

# CHAPTER 64

## Aeronautics

### ARTICLE 1

#### Aviation Generally

##### 64-1-1. Definition of terms.

In this act [64-1-1 to 64-1-10 NMSA 1978] "aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. "Operating aircraft" means performing the services of aircraft pilot.

**History:** Laws 1929, ch. 71, § 1; C.S. 1929, § 12-101; 1941 Comp., § 47-101; 1953 Comp., § 44-1-1.

#### ANNOTATIONS

**Cross references.** — For the Airborne Hunting Act, see 17-3-43 to 17-3-47 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 2.

Airplane as within terms "vehicle," "motor vehicle," 165 A.L.R. 916.

What is "motor vehicle" within automobile guest statute, 98 A.L.R.2d 543.

What is "aircraft" or the like within meaning of exclusion or exception clause of insurance policy, 39 A.L.R.4th 214.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage, 49 A.L.R.5th 659.

What constitutes "accident" under Warsaw Convention, 78 A.L.R. Fed. 459.

2A C.J.S. Aeronautics and Aerospace § 3.

##### 64-1-2. Aircraft; construction, design and airworthiness; federal license.

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction and airworthiness to the standards prescribed by the United States government with respect to navigation of aircraft subject

to its jurisdiction, it shall be unlawful for any person to navigate an aircraft within the state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force.

**History:** Laws 1929, ch. 71, § 2; C.S. 1929, § 12-102; 1941 Comp., § 47-102; 1953 Comp., § 44-1-2.

## ANNOTATIONS

**Federal regulations define terms in aircraft insurance policies.** — Aircraft insurance policies are not ambiguous where they fail to define the terms "airworthiness certificate," "airworthiness certification" and "full force and effect" because when insurance policies are clearly within the context of aviation, the pertinent federal aviation regulations which define these terms apply. *Security Mut. Cas. Co. v. O'Brien*, 1983-NMSC-035, 99 N.M. 638, 662 P.2d 639.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 30 to 41.

Aircraft operated wholly within state as subject of federal regulation, 9 A.L.R.2d 485.

Personal injury or death allegedly caused by defect in aircraft or its parts, supplies or equipment, 97 A.L.R.3d 627.

Strict liability, in absence of statute, for injury or damage occurring on the ground caused by ascent, descent, or flight of aircraft, 73 A.L.R.4th 416.

2A C.J.S. Aeronautics and Aerospace §§ 39 to 41.

### **64-1-3. Qualifications of operators; federal license.**

The public safety requiring and the advantages of uniform regulations making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating the aircraft described in Section 2 [64-1-2 NMSA 1978] hereof in any form of navigation for which license to operate such aircraft would be required by the United States government shall have the qualifications necessary for obtaining and holding the class of license required by the United States government. It shall be unlawful for any person to engage in operating such aircraft within this state in any form of navigation unless he have such a license.

**History:** Laws 1929, ch. 71, § 3; C.S. 1929, § 12-103; 1941 Comp., § 47-103; 1953 Comp., § 44-1-3.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 51 to 56, 59.

Revocation or suspension of airman's license or certificate, 78 A.L.R.2d 1150.

2A C.J.S. Aeronautics and Aerospace §§ 42 to 56.

#### **64-1-4. Possession and display of license.**

The certificates of the license in Sections 2 and 3 [64-1-2, 64-1-3 NMSA 1978] hereof required shall be kept in the personal possession of the licensee when he is operating aircraft within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state or any official, manager or person in charge of any airport or landing field in this state upon which he shall land.

**History:** Laws 1929, ch. 71, § 4; C.S. 1929, § 12-104; 1941 Comp., § 47-104; 1953 Comp., § 44-1-4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 28, 29.

2A C.J.S. Aeronautics and Aerospace § 43.

#### **64-1-5. Must observe air traffic rules.**

The public safety requiring and the advantages of uniform regulation making it desirable, it shall be unlawful for any person to operate any aircraft within this state, in any form of navigation whatsoever, in violation of the air traffic rules adopted by the state corporation commission [public regulation commission] as hereinafter authorized.

**History:** Laws 1929, ch. 71, § 5; C.S. 1929, § 12-105; 1941 Comp., § 47-105; 1953 Comp., § 44-1-5.

#### **ANNOTATIONS**

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

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

For transfer of powers of state corporation commission (now public regulation commission) with regard to regulation and control of aircraft other than common carriers to aviation division of the department of transportation, see 64-1-18 NMSA 1978.

**State highway department (now department of transportation) could grant permit for airplanes to land** on particular portions of New Mexico highways where proper

clearance was also obtained from civil aeronautics administration and state corporation commission (now public regulation commission). 1943 Op. Att'y Gen. No. 43-4240.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

2A C.J.S. Aeronautics and Aerospace § 27.

### **64-1-6. Common carriers.**

That every person, firm, corporation, association or company at any time engaged, either regularly or for the time being only, in the transportation of persons or property for hire between points within this state or from a point within this state and return thereto, is hereby declared to be a common carrier within the meaning and purview of Section 7 of Article XI [repealed] of the constitution of the state of New Mexico.

**History:** Laws 1929, ch. 71, § 6; C.S. 1929, § 12-106; 1941 Comp., § 47-106; 1953 Comp., § 44-1-6.

### **ANNOTATIONS**

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

Section 7 of Article XI of the constitution of the state of New Mexico was repealed by the electorate at the general election held November 5, 1996.

**Airline company.** — An airline company engaged regularly in the transportation of persons and property for hire between points within the state and from a point within this state and return thereto is a common carrier. *In re Reilly's Estate*, 1957-NMSC-095, 63 N.M. 352, 319 P.2d 1069.

**Spraying, dusting and seeding of farm land constitutes special service** and a person or agency engaged therein is not a common carrier by aircraft subject to license and regulation by the state corporation commission (now public regulation commission). *Marsh Aviation Co. v. SCC*, 1951-NMSC-020, 55 N.M. 178, 228 P.2d 959.

**Independent contractor for hire.** — An air carrier hauling persons and property as an independent contractor for hire for the United States government to and from points and places within the state of New Mexico is required to have a certificate of public convenience and necessity from the state corporation commission (now public regulation commission). 1969 Op. Att'y Gen. No. 69-140.

