; Code 1915, § 4740; C.S. 1929, § 116-709; 1941 Comp., § 74-315; 1953 Comp., § 69-3-17.

#### **ANNOTATIONS**

**Cross-references.** - For interchange of freight and passengers, see N.M. Const., art. XI, § 15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 14 Am. Jur. 2d Carriers § 670; 65 Am. Jur. 2d Railroads §§ 257, 258.

Duty and liability of carrier with respect to allowing passenger sufficient time for change of vehicles, 40 A.L.R.2d 809.

Interstate Commerce Commission's exercise of authority under § 223 of Staggers Rail Act of 1980 (49 USCS § 11103(c)) to require rail carriers to enter into reciprocal switching agreement, 105 A.L.R. Fed. 637.

### **63-3-15. [Track connections with other railroads at crossings.]**

When the track of any railroad company crosses, or shall cross the track of the same gauge of any other railroad company, either company shall have the right to connect the tracks of the two railroads so crossing so as to admit of the passage of cars from the one road to the other with facility and avoid the necessity of changing cars or transshipping.

**History:** Laws 1882, ch. 59, § 4; C.L. 1884, § 2733; C.L. 1897, § 3913; Code 1915, § 4748; C.S. 1929, § 116-717; 1941 Comp., § 74-316; 1953 Comp., § 69-3-18.

## ANNOTATIONS

**Cross-references.** - For intersection, connection and crossing of railroads under terms, orders or permission of state corporation commission, see N.M. Const., art. XI, § 17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 259 to 264.

Public service commission's power with respect to crossing of steam road by street railway, 5 A.L.R. 56, 39 A.L.R. 1517.

Power of state to require interstate carrier to make track connections with other roads, 22 A.L.R. 1078.

Construction or maintenance of crossing intersecting railroads, 40 A.L.R. 712.

74 C.J.S. Railroads §§ 133 to 139.

### **63-3-16. [Track connections with nearby railroads; expense of connection.]**

Whenever two or more roads having the same gauge shall establish depots within three miles of each other, said railroads shall connect their tracks so as to admit of the passage of cars from the one railroad to the other with facility, and avoid the necessity of changing cars or trans-shipping, and shall be required to make connection at each of such depots without any extra charge, the expense of said connection to be borne by the railroad company last constructing their road.

**History:** Laws 1882, ch. 59, § 5; C.L. 1884, § 2734; C.L. 1897, § 3914; Code 1915; § 4749; C.S. 1929, § 116-718; 1941 Comp., § 74-317; 1953 Comp., § 69-3-19.

## ANNOTATIONS

**Cross-references.** - For connection of railroads, see N.M. Const., art. XI, § 17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 258.

Power of state to require interstate carrier to make track connections with other roads, 22 A.L.R. 1078.

### **63-3-17. [Transportation of freight cars from other roads; requirements.]**

When the tracks of any two such railroad companies connect, or shall connect, as aforesaid, it shall be the duty of either company, when required, to transport over its road to their destination on its road, any freights offered in the cars in which the same



may be so offered at its local rates per mile, as set forth in the said company's freight tariff or established by its practice, for the distance most nearly corresponding, and to return the cars with or without freight, as the case may be, without unnecessary delay: provided, that nothing in this section shall be so construed as to require any railroad company to move upon its road any cars which do not conform in breadth of gauge, and in other substantial respects to its own cars, nor any that are not substantially built and in good repair.

**History:** Laws 1882, ch. 59, § 6; C.L. 1884, § 2735; C.L. 1897, § 3915; Code 1915, § 4750; C.S. 1929, § 116-719; 1941 Comp., § 74-318; 1953 Comp., § 69-3-20.

### ANNOTATIONS

**Cross-references.** - As to interchange of freight cars, see N.M. Const., art. XI, § 15.

### **63-3-18. [Lines built to towns within three miles of main line; depots; freight and passenger accommodations.]**

Whenever any railroad company shall construct its line to within three miles of any county seat or an established town containing two thousand or more inhabitants, such railroad company or corporation shall be compelled to build its main line or a branch thereof to within one-fourth of a mile of the known limits of such town or county seat, and shall construct at such town or county seat the usual platform and depot for the accommodation of freight and passengers; and when a branch line shall be constructed as provided in this section, it shall run trains thereon making close connections with trains on the main line.

**History:** Laws 1882, ch. 59, § 7; C.L. 1884, § 2736; C.L. 1897, § 3916; Code 1915, § 4751; C.S. 1929, § 116-720; 1941 Comp., § 74-319; 1953 Comp., § 69-3-21.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Power of public service commission to require railroad or street railway to extend its line or build new line to new territory, 2 A.L.R. 983, 30 A.L.R. 73.

Period covered by covenant for location and maintenance of depot, 7 A.L.R. 818.

Power of public service commission in respect to alteration or extension of passenger service, 70 A.L.R. 841.

### **63-3-19. [Failure to connect with other lines and nearby towns; treble damages; specific penalty; actions to recover.]**

Each and every violation of the four preceding sections [63-3-15 to 63-3-18 NMSA 1978] by any corporation operating or transacting business in this state, whether incorporated under the laws thereof or under the laws of any other state, or nation, shall render the corporation so offending liable to the party or parties aggrieved in treble damages, which shall be finally computed as follows, that is to say: the jury, or in equity cases the court, shall in the first instance determine in said sections the amount of compensatory and exemplary damages, according to the proofs, and thereafter in the entry and docketing of the judgment or decree the clerk of the proper court shall insert as the damages recovered treble the amount so determined by the jury or court, and each and all of the provisions contained in said section shall also be enforceable specially in equity by the state or by any party or parties aggrieved: and provided, further, that for each and every violation of the said foregoing provisions, or of any thereof, the corporation so offending shall be also liable to a penalty of five hundred dollars [(\$500)], recoverable in the name of the state in an action of debt to be prosecuted by the attorney general or the district attorney of the district, or on their refusal to act, by an attorney, on relation of any person aggrieved in such case, appointed by any judge of the supreme court.

**History:** Laws 1882, ch. 59, § 9; C.L. 1884, § 2738; C.L. 1897, § 3918; Code 1915, § 4752; C.S. 1929, § 116-721; 1941 Comp., § 74-320; 1953 Comp., § 69-3-22.

## ANNOTATIONS

**Compiler's note.** - The 1915 Code compilers substituted "four preceding sections" for "foregoing provisions of this act" and deleted from end: "and one-half of the penalty recovered in such action shall be paid to the informer under an order of the court having jurisdiction of the action, and the other half thereof shall be paid into the territorial treasury."

### **63-3-20. [Badges and uniforms of employes.]**

Every conductor, baggage master, engineer, brakeman or other employe of any railroad corporation, employed on any passenger train, or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place upon the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor without such badge shall be authorized to demand or to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office or station; and no other officer or employe, without such badge, shall have any authority to meddle or interfere with any passenger or property.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 12; C.L. 1884, § 2776; C.L. 1897, § 3867; Code 1915, § 4713; C.S. 1929, § 116-314; 1941 Comp., § 74-321; 1953 Comp., § 69-3-23.

### **63-3-21. [Hours for employes limited; exceptions.]**

It shall be unlawful for any railway company within the state of New Mexico or any of its officers or agents to require or permit any employe engaged in or connected with the movement of any rolling stock, engine or train, to remain on duty for a longer period than sixteen consecutive hours and whenever any such employe of such railway company shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employe who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty; provided, however, that the provisions of this and the succeeding sections shall not apply in cases of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the railway company or its officer or agent in charge of such employe at the time such employe left a terminal point and which could not have been foreseen: provided further, that the provisions of said sections shall not apply to the time necessary for train crews to take passenger trains and freight trains loaded with livestock or perishable freight to the next nearest division point, nor shall it apply to the time necessary for trainmen to reach a resting place when an accident, wreck, washout, snow blockade or other unavoidable cause has delayed their train: provided further, that the provisions of the said sections shall not apply to employes of sleeping car companies nor to crews of wrecking or relief trains.

**History:** Laws 1912, ch. 62, § 1; Code 1915, § 4755; C.S. 1929, § 116-724; 1941 Comp., § 74-322; 1953 Comp., § 69-3-24.

## ANNOTATIONS

**Meaning of "succeeding sections".** - The term "succeeding sections" refers to Laws 1912, ch. 62, § 2, compiled as 63-3-22 NMSA 1978.

### **63-3-22. [Penalty for requiring or permitting overtime.]**

That such railway company or any superintendent, train master, train dispatcher, yard master or other official or agent of any railway company in the state of New Mexico requiring or permitting any such employe to go, be or remain on duty in violation of the preceding section [63-3-21 NMSA 1978], shall be liable to a penalty of not to exceed five hundred dollars [(\$500)] for each and every such violation to be recovered in a suit or suits to be brought by the district attorney in the district court of the district where such violation was committed: it shall be the duty of the district attorney to bring such suits upon satisfactory information being lodged with him and when so requested to withhold the name of the person furnishing such information; but no such suit shall be brought after the expiration of one year from the date of such violation.

It shall be the duty of the state corporation commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge.

In all prosecution [prosecutions] under this and the preceding section [63-3-21 NMSA 1978] the railway company shall be deemed to have had knowledge of all acts of all its officers or agents.

In case of the failure of any district attorney to bring such suit within a reasonable time after information shall have been lodged with him, by the state corporation commission or any other person, of any violation of the provisions of said sections, it shall be the duty of the attorney general upon being informed of such fact to cause such prosecution to be commenced.

**History:** Laws 1912, ch. 62, § 2; Code 1915, § 4756; C.S. 1929, § 116-725; 1941 Comp., § 74-323; 1953 Comp., § 69-3-25.

### **63-3-23. [Injury to employees from defective equipment; report of defects; contributory negligence.]**

It shall be unlawful for any railroad corporation knowingly and willfully to use or operate any car or locomotive that is defective, or any car or locomotive upon which the machinery or attachments thereto belonging are in any manner defective, or shops or machinery and attachments thereof which are in any manner defective, which defects might have been previously ascertained by ordinary care and diligence by said corporation.

If the employe of any such corporation shall receive any injury by reason of such defect in any car or locomotive or machinery or attachments thereto belonging, or shops or machinery and attachments thereof, owned and operated, or being run and operated by such corporation, through no fault of his own, such corporation shall be liable for such injury, and upon proof of the same in an action brought by such employe or his legal representatives, in any court of proper jurisdiction, against such railroad corporation for damages on account of such injury so received, shall be entitled to recover against such corporation any sum commensurate with the injuries sustained: provided, that it shall be the duty of all the employes of railroad corporations to promptly report all defects coming to their knowledge in any such car or locomotive or shops or machinery and attachments thereof to the proper officer or agent of such corporation and after such report the doctrine of contributory negligence shall not apply to such employe.

**History:** Laws 1893, ch. 28, § 2; C.L. 1897, § 3217; Code 1915, § 1824; C.S. 1929, § 36-105; 1941 Comp., § 74-324; 1953 Comp., § 69-3-26.

### **ANNOTATIONS**

**Cross-references.** - As to compensation for injury or death of railroad employees, see N.M. Const., art. XX, § 16.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Defect in appliance or equipment as proximate cause of injury to railroad employee in repair or investigation thereof, 30 A.L.R.2d 1192.

Duty of railroad company to prevent injury of employee due to surface of yard, 57 A.L.R.2d 493.

Momentary forgetfulness of danger as contributory negligence, 74 A.L.R.2d 950.

Excessiveness or adequacy of award of damages for personal injury or death in actions under Federal Employers' Liability Act (45 USCS § 51 et seq.) - modern cases, 97 A.L.R. Fed. 189.

74 C.J.S. Railroads §§ 356, 424, 426.

### **63-3-24. [Intoxication of engineers and conductors on duty; penalty.]**

If any person shall, while in charge of a locomotive engine running upon any railroad of any railroad corporation, or while acting as conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars [(\$1,000)], or imprisoned in the county jail not exceeding six months.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 13; C.L. 1884, § 2677; C.L. 1897, § 3868; Code 1915, § 4714; C.S. 1929, § 116-315; 1941 Comp., § 74-325; 1953 Comp., § 69-3-27.

### **63-3-25. [Fireguards; plowing; burning of vegetation; notice.]**

The board of county commissioners of each county in this state, through which any line of railroad is operated or may hereafter be operated, shall have power, subject to the limitations in the three succeeding sections [63-3-26 to 63-3-28 NMSA 1978] contained, by an order to be entered of record, to require every railroad corporation operating [operating] a line of railroad in their respective counties, to plow as a fireguard through such portions of said counties as shall be specially designated in such order, a continuous strip of no more than six feet in width, which said strip of land shall run parallel with said line of railroad, and be plowed in such good and workmanlike manner as to effectually destroy and cover the vegetation thereon, and be sufficient to prevent the spreading of fires; and the outer line of said strip of plowed land shall be upon the outer line of the rights of way of such railroad corporation, not to exceed however, one hundred feet from the center of the track of the railroad. And such railroad corporations shall, in addition to the plowing of such strip, in each and every year burn off, or remove all dry grass or dead and dry vegetation, as soon as the same becomes sufficiently dry to burn, between said plowed strip and the track of such road or roads: provided, however, that such plowing and burning be done between the fifteenth of July and the first day of October, in each and every year: provided, further, that the board of county

commissioners shall each year serve said railroad corporations with a duly certified copy of the order, designating the particular localities where such plowing and burning shall be done, in each of said counties, at least thirty days before the said fifteenth day of July; and such fireguards need not be constructed, or burning done within the limits of any city or town, nor along the line of railroads running through mountains or other lands impracticable to plow, nor where such plowing and burning, as aforesaid, would be of no practical utility.

**History:** Laws 1884, ch. 34, § 1; C.L. 1884, § 2723; C.L. 1897, § 3904; Code 1915, § 4744; C.S. 1929, § 116-713; 1941 Comp., § 74-326; 1953 Comp., § 69-3-28.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 C.J.S. Railroads § 435.

#### **63-3-26. [Failure to maintain fireguard; penalty; enforcement.]**

Any railroad corporation failing to comply with the provision [provisions] of the preceding section [63-3-25 NMSA 1978] shall be liable to pay a penalty of two hundred dollars [(\$200)] for each and every mile, or fractional part thereof, of such strip as it neglects to plow, as aforesaid, in each and every year as aforesaid, or neglects to burn and remove the dry grass and vegetation from, as provided above, the same to be collected by an action of debt in any court of competent jurisdiction, by the attorney general, or district attorney of the district, in the name of the state, provided, such action shall be brought within two years after the cause of action accrues.

**History:** Laws 1884, ch. 34, § 2; C.L. 1884, § 2724; C.L. 1897, § 3905; Code 1915, § 4745; C.S. 1929, § 116-714; 1941 Comp., § 74-327; 1953 Comp., § 69-3-29.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 C.J.S. Railroads § 437.

#### **63-3-27. [Fireguard made under direction of county commissioners; expenses.]**

Should any railroad corporation, operating a railroad in this state, not do the plowing and burning required to be done by the preceding two sections [63-3-25, 63-3-26 NMSA 1978], the board of county commissioners of such county may hire the same to be done and charge the expenses thereof to the railroad company so failing to do such plowing and burning, and such company shall be obliged to pay the same and all costs and attorneys' fees for the collection thereof.

**History:** Laws 1884, ch. 34, § 3; C.L. 1884, § 2725; C.L. 1897, § 3906; Code 1915, § 4746; C.S. 1929, § 116-715; 1941 Comp., § 74-328; 1953 Comp., § 69-3-30.

### **63-3-28. [Actions for damages by fire; limitation.]**

All actions against railroad corporations for damages by fire, that may have been or shall be set out, or caused by operating any line of railroad in this state, shall be commenced by the parties injured within two years after the cause of action accrues.

**History:** Laws 1884, ch. 34, § 4; C.L. 1884, § 2726; C.L. 1897, § 3907; Code 1915, § 4747; C.S. 1929, § 116-716; 1941 Comp., § 74-329; 1953 Comp., § 69-3-31.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Extinguishing fire set by engine without negligence, liability for failure to aid in, 3 A.L.R. 509.

Constitutionality of statutes imposing absolute liability for fires, 53 A.L.R. 875.

Interference with extinguishment of fire by operation of train, 71 A.L.R. 914.

Liability of railroad negligently causing fire for personal injuries sustained in attempt to control fire or to save life or property, 42 A.L.R.2d 494.

Res ipsa loquitur as to cause of or liability for real-property fires, 21 A.L.R.4th 929.

Liability of property owner for damages from spread of accidental fire originating on property, 17 A.L.R.5th 547.

Liability for spread of fire intentionally set for legitimate purpose, 25 A.L.R.5th 391.

74 C.J.S. Railroads § 512.

### **63-3-29. [Headlights; requirements; exceptions.]**

That it shall be the duty of every railroad corporation, receiver or lessee thereof, operating any line of railroad in this state, on or before January 1, 1916, to equip all locomotive engines when in use in the transportation of trains over said railroad, with headlights which with the aid of a reflector will enable the engineer on such locomotive to see an object the size of a man at a distance of at least eight hundred (800) feet; provided, this act [63-3-29 to 63-3-33 NMSA 1978] shall not apply to locomotive engines which are regularly employed in yard service, known as switch engines, nor to any railroad less than sixteen miles in length. And, provided further, that this act shall not apply to engines now used by any railroad company operating in New Mexico, which are used only in cases of emergency [emergency] or exceptionally heavy traffic on short lines or branch lines and upon which the expense of equipping [equipping] said engines with headlights as herein provided, would not be justified in the opinion of the state corporation commission on account of the small value of such engines.

**History:** Laws 1915, ch. 37, § 1; C.S. 1929, § 116-321; 1941 Comp., § 74-330; 1953 Comp., § 69-3-32.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 253.

Railroad's duty as to forward light on car or train preceding engine or on engine running backward, 15 A.L.R. 1529.

Liability of railroad company for injury to livestock frightened by headlight, 29 A.L.R. 1546.

74 C.J.S. Railroads § 427.

#### **63-3-30. [Penalty for headlight violation; actions to recover.]**

Any railroad company or the receiver or lessee thereof, doing business in the state of New Mexico, which shall violate the provisions of this act [63-3-29 to 63-3-33 NMSA 1978], shall be liable to the state of New Mexico for a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each and every locomotive engine not so equipped [equipped] counting each train handled by such locomotive a separate [separate] and distinct offence [offense] and such penalties shall be recovered and suit brought in the name of the state of New Mexico in a court of proper jurisdiction, in any county in or through which such lines of railroad may be operated.

**History:** Laws 1915, ch. 37, § 2; C.S. 1929, § 116-322; 1941 Comp., § 74-331; 1953 Comp., § 69-3-33.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 C.J.S. Railroads § 437.

#### **63-3-31. [Duty of state corporation commission to report headlight violations.]**

It shall be the duty of the state corporation commission to lodge with the proper district attorneys information of any such violations as may come to it's [its] knowledge.

**History:** Laws 1915, ch. 37, § 3; C.S. 1929, § 116-323; 1941 Comp., § 74-332; 1953 Comp., § 69-3-34.

#### **63-3-32. [Presumption of knowledge of acts of agents relative to headlights.]**



In all prosecutions under this act [63-3-29 to 63-3-33 NMSA 1978] the railway company shall be deemed to have had knowledge of all acts of its officers or agents.

**History:** Laws 1915, ch. 37, § 4; C.S. 1929, § 116-324; 1941 Comp., § 74-333; 1953 Comp., § 69-3-35.

### **63-3-33. [Failure of district attorney to act; prosecution by attorney general.]**

In case of the failure of any district attorney to bring such suit within a reasonable time after information shall have been lodged with him, by the state corporation commission or any other person, of any violation of this act [63-3-29 to 63-3-33 NMSA 1978], it shall be the duty of the attorney general upon being informed of such fact to cause such prosecution to be commenced.

**History:** Laws 1915, ch. 37, § 5; C.S. 1929, § 116-325; 1941 Comp., § 74-334; 1953 Comp., § 69-3-36.

### **63-3-34. Locomotive bell; ringing; penalty for noncompliance.**

Every railroad corporation shall cause a bell of at least twenty pounds weight to be attached to each of its locomotives, and shall cause the same to be rung at a distance of not less than eighty rods from the crossing of any public street, road or highway, under a penalty of one hundred dollars [(\$100)], to be recovered by action in the name of the state, in any court of competent jurisdiction, one-half of which shall go to the informer, and the other half of which shall go to the state and such corporation shall also be liable for all damages which may be sustained by any person by reason of noncompliance with the provisions of this section.

**History:** Laws 1878, ch. 1, ch. [tit.] 8, § 1; C.L. 1884, § 2668; C.L. 1897, § 3859; Code 1915, § 4705; C.S. 1929, § 116-306; 1941 Comp., § 74-335; 1953 Comp., § 69-3-37.

## **ANNOTATIONS**

**Cross-references.** - As to disposition of fines and forfeitures, see N.M. Const., art. XII, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 363.

Customary or statutory signal from train as measure of railroad's duty as to warning at highway crossing, 5 A.L.R.2d 112.

74 C.J.S. Railroads §§ 427, 428.

### **63-3-35. [Highway crossings; definitions.]**

The following words and phrases when used in this act [63-3-35 to 63-3-38 NMSA 1978] shall, for the purpose of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

A. "Public highways": every place or way of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel.

B. "Grade crossing" or "crossing at grade": a crossing so constructed that a highway crosses railroad tracks upon the same grade as is occupied by such tracks.

C. "Grade separation": a separation of the grade of railroad tracks from that of a highway at a railroad crossing, so constructed that the highway will either pass under the tracks of the railroad or over such tracks, at a sufficient height above the same to permit railroad trains to pass under such highway.

D. "Grade separation limits": all that portion of a highway at or near a railroad crossing between the points where the grade line of such highway leaves its natural grade on one side of a railroad track and where it returns to its natural grade on the other side of such track.

**History:** Laws 1929, ch. 97, § 1; C.S. 1929, § 116-1201; 1941 Comp., § 74-336; 1953 Comp., § 69-3-38.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 265.

74 C.J.S. Railroads § 140.

### **63-3-36. Construction and maintenance of highway crossings.**

A. Subject to the provisions of Subsection B hereof, every railroad company in this state shall construct and maintain in good condition, at its own expense, good and sufficient crossings at all places in this state where its railroad crosses public highways, city, town or village streets at grade, now or hereafter to be opened for public use. Such crossings shall be constructed of planks, macadam, concrete or other suitable material in such manner as to be level with the top of the rails for a reasonable distance on each side of each rail.

B. Any highway-railroad crossing at grade that may hereafter be constructed or reconstructed by the state highway department will be a full plank crossing of a material approved by the state highway department and railroad, to be installed by the railroad company at the state highway department's expense. If a joint investigation of railroad and highway engineers shows that a highway-railroad crossing at grade should be reconstructed, then the highway department shall pay the railroad for the initial full plank

crossing. Said constructed or reconstructed crossing will be maintained in good condition at the railroad company's own expense.

**History:** Laws 1929, ch. 97, § 2; C.S. 1929, § 116-1202; 1941 Comp., § 74-337; 1953 Comp., § 69-3-39; Laws 1963, ch. 133, § 1.

## ANNOTATIONS

### **Regulation of crossings by corporation commission and highway department. -**

The state corporation commission has the power to require a railway company to construct and maintain a crossing at grade whenever it finds that the company's tracts are intersected by any kind of way open to the public as a matter of right for vehicular travel. The commission's power includes the power to require the company to do anything which will make the crossing "good and sufficient," that is, safe and convenient for public use. The commission can order the railroad company to construct and maintain a crossing at grade at its own expense, except when the state highway department is involved in the construction or reconstruction of the crossing. When the state highway department is involved, it will pay the costs of making the crossing's surface level with the rails. The railroad must bear the remaining construction costs as well as all maintenance costs. 1974 Op. Att'y Gen. No. 74-7.

**Scope of obligation to provide and maintain crossings. -** It is obligation of the railroads to provide and maintain highway crossings wherever to do so is in the public interest, reasonable and just. 1949-50 Op. Att'y Gen. No. 5248.

**Effect of changing circumstances. -** The duty of maintaining and keeping in repair highway crossings is a continuing duty, requiring the railroad companies to put such highway crossings in such condition as changes in circumstances require, therefore, where a highway is improved by widening same to accommodate increasing traffic, it is the duty of the railroad company to improve its crossing so that it will be reasonably comparable to the roadway approaching the crossing. 1937-38 Op. Att'y Gen. 157.

**The common-law duty of railroad companies is to keep and maintain crossings** for roads already established at the time of the building of the railroad line in a safe and suitable state of repair, including not only the crossing of the tracks but also the approaches thereto. 1937-38 Op. Att'y Gen. 157.

**Railroad's only duty is to make crossing safe and convenient** to the public with proper regard for the class of traffic at such crossing. If the highway commission desires further improvement beyond that, it may expend state funds for improvement thereof but cannot hold railroad liable for same. 1937-38 Op. Att'y Gen. 157.

**Am. Jur. 2d, A.L.R. and C.J.S. references. -** 65 Am. Jur. 2d Railroads, §§ 265 to 275.

Constitutional power to compel railroad to relocate its tracks and abolish grade crossings, 35 A.L.R. 1322, 36 A.L.R. 1122, 55 A.L.R. 660, 109 A.L.R. 768.

Covenant to establish and maintain crossing as running with the land, 41 A.L.R. 1369, 102 A.L.R. 781, 118 A.L.R. 982.

Railroad's right to construct and maintain piers, pillars or abutments at crossing on highway, 62 A.L.R. 1519.

Liability of railroad for damages other than those incident to bodily injury for blocking street or highway crossing, 71 A.L.R. 917.

Prohibition to control action of administrative officers as to construction of crossing or viaduct, 115 A.L.R. 23, 159 A.L.R. 627.

Duty of railroad to person using private crossing or footpath over or along railroad tracks, 167 A.L.R. 1253.

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing, 5 A.L.R.2d 112.

Failure of occupants of motor vehicle stalled on railroad crossing to get out and move to place of safety as contributory negligence, 21 A.L.R.2d 742.

Duty of railroad company to maintain flagmen at crossing, 24 A.L.R.2d 1161.

Liability of railroad to adult pedestrian attempting to pass over, under or between cars obstructing crossing, 27 A.L.R.2d 369.

Rights of injured guest in vehicle involved in railroad crossing accident as affected by obscured vision from vehicle, 42 A.L.R.2d 350.

Contributory negligence of one jumping from moving motor vehicle, 52 A.L.R.2d 1433.

Liability for injury or death of pedestrian due to condition of surface of crossing, 64 A.L.R.2d 1199.

Duty of person with physical handicap, such as impaired vision or hearing, to stop and look upon reaching a railroad crossing to avoid charge of contributory negligence, 65 A.L.R.2d 703.

Liability to owner or occupant of motor vehicle for accident allegedly resulting from defective condition of road surface at crossing, 91 A.L.R.2d 10.

Liability of railroad or other private landowner for vegetation obscuring view at railroad crossing, 66 A.L.R.4th 885.

74 C.J.S. Railroads §§ 141 to 145, 156.

### **63-3-37. [Separation of grade crossing; determination by court; cost.]**

Whenever a state, county, municipal or other street or highway, including a highway which now is or hereafter may be designated as a part of the federal aid highway system, which may hereafter be constructed or reconstructed in such manner that the same crosses or intersects any railroad, the state highway commission, or other governing body, may, if in its opinion it is practicable and reasonably necessary for the protection of the traveling public, separate the grades at such crossing, and if unable to agree with such railroad as to such grade separation and the method of accomplishing the same, may apply to the district court of the county in which such separation is located by verified petition praying for the separation of grades at such crossing, and shall accompany such petition with plans and specifications of the proposed grade separation. The procedure on such petition shall be the same as in ordinary civil action. If the court shall determine in such proceeding that such grade separation is practicable and reasonably necessary for the protection of the traveling public over such highway, it shall order such grade separation to be made, either in accordance with the plans and specifications filed with such petition or in accordance with such modification thereof as the court determines to be proper, and upon condition that the then existing grade crossing shall be closed to all forms of street or highway traffic upon the completion of such grade separation. The orders of court in such proceedings shall be enforced in the same manner as decrees in equity. When any separation of grades is made either by agreement or by court order, the railroad company shall pay not to exceed ten percent (10%) of the cost thereof between the grade separation limits, provided that the then existing grade crossing shall be closed to all forms of street or highway traffic upon the completion of such grade separation and provided that where funds are made available for such purposes under the provisions of the act of congress known as the Federal-Aid Road Act, approved July 11, 1916, as amended and supplemented, the participation of the railroad company in the cost of construction and maintenance of any grade separation structure, and the approaches thereto, shall be in conformity with and subject to the provisions of such act. In cases where two or more railroads are located in such proximity to each other as to be involved in any single separation of grades, the portion of the cost of such grade separation shall be apportioned between such railroads either by agreement or in such manner as may be just by order of court in such proceeding. Whenever the plans and specifications for a grade separation, as finally fixed by agreement, or order of court, provide for raising or lowering the grade of the railroad tracks, the cost thereof shall be included in the cost of the grade separation.

**History:** Laws 1929, ch. 97, § 3; C.S. 1929, § 116-1203; 1941 Comp., § 74-338; Laws 1945, ch. 112, § 1; 1949, ch. 118, § 1; 1953 Comp., § 69-3-40.

#### **ANNOTATIONS**

**Federal-Aid Road Act.** - The Federal-Aid Road Act referred to in this section was repealed in 1958. See, now, Federal Highway Act, 23 U.S.C. §§ 101 to 158.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 265.

74 C.J.S. Railroads § 143.

### **63-3-38. [Maintenance of crossing after grade separation.]**

After construction of every such grade separation the state highway commission shall maintain the highway roadbed and the structures supporting it and the railroad shall maintain its roadway and track and the structures supporting the same.

**History:** Laws 1929, ch. 97, § 4; C.S. 1929, § 116-1204; 1941 Comp., § 74-339; 1953 Comp., § 69-3-41.

### **63-3-39. [Industrial railroads; hauling for others; not considered common carrier.]**

No person or persons, and no industrial corporation not incorporated as a common carrier under the laws of this or some other state, and not holding himself, or itself, out as such common carrier, owning or operating industrial railroad tracks in connection with any industry in this state, shall be held or construed to be a common carrier by virtue of, or because of, the hauling of materials or supplies for others upon such industrial tracks, either free or under private contract for compensation for such service, and any and all contracts made for such service shall be lawful.

**History:** Laws 1921, ch. 191, § 1; C.S. 1929, § 116-801; 1941 Comp., § 74-340; 1953 Comp., § 69-3-42.

## **ANNOTATIONS**

**Cross-references.** - For private contracts of railroad without liability as common carrier, see 63-4-9 NMSA 1978.

## **ARTICLE 3A RAILROAD PLANNING AND PROJECTS**

### **63-3A-1. Short title.**

This act [63-3A-1 to 63-3A-3 NMSA 1978] may be cited as the "Railroad Planning and Projects Act".

**History:** Laws 1985, ch. 36, § 1.

### **63-3A-2. Purpose.**

It is the intent of the legislature to assign to the state highway and transportation department the functions of planning necessary to develop a coordinated program with the United States department of transportation in the fields of rail freight and passenger transportation. In order to accomplish this purpose and to obtain all possible funds available to implement this activity, the Railroad Planning and Projects Act [63-3A-1 to 63-3A-3 NMSA 1978] shall be liberally construed.

**History:** Laws 1985, ch. 36, § 2; 1987, ch. 268, § 5.

### **63-3A-3. State highway and transportation department; additional powers.**

A. The state highway and transportation department is authorized to enter into agreements with any bureau, department or agency of the United States government dealing with or concerning the planning of any railroad freight or passenger system for operation in New Mexico.

B. The state highway and transportation department shall have the authority to plan and promote efficient rail transportation services and shall:

(1) maintain adequate programs of research, promotion and development with provision for public participation; and

(2) take all practical steps to improve the quality of rail freight and passenger services in New Mexico.

**History:** Laws 1985, ch. 36, § 3; 1987, ch. 268, § 6.

## **ARTICLE 4 DISCONTINUANCE OF OPERATIONS**

### **63-4-1. [Order of corporation commission consenting to discontinuance required.]**

It shall be unlawful for any person, persons, partnership, association or corporation running or operating any railroad or part of any railroad or railway lying wholly within the state of New Mexico, to discontinue the operation of the same or any part thereof without first obtaining an order from the state corporation commission consenting to the same.

**History:** Laws 1921, ch. 200, § 1; C.S. 1929, § 116-401; 1941 Comp., § 74-401; 1953 Comp., § 69-4-1.

### **ANNOTATIONS**

**Compiler's note.** - Sections 69-4-10 to 69-4-12, 1953 Comp., enacted by Laws 1929, ch. 26, were held unconstitutional, insofar as they purported to provide a rule of procedure for hearings by the state corporation commission, in *In re Atchison, T. & S.F. Ry.*, 37 N.M. 194, 20 P.2d 918 (1933), and as such have not been set out.

**Purpose of section.** - It is the purpose of this section to protect the paramount public interest in the continued operation of railroads serving as common carriers. *Santa Fe, S.J. & N.R.R. v. Helmick*, 36 N.M. 157, 9 P.2d 695 (1932).

**Exception to consent requirement.** - This section does not control a situation where a railroad discontinues Sunday service on a branch line when it could be maintained only at a loss. *In re Southern Pac. Co.*, 38 N.M. 325, 32 P.2d 814 (1934).

**Neither approval nor hearing required prior to closing.** - A railroad need not obtain the approval of the corporation commission prior to closing of a station or agency nor is a hearing required prior to the closing. 1968 Op. Att'y Gen. No. 68-118.

**Those protesting against discontinuance of station must make affirmative case.** *In re Denver & R.G.W.R.R.*, 37 N.M. 472, 24 P.2d 727 (1933).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 344.

Court's power to authorize discontinuation of railroad upon foreclosing mortgage on its plant, 8 A.L.R. 238.

Carrier's right to discontinue its entire service, 11 A.L.R. 252.

Right to damages because of abandonment or relocation of railway line, station or side track, 23 A.L.R. 555.

Duty to notify patron in advance of suspension of service temporarily, 52 A.L.R. 1079.

Fraud by nonperformance of promise as to location or continuance of road, 68 A.L.R. 644, 91 A.L.R. 1296, 125 A.L.R. 879.

When grant or refusal of permission to substitute motor bus service for rail service is justified, 75 A.L.R. 241.

Changed conditions as affecting duty, or enforcement of duty, as to maintenance of stations imposed upon railroad by charter or statute, 111 A.L.R. 57.

Right of railroad company to discontinue or reduce service on branch line or part of road which is unprofitable, 123 A.L.R. 922, 10 A.L.R.2d 1121.

74 C.J.S. Railroads § 392.



### **63-4-2. [Application to commission; publication of notice; hearing.]**

Should any such owner or operator desire to discontinue the operation of any railroad or part thereof, application shall be made to the corporation commission for such consent and for a hearing on such application, which application shall be heard within a reasonable time, but not sooner than ninety days after the filing of such petition. Notice of the filing of such petition shall be given in each county in which such railroad or part thereof lies by publication once each week for four successive weeks in a newspaper of general circulation in and published in such county. In case such road or part thereof lies in a county wherein no paper is published and generally circulated, notice for that county shall be given by a similar publication in some newspaper of general statewide circulation.

**History:** Laws 1921, ch. 200, § 2; C.S. 1929, § 116-402; 1941 Comp., § 74-402; 1953 Comp., § 69-4-2.

#### **ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 344.

74 C.J.S. Railroads § 392.

### **63-4-3. [Right to contest discontinuance.]**

Any person or persons may appear before the state corporation commission, either in person or by counsel and contest the granting of its consent to the discontinuance as applied for.

**History:** Laws 1921, ch. 200, § 3; C.S. 1929, § 116-403; 1941 Comp., § 74-403; 1953 Comp., § 69-4-3.

### **63-4-4. [Publication of consent; time of discontinuance.]**

In case the consent of the corporation commission is given as above provided the fact of such consent having been given shall be published the same as is the notice as required by Section Two [63-4-2 NMSA 1978] of this act. And no such consent shall be effective to permit the discontinuance of the operation of such road or part thereof until ten days after the publication provided for in this section.

**History:** Laws 1921, ch. 200, § 4; C.S. 1929, § 116-404; 1941 Comp., § 74-404; 1953 Comp., § 69-4-4.

### **63-4-5. [Injunction proceedings; meaning of "operation at a loss."]**

In case the consent of the corporation commission is obtained as in this act [63-4-1 to 63-4-9 NMSA 1978] provided, the state, through the attorney general, or any citizen thereof, may institute injunction proceedings in any county, in which said road or any part thereof lies, to prevent the discontinuance of the operation of such road or part thereof, and in case such proceedings are had the court shall enjoin such discontinuance unless it is affirmatively shown that it is impossible to operate the road or part thereof, sought to be discontinued without a material ultimate loss. The fact that the income from the operation of the road is not sufficient to pay more than the operating expenses shall not be considered as showing a loss. It is further provided that the operation of no part of such road shall be discontinued if the whole of said road can be operated without such material loss.

**History:** Laws 1921, ch. 200, § 5; C.S. 1929, § 116-405; 1941 Comp., § 74-405; 1953 Comp., § 69-4-5.

### ANNOTATIONS

**Cross-references.** - As to injunctions, see Judicial Pamphlet 5.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 344, 346.

### **63-4-6. [Receivership; powers of receiver; period of receivership.]**

In case the injunction proceedings provided for in Section Five [63-4-5 NMSA 1978] herein are instituted, or in case of the discontinuance of operation either in whole or in part without first obtaining the permission herein provided for, the court may, in his [its] discretion, appoint a receiver to take charge of and operate such road for the purpose of determining whether said road can be operated without an ultimate loss. In case such receiver shall be so appointed he shall have all the power and authority of receivers in ordinary cases except he shall not have the power to sell and dispose of the property under his administration. Such receivership shall continue for such reasonable time as may be necessary to determine the things for which he was appointed.

**History:** Laws 1921, ch. 200, § 6; C.S. 1929, § 116-406; 1941 Comp., § 74-406; 1953 Comp., § 69-4-6.

### ANNOTATIONS

**Cross-references.** - As to appointment of receivers, see Judicial Pamphlet 5.

**Court may issue injunction.** - Since a proceeding under this section does not involve an attack upon the corporate existence of the owner of the railroad, the court appointing the receiver may not enjoin the exercise of all corporate privileges and franchises, though it may issue injunctive restraints sufficient to protect the receiver in the management and control of the property. *Santa Fe, S.J. & N.R.R. v. Helmick*, 36 N.M. 157, 9 P.2d 695 (1932).

**Authorize receiver's certificates and compel delivery of records.** - The district court may authorize issuance of receiver's certificates by the receiver appointed under this section, though the power should be sparingly used, and may also compel the delivery to the receiver of all the corporate books and records necessary. Santa Fe, S.J. & N.R.R. v. Helmick, 36 N.M. 157, 9 P.2d 695 (1932).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Receiver's liability for torts or negligence of employees, 10 A.L.R. 1061.

Contempt by interference with operation of railroad in hands of receiver, 39 A.L.R. 25, 48 A.L.R. 241.

74 C.J.S. Railroads § 376.

### **63-4-7. [Sidetracks; discontinuance, removal or change.]**

This act [63-4-1 to 63-4-9 NMSA 1978] shall not be construed as preventing the removal or change, or the discontinuance of ordinary sidetracks, unless such discontinuance, removal or change shall materially effect [affect] the general operation of such road.

**History:** Laws 1921, ch. 200, § 7; C.S. 1929, § 116-407; 1941 Comp., § 74-407; 1953 Comp., § 69-4-7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 208.

Specific performance of contract by railroad company to build or maintain sidetracks, 4 A.L.R. 529.

Period covered by covenant or condition for location and maintenance of spur track, 7 A.L.R. 820.

Duty of railroad to operate spur tracks and sidings, 18 A.L.R. 722.

Right to recover damages because of abandonment or relocation of sidetrack, 23 A.L.R. 555.

74 C.J.S. Railroads § 413.

### **63-4-8. [Application of act to common carriers.]**

The foregoing sections [63-4-1 to 63-4-7 NMSA 1978] shall apply to such railroads as are common carriers.

**History:** Laws 1921, ch. 200, § 8; C.S. 1929, § 116-408; 1941 Comp., § 74-408; 1953 Comp., § 69-4-8.

### **63-4-9. [Railroads constructed for special industry; private contracts without liability as common carriers.]**

The owner or owners of any line of railroad, not exceeding 60 miles in length, in the state of New Mexico, which has been or shall be constructed primarily for the purpose of carrying coal, lumber or the products of some other particular industry, may enter into private contracts for the carriage of persons or freight over such line of railroad without thereby becoming liable to control as common carriers or becoming subject to the obligations and duties of common carriers.

**History:** Laws 1921, ch. 200, § 9; C.S. 1929, § 116-409; 1941 Comp., § 74-409; 1953 Comp., § 69-4-9.

## **ANNOTATIONS**

**Cross-references.** - As to industrial railroads, see 63-3-39 NMSA 1978.

**Certificates of convenience and necessity.** - This section does not apply to a railroad operating under certificate of convenience and necessity from interstate commerce commission. *San Juan Coal & Coke Co. v. Santa Fe, S.J. & N. R.R.*, 35 N.M. 512, 2 P.2d 305 (1931).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 C.J.S. Carriers § 2.

## **ARTICLE 5 FORECLOSURE OF MORTGAGE ON RAILROAD PROPERTY**

### **63-5-1. [Foreclosure of lands or property; rights of purchaser; certificate of new corporation; filing; contents.]**

That whenever the railroad lands or other property of any railroad corporation, created by or under any law of the United States, or of the state of New Mexico, or the part of the railroad, lands or other property of any such corporation situated in such state of New Mexico, shall be sold by virtue of a mortgage or deed of trust, or pursuant to the judgment or decree of any court of competent jurisdiction, or by virtue of any execution issued thereon, the purchasers at any such sale may acquire and become vested with the property sold and may acquire any other property and franchises, rights and powers of such corporation in this state or elsewhere. Such purchasers may associate with themselves any number of persons and with their associates may become a corporation with power to own, operate, exercise and enjoy the properties, franchises, rights and

powers acquired by such purchasers, upon making, acknowledging and filing in the office of the state corporation commission, a certificate in which they shall describe by name and by reference to the charter or law under which it was organized, the corporation whose property or part of whose property they have acquired, and the court or courts by whose authority the sale was made, with the date of the judgment or decree, authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

A. the name of the new corporation intended to be formed by the filing of such certificate;

B. the maximum amount of its capital stock and the number of shares into which it is divided, and specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class;

C. the number of directors, not less than three nor more than fifteen, who shall manage the affairs of the new corporation and the names and post-office addresses of the directors for the first year.

**History:** Laws 1897, ch. 19, § 1; C.L. 1897, § 3922; Code 1915, § 4720; C.S. 1929, § 116-501; 1941 Comp., § 74-501; 1953 Comp., § 69-5-1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 163 to 175.

Court's power to authorize discontinuation of railroad upon foreclosing mortgage on its plant, 8 A.L.R. 238.

74 C.J.S. Railroads §§ 328 to 338.

### **63-5-2. [Powers of new corporation.]**

Such new corporation shall thereupon be vested with, and shall be entitled to exercise and enjoy, all the rights, franchises and powers, which belong to or could be exercised by the corporation whose property, or part of whose property, was acquired by such purchasers, as aforesaid, and may acquire and enjoy all or any part of the railroad, lands or other property of such corporation in the state of New Mexico, or elsewhere, and may conduct its business generally, under and in the manner provided in the charter of such last mentioned corporation, or under the laws relating thereto, with such variations in manner and form of organization as such purchasers and their associates may deem necessary and set forth in such certificates, subject to the restrictions and limitations imposed by law upon railroad corporations in this state, and any such corporation shall have the power to issue and dispose of its capital stock, of the kind and character, and of the amount specified in said certificate; and such new corporation shall, in no manner, be deemed or held liable for the debts, obligations or liabilities of

the corporation whose property, or a part thereof, it may have acquired, except state and county taxes.

**History:** Laws 1897, ch. 19, § 2; C.L. 1897, § 3923; Code 1915, § 4721; C.S. 1929, § 116-502; 1941 Comp., § 74-502; 1953 Comp., § 69-5-2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 173, 174, 294.

74 C.J.S. Railroads § 339.

### **63-5-3. [Rights of new corporation.]**

Such corporation shall be vested with and be entitled to possess, exercise and enjoy any and all rights, franchises and powers which are given or may hereafter be given to any railroad company organized under the general laws of this state, and that such new corporation, when organized to purchase, acquire or take the property of any railroad company sold as aforesaid, may lease or purchase the railroad and other property and franchises of any railroad company organized under the laws of the United States or any state or territory thereof, and thereafter operate and maintain the same, or may lease or sell its railroad and other property to any railroad company organized under the laws of any state or territory subject to the restrictions and limitations imposed by law upon railroad corporations in this state.