**For status of carriers engaged in both intrastate and interstate commerce.** 1963 Op. Att'y Gen. No. 63-83.

**Government agency.** — The fact that a shipper is a government agency does not alter the fact that the carrier is hauling for hire. 1969 Op. Att'y Gen. No. 69-140.

**Instructor.** — A person giving student air pilot instruction is not a common carrier within the meaning of this section. 1956 Op. Att'y Gen. No. 56-6510.

**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.** — 8A Am. Jur. 2d Aviation §§ 60 to 83.

Res ipsa loquitur as applicable to injury to passenger in aircraft in collision where one of the vehicles is not within carrier's control, 83 A.L.R. 1167, 161 A.L.R. 1113.

Carriage of goods by aeroplane carrier, 99 A.L.R. 194.

Death or injury to occupant of airplane from near collision with another aircraft, 12 A.L.R.2d 677.

Liability of operator of flight training school for injury to or death of trainee, 17 A.L.R.2d 557.

Liability of air carrier for loss of or damage to passenger's baggage or contents thereof, 25 A.L.R.2d 1352.

Duty and liability to guest or passenger as to preflight inspection and maintenance of aircraft, 30 A.L.R.2d 1172.

Validity, construction and operation of airport operator's grant of exclusive or discriminatory privilege or concession, 40 A.L.R.2d 1060.

Liability for injury to guest in airplane, 40 A.L.R.3d 1117.

Liability of air carrier for injury to passenger caused by fall of object from overhead baggage compartment, 32 A.L.R.5th 1.

Death or injury to occupant of airplane from collision or near-collision with another aircraft, 64 A.L.R.5th 235.

Limitation of liability of air carrier for personal injury or death, 91 A.L.R. Fed. 547.

Construction and application of § 105 Airline Deregulation Act (49 USCA § 41713), pertaining to preemption of authority over prices, routes, and services, 149 A.L.R. Fed. 299.

2A C.J.S. Aeronautics and Aerospace § 180.

## **64-1-7. State corporation commission [public regulation commission] may make rules and regulations.**

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress, the state corporation commission [public regulation commission] is hereby authorized to make, from time to time, regulations concerning such common carriers, and air traffic rules applicable to the operation of all aircraft within this state: provided, however, that such regulations and air traffic rules shall conform to and coincide with the provisions of the Air Commerce Act of May 20th, 1926, and all amendments thereto passed by the congress of the United States and the air commerce regulations and the air traffic rules adopted by the secretary of commerce pursuant thereto, as nearly as may be and insofar as the same are applicable: which said regulations and air traffic rules, so to be made by the state corporation commission [public regulation commission], are hereby declared to be necessarily incident to the exercise of its jurisdiction over the common carriers mentioned in Section 6 [64-1-6 NMSA 1978] of this act.

**History:** Laws 1929, ch. 71, § 7; C.S. 1929, § 12-107; 1941 Comp., § 47-107; 1953 Comp., § 44-1-7.

### **ANNOTATIONS**

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

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Compiler's notes.** — Under 49 U.S.C. App. 1655, the functions, powers and duties of the secretary of commerce and other offices and officers of the department of commerce, under various laws relating to aircraft, were transferred to the secretary of transportation.

The Air Commerce Act of May 20th, 1926, referred to in this section, was repealed by Acts of June 23, 1938, ch. 601, 52 Stat. 957 and Aug. 23, 1958, P.L. 85-726, 72 Stat. 806.

**Crop dusting and seeding.** — Spraying, dusting and seeding farm land constitutes a special service and person or agency engaged therein is not a common carrier by aircraft subject to license and regulation by state corporation commission (now public regulation commission). *Marsh Aviation Co. v. SCC*, 1951-NMSC-020, 55 N.M. 178, 228 P.2d 959.

**State corporation commission (now public regulation commission) may promulgate rules and regulations** relating to air carriers. 1945 Op. Att'y Gen. No. 45-4791.

**Rules applicable to all aircraft.** — Air traffic rules promulgated by the state corporation commission (now public regulation commission) apply to all aircraft, including nonprofit aviation activities as well as the common carrier enterprises. 1947 Op. Att'y Gen. No. 47-5117.

**Accident investigation and report.** — Investigations and reports of aircraft accidents may be taken care of by rule of the state corporation commission (now public regulation commission) in conformity with the federal rules covering the same matter, pursuant to the grant of power made in this section. 1939 Op. Att'y Gen. No. 39-3291.

**Interstate flights originating in state.** — Common carrier aircraft which initiate flights inside of New Mexico though extending their operations to points outside the state and returning to New Mexico are subject to regulation by the state corporation commission (now public regulation commission). 1946 Op. Att'y Gen. No. 46-4876.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

Employer's liability for negligence of employee in piloting his own airplane in employer's business, 46 A.L.R.2d 1050.

Public regulation requiring mufflers or similar noise-preventing devices on aircraft, 49 A.L.R.2d 1202.

Public regulations as to duty of aeroplane owner or operator to furnish aircraft with navigational and flight safety devices, 50 A.L.R.2d 898.

Negligence in operation of airplane on take-off, 74 A.L.R.2d 615.

Interference with airplane pilot or controls as negligence, 75 A.L.R.2d 858.

Validity and construction of statute imposing absolute liability for injury or damage occurring on ground or water below from fall, flight or ascent of aircraft, or from fall of object therefrom, 81 A.L.R.2d 1058.

Age of minor operator of airplane as affecting his primary negligence, 97 A.L.R.2d 872.

Respondeat superior: deviation from scope of employment in flying employer's airplane, 100 A.L.R.2d 1346.

Liability for injury consequent upon spraying or dusting of crop, 37 A.L.R.3d 833.

Liability of bailee of airplane for damage thereto, 44 A.L.R.3d 862.

Airport operations or flight of aircraft as nuisance, 79 A.L.R.3d 253.

What constitutes accident under Warsaw Convention (49 USCA § 40105 note), 147 A.L.R. Fed. 535.

2A C.J.S. Aeronautics and Aerospace § 20.

### **64-1-8. Air common carrier must be licensed.**

It shall be unlawful for any common carrier, in Section 6 [64-1-6 NMSA 1978] of this act mentioned and defined, to transport any person or property for hire between any points within this state or from any point within this state and return thereto, unless licensed so to do by the state corporation commission [public regulation commission], which license shall be issued and shall expire and may be suspended or revoked in accordance with the regulations made by the state corporation commission [public regulation commission] from time to time as in this act [64-1-1 to 64-1-10 NMSA 1978] contemplated. The state corporation commission [public regulation commission] may charge a fee of five dollars (\$5.00) for each license and each renewal thereof by it issued under the provisions of this act.