**History:** Laws 1897, ch. 19, § 3; C.L. 1897, § 3924; Code 1915, § 4722; C.S. 1929, § 116-503; 1941 Comp., § 74-503; 1953 Comp., § 69-5-3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 C.J.S. Railroads § 342.

### **63-5-4. [Sale of foreclosed railroad.]**

The purchasers at any such sale as aforesaid, may, if they choose, sell, transfer or assign all the railroads, lands, properties, rights, franchises and powers so purchased or acquired by them or belonging to the corporation whose property or a part of whose property was so purchased, to a corporation of any state or territory which may be authorized by the laws of such state or territory, or by its charter, to purchase or acquire such or similar property, and upon such sale, transfer or assignment being made, such corporation to whom the same shall be made shall become vested with all of said property, together with all the rights, franchises and powers thereto belonging or in anywise appertaining or [sic] to the corporation whose property or a part thereof was sold, subject to the restrictions and limitations imposed by law upon railroad corporations in this state, but shall not be deemed or held liable in any manner for the

debts, obligations or liabilities, or any of them, of the corporation whose property or a part thereof may have been sold, except state and county taxes.

**History:** Laws 1897, ch. 19, § 4; C.L. 1897, § 3925; Code 1915, § 4723; C.S. 1929, § 116-504; 1941 Comp., § 74-504; 1953 Comp., § 69-5-4.

## **ARTICLE 6**

# **DISSOLUTION OF RAILROAD COMPANIES**

### **63-6-1. [Voluntary dissolution; venue.]**

Any railroad corporation may be dissolved by judgment of the district court for the county in which its principal place of business is situated, upon its voluntary application for that purpose.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 4; C.L. 1884, § 2692; C.L. 1897, § 3883; Code 1915, § 4725; C.S. 1929, § 116-601; 1941 Comp., § 74-601; 1953 Comp., § 69-6-1.

### **ANNOTATIONS**

**Cross-references.** - As to fee for dissolution, see 53-2-1 NMSA 1978.

**Compiler's note.** - The 1915 Code compilers substituted "Any railroad corporation" for "Any corporation formed under this act."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads § 9.

Powers of railroad companies after dissolution, 47 A.L.R. 1288, 97 A.L.R. 477.

74 C.J.S. Railroads § 18.

### **63-6-2. Application for dissolution; contents; execution.**

The application must be in writing, and must set forth:

A. that at a meeting of the stockholders called for that purpose, the dissolution of the corporation was resolved upon by a vote representing two-thirds of the subscribed capital stock;

B. that all claims and demands against the corporation have been satisfied and discharged, or that adequate provision has been made for their satisfaction and discharge.

The application must be signed by the president and countersigned by the secretary, pursuant to an order of the board of directors entered upon the journal of its

proceedings, and sealed with the corporate seal. It must also be verified by the affidavits of the president, secretary and treasurer.

Adequate provisions for the satisfaction and discharge of claims and demands shall be considered to have been made if payment thereof has been assumed or guaranteed in good faith by one or more financially responsible corporations or other persons, or by the United States government or any agency thereof. The above method shall not be considered the exclusive means of making adequate provision for the satisfaction and discharge of claims and demands.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 5; C.L. 1884, § 2693; C.L. 1897, § 3884; Code 1915, § 4726; C.S. 1929, § 116-602; Laws 1953, ch. 43, § 1; 1941 Comp., § 74-602; 1953 Comp., § 69-6-2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 19 C.J.S. Corporations § 838.

#### **63-6-3. [Filing application; publication of notice of hearing.]**

If the judge be satisfied that the application is in conformity with the provisions of the next preceding section [63-6-2 NMSA 1978], he must order it to be filed, and that the clerk give not less than thirty, nor more than fifty days' notice of the hearing of the application, by publication in some newspaper published in the county, or if there be no such paper, then by posting such notice in three of the principal public places in the county.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 6; C.L. 1884, § 2694; C.L. 1897, § 3885; Code 1915, § 4727; C.S. 1929, § 116-603; 1941 Comp., § 74-603; 1953 Comp., § 69-6-3.

### **ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 19 C.J.S. Corporations § 838.

#### **63-6-4. [Objections to dissolution; filing.]**

At any time before the day appointed for hearing the application, any person may file objections, in writing, verified by his oath, to the dissolution of the corporation.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 7; C.L. 1884, § 2695; C.L. 1897, § 3886; Code 1915, § 4728; C.S. 1929, § 116-604; 1941 Comp., § 74-604; 1953 Comp., § 69-6-4.

#### **63-6-5. [Hearing and decree.]**



On the day appointed for the hearing, or on any other day to which the hearing for any cause may have been adjourned, the court must proceed to hear and determine the application; and if it shall appear to the satisfaction of the court that all the statements contained in the application are true, it must make a decree declaring such corporation dissolved.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 8; C.L. 1884, § 2696; C.L. 1897, § 3887; Code 1915, § 4729; C.S. 1929, § 116-605; 1941 Comp., § 74-605; 1953 Comp., § 69-6-5.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 19 C.J.S. Corporations § 849.

#### **63-6-6. [Judgment roll; appeal.]**

The application, notice and proof of publication or posting thereof, objections, if any, and the decree of the court shall constitute the judgment roll. An appeal from the judgment may be taken as in other cases.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 9; C.L. 1884, § 2697; C.L. 1897, § 3888; Code 1915, § 4730; C.S. 1929, § 116-606; 1941 Comp., § 74-606; 1953 Comp., § 69-6-6.

#### **ANNOTATIONS**

**Cross-references.** - As to appeals, see Judicial Pamphlet 5.

#### **63-6-7. Directors as trustees during dissolution.**

Upon the dissolution of the corporation, the then directors thereof shall be trustees of the property and assets thereof for the benefit of the creditors and stockholders, and shall have full power to wind up and settle the affairs of the corporation, to distribute its property and assets among the stockholders in proportion to the amount of stock held by them, to sell and convey its property and convert the same into money and to distribute the same among the stockholders in proportion to the amount of stock held by them, and to that end may use the name of the corporation in all actions and suits, if any be necessary, to recover and reduce to possession, the property, claims, assets and demands of the corporation.

**History:** Laws 1878, ch. 1, ch. [tit.] 9, § 10; C.L. 1884, § 2698; C.L. 1897, § 3889; Code 1915, § 4731; C.S. 1929, § 116-607; Laws 1953, ch. 43, § 2; 1941 Comp., § 74-607; 1953 Comp., § 69-6-7.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 19 C.J.S. Corporations §§ 863 to 865.

# ARTICLE 7

## CORPORATION COMMISSION; COMPLAINTS, HEARINGS AND REPORTS

### 63-7-1. [Terms defined; office of commission; organization.]

The terms "commission" and "clerk" where used in this article shall mean respectively the state corporation commission and the clerk thereof. The office of the commission shall be located in the city of Santa Fe, New Mexico. The commission shall annually elect one of its members chairman, who shall preside at hearings, and in the absence of the chairman, it may appoint any other member to preside.

**History:** Laws 1912, ch. 78, § 1; Code 1915, § 5373; C.S. 1929, § 134-1106; 1941 Comp., § 74-701; 1953 Comp., § 69-7-1.

### ANNOTATIONS

**Cross-references.** - For creation of commission, see N.M. Const., art. XI, § 1.

As to office of commission, see N.M. Const., art. XI, § 5.

For duties of commission, see N.M. Const., art. XI, §§ 6 to 11.

For general provisions concerning officers of commission, see 53-1-2 to 53-1-6 NMSA 1978.

**Appropriations.** - Laws 1989, ch. 233, § 2, effective July 1, 1989, appropriates \$234,000 from the general fund to the telecommunications section of the state corporation commission for expenditure in the seventy-eighth fiscal year for the purpose of funding five additional full-time equivalents, and provides that any unencumbered or unexpended balance remaining at the end of the seventy-eighth fiscal year shall revert to the general fund.

**Meaning of "this article".** - The 1915 Code compilers substituted "this article" for "this act." The term "this article" refers to the 1915 Code, ch. 104, art. 8, the provisions of which are presently compiled as 53-1-1 to 53-1-5, 63-7-1 to 63-7-5 and 63-7-7 to 63-7-19 NMSA 1978. However, "this act" refers to Laws 1912, ch. 78, the provisions of which are presently compiled as 63-7-1 to 63-7-5 and 63-7-7 to 63-7-19 NMSA 1978.

**Generally, as to power to fix rates.** - The power to fix rates is an attribute of sovereignty, legislative in its nature and delegated by the constitution to the corporation commission which was intended to have all the power to fix rates, and the legislature to have none of it. *Mountain States Tel. & Tel. Co. v. New Mexico SCC*, 90 N.M. 325, 563 P.2d 588 (1977).

**No power to make rates retroactive.** - Neither the applicable constitutional provisions nor the pertinent statutes provide the commission with permission to make rates retroactive. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Economic scheme as a whole to be looked at.** - The commission has a constitutional mandate to consider a telephone company's earnings, investments and expenditures as a whole within the state in promulgating rates; it is not confined solely to the cost-of-service formula. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Value of service may be looked at.** - Under some circumstances the value of telephone service may be entitled to more weight than an estimate of cost of service, which necessarily involves many allocations on a more or less arbitrary basis. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Latest available economic information should be utilized** by the commission in order to insure that projected figures bear a meaningful relation to future as well as past and present fiscal realities. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Determining level of subsidies to telephone users is commission function.** Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Rate-making power of commission is plenary,** except as restricted by those principles of constitutional law which would have limited its exercise if it had been intrusted to the legislature. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Bond requirement.** - Where the supreme court's order prior to review fixed interim telephone rates to be in force under bond for one year, and after review the court found substantial evidence in the record to show that these rates were just and reasonable, it held that there was no necessity that a bond be provided. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Given by implication of law.** - The authority to grant rates under bond, as a lawful and necessary adjunct to the effectual exercise of the power to fix interim rates, is given by implication of law. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Generally, as to duty to formulate rates.** - It is inherent in the commission's constitutional mandate that it has the authority to refuse to fix telephone rates when it does not have substantial evidence from which fair rates can be reasonably calculated or determined. Under such circumstances the commission has a duty to deny the rates, and thus it cannot be said that under all situations, without regard for the state of the

evidence, the commission has a duty to formulate rates. *Mountain States Tel. & Tel. Co. v. New Mexico* SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Duty affirmative, not passive.** - The commission has an ongoing, affirmative duty to establish rules and regulations, issue orders, examine records, conduct investigations, grant continuances and do all other things necessary to insure that the public has fair telephone rates and that the utility is fairly treated; its role is not a passive one. *Mountain States Tel. & Tel. Co. v. New Mexico* SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Where constitutional duty to fix interim rates.** - The commission, when it had found that the rates of the telephone company were not fair and reasonable and when it became obvious that it would be a considerable length of time before permanent rates could be fixed, had a constitutional duty to fix interim rates that would minimize the confiscation of the company's property, and failure to increase the rates was an unconstitutional confiscation of the company's property without due process of law. *Mountain States Tel. & Tel. Co. v. New Mexico* SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Public policy enters into the apportionment of rates,** and it is incumbent upon the commission to make public policy decisions and to change proposed rates that do not comport therewith. *Mountain States Tel. & Tel. Co. v. New Mexico* SCC, 90 N.M. 325, 563 P.2d 588 (1977).

**Generally, as to construction and maintenance of railroad crossing.** - The state corporation commission has the power to require a railway company to construct and maintain a crossing at grade whenever it finds that the company's tracks are intersected by any kind of way open to the public as a matter of right for vehicular travel. The commission's power includes the power to require the company to do anything which will make the crossing "good and sufficient," that is, safe and convenient for public use. The commission can order the railroad company to construct and maintain a crossing at grade at its own expense, except when the state highway department is involved in the construction or reconstruction of the crossing. When the state highway department is involved, it will pay the costs of making the crossing's surface level with the rails. The railroad must bear the remaining construction costs as well as all maintenance costs. 1974 Op. Att'y Gen. No. 74-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Carriers §§ 20 to 32; 74 Am. Jur. 2d Telecommunications §§ 18 to 20.

86 C.J.S. Telegraphs, Telephones, Radio and Television § 81.

**63-7-2. [Petition of grievance; initiation of proceedings by commission; intervention; mediation; public hearing; notice.]**

Any person, firm, corporation, association, chamber of commerce, board of trade or any commercial, mercantile, agricultural, mining, manufacturing or other organization or common carrier complaining of any charge or rate of any railway, express, telegraph, telephone, sleeping car, transportation or transmission company or common carrier within this state or having any grievance against any railway company, transportation company or common carrier as to any matter within the jurisdiction of the commission under the constitution of the state of New Mexico or laws made in pursuance thereof, may initiate a proceeding before the commission by petition or letter to obtain such relief as is within the powers of the commission to grant. Such letter shall also be known as a petition, and a complaint of any charge or rate shall be known as a grievance. The commission may also, of its own motion, initiate a proceeding as to any such matters.

The petition shall set forth the facts constituting the grievance and shall contain a prayer for the relief demanded. Any party, other than the commission, initiating such proceeding shall be known as the petitioner, and the party or parties complained of and any party concerned therein other than the commission or the petitioner, shall be known as the defendant.

Any person, firm, corporation, association, chamber of commerce, board of trade or any commercial, mercantile, agricultural, mining, manufacturing or other organization or common carrier, not parties may apply for leave to intervene in any proceeding and shall be heard therein and shall be known as an intervenor. Such intervention shall set forth the intervenor's interest in the proceeding. Leave granted on such application shall entitle the intervenor to appear and be treated in all respects as a party to the proceeding.

It shall be the duty of the commission to endeavor by mediation to effect settlements of such grievances. In case no satisfactory settlement be effected, the commission shall, on motion by petitioner, or of its own motion, order a public hearing upon the matter set forth in the petition, which hearing shall be held not less than ten days after service of notice thereof upon the defendant.

**History:** Laws 1912, ch. 78, § 2; Code 1915, § 5374; C.S. 1929, § 134-1107; 1941 Comp., § 74-702; 1953 Comp., § 69-7-2.

## **ANNOTATIONS**

**Cross-references.** - For power of commission to adopt rules of order and procedure, except as specified by constitution, see N.M. Const., art. XI, § 4.

For airplanes as common carriers, see 64-1-20 NMSA 1978.

For hearings on complaints about motor carriers, see 65-2-85 NMSA 1978.

For agricultural processors as public utilities, see 76-13-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 261 et seq.

Right of carrier to rates which will amortize cost of road, 9 A.L.R. 1232.

Consideration of body of rates in determining the reasonableness of carrier's rates for a particular commodity, 15 A.L.R. 185.

Special services or facilities afforded by shipper as a factor in carrier's rates, 25 A.L.R. 191.

Rate of return to which telephone company is entitled, 31 A.L.R. 825.

73A C.J.S. Public Administrative Law and Procedure §§ 115 to 123, 134 to 137.

### **63-7-3. [Service of notice; proof.]**

Every railway, express, telegraph, telephone, sleeping car or transportation or transmission corporation doing business within the state shall designate, by written statement, filed with the commission, an agent in the city of Santa Fe, New Mexico, upon whom notice may be served of any hearing or motion in any proceeding before, or of any order made by the commission, which statement shall give the street number or building where such agent has his office. Notice of any hearing, stating the time and place thereof, shall be served upon the corporation complained of by delivering a copy thereof, accompanied by a copy of the petition to the designated agent of such corporation in the city of Santa Fe, or by leaving the same with some person over eighteen years of age at the office of such agent. If such corporation shall have no designated agent in the city of Santa Fe as required by this article, such notice may be served by posting the same in the office of the commission. Notice of hearing shall be served upon any party to a proceeding not required by law to have a designated agent at the city of Santa Fe by delivering a copy of such notice to such party or statutory agent in New Mexico or by registered mail directed to such statutory agent or party, deposited in a postpaid wrapper at the post office in the city of Santa Fe. When service is made by mail, at least fifteen days' notice shall be given, and the time shall begin to run when the notice is deposited in the post office. Notice of the making of any order shall be given within five days after the making thereof. When any party has appeared by attorney, service upon such attorney shall be deemed sufficient service upon the party. Proof of service of any notice or process issued by the commission shall be by certificate endorsed thereon if the same be served by a clerk of the commission, or by affidavit of any other person appointed by the commission to serve such notice or process, accompanied by the return card if service is made by registered mail.

**History:** Laws 1912, ch. 78, § 3; Code 1915, § 5375; C.S. 1929, § 134-1108; 1941 Comp., § 74-703; 1953 Comp., § 69-7-3.

### **ANNOTATIONS**

**Meaning of "this article".** - See same catchline in notes to 63-7-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 283 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 134, 135.

#### **63-7-4. [Procedure for hearings; issuance and service of orders.]**

At the time and place set for hearing, the parties interested may be heard either in person or by counsel and may introduce evidence [evidence]. The commission shall, upon application and proper showing by either party, allow such reasonable time as may be necessary for the production of evidence and may adjourn or continue the hearing from time to time as may be deemed necessary or proper for the accommodation of the parties and the furtherance of justice.

Hearings may be held at the city of Santa Fe or any other place in the state designated by the commission and the commission is hereby authorized to use any courtroom in the state for hearings at any time when said hearing does not interfere with the business of the court. Each commissioner or the clerk shall have power to administer oaths.

The parties to any proceeding may, by stipulation in writing, file with the clerk of the commission an agreement upon the facts or any portion thereof, which stipulation shall be regarded and used as evidence upon the hearing.

All matters upon which a grievance may be founded may be joined in one hearing and no petition shall be dismissed on account of misjoinder of grievances or parties or because of the absence of direct damage to a petitioner. At the conclusion of the hearing the commission shall make its findings concerning the subject matter and facts inquired into and make and enter an order of its determination and decision based on such findings. Said order shall specify the time limit for compliance therewith, which time may, on application and for good cause shown, be extended by the commission in its discretion. Every order shall be signed by at least two commissioners, and attested by the clerk with the seal of the commission thereto affixed. A copy of such order certified by the clerk under the seal of the commission shall be served upon each of the parties to the proceeding.

**History:** Laws 1912, ch. 78, § 4; Code 1915, § 5376; C.S. 1929, § 134-1109; 1941 Comp., § 74-704; 1953 Comp., § 69-7-4.

#### **ANNOTATIONS**

**Cross-references.** - For power of commission to adopt rules of order and procedure, except as specified by Constitution, see N.M. Const., art. XI, § 4.

**Receiving of deposition.** - If the corporation commission feels that all parties have been properly notified, were or could have been proper participants in a deposition taken before the actual hearing, that the party whose deposition is being offered is unavailable and that such evidence is material to the hearing, then it may consider receiving such evidence in the matter before it. 1953-54 Op. Att'y Gen. No. 5646.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 294 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 120, 122, 125 to 130, 136, 137, 140, 143, 148, 152.

### **63-7-5. [Quorum; investigations; taking testimony.]**

Any two commissioners shall constitute a quorum to conduct hearings, decide motions and make orders, and the concurrence of at least two commissioners shall be required to make any order or determine any matter before the commission. The commission may, however, by writing under its seal, authorize any commissioner, its clerk or other person, to investigate and take testimony as to any matter pending before it.

**History:** Laws 1912, ch. 78, § 5; Code 1915, § 5377; C.S. 1929, § 134-1110; 1941 Comp., § 74-705; 1953 Comp., § 69-7-5.

### **63-7-6. [Hearings on complaints involving rate, fare or charge increases; burden of proof.]**

That at any hearing before the state corporation commission on complaint, initiated by an actual shipper, or customer, involving an increase, after the passage of this act [section], of any rate, fare or charge of any railway, express, telegraph, telephone, sleeping car, transportation or transmission company, common carrier or public utility, now or hereafter under the supervision and regulation of the state corporation commission, the burden of proof to show, by substantial evidence, that such increase in rate, fare or charge is just and reasonable, shall be upon the railway, express, telegraph, telephone, sleeping car and other transportation or transmission company or common carrier or public utility, assessing, collecting or proposing to establish, assess and collect such rate, fare or charge.

**History:** Laws 1925, ch. 19, § 1; C.S. 1929, § 134-1124; 1941 Comp., § 74-706; 1953 Comp., § 69-7-6.

## **ANNOTATIONS**

**The end to be accomplished** through exercise of the power to alter and change rates is to assure that they not be "unjust, excessive or unreasonable." *Atchison, T. & S.F. Ry. v. SCC*, 79 N.M. 793, 450 P.2d 431 (1969).



**No authority to discount telephone rates to certain elderly.** - The state corporation commission does not have the constitutional authority to establish a telephone discount rate program exempting elderly participants receiving public assistance from telephone rate increases. *Mountain States Legal Fund. v. New Mexico SCC*, 101 N.M. 657, 687 P.2d 92 (1984).

**Hearings not bound by rules of procedure.** - Administrative hearings, although patterned after judicial proceedings, are not strictly bound by the rules of civil procedure. The burden of the state corporation commission is to give a full hearing to such participants as are interested and as are qualified to appear. 1953-54 Op. Att'y Gen. No. 5646.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 261 et seq.

73A C.J.S. Public Administrative Law and Procedure § 128.

### **63-7-7. [Testimony and depositions; compelling attendance of witnesses; contempts; immunity; application of other laws.]**

The commission or any examiner authorized by it to take testimony, upon application of either party, or of its own or such examiner's motion shall have power to issue process under the seal of the commission, to compel the attendance of witnesses to testify and the production of books, papers, tariffs, files and documents relating to any matter under investigation. Subpoenas for the production of any books, papers, tariffs, files and documents shall specify the particular books, papers, tariffs, files or documents relating to the matter in controversy which the witness is required to produce. In case of disobedience to a subpoena the commission or any party to a proceeding before it may invoke the aid of any court in the state in compelling the attendance and testimony of such witness, and the production of such books, papers, tariffs, files and documents; any such court may, in case of contumacy or refusal to obey the subpoena issued by the commission or such examiner, issue an order requiring the appearance and attendance of such witness and the production of such books, papers, tariffs, files and documents, and any failure or refusal to obey such order may be punished by such court as a contempt thereof. The claim that the giving of any such testimony or evidence might tend to criminate the witness shall not excuse such witness from testifying or producing such evidence, but such testimony or evidence shall not be used in any criminal proceeding against him except for perjury.

The testimony of any witness may be taken by deposition, at the instance of any party to the proceeding or the commission, in the manner as allowed by law in civil causes, but notice of intention to apply for a commission to take the answers of witnesses to interrogatories shall not be filed with the clerk of the commission, until the parties affected by the proceeding in which such testimony is desired to be used, shall have been served with the notice of hearing of the proceeding. Costs of taking depositions

and witness fees shall be paid by the party applying therefor at the same rate as prescribed by the laws providing for depositions in civil causes.