**History:** Laws 1929, ch. 71, § 8; C.S. 1929, § 12-108; 1941 Comp., § 47-108; 1953 Comp., § 44-1-8.

### **ANNOTATIONS**

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

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Air traffic rules promulgated by commission apply to all aircraft,** including nonprofit activities as well as the common carrier enterprises. 1947 Op. Att'y Gen. No. 47-5117.

**Exemptions not authorized.** — The state corporation commission (now public regulation commission) has no authority to make exemptions from the requirement of a certificate of convenience and necessity. 1969 Op. Att'y Gen. No. 69-140.

**Contractor with federal government not exempt from regulation.** — A person holding a contract to provide intrastate services for the United States government is not exempt from state regulation. 1969 Op. Att'y Gen. No. 69-140.

**Federal government not bound by state tariffs.** — Although a carrier providing intrastate services for the federal government may be required to have a certificate of public convenience and necessity, the United States government is entitled to negotiate a special rate with the carrier and is not bound by state tariffs. 1969 Op. Att'y Gen. No. 69-140.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 28, 29.

License: construction of provision of aviation liability policy which requires pilot of insured aircraft to have appropriate license or certification, 72 A.L.R.3d 525.

2A C.J.S. Aeronautics and Aerospace §§ 191 to 222.

### **64-1-9. Penalties.**

A person who violates any provision of this act [64-1-1 to 64-1-10 NMSA 1978] shall be guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars [(\$100)], or by imprisonment for not more than ninety days, or both; provided, however, that acts or omissions made unlawful by this article [64-1-1 to 64-1-10 NMSA 1978] shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States; but it shall not be necessary to allege or prove, as part of the case for the state, that the defendant is not amenable, on account of the alleged violation, to prosecution under the laws of the United States. That he is amenable to such prosecution shall be matter of defense, unless it affirmatively appear from the evidence adduced by the state.

**History:** Laws 1929, ch. 71, § 10; C.S. 1929, § 12-110; 1941 Comp., § 47-109; 1953 Comp., § 44-1-9.

### **ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 211 to 214, 217 to 223.

2A C.J.S. Aeronautics and Aerospace §§ 282 to 288.

### **64-1-10. Fees; disposition.**

The corporation commission [public regulation commission] shall charge and collect the following miscellaneous fees in connection with the administration of this act [64-1-1 to 64-1-10 NMSA 1978]:

for filing aircraft common carrier application for authority to transport persons or property for hire      \$10.00;

for filing application for transfer of authority to operate aircraft      \$10.00;

for furnishing copy of any record or order, 15 cents [(\$0.15)] per one hundred words, or fraction thereof;

for furnishing any other certificates not specifically provided for \$2.00.

All fees collected under the terms of this act by the corporation commission [public regulation commission] shall be remitted to the state treasurer and by him credited to the general fund.

**History:** Laws 1929, ch. 71, § 11 as added by Laws 1941, ch. 115, § 1; 1941 Comp., § 47-110; 1953 Comp., § 44-1-10; Laws 1957, ch. 15, § 1.

## ANNOTATIONS

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

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 2A C.J.S. Aeronautics and Aerospace §§ 188, 189.

### 64-1-11. Aviation Act; short title.

Sections 64-1-11 through 64-1-17 NMSA 1978 may be cited as the "Aviation Act."

**History:** 1953 Comp., § 44-1-10.1, enacted by Laws 1963, ch. 314, § 1; 1977, ch. 250, § 12.

### 64-1-12. Definitions.

As used in the Aviation Act:

- A. "aircraft" means airplane and helicopter;
- B. "pilot" means any person participating in the operation of an aircraft while it is in flight;
- C. "passenger" means any person riding in an aircraft except a pilot;
- D. "department" means the state highway and transportation department;
- E. "division" means the aviation division of the department;
- F. "director" means the executive head of the division; and
- G. "secretary" means the executive head of the department.

**History:** 1953 Comp., § 44-1-10.2, enacted by Laws 1963, ch. 314, § 2; 1977, ch. 250, § 13; 1987, ch. 268, § 7.

## ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, in Subsection D inserted "state highway and" preceding "transportation" and, in Subsection G, deleted "of transportation" following "secretary."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 2.

2A C.J.S. Aeronautics and Aerospace §§ 2 to 6.

### **64-1-13. Aviation division; powers and duties.**

The division shall:

A. cooperate with all public and private agencies and organizations, state, local and federal, to encourage and advance aviation in this state;

B. assemble and distribute to the public information relating to aviation, landing fields, beacons and other matters pertaining to aviation and may accept federal money made available for the advancement of aviation;

C. authorize expenditures of money from the state aviation fund for construction, development and maintenance of public-use airport facilities, except airports serving regularly scheduled interstate airlines using aircraft with a maximum passenger capacity of more than one hundred seats or a maximum payload capacity of more than twenty-five thousand pounds, including rural landing fields and airstrips. Expenditures shall be made according to the need for airport facilities as determined by the division;

D. operate under a director, appointed by the secretary, with the approval of the governor, who shall have an aviation background and meet other qualifications prescribed by the secretary;

E. establish policies for operation of the division;

F. promulgate rules for proper enforcement of aviation laws, except for those relating to common carriers;

G. provide for a surety bond, paid from the state aviation fund, issued by a corporate surety company licensed to do business in New Mexico, in an amount set by the state board of finance, on a form approved by the attorney general, conditioned upon the faithful performance of the duties of the personnel of the division who expend or authorize the expenditure of state funds;

H. have the following powers with respect to state airports:

(1) the division may, on behalf of and in the name of the state, out of appropriations and other money made available for such purposes, plan, construct, enlarge, improve, maintain, equip and operate airports and air navigation facilities, including the construction, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes, the division may, in the name of the state, by purchase, gift, devise, lease or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or air navigation facilities. The division may enter into any contracts necessary to the execution of the powers granted it by this paragraph; and

(2) the division may accept, receive, receipt for, disburse and expend federal money and other money, public or private, made available to accomplish, in whole or in part, any of the purposes of this subsection. All federal money accepted under this subsection shall be accepted and expended by the division upon such terms and conditions as are prescribed by the United States. The division, on behalf of the state, may enter into contracts with the United States or with any person that may be required in connection with a grant or loan of federal money for airport or air navigation facility purposes. All money received by the division pursuant to this subsection is appropriated for the purpose for which the money was made available, to be disbursed or expended in accordance with the terms and conditions upon which the money was made available; provided that nothing contained in this section shall affect the power of a local government to contract with the United States or any person in connection with a grant or loan of money for airports or air navigation facilities in accordance with the terms and conditions upon which the funds were made available; and

I. have the power to engage in planning for the development of a system of public airports within the state.

**History:** 1953 Comp., § 44-1-10.5, enacted by Laws 1963, ch. 314, § 5; 1966, ch. 39, § 1; 1970, ch. 49, § 1; 1975, ch. 197, § 1; 1976, ch. 23, § 1; 1977, ch. 250, § 16; 1987, ch. 268, § 8; 2001, ch. 154, § 1; 2009, ch. 164, § 1.

## ANNOTATIONS

**Cross references.** — For additional powers and duties of the division, see 64-1-19 NMSA 1978.

**The 2009 amendment**, effective July 1, 2009, in Subsection C, after “passenger capacity of more than”, changed “sixty” to “one hundred” and after “payload capacity of more than”, changed “fifteen” to “twenty-five”.

**The 2001 amendment**, effective July 1, 2001, in Subsection C, increased the maximum passenger capacity from thirty to sixty seats and increased the maximum payload capacity from seven thousand five hundred to fifteen thousand pounds.

**The 1987 amendment**, effective July 1, 1987, in Subsection D deleted "of transportation" following "secretary" and made minor changes in language and punctuation throughout the section.

**Acquisition of property.** — This section necessarily implies that the department of aviation (now the aviation division of the department of transportation) may hold title by and through the state of New Mexico to those facilities whose acquisition with state funds is authorized. 1965 Op. Att'y Gen. No. 65-70.

**Study grant.** — Subsections A and I of this section make it apparent that the aviation board (now the aviation division) has the necessary power to make a grant to a joint municipal-county organization to help finance a planning and feasibility study regarding a proposed airport. 1971 Op. Att'y Gen. No. 71-115.

**Third party beneficiary contract.** — Grant of power under Subsection H(2) of this section is broad enough to include power to make assurances on behalf of third parties required by the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. §§ 4601 to 4655) in return for federal funds. 1971 Op. Att'y Gen. No. 71-76.

**Power of localities to contract for federal funds.** — The proviso in the last sentence of Subsection H(2) of this section indicates that the legislature evidently assumed that county and municipal governments have plenary power to contract for federal funds. 1971 Op. Att'y Gen. No. 71-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

Construction and application of § 105 Airline Deregulation Act (49 USCA § 41713), pertaining to preemption of authority over prices, routes, and services, 149 A.L.R. Fed. 299.

2A C.J.S. Aeronautics and Aerospace §§ 20, 28, 38.

### **64-1-13.1. Air service assistance program created.**

An air service assistance program is created to provide assistance to airlines in the establishment of regional air service for small communities to and from hub airports in the southwest United States. The division shall administer the air service assistance program and shall establish regulations for eligibility for assistance, including the maximum amount a recipient may receive.

**History:** Laws 1999, ch. 184, § 1.

## ANNOTATIONS

**Emergency clauses.** — Laws 1999, ch. 184, § 3 contained an emergency clause and was approved April 6, 1999.

### **64-1-14. Director; powers and duties.**

The director shall:

A. be the executive officer of the division;

B. with the consent of the secretary, employ necessary personnel; and

C. administer the aviation laws of this state, except those relating to common carriers, and enforce the policies, rules and regulations of the division.

**History:** 1953 Comp., § 44-1-10.6, enacted by Laws 1963, ch. 314, § 6; 1977, ch. 250, § 17; 1987, ch. 268, § 9.

## ANNOTATIONS

**The 1987 amendment,** effective July 1, 1987, deleted "of transportation" following "secretary."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

2A C.J.S. Aeronautics and Aerospace § 20.

### **64-1-15. State aviation fund.**

A. There is created in the state treasury the "state aviation fund". All income to the state aviation fund is appropriated to the division. Earnings from investment of the fund shall be credited to the fund.

B. The amounts distributed to the state aviation fund pursuant to Subsection C of Section 7-1-6.7 NMSA 1978 shall be used for the air service assistance program, including planning, program administration, construction, equipment, materials and maintenance of a system of airports, navigation aids and related facilities. All other amounts distributed to the state aviation fund, including collections by the division for aircraft registration pursuant to the Aircraft Registration Act [64-4-1 to 64-4-15 NMSA 1978], payments to the division pursuant to Sections 64-1-13 and 64-1-19 NMSA 1978 and reimbursements to the division from federal aviation administration funds or from any other source shall be used for planning and program administration, construction, equipment, materials and maintenance of a system of airports, navigation aids and related facilities. All expenditures shall be made in accordance with budgets approved

by the department. Balances in the state aviation fund shall not be transferred and shall not revert to any other fund.

**History:** 1953 Comp., § 44-1-10.7, enacted by Laws 1963, ch. 314, § 7; 1977, ch. 250, § 18; 1983, ch. 211, § 39; 1989, ch. 158, § 1; 2001, ch. 198, § 2; 2007, ch. 297, § 2; 2007, ch. 298, § 2; 2013, ch. 19, § 2.

## ANNOTATIONS

**Cross references.** — For the Gasoline Tax Act, see 7-13-1 NMSA 1978 et seq.

**The 2013 amendment,** effective July 1, 2013, authorized the use of state aviation funds for airports, navigation aids and related facilities; and in Subsection B, in the first sentence, after "air service assistance program", added "including planning, program administration, construction, equipment, materials and maintenance of a system of airports, navigation aids and related facilities".

**The 2007 amendment,** effective July 1, 2007, provided that earnings from investment of the fund shall be credited to the fund; that amounts distributed to the fund shall be used for planning and administration, construction and equipment and maintenance of a system of airports and related facilities; and that balances in the fund shall not be transferred or revert to any other fund.