In said laws, the state corporation commission, any commissioner and the clerk thereof, shall be substituted for the district court, the judge and clerk of the district court respectively, wherever such officers or said court are mentioned in such laws.

**History:** Laws 1912, ch. 78, § 6; Code 1915, § 5378; C.S. 1929, § 134-1111; 1941 Comp., § 74-707; 1953 Comp., § 69-7-7.

## ANNOTATIONS

**Cross-references.** - For contempt for refusing to obey subpoena, see Judicial Pamphlet 5.

As to depositions, see Judicial Pamphlet 5.

**Law reviews.** - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 338 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 124, 131, 132.

### **63-7-8. [Witness fees and mileage; deposit; payment.]**

Witness fees and mileage of witnesses appearing before the commission or an examiner, shall be paid at the same rates as provided by law for witnesses before the district court and shall be paid by the party at whose instance they are summoned. When any party requests the commission to summon a witness he shall, before subpoena issue, deposit with the clerk a sufficient sum of money to pay the fees and mileage of such witness. Witnesses summoned by the commission of its own motion shall be paid out of the contingent expense fund of the commission.

**History:** Laws 1912, ch. 78, § 7; Code 1915, § 5379; C.S. 1929, § 134-1112; 1941 Comp., § 74-708; 1953 Comp., § 69-7-8.

## ANNOTATIONS

**Cross-references.** - As to witness fees, see 38-6-4 NMSA 1978.

### **63-7-9. [Receiving documentary evidence.]**

Where relevant and material matter offered in evidence is embraced in a report, tariff, rate sheet, classification, book, pamphlet or other written or printed statement or

document of any kind containing other matter not material or relevant, and not intended to be put in evidence, such report, tariff, rate sheet, classification, book, pamphlet or other written or printed statement or document need not be received or filed with the commission, but counsel or party offering the same shall also present, in convenient form for filing, a copy of such material and relevant matter, which copy shall be received and filed as evidence and made a part of the record; or, whenever practicable, such matter may be read and taken down by the stenographer and thus made a part of the record.

**History:** Laws 1912, ch. 78, § 8; Code 1915, § 5380; C.S. 1929, § 134-1113; 1941 Comp., § 74-709; 1953 Comp., § 69-7-9.

### **ANNOTATIONS**

**Hearings not bound by rules of procedure.** - Administrative hearings, although patterned after judicial proceedings, are not strictly bound by the rules of civil procedure, and as such the burden of the state corporation commission is to give a full hearing to such participants as are interested and as are qualified to appear. 1953-54 Op. Att'y Gen. No. 5646.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73A C.J.S. Public Administrative Law and Procedure §§ 125, 126, 129.

### **63-7-10. [Inspection of books and records.]**

The commission or any commissioner or person authorized by the commission in writing, under its seal to make such examination, shall have the right at all times to inspect the books, papers and records of all such companies and common carriers doing business in this state relating to any matter pending before, or being investigated by, the commission. Any officer, agent or employe of any such company or corporation, or any person, in charge of such books, papers and records, who shall refuse to permit such examination, or who shall conceal, destroy or mutilate, or attempt to conceal, destroy or mutilate any such books, papers or records, or remove the same beyond the limits of the state for the purpose of preventing such examination shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined not to exceed five hundred dollars [(\$500)] or imprisoned in the county jail not more than six months.

**History:** Laws 1912, ch. 78, § 9; Code 1915, § 5381; C.S. 1929, § 134-1114; 1941 Comp., § 74-710; 1953 Comp., § 69-7-10.

### **ANNOTATIONS**

**Cross-references.** - For inspections by commission, see N.M. Const., art. XI, § 11.

### **63-7-11. [Copies of records.]**

Copies of any report, findings, decision or order of the commission shall be furnished without charge upon application to the clerk by any party to a proceeding. Copies of the testimony or the complete record shall be furnished by the clerk for which he is authorized to make and collect a charge of ten cents [(\$.10)] for each hundred words or fraction thereof. All the monies received for such copies shall be turned over to the state treasurer and credited to the state corporation contingent expense fund.

**History:** Laws 1912, ch. 78, § 10; Code 1915, § 5382; C.S. 1929, § 134-1115; 1941 Comp., § 74-711; 1953 Comp., § 69-7-11.

### **63-7-12. [Motion for rehearing or modification of order or requirement.]**

Rehearings may be granted to any party by the commission in its discretion. An application for rehearing, or for the change or modification of an order or requirement of the commission, on account of facts and circumstances arising subsequent to the hearing or consequences resulting from compliance with such order or requirement, shall be by motion, which motion shall state specifically the grounds upon which said application is made, and the matters relied upon by the applicant. In case such rehearing is granted notice thereof shall be given in the same manner as notice of other hearings.

**History:** Laws 1912, ch. 78, § 11; Code 1915, § 5383; C.S. 1929, § 134-1116; 1941 Comp., § 74-712; 1953 Comp., § 69-7-12.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 392 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 161 to 164.

### **63-7-13. [Record and file of proceedings; contents; transcribing testimony.]**

The clerk shall keep a complete record and separate file of each proceeding had before the commission. The testimony of witnesses shall be taken by a stenographer who shall transcribe the evidence, in triplicate. The original order, the evidence adduced at the hearing, transcribed as aforesaid, together with all exhibits and documents in the case shall constitute such file.

**History:** Laws 1912, ch. 78, § 12; Code 1915, § 5384; C.S. 1929, § 134-1117; 1941 Comp., § 74-713; 1953 Comp., § 69-7-13.

#### **ANNOTATIONS**

**Costs.** - Where each party had prevailed on certain issues and thus there was no single "prevailing party," it was nevertheless deemed to be unfair and unreasonable to shift the cost of an already prepared record to the party which had enjoyed the greater success on removal. *Southern Pac. Transp. Co. v. Corporation Comm'n*, 105 N.M. 145, 730 P.2d 448 (1986).

**Assessment of costs to prepare record.** - Because the commission is statutorily required to keep three copies of all witness testimony at its hearings, but is not required to keep three copies of the entire record, the commission's assessment of record preparation costs against an applicant was proper. *Oil Transp. Co. v. New Mexico SCC*, 110 N.M. 568, 798 P.2d 169 (1990).

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73A C.J.S. Public Administrative Law and Procedure § 160.

### **63-7-14. [Removal to supreme court; transmitting record; notice.]**

Upon application of any party to a proceeding for an order of removal to the supreme court, of any order or in case of failure or refusal of any party to comply with such order within the time limit therein, the commission shall make an order of removal, stating the cause of such removal. The clerk shall immediately transmit to the supreme court, said order of removal together with the file of the proceeding and a copy of the record thereof duly certified by him. The supreme court shall give notice of hearing upon such order of removal as provided in this article for notice of hearings before the commission.

**History:** Laws 1912, ch. 78, § 13; Code 1915, § 5385; C.S. 1929, § 134-1118; 1941 Comp., § 74-714; 1953 Comp., § 69-7-14.

## **ANNOTATIONS**

**Cross-references.** - For removal to supreme court, see N.M. Const., art. XI, § 7.

**Meaning of "this article".** - See same catchline in notes to 63-7-1 NMSA 1978.

**Time schedule of bus line.** - Jurisdiction of supreme court to review orders of corporation commission on removal does not extend to order denying approval of time schedule of motorbus line. *In re Wallace Transf. Co.*, 35 N.M. 652, 6 P.2d 199 (1931).

**Costs.** - Where each party had prevailed on certain issues and thus there was no single "prevailing party," it was nevertheless deemed to be unfair and unreasonable to shift the cost of an already prepared record to the party which had enjoyed the greater success on removal. *Southern Pac. Transp. Co. v. Corporation Comm'n*, 105 N.M. 145, 730 P.2d 448 (1986).

**Law reviews.** - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

### **63-7-15. [Amendments to petitions or papers.]**

Upon application of any party, amendments to any petition or paper filed in any proceeding or investigation may be allowed by the commission or the supreme court in its discretion.

**History:** Laws 1912, ch. 78, § 14; Code 1915, § 5386; C.S. 1929, § 134-1119; 1941 Comp., § 74-715; 1953 Comp., § 69-7-15.

### **63-7-16. [Rules of order, practice and procedure; power of commission and supreme court.]**

The commission and the supreme court are hereby authorized and empowered to make and publish further rules of order, practice and procedure as the commission or supreme court may deem necessary or proper.

**History:** Laws 1912, ch. 78, § 15; Code 1915, § 5387; C.S. 1929, § 134-1120; 1941 Comp., § 74-716; 1953 Comp., § 69-7-16.

## **ANNOTATIONS**

**Cross-references.** - For power of commission to adopt rules of order and procedure, except as specified by constitution, see N.M. Const., art. XI, § 4.

### **63-7-17. [Tariff schedule; filing with commission; public inspection; contents.]**

Every transportation, transmission company and common carrier engaged in transportation of passengers and property from points in this state to points within, or beyond its limits, and from points in other states to points in this state and every such interstate company or common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classifications for the transportation of persons and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every other route leased, operated and controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open to the public inspection as aforesaid, the

separately established rates, fares, charges and classifications, applied to the through transportation. The schedules printed as aforesaid, shall plainly state the places between which property and persons will be carried, and shall also contain classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed and any rules or regulations which may in anywise change, affect or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee.

**History:** Laws 1912, ch. 78, § 16; Code 1915, § 5388; C.S. 1929, § 134-1121; 1941 Comp., § 74-717; 1953 Comp., § 69-7-17.

### ANNOTATIONS

**Cross-references.** - For rate fixing power of commission, see N.M. Const., art. XI, §§ 7, 10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 Am. Jur. 2d Carriers §§ 107, 117.

13 C.J.S. Carriers §§ 182 to 188.

### **63-7-18. [Schedule changes; notice.]**

Unless the commission otherwise orders [orders] no change shall be made in any classification, rate, fare, charge, rule or regulation which shall have been filed and published by such company or common carrier in compliance with the preceding section [63-3-17 NMSA 1978], except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate classification, fare or charge will go into effect; and all proposed changes shall be shown by printing, filing and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may by order allow changes in rates without requiring the thirty days' notice and the publication provided for in this article.

**History:** Laws 1912, ch. 78, § 17; Code 1915, § 5389; C.S. 1929, § 134-1122; 1941 Comp., § 74-718; 1953 Comp., § 69-7-18.

### ANNOTATIONS

**Cross-references.** - For power of commission to change or alter rates, see N.M. Const., art. XI, § 7.

**Meaning of "this article".** - See same catchline in notes to 63-7-1 NMSA 1978.

## **63-7-19. [Joint tariffs; concurrence of companies.]**

The names of the several companies or carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

**History:** Laws 1912, ch. 78, § 18; Code 1915, § 5390; C.S. 1929, § 134-1123; 1941 Comp., § 74-719; 1953 Comp., § 69-7-19.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 13 C.J.S. Carriers §§ 169 to 175.

## **63-7-20. Utility and carrier inspection; fee.**

Each utility and carrier doing business in this state which is subject to the control and jurisdiction of the commission by virtue of the provisions of Article 11 of the constitution of New Mexico with respect to its rates and service shall pay annually to the commission a fee in performance of its duties as now provided by law. The fee for carriers shall not exceed one-fourth of one percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. The fee for utilities shall not exceed one-half of one percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. This sum shall be payable annually on or before January 20 or in equal quarterly installments on or before January 20, April 20, July 20 and October 20 in each year. No similar fee shall be imposed upon the utility or carrier. In the case of utilities or carriers engaged in interstate business, the fees shall be measured by the gross receipts of the utilities or carriers from intrastate business only for the preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. As used in this section, "utility" includes telephone companies and transmission companies.

**History:** 1941 Comp., § 74-722, enacted by Laws 1951, ch. 194, § 1; 1953 Comp., § 69-7-22; Laws 1989, ch. 233, § 1; 1993, ch. 311, § 11.

### **ANNOTATIONS**

**The 1989 amendment**, effective January 1, 1990, added the present catchline, restructured the former first sentence as the present first and second sentences, added the present third and last sentences, and made minor stylistic changes throughout the section.

**The 1993 amendment**, effective July 1, 1993, substituted "one-half" for "three-eighths" in the third sentence.



**Collection of fees should be based strictly upon intrastate business**, receipts not derived in whole or in part from interstate business. 1951-52 Op. Att'y Gen. No. 5533.

### **63-7-21. [Disposition of fees.]**

All moneys collected under the provisions of Chapter 194, Laws of 1951 [63-7-20 to 63-7-22 NMSA 1978], shall be deposited with the state treasurer and by him credited to the general fund.

**History:** 1941 Comp., § 74-723, enacted by Laws 1951, ch. 194, § 2; 1953 Comp., § 69-7-23; Laws 1957, ch. 10, § 1.

## **ANNOTATIONS**

**Collection of fees should be based strictly upon intrastate business**, receipts not derived in whole or in part from interstate business. 1951-52 Op. Att'y Gen. No. 5533.

### **63-7-22. [Exemptions from act.]**

The provisions of this act [63-7-20 to 63-7-22 NMSA 1978] shall not apply to pipelines which are used for the transportation of oil, natural gas or the products thereof; neither shall the provisions of this act apply to common or contract motor carriers or aircraft carriers transporting passengers or property for hire.

**History:** 1941 Comp., § 74-724, enacted by Laws 1951, ch. 194, § 3; 1953 Comp., § 69-7-24.

### **63-7-23. Telecommunications; administrative fines.**

A. For purposes of this section:

(1) "commission" means the state corporation commission; and

(2) "telecommunications provider" means any telegraph company, telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular service company or pay telephone provider regulated in whole or in part by the commission under law, including but not limited to Article 11 of the constitution of New Mexico, the Telephone and Telegraph Company Certification Act [63-9-1 to 63-9-19 NMSA 1978], the New Mexico Telecommunications Act, the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978] and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

B. The commission may impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the commission.

C. An administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each violation or each of multiple violations arising out of the same facts, up to a maximum of twenty-five thousand dollars (\$25,000); or an administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each day of a continuing violation or violations arising out of the same facts, up to a maximum of twenty-five thousand dollars (\$25,000). Notwithstanding any other provision of this subsection, the commission may impose an administrative fine not to exceed twenty-five thousand dollars (\$25,000) for a single violation:

(1) that results in substantial harm to the customers of the telecommunications provider or substantial harm to the public interest; or

(2) for failure to obtain a certificate of public convenience and necessity required by law or for operation outside the scope of any such certificate.

D. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the provider that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of an administrative fine under this section, and that the telecommunications provider has an opportunity for a hearing. The commission may only impose an administrative fine by written order that, in the case of contested proceedings, shall be supported by a preponderance of the evidence.

E. The commission may initiate a proceeding to impose an administrative fine within two years from the date of the commission's discovery of the violation, but in no event shall a proceeding be initiated more than five years after the date of the violation. This limitation shall not run against any act or omission constituting a violation under this section for any period during which the telecommunications provider has fraudulently concealed the violation.

F. The commission shall consider mitigating and aggravating circumstances in determining the amount of administrative fine imposed.

G. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a telecommunications provider, within the scope of such person's authority, duties or employment, shall be deemed the act or omission of the telecommunications provider.

H. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine may remove the order to the supreme court of New Mexico as authorized by the provisions of Article 11, Section 7 of the constitution of New Mexico. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine that is not removable to the supreme court of New Mexico under the provisions of Article 11, Section 7 of the constitution of New Mexico may file a notice of appeal in the supreme court of New Mexico asking for a review of the commission's order therein. A notice of appeal shall be filed within thirty days after the entry of the

commission's order. Notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken.

I. The commission shall promulgate procedural rules and regulations for the implementation of this section.

**History:** Laws 1995, ch. 175, § 1.

## ANNOTATIONS

**Effective dates.** - Laws 1995, ch. 175 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

# ARTICLE 8 HEALTH AND SAFETY OF RAILROAD EMPLOYEES

## 63-8-1. Duties of the commission.

For the purpose of protecting the health and safety of employees of railroads, the state corporation commission, hereinafter called the commission, shall prescribe standards of safety and safety devices requiring:

A. the installation and maintenance by railroads of electric marker warning lights or a single electric marker warning light on the rear of all trains with sufficient candle power to be visible at a distance of three thousand feet under ordinary atmospheric conditions; and

B. the installation and maintenance by railroads of adequate electrical lighting within cabooses for clerical work.

**History:** 1953 Comp., § 69-9-1, enacted by Laws 1955, ch. 43, § 1; 1967, ch. 202, § 1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Railroads §§ 246, 361.

74 C.J.S. Railroads §§ 426, 427.

## 63-8-2. Compliance.

It shall be the duty of all persons engaged in the operation of railroads to comply with any regulation or order of the commission issued under the provisions of this act [63-8-1 to 63-8-7 NMSA 1978], and to furnish any information required by the commission for purposes of this act.

The commission or its authorized agent may, during reasonable hours, enter the place of operation of any person engaged in the operation of railroads for the purpose of ascertaining whether the standards prescribed by authority of this act are being complied with.

**History:** 1953 Comp., § 69-9-2, enacted by Laws 1955, ch. 43, § 2.

### **63-8-3. Hearing upon complaint.**

Whenever an employee shall file a complaint with the commission charging violation of the regulations of the commission, or the commission upon its own initiative issues a complaint, the person complained of shall be served with a copy thereof and shall, within twenty days, file a written answer with the commission. Within ten days after an answer is filed the commission shall set a date for a hearing of the complaint at a place convenient to both the complainant and the person complained of. The commission may, in its discretion, permit any interested person or organization to intervene. A party to the hearing may appear and be heard in person or by his representative, and may examine or cross-examine witnesses or present other evidence. On motion of a party, the commission may allow a continuance of not to exceed thirty days.

**History:** 1953 Comp., § 69-9-3, enacted by Laws 1955, ch. 43, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73A C.J.S. Public Administrative Law and Procedure §§ 118, 120 to 122, 137, 140.

### **63-8-4. Order.**

Within forty-five days after the conclusion of a hearing held under the provisions of this act [63-8-1 to 63-8-7 NMSA 1978], the commission shall issue an order dismissing the complaint or requiring compliance with a regulation of the commission. The commission may, in its discretion, allow the employer not to exceed forty-five days within which to comply with an order. Upon petition any order of the commission shall be reviewed by the district court of Santa Fe county, and in such action the chairman of the commission shall be the defendant. The decision of the district court may be appealed to the supreme court.

**History:** 1953 Comp., § 69-9-4, enacted by Laws 1955, ch. 43, § 4.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 376 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 147 to 150, 186, 187, 193, 259, 260.

### **63-8-5. Penalty.**

Any person failing to comply with an order or regulation of the commission authorized by this act [63-8-1 to 63-8-7 NMSA 1978] shall be liable to a penalty of twenty-five dollars (\$25.00) for each day of noncompliance. The attorney general shall file suit on behalf of the state for any unpaid penalty within one year after the penalty accrues.

**History:** 1953 Comp., § 69-9-5, enacted by Laws 1955, ch. 43, § 5.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 C.J.S. Railroads §§ 437 to 446.

### **63-8-6. Extension of time.**

Any common carrier railroad which is unable on or before the effective date of this act to equip its cabooses as prescribed herein may apply to the state corporation commission for extension of time. The commission may grant additional time, not to exceed six months from the effective date of this act, except that in the event of a national emergency such time may be extended at the discretion of the commission, and during such period the common carrier railroad shall not be subject to the fine prescribed by Section 5 [63-8-5 NMSA 1978].

**History:** 1953 Comp., § 69-9-6, enacted by Laws 1955, ch. 43, § 6.

### **63-8-7. Exceptions.**

Provided, however, that nothing herein shall apply to trains in emergency service, nor to railroads having tracks of less than standard gauge.

**History:** 1953 Comp., § 69-9-7, enacted by Laws 1955, ch. 43, § 7; 1967, ch. 202, § 2.

## **ARTICLE 9 TELEPHONE AND TELEGRAPH COMPANIES**

### **63-9-1. Short title.**

This act [63-9-1 to 63-9-19 NMSA 1978] may be cited as the "Telephone and Telegraph Company Certification Act".

**History:** 1953 Comp., § 69-10-1, enacted by Laws 1965, ch. 292, § 1.

## ANNOTATIONS

**Cross-references.** - For power of state corporation commission to impose fines on telecommunications providers, see 63-7-23 NMSA 1978.

For regulation of telecommunications other than mobile telephone and radio paging services, see 63-9A-1 NMSA 1978 et seq.

For interception of communications under court order, see 30-12-2 NMSA 1978.

For excavation damage to pipelines and underground utility lines, see 62-14-1 NMSA 1978.

**Applicability of article.** - This article applies only to mobile telephone and radio paging services and no longer applies to intrastate data transmission services. *Las Cruces TV Cable v. New Mexico SCC*, 103 N.M. 345, 707 P.2d 1155 (1985).

**Corporation commission has no exclusive jurisdiction in dispute involving telephone.** - Neither N.M. Const., art. XI, § 7 nor the Telephone and Telegraph Company Certification Act grants the state corporation commission general power and exclusive jurisdiction over every dispute concerning telephone services. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 95 N.M. 509, 623 P.2d 1023 (Ct. App. 1981).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - State regulation of radio paging services, 44 A.L.R.4th 216.

Liability of telephone company for mistakes in or omissions from its directory, 47 A.L.R.4th 882.

### 63-9-2. Definitions.

As used in the Telephone and Telegraph Company Certification Act [63-9-1 to 63-9-19 NMSA 1978]:

A. "commission" means the state corporation commission;

B. "telephone company" means a company, corporation, partnership, individual or others, not engaged solely in interstate business, furnishing mobile telephone service or radio paging;

C. "public utility telephone service" means making and offering mobile telephone or radio paging service to or for the public generally and being ready, willing and able to furnish such service with adequate equipment; and

D. "certificated area" means the geographical area which a telephone company is authorized to serve by a certificate of public convenience and necessity and which is defined on the map as part of the certificate.

**History:** 1953 Comp., § 69-10-2, enacted by Laws 1965, ch. 292, § 2; 1975, ch. 59, § 1; 1985, ch. 242, § 22.

### **63-9-3. Certificate required for operation.**

No telephone company shall hereafter begin the construction or operation of any telephone plant or system or of any extension thereof, for the purpose of furnishing public utility telephone service, without first obtaining from the commission a certificate that public convenience and necessity requires or will require such construction or operation of the plant or system; provided, that this section shall not apply to:

A. construction of plant or system within a certificated area which such telephone company already lawfully serves, where such construction is necessary in the ordinary course of business;

B. extension of plant or system to area contiguous to the certificated area of such telephone company, if such contiguous areas are not certificated and are not receiving public utility telephone service from another telephone company; provided that the commission shall be notified, in such manner as it may prescribe by rule, of any such extension into contiguous area; and

C. such construction or extension occurring when a proper application is being made pursuant to Section 4 [63-9-4 NMSA 1978] of this act.