Laws 2007, ch. 297, § 2 and Laws 2007, ch. 298, § 2 enacted identical amendments to this section.

**The 2001 amendment,** effective April 3, 2001, added the fifth sentence.

**The 1989 amendment,** effective June 16, 1989, substituted "planning, construction and maintenance of a system of airports, navigation aids and related facilities serving New Mexico" for "airport construction and maintenance based on need" in the next-to-last sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 48.

2A C.J.S. Aeronautics and Aerospace § 189.

### **64-1-16. Landing fees.**

An airport facility that receives funds under the Aviation Act may charge landing fees for aircraft used in commercial activities for compensation or for general aviation aircraft that weigh more than twelve thousand five hundred pounds; provided that any landing fees shall be assessed and used in compliance with federal law.

**History:** 1953 Comp., § 44-1-10.8, enacted by Laws 1963, ch. 314, § 8; 1979, ch. 336, § 1; 2003, ch. 43, § 1; 2019, ch. 250, § 1.

## ANNOTATIONS

**The 2019 amendment**, effective July 1, 2019, authorized the imposition of landing fees for aircraft used in commercial activities for compensation or for general aviation aircraft over a certain weight; after "the Aviation Act", deleted "shall not" and added "may", after "landing fees for aircraft", deleted "except for aircraft", and after "compensation", added "or for general aviation aircraft that weigh more than twelve thousand five hundred pounds; provided that any landing fees shall be assessed and used in compliance with federal law".

**The 2003 amendment**, effective July 1, 2003, substituted "An airport facility that" for "No airport facility which" at the beginning, inserted "not" following "Aviation Act shall", and substituted "commercial activities for compensation" for "scheduled air service or commercial aircraft in excess of 18,000 pounds maximum gross weight" at the end.

**Restriction imposed by section presupposes existing airport facility** rather than one which is only in the feasibility or planning stage. 1971 Op. Att'y Gen. No. 71-115.

**Use of funds for feasibility study.** — This section would not prohibit landing fees for aircraft at a facility proposed to be built in the future, after a planning and feasibility study financed in part with a grant from the aviation department (now the aviation division of the department of transportation), where no part of the grant was used for the construction, development or operation of the facility. 1971 Op. Att'y Gen. No. 71-115.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 2A C.J.S. Aeronautics and Aerospace §§ 188, 189.

### **64-1-17. Airport facilities on private land.**

No money shall be expended under the Aviation Act for construction, development or maintenance of an airport facility located on private land, unless the landowner files a written agreement with the director permitting public use of the facility without limit as to time.

**History:** 1953 Comp., § 44-1-10.9, enacted by Laws 1963, ch. 314, § 9; 1977, ch. 250, § 19.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 2A C.J.S. Aeronautics and Aerospace § 57.

### **64-1-18. Transfer of powers.**



All of the powers granted by law to the state corporation commission [public regulation commission] with regard to regulation and control of aircraft other than aircraft engaged as common carriers, are transferred to the division.

**History:** Laws 1939, ch. 199, § 5; 1941 Comp., § 47-115; 1953 Comp., § 44-1-15; Laws 1963, ch. 314, § 10; 1977, ch. 250, § 20.

### ANNOTATIONS

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

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Title of enactment.** — Since there was nothing in the title of Laws 1939, ch. 199, to intimate in the least that the corporation commission (now public regulation commission) was to be stripped of its power over all aircraft, Laws 1939, ch. 199, § 5, which originally enacted this section, transferring such authority to the former New Mexico aeronautic commission, violated and was in contravention of N.M. Const., art. IV, § 16. 1939 Op. Att'y Gen. No. 39-3258.

### 64-1-19. Aviation division; additional powers and duties.

The division may:

A. contract with any agency of the federal government to perform specified aviation services;

B. accept federal grants for the administration and performance of such aviation services;

C. employ necessary personnel and pay other administrative costs from federal grant funds in accordance with a budget approved by the department of finance and administration without regard to other restrictions or limitations imposed on the division's budget.

**History:** 1953 Comp., § 44-1-15.1, enacted by Laws 1975, ch. 197, § 2; 1977, ch. 250, § 21.

### ANNOTATIONS

**Cross references.** — For other powers and duties of the division, see 64-1-13 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

2A C.J.S. Aeronautics and Aerospace § 20.

### **64-1-20. [Guests in aircraft; right of action for damages for injury, death or loss.]**

No person riding in an aircraft as a guest, without payment for the ride or transportation, nor his personal representative in the event of the death of such guest, shall have a cause of action against any pilot or crewman of such aircraft or its owner or his employee or agent for injury, death or loss which occurs as a result of an accident unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

**History:** 1953 Comp., § 44-1-16, enacted by Laws 1963, ch. 196, § 1.

#### **ANNOTATIONS**

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

**Law reviews.** — For note, "McGeehan v. Bunch - Invalidating Statutory Tort Immunity Through a New Approach to Equal Protection Analysis," see 7 N.M.L. Rev. 251 (1977).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 123 to 126.

Duty and liability to guest or passenger as to preflight inspection and maintenance of aircraft, 30 A.L.R.2d 1172.

Liability for injury to guest in aeroplane, 40 A.L.R.3d 1117.

Guest statute: choice-of-law considerations in application of aviation guest statutes, 62 A.L.R.3d 1076.

Guests: constitutionality of automobile and aviation guest statutes, 66 A.L.R.3d 532.

2A C.J.S. Aeronautics and Aerospace §§ 250 to 281.

### **64-1-21. Definition.**

In this act [64-1-21 to 64-1-23 NMSA 1978], "aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, including a parachute or other contrivance designed for such navigation.

**History:** 1953 Comp., § 44-1-17, enacted by Laws 1965, ch. 34, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 2.

2A C.J.S. Aeronautics and Aerospace § 3.

### **64-1-22. Unlawful interference with the flight of aircraft.**

Any person discharging a firearm or setting in flight any missile, projectile or object intended to strike or collide with any flying aircraft shall be guilty of unlawful interference with the flight of an aircraft.

**History:** 1953 Comp., § 44-1-18, enacted by Laws 1965, ch. 34, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 54 to 56, 59.

2A C.J.S. Aeronautics and Aerospace §§ 285, 286.

### **64-1-23. Penalty.**

Whoever is convicted of unlawful interference with the flight of an aircraft shall be guilty of a fourth degree felony.