**History:** 1953 Comp., § 69-10-3, enacted by Laws 1965, ch. 292, § 3.

### **ANNOTATIONS**

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

Meaning of term "radius" employed in telephone company's rule as descriptive of area, location or distance, 10 A.L.R.2d 605.

86 C.J.S. Telegraphs, Telephones, Radio and Television § 20.

#### **63-9-4. Certificate for prior operations.**

Within six months after the effective date of this act any telephone company furnishing public telephone or telegraph service contemplated by Article XI, Section 7 of the constitution of the state of New Mexico, including any telephone cooperative operating in the state of New Mexico, shall file with the commission an application for a certificate of public convenience and necessity. The commission shall thereupon grant a certificate only to the extent of territory served on the effective date of this act and shall define such area on a map. Henceforth such territory shall be deemed certificated area. Operations after six months from the effective date of this act for which no application has been made shall be unlawful.

**History:** 1953 Comp., § 69-10-4, enacted by Laws 1965, ch. 292, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 86 C.J.S. Telegraphs, Telephones, Radio and Television § 20.

#### **63-9-5. Application for certificate.**

A. If the applicant for a certificate of convenience and necessity is a corporation, a certified copy of its articles of incorporation shall be filed in the office of the commission before any certificate may issue.

B. The commission, upon the filing of an application, shall fix a time and place for hearing thereon, which shall be no sooner than ten days after the filing. The commission shall cause notice of the hearing to be served at least ten days before the hearing on all known interested parties. The commission may allow any interested party to intervene at the hearing.

C. The commission shall prescribe forms for use by applicants and make regulations relating to the manner of filing and filing fees.

**History:** 1953 Comp., § 69-10-5, enacted by Laws 1965, ch. 292, § 5.

#### **63-9-6. Issuance of certificate; territory on map.**

A. After conclusion of a hearing on an application for a certificate of convenience and necessity the commission shall make and file an order containing its findings of fact and decision. The order shall become operative twenty days after issuance, except as the commission may otherwise provide.

B. The commission shall grant all certificates as required by Section 4 [63-9-4 NMSA 1978] of this act.



C. As to all applications other than those based upon Section 4 of this act, the commission has the power, after having determined public convenience and necessity, to grant a certificate as applied for, or to refuse to grant it, or to grant it for the construction or operation of only a portion of the contemplated plant or system or extension thereof, or for the partial exercise only of the rights and privilege sought, and may attach to the exercise of the rights and privilege granted by a certificate such terms and conditions as in its judgment the public convenience and necessity may require.

D. The geographical field or area that a telephone company is authorized and required to serve by a certificate shall be defined on a map which will be part of the certificate. The commission shall prescribe the form of the map to be used.

**History:** 1953 Comp., § 69-10-6, enacted by Laws 1965, ch. 292, § 6.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 86 C.J.S. Telegraphs, Telephones, Radio and Television § 20.

### **63-9-7. Duty to exercise authority; discontinuance.**

A. Unless exercised within a period designated by the commission, exclusive of any delay due to the order of any court, authority conferred by a certificate of convenience and necessity issued by the commission shall be void. The beginning of the construction of a plant or system, in good faith, within the time prescribed by the commission and the prosecution of the same with reasonable diligence in proportion to the magnitude of the undertaking, shall constitute an exercise of the authority.

B. The holder of a certificate shall render continuous and adequate service to the public and shall not discontinue, reduce or impair service to a certificated area, or part of a certificated area, except ordinary discontinuance of service for nonpayment of charges, nonuse and similar reasons in the usual course of business, unless and until there shall first have been obtained from the commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction or impairment of service, without regard to the provisions of this section; provided, however, that nothing in this section shall be construed as requiring a certificate from the commission for any installation, replacement or other changes in plant, operation or equipment which will not impair the adequacy or quality of service provided.

**History:** 1953 Comp., § 69-10-7, enacted by Laws 1965, ch. 292, § 7.

### **ANNOTATIONS**

**Limitation on scope of section.** - This section cannot be read so as to limit N.M. Const., art. XI, § 7; and it cannot be read to require the telephone company to provide service anywhere, anytime, to anybody, and under all circumstances. Coachlight Las Cruces, Ltd. v. Mountain Bell Tel. Co., 99 N.M. 796, 664 P.2d 994 (Ct. App.), cert. denied, 99 N.M. 787, 664 P.2d 985 (1983).

**Discontinuation of service for nonpayment.** - It is public policy that Mountain Bell can discontinue service for nonpayment of the charges incurred by a customer. First Cent. Serv. Corp. v. Mountain Bell Tel., 95 N.M. 509, 623 P.2d 1023 (Ct. App. 1981).

**Telephone utility has right to establish reasonable rules and regulations** for furnishing service to patrons and for the conduct of its business; ordinarily regulations so made will be presumed to be reasonable and necessary, unless the contrary is shown. First Cent. Serv. Corp. v. Mountain Bell Tel., 95 N.M. 509, 623 P.2d 1023 (Ct. App. 1981).

**Subscriber for telephone service has no property right in telephone number.** First Cent. Serv. Corp. v. Mountain Bell Tel., 95 N.M. 509, 623 P.2d 1023 (Ct. App. 1981).

**It is law that tariff required to be filed is not contract.** First Cent. Serv. Corp. v. Mountain Bell Tel., 95 N.M. 509, 623 P.2d 1023 (Ct. App. 1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 86 C.J.S. Telegraphs, Telephones, Radio and Television §§ 20, 65, 68, 69, 78.

### **63-9-8. Assignability.**

Any certificate of public convenience and necessity, or rights obtained under any such certificate held, owned or obtained by any telephone company, may be sold, assigned or leased as other property, only after determination by the commission that the purchaser, assignee or lessee is capable of rendering adequate public utility telephone service.

**History:** 1953 Comp., § 69-10-8, enacted by Laws 1965, ch. 292, § 8.

### **63-9-9. Nonduplication in certificated areas.**

A. It shall hereafter be unlawful to construct, own, operate, manage, lease or control any plant or equipment for the furnishing of telephone or telegraph service contemplated by Article XI, Section 7 of the constitution of New Mexico and this act [63-9-1 to 63-9-19 NMSA 1978], in any certificated area granted to another telephone company unless public convenience and necessity shall require such second plant or equipment.

B. Any person, corporation, municipal corporation, partnership or association, proposing to construct or operate such second plant or equipment, shall first file an application with the commission, to which application the authority proposing to authorize the

construction of such second plant or equipment and the owner, manager or operator of the plant or equipment then in operation shall be made parties. The applications shall set up the reasons why public convenience and necessity require such second plant or equipment. In determining whether the public convenience and necessity require such second plant or equipment the commission shall consider and determine upon substantial evidence whether the following conditions existed at the time of the filing of said application:

- (1) the existing telephone or telegraph service is inadequate to meet the reasonable needs and convenience of the public;
- (2) the proposed second plant or equipment would eliminate such inadequacy;
- (3) it is economically feasible to operate the proposed second plant or equipment successfully and continuously for the furnishing of telephone or telegraph service;
- (4) the applicant for said second plant or equipment has sufficient financial resources to provide the proposed telephone or telegraph service properly and continuously;
- (5) the applicant for said second plant or equipment has competent and experienced management and personnel to provide the proposed telephone or telegraph service;
- (6) the applicant for said second plant or equipment is willing and able to conform to the constitution and law of the state of New Mexico and the rules and regulations of the commission; and
- (7) the applicant for said second plant or equipment is in every respect willing and able to provide the proposed telephone or telegraph service properly.

If the commission shall find upon substantial evidence that each of the foregoing conditions existed at the time of filing said application and after determining that the public convenience and necessity require that additional plant or equipment is necessary, the commission shall issue an order in the alternative directing the owner, manager or operator of the plant or equipment then in operation to make such changes and additions in plant as may be reasonably necessary to meet the public convenience and necessity within not less than ninety days, or such other additional time as the commission finds from the testimony would be reasonably required to expeditiously make the changes and additions specified and required by the commission. Such order shall specifically direct what changes or additions in plant shall be made or what services shall be provided. If such changes or additions are not made within the time ordered by the commission or such additional time as may be ordered, then a certificate of public convenience and necessity for such second plant or equipment may issue.

**History:** 1953 Comp., § 69-10-9, enacted by Laws 1965, ch. 292, § 9.

## **ANNOTATIONS**

**This section is concerned with prevention of certain duplicate utility services** unless the court finds that public convenience and necessity require a second plant or equipment to furnish a similar service. 1963-64 Op. Att'y Gen. No. 63-66.

**Operation without franchise.** - The fact that a telephone company has operated in a county without a franchise does not limit the power of the county commission to grant a franchise to that company. The obtaining of a franchise is not mandatory, and operating without one is legal. 1963-64 Op. Att'y Gen. No. 63-66.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 86 C.J.S. Telegraphs, Telephones, Radio and Television §§ 74 to 76.

### **63-9-10. Conflict in noncertificated contiguous areas.**

If any telephone company in constructing or extending its plant or system in a noncertificated area contiguous to its certificated area shall interfere with the plant or system constructed or extended by another telephone company in such noncertificated area contiguous also to that company's certificated area, the commission, on its own motion, or on complaint of the telephone company injured, may, after a hearing on reasonable notice, make an order prohibiting the construction or extension, or prescribing conditions and location of such construction or extension, or granting a certificate or certificates of public convenience and necessity assigning specific portions of such noncertificated area to one or each of the telephone companies, all after having given due regard to the rights of the respective parties and to the public convenience and necessity.

**History:** 1953 Comp., § 69-10-10, enacted by Laws 1965, ch. 292, § 10.

### **63-9-11. Complaint alleging violation by telephone company.**

A. Complaint may be made by any interested party setting forth any act or omission by a telephone company alleged to be in violation of any provision of this act [63-9-1 to 63-9-19 NMSA 1978] or any order or rule of the commission relating to the issuance or nonissuance of a certificate of public convenience and necessity.

B. Upon filing of the complaint the commission shall set the time and place of hearing and at least ten days' notice thereof shall be given to the party complained of. Service of notice of the hearing shall be made in any manner giving actual notice.

C. All matters upon which complaint may be founded may be joined in one hearing and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission or on review by the courts. The persons the commission allows to intervene shall be joined and heard, along with the complainant and the party complained of.

D. After conclusion of the hearing the commission shall make and file an order containing its findings of fact and decision. A copy of the order shall be served upon the party complained of or his attorney.

E. Conduct of the hearings and rendering of decisions shall be governed by the rules of practice and procedure heretofore or hereafter promulgated by the commission.

**History:** 1953 Comp., § 69-10-11, enacted by Laws 1965, ch. 292, § 11.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 261 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 118, 121, 122, 134 to 139, 143 to 147, 152.

### **63-9-12. Rules.**

The commission shall have the right and is hereby empowered to adopt, promulgate, enforce and amend such reasonable rules as may be required to administer the Telephone and Telegraph Company Certification Act [63-9-1 to 63-9-19 NMSA 1978].

**History:** 1953 Comp., § 69-10-12, enacted by Laws 1965, ch. 292, § 12.

### **63-9-13. Action to set aside nonremovable orders of the commission.**

A. Any telephone company and any other person in interest being aggrieved by an order or determination of the commission in connection with the issuance or nonissuance of a certificate of public convenience and necessity not removable to the supreme court of New Mexico under the provisions of Article XI, Section 7 of the constitution of New Mexico, may commence an action in the district court for Santa Fe county against the commission as defendant, to set aside the order or determination.

B. If, after review of the record made before the commission, the district court finds an order or determination arbitrary, capricious, unsupported by substantial evidence or unlawful, it can set it aside and may grant relief by injunction, mandamus or other extraordinary remedy.

C. In any action hereunder the complaint shall be served with the summons. The answer of the commission to the complaint shall be served and filed within twenty days after service of the complaint, whereupon said action shall be at issue without further pleading and stand ready for trial upon ten days' notice.

D. Any person not a party to the action, but having an interest in the subject thereof, may be made a party upon order of the court.

E. All such actions shall have precedence over any civil cause of a different nature, and the district court shall always be deemed open for the trial thereof.

**History:** 1953 Comp., § 69-10-13, enacted by Laws 1965, ch. 292, § 13.

### **ANNOTATIONS**

**Law reviews.** - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 376 et seq.; 74 Am. Jur. 2d Telecommunications §§ 34, 35.

73A C.J.S. Public Administrative Law and Procedure §§ 178 to 184, 193, 202, 203, 208, 211, 212, 224.

### **63-9-14. Time limit for seeking recourse in the courts.**

Every action to vacate or set aside any determination or order of the commission or to enjoin the enforcement thereof or to prevent such order or determination from becoming effective shall be commenced, and every appeal, removal or right of recourse to the courts shall be taken, or exercised within ninety days after the entry or rendition of the order or determination. The right to commence any such action, or to take or exercise any appeal or right of recourse to the courts, shall terminate absolutely at the end of the ninety days.

**History:** 1953 Comp., § 69-10-14, enacted by Laws 1965, ch. 292, § 14.

### **ANNOTATIONS**

**Section applies only to certification proceedings, not ratemaking proceedings.** -

This section, by its terms, seems broad enough to cover removals from ratemaking proceedings, but it is part of the Telephone and Telegraph Company Certification Act and therefore can only apply to certification proceedings. Mountain States Tel. & Tel. Co. v. Corporation Comm'n, 99 N.M. 1, 653 P.2d 501 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73A C.J.S. Public Administrative Law and Procedure §§ 209, 210.

### **63-9-15. Validity of orders; substantial compliance with act sufficient.**

A substantial compliance by the commission with the requirements of this act [63-9-1 to 63-9-19 NMSA 1978] shall be sufficient to give effect to all rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature, in respect thereto.

**History:** 1953 Comp., § 69-10-15, enacted by Laws 1965, ch. 292, § 15.

### **63-9-16. Appeal to supreme court.**

Any party to an action to set aside a nonremovable commission order or determination within sixty days after service of a copy of the order or judgment of the district court, may appeal to the supreme court, and the cause shall be placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

**History:** 1953 Comp., § 69-10-16, enacted by Laws 1965, ch. 292, § 16.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 Am. Jur. 2d Telecommunications §§ 34, 35.

### **63-9-17. Process and procedure in courts.**

In the actions and proceedings in district court all processes shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise provided.

**History:** 1953 Comp., § 69-10-17, enacted by Laws 1965, ch. 292, § 17.

### **63-9-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1995, ch. 175, § 2, repeals 63-9-18 NMSA 1978, as enacted by Laws 1965, ch. 292, § 18, relating to penalty for violations of the Telephone and Telegraph Certification Act, effective June 16, 1995. For provisions of former section, see 1989 Replacement Pamphlet. For present comparable provisions, see 63-7-23 NMSA 1978.

### **63-9-19. Injunctions; contempt.**

In any matter not removable to the supreme court of New Mexico under the provisions of Article XI, Section 7 of the constitution of New Mexico, the commission may apply to courts having jurisdiction for injunctions to prevent violations of any provision of this act [63-9-1 to 63-9-19 NMSA 1978] or of any rule or order of the commission in connection

with the issuance or nonissuance of certificates of public necessity and convenience pursuant to this act, and such courts shall have power to grant such injunctions and to enforce such injunctions by contempt procedure.

**History:** 1953 Comp., § 69-10-19, enacted by Laws 1965, ch. 292, § 19.

### ANNOTATIONS

**Severability clauses.** - Laws 1965, ch. 292, § 21, provides for the severability of the act if any part or application thereof is held invalid.

## ARTICLE 9A TELECOMMUNICATIONS SERVICES

### 63-9A-1. Short title.

Sections 1 through 21 of this act may be cited as the "New Mexico Telecommunications Act".

**History:** Laws 1985, ch. 242, § 1.

### ANNOTATIONS

**Cross-references.** - For power of state corporation commission to impose fines on telecommunications providers, see 63-7-23 NMSA 1978.

**New Mexico Telecommunications Act.** - Although this section defines the New Mexico Telecommunications Act as Sections 1 to 21 of Laws 1985, Chapter 242, Section 21 of that act appears as a note following 63-9A-20 NMSA 1978, and Laws 1987, ch. 21, §§ 4 and 5 added 63-9A-6.1 and 63-9A-6.2 NMSA 1978 to the New Mexico Telecommunications Act. The act may now be found in 63-9A-1 to 63-9A-20 NMSA 1978.

**This article applicable to high-speed data transmission services.** Las Cruces TV Cable v. New Mexico SCC, 103 N.M. 345, 707 P.2d 1155 (1985).

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - State civil actions by subscription television business for use, or providing technical means of use, of transmissions by nonsubscribers, 46 A.L.R.4th 811.

Liability of telephone company for mistakes in or omissions from its directory, 47 A.L.R.4th 882.



## **63-9A-2. Purpose.**

The legislature declares that it remains the policy of the state of New Mexico to maintain the availability of access to telecommunications services at affordable rates.

Furthermore, it is the policy of this state to have comparable message telecommunications service rates, as established by the commission, for comparable markets or market areas. To the extent that it is consistent with maintaining availability of access to service at affordable rates and comparable message telecommunications service rates, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of the New Mexico Telecommunications Act to permit a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment.

**History:** Laws 1985, ch. 242, § 2; 1987, ch. 21, § 1.

### **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

**This article applicable to high-speed data transmission services.** Las Cruces TV Cable v. New Mexico SCC, 103 N.M. 345, 707 P.2d 1155 (1985).

## **63-9A-3. Definitions.**

As used in the New Mexico Telecommunications Act:

A. "affordable rates" means local exchange service rates that promote universal service within a local exchange service area, giving consideration to the economic conditions and costs to provide service in such area;

B. "cable television service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

C. "commission" means the state corporation commission;

D. "competitive telecommunications service" means a service which has been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

E. "effective competition" means that the customers of the service have reasonably available and comparable alternatives to the service;

F. "fund" means the New Mexico universal service fund;

G. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

H. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications company within a local exchange area;

I. "message telecommunications service" means telecommunications service between local exchange areas within the state for which charges are made on a per-unit basis, not including wide area telecommunications service, or its equivalent, or individually negotiated contracts for telecommunications services;

J. "noncompetitive telecommunications service" means a service which has not been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

K. "private telecommunications service" means a system, including the construction, maintenance or operation thereof, for the provision of telecommunications service, or any portion of such service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the person or entity which may use such service includes any affiliates of the person or entity, provided that at least eighty percent of the assets or voting stock of the affiliates is owned by the person or entity. If any other person or entity uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

L. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. Public telecommunications service does not include the provision of terminal equipment used to originate or terminate such service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including but not limited to mobile telephone service and radio paging; or one-way cable television service; and

M. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity which provides public telecommunications service.

**History:** Laws 1985, ch. 242, § 3; 1987, ch. 21, § 2.

## **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

**Subsection L encompasses high speed data transmission services.** - High speed data transmission services fall within the scope of the definition of "public telecommunications service" in Subsection B [now Subsection L]. *Las Cruces TV Cable v. New Mexico SCC*, 103 N.M. 345, 707 P.2d 1155 (1985).

#### **63-9A-4. Exemption for private service.**

Construction, maintenance or operation of a private telecommunications service does not constitute the provision of public telecommunications service, and a private telecommunications service shall not be subject to regulation by the commission under the New Mexico Telecommunications Act.

**History:** Laws 1985, ch. 242, § 4.

#### **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

#### **63-9A-5. Regulation by commission.**

Except as otherwise provided in the New Mexico Telecommunications Act, each public telecommunications service is declared to be affected with the public interest and, as such, subject to the provisions of that act, including the regulation thereof as hereinafter provided.

**History:** Laws 1985, ch. 242, § 5.

#### **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

#### **63-9A-6. Certificate required.**

A. No public telecommunications service shall be offered in this state except in accordance with the provisions of the New Mexico Telecommunications Act.

B. No public telecommunications service shall be offered within this state without the telecommunications company first having obtained from the commission a certificate declaring that the operation is in the present or future [a] public convenience and necessity, unless the operation is otherwise authorized by the New Mexico Telecommunications Act.

C. The commission shall have full power and authority to determine matters of public convenience and necessity relating to the issuance of a certificate of public convenience and necessity to a provider of public telecommunications service; provided, however, that in keeping with the purposes of the New Mexico Telecommunications Act, the

commission shall not deny an applicant a certificate on the grounds of need if it is shown that the applicant possesses adequate financial resources and technical competency to provide the service. It shall be within the discretion of the commission to determine when and upon what conditions plant, equipment or services may be provided under certificates of public convenience and necessity, by more than one person, and the commission may attach to the exercise of rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require or as otherwise authorized.

D. Notwithstanding the provisions of Subsection C of this section, any telecommunications company with less than one hundred thousand access lines holding a certificate of public convenience and necessity to provide local exchange service to the public shall have the exclusive right to provide local exchange service within its certificated service territory and shall not be subject to competition in the provision of local exchange service in its certificated service territory unless the commission determines that public convenience and necessity require additional plant or equipment for the provision of local exchange service within the certificated service territory of the existing telecommunications company and a certificate of public convenience and necessity is granted pursuant to Subsection E of this section.

E. In determining whether public convenience and necessity require an additional certificate to provide local exchange service in a certificated service territory, the commission shall, in a proceeding in which the telecommunications company certificated in the affected area is a party, consider and determine upon substantial evidence that the following conditions exist:

- (1) the existing telecommunications company is inadequate to meet the reasonable needs and convenience of the public;
- (2) the proposed second plant or equipment would eliminate such inadequacy;
- (3) it is economically feasible to operate the proposed second plant or equipment successfully and continuously for the furnishing of local exchange service;
- (4) the applicant for the second plant or equipment has sufficient financial resources to provide the proposed local exchange service properly and continuously;
- (5) the applicant for the second plant or equipment has competent and experienced management and personnel to provide the proposed local exchange service;
- (6) the applicant for the second plant or equipment is willing and able to conform to the constitution of New Mexico and laws of New Mexico and the rules and regulations of the commission;
- (7) the applicant for the second plant or equipment is in every respect willing and able to provide the proposed local exchange service properly; and

(8) granting the additional certificate to the applicant shall not have a significant adverse impact on the existing telecommunications company.

F. All certificates of public convenience and necessity shall:

(1) continue in force notwithstanding the provisions of Section 63-9A-2 NMSA 1978; and

(2) remain subject to all terms and conditions imposed by statute or commission order at the time of issuance or in connection with any subsequent amendment notwithstanding the provisions of that section.