**History:** 1953 Comp., § 44-1-19, enacted by Laws 1965, ch. 34, § 3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 211, 212.

2A C.J.S. Aeronautics and Aerospace §§ 285, 286.

## **ARTICLE 2**

### **Airports**

#### **64-2-1. Joint airport zoning board.**

A. Whenever any political subdivision of the state owns and operates an airport which is located within the jurisdiction of any other political subdivision or whose approach plan area is within the jurisdiction of any other political subdivision, the political subdivision owning and operating the airport may create a joint airport zoning board composed of two members appointed by the political subdivision owning and operating the airport, two members appointed by any political subdivision within whose jurisdiction the airport lies or the approach plan extends and one member selected by the other members within thirty days after the joint airport zoning board is created.

B. Within sixty days of being requested in writing by the political subdivision which owns and operates an airport to appoint members to the joint airport zoning board, any political subdivision which has jurisdiction over the area where the airport is located or the approach plan area for the airport shall appoint the required two members to the joint airport zoning board. After the sixty day period has passed and until the required appointment is made, the failure of any political subdivision within whose jurisdiction the airport lies or the approach plan extends to appoint any members to the joint airport zoning board shall not invalidate any action taken by the joint airport zoning board to implement and enforce the municipal airport zoning laws.

**History:** 1953 Comp., § 44-2-11, enacted by Laws 1965, ch. 308, § 1; 1989, ch. 365, § 1.

## ANNOTATIONS

**Cross references.** — For the Municipal Airport Law, see 3-39-1 NMSA 1978 et seq.

For the Municipal Airport Zoning Law, see 3-39-16 NMSA 1978 et seq.

For authority of boards of county commissioners to establish airports, see 4-38-31 NMSA 1978.

**The 1989 amendment**, effective June 16, 1989, added the subsection designations and, in Subsection B, added the present first sentence, while adding all of the language of the present second sentence preceding "the failure".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 48 to 54.

Validity of municipal regulation of aircraft flight paths or altitudes, 36 A.L.R.3d 1314.

Zoning regulations limiting use of property near airport as taking of property, 18 A.L.R.4th 542.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage, 49 A.L.R.5th 659.

2A C.J.S. Aeronautics and Aerospace § 58.

### **64-2-2. Powers and duties of board.**

To protect the lives and property of the users of the airport and the occupants of the territory adjacent to the airport, the joint airport zoning board may exercise those powers and duties granted legislative bodies under the Municipal Airport Zoning Law [3-39-16 to 3-39-26 NMSA 1978] in conformity with the provisions of the Municipal Airport Zoning Law or Sections 3-21-1, 3-21-2 and 3-21-5 through 3-21-11 NMSA 1978 insofar as it relates to compatible land use zoning around the airport. The area eligible for height,

hazard and compatible land use zoning around the airport may not extend more than fifty thousand feet beyond any point on the perimeter of the area of land for the airport which is owned by the political subdivision which operates the airport.

**History:** 1953 Comp., § 44-2-12, enacted by Laws 1965, ch. 308, § 2; 1979, ch. 324, § 1; 1989, ch. 365, § 2.

#### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 48, 54.

2A C.J.S. Aeronautics and Aerospace § 58.

### **ARTICLE 3**

#### **Civil Air Patrol Division (Repealed.)**

##### **64-3-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98B repealed 64-3-1 NMSA 1978, as enacted by Laws 1949, ch. 147, § 1, relating to creation of civil air patrol division, effective April 10, 1987.

##### **64-3-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98B repealed 64-3-2 NMSA 1978, as enacted by Laws 1955, ch. 84, § 1, relating to cooperation with other agencies authorized, effective April 10, 1987.

### **ARTICLE 4**

#### **Registration of Aircraft**

##### **64-4-1. Short title.**

Sections 64-4-1 through 64-4-15 NMSA 1978 may be cited as the "Aircraft Registration Act."

**History:** 1953 Comp., § 44-5-1, enacted by Laws 1965, ch. 122, § 1; 1977, ch. 250, § 22.

## **64-4-2. Purpose of act.**

The purpose of this act [64-4-1 to 64-4-15 NMSA 1978] is to provide for registration and uniform taxation of aircraft based or hangared in New Mexico.

**History:** 1953 Comp., § 44-5-2, enacted by Laws 1965, ch. 122, § 2.

### **ANNOTATIONS**

**Aircraft of nonresident servicemen exempt.** — Under New Mexico law, an aircraft is not defined by statute as a motor vehicle; hence, aircraft of nonresident servicemen stationed in this state are exempt from the provisions of the Aircraft Registration Act by virtue of the federal Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. §§ 501 to 591). 1966 Op. Att'y Gen. No. 66-41 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

2A C.J.S. Aeronautics and Aerospace §§ 39 to 41, 189.

## **64-4-3. Definitions.**

As used in the Aircraft Registration Act:

A. "division" means the aviation division of the state highway and transportation department;

B. "director" means the executive head of the division;

C. "maximum gross weight" means the manufacturer's gross weight according to the operating limitations placard of the aircraft, furnished by the federal aviation administration; and

D. "specialized use" means use for commercial operations other than passenger carriage, including cargo hauling, crop dusting or spraying and forest fire-fighting use.

**History:** 1953 Comp., § 44-5-3, enacted by Laws 1965, ch. 122, § 3; 1970, ch. 50, § 1; 1971, ch. 150, § 1; 1977, ch. 250, § 23; 1987, ch. 268, § 10.

### **ANNOTATIONS**

**The 1987 amendment,** effective July 1, 1987, in Subsection A inserted "state highway and" preceding "transportation department."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 2.

2A C.J.S. Aeronautics and Aerospace §§ 2 to 6.

#### **64-4-4. Aircraft registration.**

A. All aircraft based or hangared within this state shall be registered annually with the division, and a registration fee shall be paid as approved in the Aircraft Registration Act.

B. Aircraft that are within the state for maintenance, overhaul, storage or repair, but that are habitually or permanently based in another state, may be registered pursuant to the provisions of the Aircraft Registration Act.

**History:** 1953 Comp., § 44-5-4, enacted by Laws 1965, ch. 122, § 4; 1970, ch. 50, § 2; 1977, ch. 250, § 24; 2003, ch. 224, § 1.