**History:** Laws 1985, ch. 242, § 6; 1987, ch. 21, § 3.

## **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

### **63-9A-6.1. New Mexico universal service fund; establishment; board.**

A. The commission shall establish a "New Mexico universal service fund" to maintain existing residential local exchange service at affordable rates.

B. The fund shall be financed by a uniform surcharge on all local exchange service customers at a rate to be determined by the commission. Money deposited in the fund is not public money and the administration of the fund is not subject to the provisions of law regulating public funds.

C. The commission shall:

(1) establish eligibility criteria for participation in the fund which assure the availability of service at affordable rates without unreasonably increasing rates to local exchange service and message telecommunications service customers;

(2) determine which companies meet the eligibility criteria; and

(3) provide for the collection of the surcharge and the administration and disbursement of money from the fund.

D. The commission shall adopt rules and regulations for the implementation and administration of the fund in accordance with the provisions of this section.

E. The commission shall establish a board composed of representatives from the providers of local exchange service to collect, administer and disburse money from the fund under the supervision and control of the commission pursuant to the established criteria and the rules and regulations promulgated by the commission.

**History:** 1978 Comp., § 63-9A-6.1, enacted by Laws 1987, ch. 21, § 4; 1988, ch. 16, § 1.

## **ANNOTATIONS**

**The 1988 amendment**, effective February 25, 1988, added the second sentence in Subsection B.

### **63-9A-6.2. Carrier of last resort.**

Any telecommunications company which has a certificate of public convenience and necessity permitting it to provide message telecommunications service between or among local exchange areas shall not be allowed to terminate or withdraw from providing message telecommunications service between or among local exchange areas without an order of the commission upon a finding that there is another telecommunications company in place capable of providing service without interruption.

**History:** 1978 Comp., § 63-9A-6.2, enacted by Laws 1987, ch. 21, § 5.

### **63-9A-7. Manner of regulation.**

The granting of any certificate of public convenience and necessity to provide a public telecommunications service shall not be deemed to require the holder thereof to provide other telecommunications services under regulation which are otherwise subject to competition.

**History:** Laws 1985, ch. 242, § 7.

### **63-9A-8. Regulation of rates and charges.**

A. In accordance with the policy established in the New Mexico Telecommunications Act, the commission shall, by its own motion or upon petition by any interested party, hold hearings to determine if any public telecommunications service is subject to effective competition in the relevant market area. When the commission has made a determination that a service or part of a service is subject to effective competition, the commission shall, consistent with the purposes of the New Mexico Telecommunications Act, modify, reduce or eliminate rules, regulations and other requirements applicable to the provision of such service, including the fixing and determining of specific rates, tariffs or fares for the service. The commission's action may include the detariffing of service or the establishment of minimum rates which will cover the costs for the service. Such modification shall be consistent with the maintenance of the availability of access to local exchange service at affordable rates and comparable message telecommunication service rates, as established by the commission, for comparable markets or market areas, except that volume discounts or other discounts based on reasonable business purposes shall be permitted. Upon petition or request of an affected telecommunications company, the commission upon a finding that the

requirements of Subsection C of this section are met shall modify the same or similar regulatory requirements for those providers of comparable public telecommunications services in the same relevant markets, so that there shall be parity of regulatory standards and requirements for all such providers.

B. In determining whether a service is subject to effective competition, the commission shall consider the following:

(1) the extent to which services are reasonably available from alternate providers in the relevant market area;

(2) the ability of alternate providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions; and

(3) existing economic or regulatory barriers.

C. No provider of public telecommunications service may use current revenues earned or expenses incurred in conjunction with any noncompetitive service to subsidize competitive public telecommunications services. In order to avoid cross-subsidization of competitive services by noncompetitive telecommunications services, prices or rates charged for a competitive telecommunications service shall cover the cost for the provision of the service. In any proceeding held pursuant to this section, the party providing the service shall bear the burden of proving that the prices charged for competitive telecommunications services cover cost.

D. The commission may, upon its own motion or on the petition of an interested party and after notice to all interested parties and customers and a hearing, reclassify any service previously determined to be a competitive telecommunications service if after a hearing the commission finds that a service is not subject to effective competition.

**History:** Laws 1985, ch. 242, § 8; 1987, ch. 21, § 6.

## ANNOTATIONS

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

**Constitutional authority not limited.** - Although statutory authority specifically is granted to the state corporation commission to regulate a public telecommunications service, such provisions do not limit its constitutional authority under N.M. Const., Art. XI, § 7. *Mountain States Tel. & Tel. Co. v. New Mexico State Corp. Comm'n*, 109 N.M. 504, 787 P.2d 423 (1990).

**Telephone company's third-party billing and collection services** were subject to regulation by the state corporation commission, where such services involved timing calls through switching operations and transmitting recorded data to the company's

billing department. *Mountain States Tel. & Tel. Co. v. New Mexico SCC*, 107 N.M. 745, 764 P.2d 876 (1988).

**Pay telephone services.** - State corporation commission, in its discretion, could consider any relevant factor in making its determination whether to detariff pay telephone services if effective competition was found to exist. The commission could examine the market-share factor in order to make a decision regarding the existence of effective competition. *Mountain States Tel. & Tel. Co. v. New Mexico State Corp. Comm'n*, 109 N.M. 504, 787 P.2d 423 (1990).

### **63-9A-9. Regulation of individual contracts to facilitate competition.**

A. In accordance with the provisions of this section, the commission shall regulate the rates, charges and service conditions for individual contracts for public telecommunications services in a manner which facilitates effective competition and shall authorize the provision of all or any portion of a public telecommunications service under stated or negotiated terms to any person or entity that has acquired or is preparing to acquire, through construction, lease or any other form of acquisition, similar public telecommunications services from an alternate source.

B. At any time, the provider of public telecommunications services may file a verified application with the commission for authorization to provide a public telecommunications service on an individual contract basis. The application shall describe the telecommunications services to be offered, the party to be served and the parties offering the service, together with such other information and in such form as the commission may prescribe. Such additional information shall be reasonably related to the determination of the existence of a competitive offer. A determination of effective competition pursuant to Section 63-9A-8 NMSA 1978 shall not be necessary to file an application or to have an application granted by the commission pursuant to this section.

C. The commission shall approve or deny any such application within ten days or such other period as shall be established by the commission, not to exceed sixty days, giving consideration to the requirements of any contract negotiations. If the commission has not acted on any application within the time period established, the application shall be deemed granted. The commission shall deny the application only upon a finding that the application fails to set forth prescribed information or that the subject or comparable services are not being offered to the customer by parties other than the applicant or that the contract fails to cover the costs of the service.

D. Within ten days after the conclusion of negotiations, the provider of public telecommunications services shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service, which shall be maintained by the commission on a confidential basis subject to an appropriate protective order.



**History:** Laws 1985, ch. 242, § 9; 1987, ch. 21, § 7.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1987, ch. 21, § 9 provides for the severability of the act if any part or application thereof is held invalid.

#### **63-9A-10. Examination of books and records.**

Nothing in the New Mexico Telecommunications Act shall preclude the commission from exercising its authority to require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs or expenses that are joint or common to both public telecommunications services and other services.

**History:** Laws 1985, ch. 242, § 10.

#### **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

#### **63-9A-11. Complaint alleging violation by provider of telecommunications services.**

A. Complaint may be made by any interested party setting forth any act or omission by a provider of telecommunications services alleged to be in violation of any provision of the New Mexico Telecommunications Act or any order or rule of the commission issued pursuant to that act.

B. Upon filing of the complaint, the commission shall set the time and place of hearing and at least ten days' notice thereof shall be given to the party complained of. Service of notice of the hearing shall be made in any manner giving actual notice.

C. All matters upon which complaint may be founded may be joined in one hearing and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission or on review by the courts. The persons the commission allows to intervene shall be joined and heard, along with the complainant and the party complained of.

D. The burden shall be on the party complaining to show a violation of a provision of the New Mexico Telecommunications Act or an order or rule of the commission issued pursuant to that act.

E. After conclusion of the hearing the commission shall make and file an order containing its findings of fact and decision. A copy of the order shall be served upon the party complained of or his attorney.

F. Conduct of the hearings and rendering of decisions shall be governed by the rules of practice and procedure heretofore or hereafter promulgated by the commission.

**History:** Laws 1985, ch. 242, § 11.

#### **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

#### **63-9A-12. Validity of orders; substantial compliance with act sufficient.**

A substantial compliance by the commission with the requirements of the New Mexico Telecommunications Act shall be sufficient to give effect to all rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature, in respect thereto.

**History:** Laws 1985, ch. 242, § 12.

#### **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

#### **63-9A-13. Rules.**

The commission shall have the right and is hereby empowered to adopt, promulgate, enforce and amend such reasonable rules as may be required to administer the New Mexico Telecommunications Act.

**History:** Laws 1985, ch. 242, § 13.

#### **ANNOTATIONS**

**Cross-references.** - For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

#### **63-9A-14. Action to set aside nonremovable orders of the commission.**

Any provider of telecommunications services and any other person in interest being aggrieved by an order or determination of the commission under the New Mexico Telecommunications Act not removable to the supreme court of New Mexico under the provisions of Article 11, Section 7 of the constitution of New Mexico may file a notice of appeal in the supreme court asking for a review of the commission's final orders therein.

A notice of appeal must be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall name the state corporation commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may upon proper notice order any person to be joined as a party.

**History:** Laws 1985, ch. 242, § 14.

## **ANNOTATIONS**

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

### **63-9A-15. Notice to the commission.**

Upon the filing of a notice of appeal, the appellant shall cause a copy thereof to be served upon the commission and parties of record in the proceeding before the commission in the manner prescribed by the Rules of Appellate Procedure for Civil Cases. Within thirty days after service of the notice of appeal or such further time as the supreme court for good cause may specify, the commission shall certify to the supreme court the record of the testimony taken before the commission and all exhibits offered or received in evidence at the hearing before the commission, and all pleadings, findings, conclusions, orders and opinions, or certified copies thereof, made and entered in, or in connection with, the hearing before the commission; provided, however, that the parties and the commission may stipulate that a specified portion only of the testimony taken at the hearing before the commission shall be certified to the supreme court for review on appeal.

**History:** Laws 1985, ch. 242, § 15.

## **ANNOTATIONS**

**Cross-references.** - As to Rules of Appellate Procedure, see Judicial Pamphlet 12 in Judicial Volume 2.

### **63-9A-16. Appeal on the record.**

The appeal shall be heard on the record made before the commission, and the supreme court shall not permit the introduction of new evidence addressed to any of the issues presented at the hearing before the commission.

**History:** Laws 1985, ch. 242, § 16.

### **63-9A-17. Burden of showing that the order is unreasonable or unlawful.**

The burden shall be on the party appealing to show that the order appealed from is unreasonable or unlawful.

**History:** Laws 1985, ch. 242, § 17.

### **63-9A-18. Decision on appeal.**

The supreme court shall have no power to modify the action or order appealed from, but shall either affirm or annul and vacate the same. The supreme court shall vacate and annul the order complained of if it is made to appear to the satisfaction of the court that the order is unreasonable or unlawful. Proceedings in the supreme court shall be governed by the provisions of the New Mexico Telecommunications Act and by the Rules of Appellate Procedure for Civil Cases promulgated by the supreme court of New Mexico.

**History:** Laws 1985, ch. 242, § 18.

#### **ANNOTATIONS**

**Cross-references.** - As to Rules of Appellate Procedure, see Judicial Pamphlet 12 in Judicial Volume 2.

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

### **63-9A-19. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1995, ch. 175, § 2, repeals 63-9A-19 NMSA 1978, as enacted by Laws 1985, ch. 242, § 19, relating to penalty for violations of the New Mexico Telecommunications Act, effective June 16, 1995. For provisions of former section, see 1989 Replacement Pamphlet. For present comparable provisions, see 63-7-23 NMSA 1978.

### **63-9A-20. Injunctions; contempt.**

In any matter not removable to the supreme court of New Mexico under the provisions of Article 11, Section 7 of the constitution of New Mexico, the commission may apply to courts having jurisdiction for injunctions to prevent violations of any provision of the New Mexico Telecommunications Act or of any rule or order of the commission issued pursuant to that act, and such courts shall have power to grant such injunctions and to enforce such injunctions by contempt procedure.

**History:** Laws 1985, ch. 242, § 20.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1985, ch. 242, § 21, provides for the severability of the act if any part or application thereof is held invalid.

**New Mexico Telecommunications Act.** - See 63-9A-1 NMSA 1978 and notes thereto.

## **ARTICLE 9B**

### **CELLULAR TELEPHONE SERVICES**

#### **63-9B-1. Short title.**

This act [63-9B-1 to 63-9B-14 NMSA 1978] may be cited as the "Cellular Telephone Services Act".

**History:** Laws 1987, ch. 296, § 1.

#### **ANNOTATIONS**

**Cross-references.** - For power of state corporation commission to impose fines on telecommunications providers, see 63-7-23 NMSA 1978.

#### **63-9B-2. Purpose.**

The legislature declares that it is the policy of the state of New Mexico to permit cellular telephone service to operate in this state as authorized by the federal communications commission. It is the purpose of the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978] to permit a regulatory framework that will allow modification and detariffing of cellular telephone services as may be justified by the existence of competition in cellular telephone services in New Mexico.

**History:** Laws 1987 ch. 296, § 2.

#### **63-9B-3. Definitions.**

As used in the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978]:

A. "commission" means the state corporation commission;

B. "cellular service company" means a cellular telephone company that uses cellular telephone equipment and is a radio common carrier, or telephone or telecommunications company licensed by the federal communications commission and operates within the 800 megahertz band of frequency. A cellular service company operates a cellular system which is a high capacity land mobile system in which assigned spectrum is divided into discrete channels which are assigned in groups to geographic cells covering a cellular geographic area, as defined by the federal communications commission. Cellular service company does not include noncellular

radio common carrier service, including but not limited to noncellular mobile telephone service, radio-paging service or one-way cable television service; and

C. "certificated area" means the geographical area which a cellular service company is authorized to serve by a certificate of public convenience and necessity and which is defined on the map as part of the certificate issued under such law authorizing the issuance of a certificate of public convenience and necessity for such purpose.

**History:** Laws 1987, ch. 296, § 3.

#### **63-9B-4. Operation, regulation and tariffs.**

A. A cellular service company may provide cellular telephone services in a certificated area as authorized by law and the commission, subject to reasonable rules and regulations of the commission or as otherwise provided by law. The provisions of Section 63-9A-6 NMSA 1978 shall not be construed to prevent a certificated cellular service company from providing cellular services in the certificated service territory of a telecommunications company having an exclusive right to provide local exchange service.

B. If the commission finds after holding hearings requested by any interested party or by its own motion that more than one cellular service company licensed by the federal communications commission is operating in all or part of a certificated area, then the commission may determine that competition in cellular telephone services exists in such area.

C. When the commission has made a determination that cellular telephone services are subject to competition, the commission shall, consistent with the purposes of the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978], modify, reduce or eliminate rules, regulations and other requirements applicable to the provision for such service including the fixing and determining of specific rates, tariffs or fares for the service. The commission's action may include the detariffing of service or the establishment of minimum rates which will cover the costs for the service.

**History:** Laws 1987, ch. 296, § 4.

#### **63-9B-5. Complaint alleging violation by provider of telecommunications services.**

A. Complaint may be made by any interested party setting forth any act or omission by a cellular service company alleged to be in violation of any provision of the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978] or any order or rule of the commission issued pursuant to that act.

B. Upon filing of the complaint, the commission shall set the time and place of hearing and at least ten days' notice of the hearing shall be given to the party complained of. Service of notice of the hearing shall be made in any manner giving actual notice.

C. All matters upon which complaint may be founded may be joined in one hearing and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission or on review by the courts. The persons the commission allows to intervene shall be joined and heard, along with the complainant and the party complained of.

D. The burden shall be on the party complaining to show a violation of a provision of the Cellular Telephone Services Act or an order or rule of the commission issued pursuant to that act.

E. After conclusion of the hearing, the commission shall make and file an order containing its findings of fact and decision. A copy of the order shall be served upon the party complained of or his attorney.

F. Conduct of the hearings and rendering of decisions shall be governed by the rules of practice and procedure promulgated by the commission.

**History:** Laws 1987, ch. 296, § 5.

### **63-9B-6. Validity of orders; substantial compliance with act sufficient.**

A substantial compliance by the commission with the requirements of the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978] shall be sufficient to give effect to all rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature.

**History:** Laws 1987, ch. 296, § 6.

### **63-9B-7. Rules.**

The commission shall adopt, promulgate, enforce and amend such reasonable rules as may be required to administer the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978].

**History:** Laws 1987, ch. 296, § 7.

### **63-9B-8. Action to set aside nonremovable orders of the commission.**

Any cellular service company and any other person in interest being aggrieved by an order or determination of the commission under the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978] not removable to the supreme court of New Mexico under the provisions of Article 11, Section 7 of the constitution of New Mexico may file a notice of appeal in the supreme court asking for a review of the commission's final orders. A notice of appeal shall be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may upon proper notice order any person to be joined as a party.

**History:** Laws 1987, ch. 296, § 8.

### **63-9B-9. Notice to the commission.**

Upon the filing of a notice of appeal, the appellant shall cause a copy to be served upon the commission and parties of record in the proceeding before the commission in the manner prescribed by the Rules of Appellate Procedure for Civil Cases. Within thirty days after service of the notice of appeal or such further time as the supreme court for good cause may specify, the commission shall certify to the supreme court the record of the testimony taken before the commission and all exhibits offered or received in evidence at the hearing before the commission and all pleadings, findings, conclusions, orders and opinions, or certified copies thereof, made and entered in, or in connection with, the hearing before the commission; provided, however, that the parties and the commission may stipulate that a specified portion only of the testimony taken at the hearing before the commission shall be certified to the supreme court for review on appeal.

**History:** Laws 1987, ch. 296, § 9.

## **ANNOTATIONS**

**Cross-references.** - For Rules of Appellate Procedure, see Judicial Pamphlet 12 in Judicial Volume 2.

### **63-9B-10. Appeal on the record.**

The appeal shall be heard on the record made before the commission, and the supreme court shall not permit the introduction of new evidence addressed to any of the issues presented at the hearing before the commission.

**History:** Laws 1987, ch. 296, § 10.

### **63-9B-11. Burden of showing that the order is unreasonable or unlawful.**



The burden shall be on the party appealing to show that the order appealed from is unreasonable or unlawful.

**History:** Laws 1987, ch. 296, § 11.

### **63-9B-12. Decision on appeal.**

The supreme court shall have no power to modify the action or order appealed from, but shall either affirm or annul and vacate the action or order. The supreme court shall vacate and annul the order complained of if it is made to appear to the satisfaction of the court that the order is unreasonable or unlawful. Proceedings in the supreme court shall be governed by the provisions of the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978] and by the Rules of Appellate Procedure for Civil Cases promulgated by the supreme court of New Mexico.

**History:** Laws 1987, ch. 296, § 12.

#### **ANNOTATIONS**

**Cross-references.** - For Rules of Appellate Procedure, see Judicial Pamphlet 12 in Judicial Volume 2.

### **63-9B-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1995, ch. 175, § 2, repeals 63-9B-13 NMSA 1978, as enacted by Laws 1987, ch. 296, § 13, relating to penalty for violations of the Cellular Telephone Services Act, effective June 16, 1995. For provisions of former section, see 1989 Replacement Pamphlet. For present comparable provisions, see 63-7-23 NMSA 1978.

### **63-9B-14. Injunctions; contempt.**

In any matter not removable to the supreme court of New Mexico under the provisions of Article 11, Section 7 of the constitution of New Mexico, the commission may apply to courts having jurisdiction for injunctions to prevent violations of any provision of the Cellular Telephone Services Act [63-9B-1 to 63-9B-14 NMSA 1978] or of any rule or order of the commission issued pursuant to that act, and the courts shall have power to grant injunctions and to enforce injunctions by contempt procedure.

**History:** Laws 1987, ch. 296, § 14.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1987, ch. 296, § 15 provides for the severability of the Cellular Telephone Services Act if any part or application thereof is held invalid.

# **ARTICLE 9C**

## **LOW INCOME TELEPHONE SERVICE ASSISTANCE**

### **63-9C-1. Short title.**

This act [63-9C-1 to 63-9C-6 NMSA 1978] may be cited as the "Low Income Telephone Service Assistance Act".

**History:** Laws 1987, ch. 197, § 1.

### **63-9C-2. Purpose.**

It is the purpose of the Low Income Telephone Service Assistance Act [63-9C-1 to 63-9C-6 NMSA 1978] to assure that telephone rate increases do not force many low-income New Mexicans to discontinue necessary telephone service and to increase the availability of basic telephone service to low-income New Mexicans by providing assistance to meet the cost of basic telephone service.

**History:** Laws 1987, ch. 197, § 2.

### **63-9C-3. Definitions.**

As used in the Low Income Telephone Service Assistance Act [63-9C-1 to 63-9C-6 NMSA 1978]:

- A. "commission" means the state corporation commission;
- B. "department" means the human services department; and
- C. "local exchange company" means a person, company, corporation, partnership, cooperative, joint venture or other business organization or association not engaged solely in interstate business, which provides services or facilities for the transmission of two-way interactive switched voice communications over a telephone line within a local exchange area for single-line customers.

**History:** Laws 1987, ch. 197, § 3.

### **63-9C-4. Low income assistance rates; commission authority.**

A. A local exchange company may provide assistance in the form of reduced rates to those persons who meet the eligibility criteria of one or more need-based assistance programs administered by the department.

B. The commission shall promulgate rules and regulations for the implementation of the Low Income Telephone Assistance Act, [63-9C-1 to 63-9C-6 NMSA 1978] for those exchange companies who provide such assistance.

**History:** Laws 1987, ch. 197, § 4.

### **63-9C-5. Federal waiver.**

In addition to any reduced rates provided by local exchange companies on behalf of low-income New Mexicans, the commission shall apply to the federal communications commission for a waiver of the federal end user common line charges. Upon receipt of the waiver, the commission shall notify the local exchange companies providing low income telephone service assistance and the monthly telephone bill shall reflect the waiver of the federal end user common line charges.

**History:** Laws 1987, ch. 197, § 5.

### **63-9C-6. Department cooperation.**

Subject to state and federal statutes and regulations governing the sharing of confidential information, the department shall cooperate with the commission and the local exchange companies in identifying those persons eligible for assistance pursuant to the Low Income Telephone Service Assistance Act [63-9C-1 to 63-9C-6 NMSA 1978].

**History:** Laws 1987, ch. 197, § 6.

## **ARTICLE 9D ENHANCED 911**

### **63-9D-1. Short title.**

Chapter 63, Article 9D NMSA 1978 may be cited as the "Enhanced 911 Act".

**History:** Laws 1989, ch. 25, § 1; 1993, ch. 48, § 2.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "Chapter 63, Article 9D NMSA 1978" for "This act".

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

## **63-9D-2. Findings and purpose.**

A. The legislature finds that:

- (1) isolated people, the elderly, the young and victims of crime are often at risk and without help;
- (2) children, elderly persons and victims of crime are frequently unable to explain directions to the location of an emergency situation;
- (3) life-threatening accidents, fires, crimes and natural disasters occur in the state each year;
- (4) an enhanced 911 telephone emergency system provides:
  - (a) expansion of the benefits of the basic 911 emergency telephone number;
  - (b) faster response time which minimizes the loss of life and property;
  - (c) automatic routing to the appropriate emergency response unit;
  - (d) immediate visual display of the location and telephone number of the caller; and
  - (e) curtailment of abuses of the emergency system by documenting callers; and
- (5) New Mexico communities could make efficient use of the enhanced 911 telephone emergency system if the communities had adequate funding available.

B. It is the purpose of the Enhanced 911 Act [this article] to further the public interest and protect the safety, health and welfare of the people of New Mexico by enabling the development, installation and operation of enhanced 911 emergency reporting systems to be operated under shared state and local governmental management and control.

**History:** Laws 1989, ch. 25, § 2; 1993, ch. 48, § 3.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, in Subsection A, deleted former Paragraphs (4), (5), and (8) relating to the availability of the 911 emergency number and system, redesignated former Paragraphs (6) and (7) as current Paragraphs (4) and (5), and substituted "curtailment" for "curtailing" in subparagraph (4)(e); and in Subsection B, inserted "shared state and" near the end.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

### **63-9D-3. Definitions.**

As used in the Enhanced 911 Act [this article]:

A. "911 emergency surcharge" means the monthly uniform charge assessed on each local exchange service customer in the state for each local exchange access line to pay for the purchase, lease, installation and maintenance of equipment necessary for the establishment of a 911 system including the repayment of bonds issued pursuant to the Enhanced 911 Bond Act [63-9D-12 to 63-9D-20 NMSA 1978];

B. "911 service area" means the area within a local governing body's jurisdiction that has been designated by the local governing body or the division to receive enhanced 911 service;

C. "911 system" means the basic 911 system or the enhanced 911 system;

D. "basic 911 system" means a telephone service that automatically connects a person dialing the single three-digit number 911 to an established public safety answering point through normal telephone service facilities;

E. "commission" means the state corporation commission;

F. "department" means the taxation and revenue department;

G. "division" means the local government division of the department of finance and administration;

H. "enhanced 911 system" means a telephone system consisting of network, database and on-premises equipment that utilizes the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling the users of a public telephone system to reach a public safety answering point to report emergencies by dialing 911, and includes the capability to:

(1) selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area; and

(2) automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate public safety answering point;

I. "enhanced 911 equipment" means the customer premises equipment directly related to the operation of an enhanced 911 system, including, but not limited to, automatic number identification or automatic location identification controllers and display units, printers, cathode ray tubes and software associated with call detail recording;

J. "equipment supplier" means any person or entity who provides or offers to provide telecommunications equipment necessary for the establishment of enhanced 911 services;

K. "local 911 surcharge" means the additional charge imposed by a local governing body of a community served by a local exchange telephone company that has not otherwise provided for enhanced 911 capability in its network in order to provide funding for the local governing body to pay for development of the network and database;

L. "local exchange access line" means any telephone line that connects a local exchange service customer to the local switching office and has the capability of reaching local public safety service agencies, but does not include any line used by a carrier for the provision of interexchange services;

M. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

N. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a local exchange telephone company within a local exchange area, including access to enhanced 911 systems;

O. "local exchange telephone company" means a telecommunications company, as defined by Subsection M of Section 63-9A-3 NMSA 1978, certified to provide local exchange service;

P. "local governing body" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code [Chapter 3 NMSA 1978];

Q. "network" means any system designed to provide one or more access paths for communications between users at different geographic locations; provided that a system may be designed for voice, data or both and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies;

R. "network and database surcharge" means the monthly uniform charge assessed on each local exchange service customer in the state for each local exchange access line to pay for the costs of developing and maintaining a network and database for a 911 emergency system; and

S. "public safety answering point" means a twenty-four-hour local jurisdiction communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency.

**History:** Laws 1989, ch. 25, § 3; 1993, ch. 48, § 4.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, inserted current Subsections C, D, E, Q, and R, deleted former Subsection G, defining "fund", and redesignated former Subsections C through F, H through N, and O as current Subsections F through P, and S; added the language beginning "for each local exchange" at the end of Subsection A; deleted "New Mexico state corporation" preceding "commission" in Subsection M; substituted "local exchange telephone" for "telecommunications" in Subsection N; deleted "city council or other" following "county or the" and "or of a town, village or special district" at the end of Subsection P; and made minor stylistic changes.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

### **63-9D-4. Provision for 911 services by local governing bodies; 911 system costs and network and database costs; payment of costs; joint powers agreements; aid outside jurisdictional boundaries.**

A. A local governing body may incur costs for the purchase or lease, installation and maintenance of equipment necessary for the establishment of a 911 system at public safety answering points and may pay such costs through disbursements from the enhanced 911 fund. Necessary network and database costs may be recovered by a local governing body from the network and database fund in amounts approved by the state board of finance.

B. If the enhanced 911 system is to be provided for territory that is included in whole or in part in the jurisdiction of the local governing bodies of two or more public agencies that are the primary providers of emergency fire fighting, law enforcement, ambulance, emergency medical or other emergency services, the agreement for the procurement of the necessary equipment for a 911 system shall be entered into by each local governing body, unless a local governing body expressly excludes itself from the agreement. Any agreement shall provide that each local governing body not excluded from the agreement shall make payment therefor from general revenues. Nothing in this subsection shall be construed to prevent two or more such local governing bodies from entering into a contract to establish a separate legal entity, that is, separate governing body, and thereunder to enter into an agreement as the enhanced 911 customer.

C. All public agencies in a 911 system shall provide that once an emergency unit is dispatched in response to a request for aid through the 911 system, the emergency unit shall render services to the requester without regard to whether the unit is operating outside its normal jurisdictional boundaries.

**History:** Laws 1989, ch. 25, § 4; 1993, ch. 48, § 5.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline which read "Provision for Enhanced 911 Services by Local Governing Bodies - Payment of Costs - Joint Powers Agreements"; substituted "a 911 system" for "an enhanced 911 system" and inserted "enhanced 911" near the end of the first sentence of Subsection A; substituted the current second sentence in Subsection A for language authorizing communities to incur costs for development of network capability and enhanced 911 system database; substituted "procurement of the necessary equipment for a 911 system" for "necessary equipment" in the first sentence of Subsection B; added Subsection C; and made stylistic changes.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

### **63-9D-5. Imposition of surcharge; notification.**

There is imposed a 911 emergency surcharge in the amount of twenty-five cents (\$.25) and a network and database surcharge in the amount of twenty-six cents (\$.26) to be billed by local exchange telephone companies on all local exchange access lines in the state; provided, however, that a 911 emergency surcharge and the network and database surcharge shall not be imposed upon local exchange service customers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act [63-9C-1 to 63-9C-6 NMSA 1978]. The 911 emergency surcharge shall commence with the first billing period of each customer on or following ninety days after the effective date of the Enhanced 911 Act [this article]. The network and database surcharge shall commence with the first billing period of each customer on or following ninety days after July 1, 1993. Each local governing body shall notify the division and the local exchange telephone company providing local exchange service to the 911 service area of the boundaries of the 911 service area and the costs to the local governing body of purchasing or leasing, installing and maintaining the equipment necessary to provide 911 emergency services in the 911 service area. Each local governing body that seeks funding for its 911 system shall file an application with the division requesting approval of the state board of finance for disbursement from the enhanced 911 fund and the network and database fund.

**History:** Laws 1989, ch. 25, § 5; 1993, ch. 48, § 6.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, deleted "Additional Local Surcharge" following "Notification" in the catchline and rewrote this section to the extent that a detailed comparison is impracticable.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.



**Temporary provisions.** - Laws 1989, ch. 25, § 12, effective March 10, 1989, provides that notwithstanding the provisions of Section 5 (63-9D-5 NMSA 1978) of the Enhanced 911 Act, in order to expedite deployment of enhanced 911, during the first year after March 10, 1989, a local governing body may notify the division and the local exchange company of its election to participate in the enhanced 911 fund no later than three months prior to implementation of the enhanced 911 system.

**Effective date of the Enhanced 911 Act.** - The phrase "effective date of the Enhanced 911 Act", referred to in Subsections A and B, means March 10, 1989, the effective date of Laws 1989, ch. 25.

### **63-9D-6. Participation in funds; liability of user for surcharge; collection; uncollected amounts.**

A. The local governing body may, by ordinance or resolution, recover from the enhanced 911 fund and the network and database fund an amount necessary to recover the costs of purchasing, leasing, installing and maintaining equipment and the costs of developing and maintaining a network and database necessary to provide a 911 emergency system in its designated 911 service area.

B. Local exchange telephone companies shall be required to bill and collect the 911 emergency surcharge and the network and database surcharge from their local exchange service customers. The 911 emergency surcharge and the network and database surcharge required to be collected by the local exchange telephone company shall be added to and shall be stated in the billings to the local exchange service customer. The money collected by the local exchange telephone company as the 911 emergency surcharge and the network and database surcharge shall not be considered as revenues of the local exchange telephone company.

C. Every billed local exchange service customer is liable for payment of the 911 emergency surcharge and the network and database surcharge until they have been paid to the local exchange telephone company.

D. The local exchange telephone company has no obligation to take any legal action to enforce the collection of the 911 emergency surcharge or the network and database surcharge. An action may be brought by or on behalf of the department. The local exchange telephone company shall annually provide the department a list of the amounts uncollected along with the names and addresses of those local exchange service customers who carry a balance that can be determined by the local exchange telephone company to be the nonpayment of the 911 emergency surcharge and the network and database surcharge. The local exchange telephone company shall not be held liable for uncollected amounts.

**History:** Laws 1989, ch. 25, § 6; 1990, ch. 87, § 1; 1993, ch. 48, § 7.

### **ANNOTATIONS**

**The 1990 amendment**, effective March 2, 1990, substituted "ordinance or resolution" for "ordinance in the case of municipalities and by resolution in the case of counties or special districts" in Subsection A and "Section 63-9D-5 NMSA 1978" for "Section 5 of the Enhanced 911 Act" in the fourth sentence of Subsection D.

**The 1993 amendment**, effective July 1, 1993, substituted "Funds" for "Fund" in the catchline and rewrote this section to the extent that a detailed comparison is impracticable.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

### **63-9D-7. Remittance of charges; administrative fee; audits.**

A. Amounts collected by reason of the 911 emergency surcharge and the network and database surcharge shall be remitted monthly to the department, which shall administer and enforce collection of each surcharge in accordance with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978]. The amount of the 911 emergency surcharge and the network and database surcharge shall be remitted to the department no later than the twenty-fifth day of the month following the month in which the surcharge was imposed. At that time, a return for the preceding month shall be filed with the department in such form as the department and local exchange telephone company shall agree upon. The local exchange telephone company required to file the return shall deliver the return together with a remittance of the amount of the 911 emergency surcharge and the network and database surcharge payable to the department. The local exchange telephone company shall maintain a record of the amount of each charge collected pursuant to the Enhanced 911 Act [this article]. The record shall be maintained for a period of three years after the time the charges were collected.

B. From every remittance to the department made on or before the date when it becomes due, the local exchange telephone company required to make a remittance shall be entitled to deduct and retain one percent of the collected amount or fifty dollars (\$50.00), whichever is greater, as the cost of administration for collecting the 911 emergency surcharge and the network and database surcharge.

**History:** Laws 1989, ch. 25, § 7; 1993, ch. 48, § 8.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, inserted "and the network and database surcharge" in the first and second sentences of Subsection A and at the end of Subsection B; rewrote the second sentence of Subsection A which read "The amount of the charge collected in one month by the local exchange telephone company shall be remitted to the department no later than sixty days after the end of the month"; substituted "three years" for "one year" and "charges were" for "charge was" in the final sentence of Subsection A; and deleted former Subsections C through F, relating to

audits of local exchange telephone companies and the collection and remittance of local 911 surcharge amounts.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

### **63-9D-8. Enhanced 911 fund; creation; administration; disbursement; reports to legislature.**

A. There is created in the state treasury a fund which shall be known as the "enhanced 911 fund". The enhanced 911 fund shall be administered by the division.

B. All money remitted to the department as a result of collection of the 911 emergency surcharge shall be deposited in the enhanced 911 fund.

C. All money deposited in the enhanced 911 fund and all income earned by investment of the fund are hereby appropriated for expenditure in accordance with the Enhanced 911 Act [this article] and shall not revert to the general fund.

D. Payments shall be made from the enhanced 911 fund to participating local governing bodies upon vouchers signed by the director of the division.

E. Money in the enhanced 911 fund may be used for the purchase, lease, installation or maintenance of equipment necessary for a 911 system, including the repayment of bonds issued pursuant to the Enhanced 911 Bond Act [63-9D-12 to 63-9D-20 NMSA 1978]. Annually, the division may expend no more than five percent of all money deposited annually in the enhanced 911 fund for the purpose of administering and coordinating activities associated with implementation of the Enhanced 911 Act.

F. The division shall report to the legislature each session as to the status of the enhanced 911 fund and whether the current level of the 911 emergency surcharge is adequate, excessive or insufficient to fund the anticipated needs for the next year.

**History:** Laws 1989, ch. 25, § 8; 1990, ch. 86, § 10; 1990, ch. 87, § 2; 1993, ch. 48, § 9.

### **ANNOTATIONS**

**The 1990 amendments.** - Laws 1990, ch. 86, § 10, effective May 16, 1990, deleting former Subsection B which read "All money remitted to the department as a result of collection of the 911 emergency surcharge shall be deposited in the fund" and redesignating former Subsections C and D as new Subsections B and C, was approved March 2, 1990. However, Laws 1990, ch. 87, § 2, effective March 2, 1990, also amending this section by adding present Subsections C and E and redesignating former Subsections C and D as present Subsections D and F, but not giving effect to the changes made by the first 1990 amendment, was approved later on March 2, 1990. The section is set out as amended by Laws 1990, ch. 87, § 2. See 12-1-8 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, inserted "are hereby appropriated for expenditure in accordance with the Enhanced 911 Act and" in Subsection C; added the first sentence of Subsection E; and made stylistic changes throughout the section.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

### **63-9D-8.1. Division powers.**

A. The division may adopt such reasonable rules as are deemed necessary to carry out the provisions of the Enhanced 911 Act [this article].

B. The division shall have the authority to fund basic 911 systems pursuant to the provisions of the Enhanced 911 Act.

C. The division and the local governing body shall have the authority to establish 911 service areas.

D. Unless otherwise provided by law, no rule affecting any person, agency, local governing body or local exchange telephone company shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the division or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons or agencies who have made a written request for advance notice of the hearing and to all local governing bodies and local exchange telephone companies.

E. All rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 63-9D-8.1, enacted by Laws 1990, ch. 87, § 3; 1993, ch. 48, § 10.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, added current Subsections B and C and redesignated former Subsections B and C as Subsections D and E.

**Emergency clauses.** - Laws 1990, ch. 87, § 4 makes the act effective immediately. Approved March 2, 1990.

## **63-9D-8.2. Network and database surcharge fund; creation; administration; disbursement.**

A. There is created in the state treasury the "network and database surcharge fund". The network and database surcharge fund shall be administered by the division.

B. All money remitted to the department as a result of the network and database surcharge shall be deposited in the network and database surcharge fund.

C. All money deposited in the network and database surcharge fund and all income earned by investment of the network and database surcharge fund are hereby appropriated for expenditure in accordance with the provisions of the Enhanced 911 Act [this article] and shall not revert to the general fund.

D. Payments shall be made from the network and database surcharge fund to participating local governing bodies upon vouchers signed by the director of the division.

E. Annually, the division may expend no more than two and one-half percent of all money deposited annually in the network and database surcharge fund for the purpose of administering and coordinating activities associated with implementation of the network and database surcharge fund.

F. Money in the network and database surcharge fund may be awarded as grant assistance upon application of local governing bodies to the division and approval by the state board of finance. If it is anticipated that insufficient funds will be available to pay all requests for grants, the state board of finance may reduce the percentage of assistance to be awarded. In the event of such a reduction, the state board of finance may award supplemental grants to local governing bodies that can demonstrate financial hardship.

**History:** 1978 Comp., § 63-9D-8.2, enacted by Laws 1993, ch. 48, § 11.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 48, § 14 makes the act effective on July 1, 1993.

## **63-9D-9. Agreements or contracts for 911 systems; use of funds collected; transfer of funds.**

A. Money received by a local governing body from the enhanced 911 fund shall be spent solely to pay for 911 equipment costs, associated installation costs and maintenance costs necessary to provide enhanced 911 services. Money received as a result of the network and database surcharge shall be spent solely to pay for the network capability and database for an enhanced 911 system.

B. Money received by a local governing body from the local 911 surcharge shall be credited to separate cash funds, apart from the general fund of the local governing body, for network and database payments. Any local 911 surcharge money remaining on July 1, 1993 shall be transferred to the network and database surcharge fund.

**History:** Laws 1989, ch. 25, § 9; 1993, ch. 48, § 12.

#### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, added "transfer of funds" to the catchline and rewrote this section to the extent that a detailed comparison is impracticable.

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

#### **63-9D-10. Immunity.**

911 systems are within the governmental powers and authorities of the local governing body or state agency in the provision of services for the public health, welfare and safety. In contracting for such services or the provisioning of a 911 system, except for willful or wanton negligence or intentional acts, the local governing body, public agency, equipment supplier, local exchange telephone company and mobile telephone company including a cellular service company as defined in Subsection B of Section 63-9B-3 NMSA 1978, their employees and agents shall be immune from litigation or the payment of any damages in the performance of installing, maintaining or providing 911 systems and transmitting 911 calls.

**History:** Laws 1989, ch. 25, § 10.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

#### **63-9D-11. Private listing subscribers and 911 service.**

Private listing subscribers waive the privacy afforded by nonlisted or nonpublished numbers to the extent that the name and address associated with the telephone number may be furnished to the enhanced 911 system for call routing or for automatic retrieval of location information in response to a call initiated to 911.

**History:** Laws 1989, ch. 25, § 11.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1989, ch. 25, § 14 makes the Enhanced 911 Act effective immediately. Approved March 10, 1989.

**Severability clauses.** - Laws 1989, ch. 25, § 13, provides for the severability of the Enhanced 911 Act if any part or application thereof is held invalid.

### **63-9D-11.1. Violation; penalties.**

A. Any person who knowingly dials 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency is guilty of a petty misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment for a term not to exceed six months, or both.

B. A municipality may adopt an ordinance making it a violation for any person to knowingly dial 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency. The municipality may adopt and enforce the ordinance pursuant to the authority provided in Section 3-17-1 NMSA 1978.

**History:** 1978 Comp., § 63-9D-11.1, enacted by Laws 1993, ch. 48, § 13.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 48, § 14 makes the act effective on July 1, 1993.

### **63-9D-12. Short title.**

Sections 63-9D-12 through 63-9D-20 NMSA 1978 may be cited as the "Enhanced 911 Bond Act".

**History:** Laws 1990, ch. 61, § 1; 1992, ch. 102, § 1.

#### **ANNOTATIONS**

**The 1992 amendment,** effective March 10, 1992, substituted "Sections 63-9D-12 through 63-9D-20 NMSA 1978" for "Sections 1 through 8 of this act".

**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

### **63-9D-13. Definitions.**

As used in the Enhanced 911 Bond Act [63-9D-12 to 63-9D-20 NMSA 1978]:

A. "board" means the state board of finance;

B. "division" means the local government division of the department of finance and administration;

C. "enhanced 911 bonds" means the bonds authorized in the Enhanced 911 Bond Act;

D. "enhanced 911 project" means actions authorized under Section 63-9D-14 NMSA 1978 that pertain to a specific component of the 911 system; and

E. "pledged revenues" means the revenues to and the income of the enhanced 911 fund that are pledged to the payment of enhanced 911 bonds under the Enhanced 911 Bond Act.

**History:** Laws 1990, ch. 61, § 2; 1992, ch. 102, § 2.

### **ANNOTATIONS**

**The 1992 amendment**, effective March 10, 1992, substituted "Section 63-9D-14 NMSA 1978" for "Section 3 of the Enhanced 911 Bond Act" in Subsection D.

**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

### **63-9D-14. Enhanced 911 bonds; authority to issue; pledge of revenues; limitation on issuance.**

A. In addition to any other law authorizing the board to issue revenue bonds, the board may issue enhanced 911 bonds pursuant to the Enhanced 911 Bond Act [63-9D-12 to 63-9D-20 NMSA 1978] for the purposes specified in this section.

B. Enhanced 911 bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating the enhanced 911 system. The board may pledge irrevocably any or all of the projected revenues of the enhanced 911 fund, specifically including the 911 emergency surcharge authorized under the Enhanced 911 Act [this article], to the payment of the interest on and principal of such bonds. Any general determination by the board that any facilities or equipment are reasonably related to and shall constitute a part of a specified enhanced 911 project shall be conclusive if set forth in the proceedings authorizing the enhanced 911 bonds.

**History:** Laws 1990, ch. 61, § 3; 1992, ch. 102, § 3.

### **ANNOTATIONS**

**The 1992 amendment**, effective March 10, 1992, substituted "or" for "and" near the end of the first sentence of Subsection B.



**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

### **63-9D-15. Use of proceeds of bond issue.**

It is unlawful to divert, use or expend any money received from the issuance of enhanced 911 bonds for any purpose other than the purposes for which the bonds were issued.

**History:** Laws 1990, ch. 61, § 4.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

### **63-9D-16. Enhanced 911 bonds; terms.**

Enhanced 911 bonds:

A. shall bear interest at a coupon rate or coupon rates not exceeding the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; provided that interest shall be payable annually or semiannually and may or may not be evidenced by coupons; and provided further that the first interest payment date may be for interest accruing for any period not exceeding one year;

B. may be subject to a prior redemption at the board's option at such time or times and upon such terms and conditions, with or without the payment of such premium or premiums, as may be provided by action of the board;

C. may mature at any time or times not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments;

E. shall be sold for cash at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or private sale.

**History:** Laws 1990, ch. 61, § 5.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

### **63-9D-17. Bond authorization.**

The board may issue and sell enhanced 911 bonds in compliance with the Enhanced 911 Bond Act [63-9D-12 to 63-9D-20 NMSA 1978]. The board shall schedule the issuance and sale of the bonds in the most expeditious and economical manner upon a finding by the board that the division has certified that the need exists for the issuance of bonds and upon an action by the board designating the enhanced 911 fund to be the source of pledged revenues.