#### **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added the Subsection A designation and added Subsection B.

**No formula for veterans' exemption.** — Although qualified veterans were theoretically entitled to soldiers' exemption under former 72-1-13, 1953 Comp., from some undetermined portion of the aircraft registration fee, where the legislature did not provide a formula for application of the exemption, the director had no power to invent such a formula. 1972 Op. Att'y Gen. No. 72-28.

**Aircraft of nonresident servicemen exempt.** — Under New Mexico law, an aircraft is not defined by statute as a motor vehicle; hence, aircraft of nonresident servicemen stationed in this state are exempt from the provisions of the Aircraft Registration Act by virtue of the federal Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App §§ 501 to 591). 1966 Op. Att'y Gen. No. 66-41 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 31, 32.

2A C.J.S. Aeronautics and Aerospace §§ 39 to 41.

#### **64-4-5. Time of registration; penalty.**

A. The owner or lessee of an aircraft, whichever is in possession, shall register the aircraft prior to March 1 of each year.

B. Any person who purchases, leases or otherwise acquires an aircraft or brings one into the state after March 1 shall register the aircraft within fifteen days after purchase, lease, acquisition or entering the state.

C. Any owner or lessee who fails to comply with Subsection A or any person who fails to comply with Subsection B shall pay a fine equal to ten percent of the regular registration fee times each month or portion of a month the registration fee is past due.

**History:** 1953 Comp., § 44-5-5, enacted by Laws 1970, ch. 50, § 3.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1970, ch. 50, § 3, repealed 44-5-5, 1953 Comp., and enacted a new section, effective January 1, 1972.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 31, 32.

2A C.J.S. Aeronautics and Aerospace §§ 282 to 288.

### **64-4-5.1. Unpaid registration fees; lien; hearing; seizure.**

A. The registration fee and any penalties that have accrued under the Aircraft Registration Act constitute a lien on the aircraft from the date the registration fee was due. The division shall notify the registered owner of any aircraft required to be registered under that act by mailing a notice of intent to file a lien on any aircraft subject to a lien for nonpayment of aircraft registration fees. The registered owner shall have thirty days from the date of the mailing of such notice to pay all outstanding fees, interest and penalties. The division may thereafter perfect the lien by filing a notice of lien in the office of the secretary of state and the federal aviation administration aircraft records center. The notice of lien shall be on a form prepared by the division and shall indicate the amount of the registration fee that was due, the date the fee was due and the fact that penalties will accrue monthly from that date. The lien shall have priority over any other lien or encumbrance perfected subsequent to the date the notice of lien was filed, except for liens for state taxes having a priority established by law. A copy of the notice of lien shall be filed with the division. The lien shall continue until the registration fee and accrued penalties are paid. Upon satisfaction of the lien, the division shall notify the registered owner of the release of lien and shall file a copy of such release in the office of the secretary of state in which the notice of lien was recorded.

B. After due notice and hearing to the registered owner, the division may bring an action in the magistrate court in the county in which the aircraft is found to collect the registration fee and accrued penalties by seizure of the aircraft from the person in possession and by sale as provided in Section 39-5-1 NMSA 1978. Prior to the hearing, the division shall notify all lienholders of record of the impending action. The costs of identifying these lienholders and of bringing such action in magistrate court may be added to the amount owed by the owner. The division shall promulgate rules and regulations to provide a hearing to any delinquent owner prior to seizure of any aircraft under this subsection.

**History:** 1978 Comp., § 64-4-5.1, enacted by Laws 1983, ch. 52, § 1; 1985, ch. 71, § 1.

### **64-4-6. Action on application.**



Upon receipt of an application for registration of any aircraft and payment of the required fee, the division shall file the application, assign to the application and the aircraft to be registered a distinct number and register the application and the number in an index to be kept for that purpose. A number plate and certificate of registration bearing the same number assigned to the application shall be delivered to the owner or lessee of the aircraft without further expense to such applicant. The certificate of registration shall be carried in the aircraft at all times and the registration number shall be conspicuously displayed on the aircraft as may be required by appropriate rule of the director.

**History:** 1953 Comp., § 44-5-6, enacted by Laws 1965, ch. 122, § 6; 1970, ch. 50, § 4; 1977, ch. 250, § 25.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 31, 32.

2A C.J.S. Aeronautics and Aerospace §§ 197 to 200.

#### **64-4-7. Division duties.**

The division shall prepare the applications for registration certificate [certificates] and registration numbers to provide for a uniform, statewide registration of aircraft and shall keep in the office of the division in Santa Fe a current index of aircraft registration.

**History:** 1953 Comp., § 44-5-7, enacted by Laws 1965, ch. 122, § 7; 1970, ch. 50, § 5; 1977, ch. 250, § 26.

#### **ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

2A C.J.S. Aeronautics and Aerospace §§ 39 to 41.

#### **64-4-8. Rules and regulations.**

The director has the power to adopt reasonable rules and regulations for the purpose of implementing the Aircraft Registration Act.

**History:** 1953 Comp., § 44-5-8, enacted by Laws 1965, ch. 122, § 8; 1970, ch. 50, § 6; 1977, ch. 250, § 27.

#### **ANNOTATIONS**

**No authority to provide for exemptions.** — Authority to promulgate rules to implement the act does not imply authority to promulgate regulations providing for exemptions from the assessments imposed thereby. 1972 Op. Att'y Gen. No. 72-28.

As legislature did not provide a formula for application of soldiers' exemption under former 72-1-13, 1953 Comp., to this act, director had no power to invent such a formula. 1972 Op. Att'y Gen. No. 72-28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation § 27.

2A C.J.S. Aeronautics and Aerospace §§ 39 to 41.

### **64-4-9. Duplicate certificates.**

Duplicate certificates of registration may be obtained upon proof of loss or destruction of the original by application therefor to the division and a payment of one dollar fifty cents (\$1.50) for each additional certificate.

**History:** 1953 Comp., § 44-5-9, enacted by Laws 1965, ch. 122, § 9; 1970, ch. 50, § 7; 1977, ch. 250, § 28.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 31, 32.