**History:** Laws 1990, ch. 61, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

### **63-9D-18. Authority to refund bonds.**

A. The board may issue and sell at public or private sale enhanced 911 bonds to refund outstanding enhanced 911 bonds and other bonds payable from the enhanced 911 fund by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.

B. In performing an advanced refunding, the board shall use the level savings method of advance refunding to the greatest extent possible.

C. No bonds shall be issued to refund outstanding enhanced 911 bonds or other bonds payable from the enhanced 911 fund if any of the refunding bonds have maturity dates after the latest maturity date of a bond to be refunded.

**History:** Laws 1990, ch. 61, § 7; 1992, ch. 102, § 4.

#### **ANNOTATIONS**

**The 1992 amendment,** effective March 10, 1992, substituted "board" for "state board of finance" near the beginning of Subsections A and B; and substituted "enhanced 911 fund" for "enhanced 911 bond fund" near the middle of Subsection A.

**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

## **63-9D-19. Enhanced 911 bonds not general obligations; authentication.**

A. Enhanced 911 bonds or refunding bonds issued as authorized by the Enhanced 911 Bond Act [63-9D-12 to 63-9D-20 NMSA 1978] are:

(1) not general obligations of the state; and

(2) collectible only from the proper pledged revenues, and each bond shall state that it is payable solely from the pledged revenues, and that the bondholders may not look to any other state fund for the payment of the interest and principal of the bonds.

B. The bonds and coupons shall be signed and sealed as provided by the resolution of the board issuing the bond, and the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978] shall be applicable.

**History:** Laws 1990, ch. 61, § 8.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1990, ch. 61, § 9 makes the Enhanced 911 Bond Act effective immediately. Approved March 2, 1990.

## **63-9D-20. Amount of surcharge; security for bonds.**

A. Notwithstanding the amount of the 911 emergency surcharge set forth in Subsection A of Section 63-9D-5 NMSA 1978, the legislature shall provide for the continued imposition, collection and deposit of the 911 emergency surcharge into the enhanced 911 fund in amounts that, together with other amounts deposited into the fund, will be sufficient to produce an amount necessary to meet annual debt service charges on all outstanding enhanced 911 bonds.

B. The legislature shall not repeal, amend or otherwise modify any law that affects the 911 emergency surcharge in a manner that impairs any outstanding enhanced 911 bonds secured by a pledge of the 911 emergency surcharge unless:

(1) the outstanding enhanced 911 bonds have been discharged in full; or

(2) provision has been made to discharge fully the outstanding enhanced 911 bonds.

C. The terms of any bonds issued after the effective date of this section shall not conflict with the provisions of this section.

D. Nothing in this section shall require any increase in the 911 emergency surcharge set forth in Subsection A of Section 63-9D-5 NMSA 1978.

**History:** 1978 Comp., § 63-9D-20, enacted by Laws 1992, ch. 102, § 5.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1992, ch. 102, § 6 makes the act effective immediately. Approved March 10, 1992.

## **ARTICLE 9E PRIVATE PAY TELEPHONE SERVICES**

### **63-9E-1. Pay telephones; credit cards for intrastate telephone calls.**

Every privately owned, instrument implemented coin or coinless telephone capable of reselling public telecommunications services in New Mexico must be able to accept for intrastate telephone calls the same credit card accounts accepted for such calls at any pay telephone owned by a local exchange company operating in the same area.

**History:** Laws 1989, ch. 229, § 1.

#### **ANNOTATIONS**

**Cross-references.** - For power of state corporation commission to impose fines on telecommunications providers, see 63-7-23 NMSA 1978.

**Effective dates.** - Laws 1989, ch. 229 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **63-9E-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1995, ch. 175, § 2, repeals 63-9E-2 NMSA 1978, as enacted by Laws 1989, ch. 229, § 2, relating to penalties for violation of state corporation commission regulations governing the use of private pay telephones, effective June 16, 1995. For provisions of former section, see 1989 Replacement Pamphlet. For present comparable provisions, see 63-7-23 NMSA 1978.

### **63-9E-3. [Calls to operator at no charge.]**

The caller using a pay phone shall be allowed to reach the operator at no charge.

**History:** Laws 1989, ch. 229, § 3.

#### **ANNOTATIONS**

**Cross-references.** - For power of state corporation commission to impose fines on telecommunications providers, see 63-7-23 NMSA 1978.

**Effective dates.** - Laws 1989, ch. 229 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

## **ARTICLE 9F**

# **TELECOMMUNICATIONS ACCESS ACT**

### **63-9F-1. Short title.**

This act [63-9F-1 to 63-9F-13 NMSA 1978] may be cited as the "Telecommunications Access Act".

**History:** Laws 1993, ch. 54, § 1.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-2. Findings and purpose.**

A. The legislature finds that:

(1) it supports those provisions of the federal Americans with Disabilities Act of 1990 that address the need to provide telecommunications access to all citizens;

(2) many New Mexicans are hearing or speech impaired and because of their impairment are unable to use traditional telecommunications equipment and services without assistance; and

(3) the state's hearing or speech impaired citizens are a substantial and valuable resource and their participation as contributing and productive members of our society would be enhanced substantially if full access to telecommunications service were made available to them.

B. It is the purpose of the Telecommunications Access Act [63-9F-1 to 63-9F-13 NMSA 1978] to provide a statutory framework and funding under which the opportunity for full access to telecommunications services is made available to hearing or speech impaired New Mexicans.

**History:** Laws 1993, ch. 54, § 2.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

**Americans with Disabilities Act of 1990.** - The federal Americans with Disabilities Act of 1990, referred to in Paragraph (1) of Subsection (A), is codified throughout titles 29, 42, and 47 of the United States Code.

### **63-9F-3. Definitions.**

As used in the Telecommunications Access Act [63-9F-1 to 63-9F-13 NMSA 1978]:

- A. "commission" means the commission for deaf and hard-of-hearing persons;
- B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;
- C. "department" means the general services department;
- D. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;
- E. "intrastate telephone services" means all charges for access lines, special services, including all calls originating and terminating in the state, and intrastate toll services;
- F. "specialized telecommunications equipment" means devices that when connected to a telephone enable or assist an impaired individual to communicate with another individual using the telephone network;
- G. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978; and
- H. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person.

**History:** Laws 1993, ch. 54, § 3; 1996, ch. 48, § 1.

### **ANNOTATIONS**

**The 1996 amendment**, effective July 1, 1996, inserted ", including all calls originating and terminating in the state," in two places in Subsection E and deleted "but does not include radio paging service" from the end of Subsection G.

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-4. Specialized telecommunications equipment program established.**

The commission shall design, establish and administer a program for providing specialized telecommunications equipment to impaired individuals. The commission shall adopt regulations for the program that:

A. shall include eligibility requirements for participation in the program, which requirements:

(1) shall provide financial eligibility conditions; and

(2) shall include provisions for determining eligibility thresholds based on:

(a) the quality and severity of the individual's impairment;

(b) the availability of current telecommunications services at the individual's place of residence;

(c) New Mexico residency; and

(d) minimum age;

B. establish detailed procedures and forms to be used by impaired individuals wishing to apply for participation in the program;

C. establish minimum training requirements for all applicants receiving telecommunications equipment regarding etiquette and use of telecommunications equipment;

D. include a statewide survey and information gathering component to identify the extent of the hearing and speech impairment problem in the state, the number of impaired individuals in the state and the existence and availability of any specialized telecommunications equipment; and

E. include an outreach component designed to provide information about and facilitate access to the program for impaired individuals.

**History:** Laws 1993, ch. 54, § 4; 1995, ch. 39, § 1.

## ANNOTATIONS

**The 1995 amendment**, effective June 16, 1995, deleted former Paragraph A(2) which read "may include provisions for participation by impaired individuals in the cost of acquiring specialized telecommunications equipment"; designated former Paragraph A(3) as Paragraph A(2); inserted the subparagraph designation (a) in Paragraph A(2) and added Subparagraphs A(2)(b) through A(2)(d); added Subsection C; and redesignated former Subsections C and D as Subsections D and E.

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-5. Implementation date requirement for specialized telecommunications equipment program.**

The commission may implement a specialized telecommunications equipment program no later than July 1, 1997.

**History:** Laws 1993, ch. 54, § 5; 1995, ch. 39, § 2.

## ANNOTATIONS

**The 1995 amendment**, effective June 16, 1995, substituted "commission may" for "commission shall" and "July 1, 1997" for "two years after the effective date of the Telecommunications Access Act".

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-6. Telecommunications relay system.**

A. The department, in consultation with the commission, shall establish a telecommunications relay system that enables impaired individuals to communicate with unimpaired individuals. The department shall implement the telecommunications relay system no later than July 26, 1993.

B. The department, after consultation with the commission, shall invite proposals or bids, or both, from telecommunications companies to design and implement a telecommunications relay system. The department shall comply with the provisions of the Procurement Code in contracting for the services and property required. It shall consider the factors of price and the interest of the community of impaired individuals in having access to a high quality and technologically-advanced system. New Mexico residency shall be given a weight of five percent of the total weight of all evaluation factors in a proposal evaluation. Any business that qualifies as a "resident business" as defined in Section 13-1-21 NMSA 1978 shall receive a five percent preference. In the procurement process it shall request and consider the recommendations of the



communications assistants who have provided the voice relay service used in the state prior to the effective date of the Telecommunications Access Act [63-9F-1 to 63-9F-13 NMSA 1978].

C. If the department determines that no proposal or bid is acceptable after review, the department may provide the telecommunications relay system.

D. The telecommunications relay system shall:

(1) be available statewide for operation twenty-four hours a day every day of the year;

(2) relay all messages promptly and accurately;

(3) protect and maintain the privacy of individuals using the system;

(4) preserve the confidentiality of all telephone communications; and

(5) conform to all applicable standards established by state and federal laws and any regulations adopted pursuant to those laws.

**History:** Laws 1993, ch. 54, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

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

#### **63-9F-7. Duties of the department.**

A. The department shall:

(1) adopt regulations to carry out the provisions of the Telecommunications Access Act [63-9F-1 to 63-9F-13 NMSA 1978] and to ensure that the specialized telecommunications equipment program and the telecommunications relay system are in compliance with the applicable state and federal laws and any regulations adopted pursuant to those laws;

(2) seek recommendations annually from the commission about how to administer the provisions of the Telecommunications Access Act; and

(3) perform all duties necessary to carry out the provisions of the Telecommunications Access Act.

B. The department may require an annual audit of each telecommunications company participating in the telecommunications relay system to account for all surcharges billed and collected pursuant to the Telecommunications Access Act.

**History:** Laws 1993, ch. 54, § 7.

## **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-8. Commission duties.**

The commission shall advise the department concerning the administration of the specialized telecommunications equipment program and the telecommunications relay system. The commission shall:

A. create policies, procedures and regulations governing the administration of the specialized telecommunications equipment program and review and recommend policies, procedures and regulations governing the administration of the telecommunications relay system;

B. assist the department in obtaining certification from the federal communications commission that the telecommunications relay system is in compliance with applicable federal rules and regulations;

C. review and comment upon the department's budget request for administration of the specialized telecommunications equipment program and the telecommunications relay system;

D. monitor expenditures for the specialized telecommunications equipment program and the telecommunications relay system;

E. monitor the quality of the telecommunications relay system and the satisfaction of its users;

F. identify the need for specialized telecommunications equipment by impaired individuals;

G. identify the problems that impaired individuals have in acquiring specialized telecommunications equipment;

H. obtain funding for the specialized telecommunications equipment program; and

I. perform other duties necessary to advise the department in the administration of the provisions of the Telecommunications Access Act [63-9F-1 to 63-9F-13 NMSA 1978].

**History:** Laws 1993, ch. 54, § 8; 1995, ch. 39, § 3.

### **ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, in Subsection A, substituted "create" for "review and recommend" at the beginning and inserted "review and recommend policies, procedures and regulations governing the administration of", and rewrote Subsection H which read "identify funding sources available to provide specialized telecommunications equipment needed by impaired individuals".

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-9. Limit on liability.**

The commission, the department, the provider of the telecommunications relay system and their employees shall not be liable for any claims, actions, damages or causes of action arising out of or resulting from the establishment, participation in or operation of the telecommunications relay system except for gross negligence or intentional acts.

**History:** Laws 1993, ch. 54, § 9.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-10. Complaints.**

All complaints, including complaints about the service provided by the telecommunications relay system, the provider of the telecommunications relay system or the operation and administration of the telecommunications relay system, shall be made directly to the commission.

**History:** Laws 1993, ch. 54, § 10.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-11. Imposition of surcharge.**

A. A telecommunications relay service surcharge of thirty-three one hundredths of one percent is imposed on the gross amount paid by customers for intrastate telephone services provided in this state. The surcharge shall be included on the monthly bill of

each customer of a local exchange company or other telecommunications company providing intrastate telephone services and paid at the time of payment of the monthly bill. Receipts from selling a service to any other telecommunications company or provider for resale shall not be subject to the surcharge. The customer shall be liable for the payment of this surcharge to the local exchange company or other telecommunications company providing intrastate telephone services to the customer.

B. Every telecommunications company providing intrastate telephone services shall be responsible for assessing, collecting and remitting the telecommunications relay service surcharge to the taxation and revenue department. The amount of the telecommunications relay service surcharge collected by a telecommunications company shall be remitted monthly to the taxation and revenue department, on or before the twenty-fifth of the month following collection, which shall administer and enforce the collection of the surcharge pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

C. The taxation and revenue department shall remit to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted pursuant to the provisions of Subsection D of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

D. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the general fund each month.

E. The general services department shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

- (1) the amount and source of revenue received by the telecommunications access fund;
- (2) the amount and category of expenditures from the fund; and
- (3) the balance of the fund on that June 30.

**History:** Laws 1993, ch. 54, § 11; 1996, ch. 48, § 2.

### **ANNOTATIONS**

**The 1996 amendment**, effective July 1, 1996, inserted "providing intrastate telephone services" in the second sentence of Subsection A, substituted "providing intrastate telephone services" for "except a company contributing to the intrastate relay service" in the first sentence in Subsection B, and added Subsection E.

**Effective dates.** - Laws 1993, ch. 54, § 14 makes 63-9F-11 NMSA 1978 effective on July 1, 1993.

### **63-9F-12. Telecommunications access fund; established.**

There is created in the state treasury the "telecommunications access fund". Money appropriated to the fund or accruing to it through gifts, grants, fees, surcharges, penalties or bequests shall be delivered to the state treasurer for deposit in the fund. The fund shall be invested as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of general services. The department shall administer the fund. Money in the fund is appropriated for the purpose of carrying out the provisions of the Telecommunications Access Act [63-9F-1 to 63-9F-13 NMSA 1978]. The department and the commission may request the budget division of the department of finance and administration to approve the expenditure of funds deposited in the telecommunications access fund for the purpose of defraying salary and other necessary expenses incurred by the department and the commission in the administration of the provisions of the Telecommunications Access Act. The budget division may approve the expenditure of not more than ten percent of the amount deposited in the telecommunications access fund during any fiscal year for administrative expenses. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

**History:** Laws 1993, ch. 54, § 12.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

### **63-9F-13. Confidentiality of translated or relayed conversations; penalty for breach of confidentiality.**

A. A communications assistant who is employed to translate or relay a conversation to or from an impaired individual is a conduit for the conversation and shall not disclose, or be compelled to disclose in any nonjudicial proceeding, the contents of the conversation.

B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1993, ch. 54, § 13.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 54, § 15 makes the Telecommunications Access Act effective immediately. Approved March 18, 1993.

## **ARTICLE 10**

### **CABLE TELEVISION SERVICE FACILITIES**

#### **63-10-1. Cable television service facilities; unlawful acts.**

A. As used in this section, "cable television service" means any and all services provided by or through the facilities of any cable television system or closed circuit coaxial cable communications system or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

B. No person shall tamper with or make or continue connection with the equipment providing cable television service without payment of the lawful charges for cable television service. If, within a reasonable time after a person knew or should have known of a connection continued in violation of this subsection, that person notifies the person providing the cable television service of the connection, the person so notifying shall not be liable for any violation of this subsection.

**History:** 1953 Comp., § 69-13-1, enacted by Laws 1977, ch. 95, § 1; 1985, ch. 74, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 74 Am. Jur. 2d Telecommunications § 184.

Cable television equipment or services as subject to sales or use tax, 5 A.L.R.4th 754.

Criminal liability for unauthorized interference with or reception of radio or television transmission, 43 A.L.R.4th 991.

State civil actions by subscription television business for use, or providing technical means of use, of transmissions by nonsubscribers, 46 A.L.R.4th 811.

#### **63-10-2. Penalties.**

Any person violating the provisions of Subsection B of Section 63-10-1 NMSA 1978 is guilty of a petty misdemeanor.

**History:** 1978 Comp., § 63-10-2, enacted by Laws 1985, ch. 74, § 3.

#### **ANNOTATIONS**

**Cross-references.** - As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

**Repeals and reenactments.** - Laws 1985, ch. 74, § 3, repeals former 63-10-2 NMSA 1978, as enacted by Laws 1977, ch. 95, § 2, and enacts the above section. For provisions of former section, see 1978 original pamphlet.

### **63-10-3. Cable television; access.**

The owner of a multiple unit dwelling, the units of which are all owned by the owner, if he has entered into an agreement of access for cable television service as defined in Section 63-10-1 NMSA 1978, shall:

A. during the lifetime of the agreement, allow reasonable access to the dwelling for the purpose of maintaining and repairing equipment used in providing the service;

B. not attempt to use the equipment installed by the provider of the service for any purpose or reason; and

C. not interfere with the removal of the equipment installed by the provider of the service if the provider fully compensates the owner for any damages caused by the removal.

**History:** Laws 1985, ch. 74, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity and construction of provision of Cable Communications Policy Act (47 USC § 541(a)(2)) allowing cable companies access to utility easements on private property, 113 A.L.R. Fed. 523.

## **ARTICLE 11**

# **EXCAVATION DAMAGE TO CABLE TELEVISION LINES**

### **63-11-1. Purpose and intent.**

The purpose of this act [63-11-1 to 63-11-8 NMSA 1978] is to prevent injury to persons and damage to property from accidents resulting from damage to cable television lines and related facilities by excavating and blasting.

**History:** 1953 Comp., § 69-14-1, enacted by Laws 1977, ch. 328, § 1.

### **63-11-2. Definitions.**

For the purposes of this act [63-11-1 to 63-11-8 NMSA 1978]:

A. "blasting" means the use of an explosive to excavate;

B. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling;

C. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and shall include trenchers, bulldozers, back hoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

D. "cable television lines and related facilities" means the facilities of any cable television system or closed circuit coaxial cable communications system or similar §1 transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system; and

E. "person" means any individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state, association or any legal representative thereof.

**History:** 1953 Comp., § 69-14-2, enacted by Laws 1977, ch. 328, § 2.

### **63-11-3. Excavation.**

Every person who prepares engineering plans for excavation or who engages in excavation shall:

A. make reasonable efforts to inform himself of the location of any cable television lines and related facilities in or near the area where the excavation is to be conducted;

B. plan the excavation to avoid or minimize interference or damage to any cable television lines and related facilities in or near the excavation area;

C. provide reasonable advance notice of the commencement, extent and duration of the excavation work to the owners of the cable television lines and related facilities in and near the excavation area, so that such owners may locate and mark the location of the cable television lines and related facilities in the excavation area;

D. maintain at least an estimated clearance of eighteen inches between any non-exposed cable television lines and related facilities and the cutting edge or point of any mechanical excavating equipment utilized in such excavation;

E. provide such support for existing cable television lines and related facilities in or near the excavation area as may be reasonably necessary to prevent damage to such cable television lines and related facilities;

F. backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities



for preexisting cable television lines and related facilities in or near the excavation area;  
and

G. notify as promptly as possible the owner of any cable television lines and related facilities which may have been damaged or dislocated during the excavation work.

**History:** 1953 Comp., § 69-14-3, enacted by Laws 1977, ch. 328, § 3.

#### **63-11-4. Emergency excavation.**

Every person who shall engage in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing cable television lines and related facilities in and near the construction area and shall notify as promptly as possible the owners of the cable television lines and related facilities located in or near the emergency excavation area. In the event of any damage to or dislocation of any cable television lines and related facilities caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner thereof.

**History:** 1953 Comp., § 69-14-4, enacted by Laws 1977, ch. 328, § 4.

#### **63-11-5. Marking of facilities.**

Every person owning or operating cable television lines and related facilities shall upon the request of a person intending to commence an excavation and upon reasonable advance notice, mark by some reasonable and customary means the location and, if known, the depth of cable television lines and related facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the cable television lines and related facilities in advance of and during the excavation work.

**History:** 1953 Comp., § 69-14-5, enacted by Laws 1977, ch. 328, § 5.

#### **63-11-6. Liability for damage from failure to make reasonable efforts to obtain information.**

A. If any cable television lines and related facilities are damaged by any person who has failed to make reasonable efforts to inform himself as to their location as provided in Chapter 63, Article 11 NMSA 1978 then such person shall be liable to the owner of the cable television lines and related facilities for the entire cost of the repair of the cable television lines and related facilities plus reasonable attorney's fees. It is not the intent of Chapter 63, Article 11 NMSA 1978 to impose civil liability to any person beyond that provided in this section.

B. If any utility or homeowner improvements are damaged by the cable television service, who has failed to make reasonable efforts to inform himself as to their location

as provided in Chapter 63, Article 11 NMSA 1978 then such person shall be liable to the homeowner for the entire cost of the utilities or improvements plus reasonable attorney's fees.

**History:** 1953 Comp., § 69-14-6, enacted by Laws 1977, ch. 328, § 6; 1985, ch. 74, § 4.

### **63-11-7. Liability for negligence notwithstanding information obtained.**

The act of obtaining or making reasonable efforts to obtain information as required by this act [63-11-1 to 63-11-8 NMSA 1978] shall not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

**History:** 1953 Comp., § 69-14-7, enacted by Laws 1977, ch. 328, § 7.

### **63-11-8. Penalties.**

In addition to any other liability imposed by law, any person who willfully fails to comply with this act [63-11-1 to 63-11-8 NMSA 1978] and whose failure proximately contributes to the damage of any cable television lines and related facilities shall be subject to damages not to exceed triple the actual amount of damages to the cable television lines and related facilities.

**History:** 1953 Comp., § 69-14-8, enacted by Laws 1977, ch. 328, § 8.