### **64-4-10. Transfer of registration.**

Whenever the owner or lessee of a registered aircraft transfers his title or interest thereto, the registration certificate and number issued for such aircraft shall remain with said aircraft. Upon a transfer or assignment of title or interest the owner or lessee shall endorse such assignment upon his certificate of registration, which statement shall be verified under oath by such owner or lessee. The owner or lessee shall deliver the certificate of registration and registration number to the purchaser or transferee at the time of delivery of the aircraft. If an aircraft is not registered at the time of purchase or lease, even though the aircraft may have been purchased within the state, new or used, the purchaser shall register it as provided herein.

**History:** 1953 Comp., § 44-5-10, enacted by Laws 1965, ch. 122, § 10.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 31, 32.

2A C.J.S. Aeronautics and Aerospace § 191.

### **64-4-11. Registration fees.**

A. The division shall collect the following registration fees:

(1) when the model of the aircraft is one year or less old immediately prior to the year for which it is being registered, two cents (\$.02) a pound of manufacturer's maximum gross weight;

(2) when the model of the aircraft is two years old immediately prior to the year for which it is being registered, one and three-fourths cents (\$.0175) a pound of manufacturer's maximum gross weight;

(3) when the model of the aircraft is three years old immediately prior to the year for which it is being registered, one and one-half cents (\$.0150) a pound of manufacturer's maximum gross weight;

(4) when the model of the aircraft is four years old immediately prior to the year for which it is being registered, one and one-fourth cents (\$.0125) a pound of manufacturer's maximum gross weight;

(5) when the model of the aircraft is five years or more old immediately prior to the year for which it is being registered, one cent (\$.01) a pound of manufacturer's maximum gross weight;

(6) surplus military aircraft over five years old from date of manufacture, one cent (\$.01) a pound of military placarded or certificated gross weight; and

(7) hot air balloons, a flat fee of ten dollars (\$10.00) regardless of the age and weight of aircraft.

B. The fees charged in Subsection A of this section shall not exceed three hundred dollars (\$300) per engine regardless of the weight or age of the aircraft.

C. The fees set by this section are in lieu of all personal property taxes on aircraft authorized by any law of this state. Registration certificates for part of the year issued after July 1 shall be issued at the rate of fifty percent of the annual fee.

**History:** 1953 Comp., § 44-5-11, enacted by Laws 1978, ch. 43, § 1; 2003, ch. 224, § 2.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1978, ch. 43, § 1, repealed 44-5-11, 1953 Comp. (former 64-4-11 NMSA 1978), and enacted a new section, effective March 31, 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "regardless" for "irrespective" following "ten dollars (\$10.00)" in Paragraph A(7); added present Subsection B and redesignated former Subsection B as Subsection C; and substituted "after July 1" for "after the first day of July" following "year issued after" in Subsection C.

## **64-4-12. Aircraft dealer's and specialized-use license.**

Any dealer in new or used aircraft, or both, who holds such aircraft for resale and operates them primarily for purposes incident to a resale, or owner or lessee of specialized-use aircraft, may apply to the division for a dealer's or a specialized-use license. Upon such application, the division shall issue an aircraft dealer's or a specialized-use license to the applicant for an annual fee of fifty dollars (\$50.00). The dealer's or the specialized-use license shall be in lieu of all other licenses and personal property taxes upon such aircraft owned or held for resale by the dealer or specialized-use operator within this state so long as they are kept for specialized use or for resale. This does not prohibit the registering of all such aircraft as otherwise provided in the Aircraft Registration Act.

**History:** 1953 Comp., § 44-5-12, enacted by Laws 1965, ch. 122, § 12; 1970, ch. 50, § 9; 1977, ch. 250, § 30.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 31, 32.

2A C.J.S. Aeronautics and Aerospace § 25.

## **64-4-13. Fraudulent applications.**

Any person who fraudulently uses a false or fictitious name in any application for aircraft registration or knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a fraud in any such application shall upon conviction, be guilty of a misdemeanor.

**History:** 1953 Comp., § 44-5-13, enacted by Laws 1965, ch. 122, § 13.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 211, 212.

2A C.J.S. Aeronautics and Aerospace §§ 285, 286.

## **64-4-14. Disposition of fees.**

A. Except as provided in Subsection B of this section, all fees collected under the provisions of the Aircraft Registration Act shall be remitted to the state treasurer by the division for credit to the state aviation fund.

B. Eighty percent of registration fees collected with respect to aircraft registered pursuant to Subsection B of Section 64-4-4 NMSA 1978 and that are located on airports owned by a local government shall be distributed to the local government. The fees so

distributed shall be used by the local government for airport upgrades, including repair, reconstruction and maintenance of runways and related facilities. Local government funding to the airport shall not be replaced in whole or in part by this distribution.

**History:** 1953 Comp., § 44-5-14, enacted by Laws 1965, ch. 122, § 14; 1970, ch. 50, § 10; 1977, ch. 250, § 31; 2003, ch. 224, § 3.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, added the Subsection A designation; added "Except as provided in Subsection B of this section" at the beginning of Subsection A; and added Subsection B.

### 64-4-15. Exemptions.

The provisions of this act [64-4-1 to 64-4-15 NMSA 1978] shall not apply to the following:

A. Public aircraft. Any aircraft owned by the state or any political subdivision thereof, or any aircraft of the United States government.

B. Nonresident aircraft. Any aircraft having a habitual situs or permanent base in another state, provided the registration requirements of such state, if any, have been complied with, with respect to such aircraft.

**History:** 1953 Comp., § 44-5-15, enacted by Laws 1965, ch. 122, § 15.

## ANNOTATIONS

**Servicemen.** — Aircraft of nonresident servicemen stationed within this state are exempt from the provisions of the Aircraft Registration Act by virtue of the federal Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. §§ 501 to 591). 1966 Op. Att'y Gen. No. 66-41 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8A Am. Jur. 2d Aviation §§ 31, 32.

2A C.J.S. Aeronautics and Aerospace § 25.

## ARTICLE 5

### Salvage of Crashed Aircraft

#### 64-5-1. Abandonment of crashed aircraft.

Any aircraft which has crashed and which has not been removed from the site of the crash is conclusively presumed to be abandoned by the owner if:

A. one year has elapsed from the time that the aircraft was released to the owner by the federal agency responsible for investigating the crash; and

B. the owner is not currently and actively engaged in the removal of the aircraft.

**History:** 1953 Comp., § 44-6-1, enacted by Laws 1975, ch. 18, § 1.

## ANNOTATIONS

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

### 64-5-2. Issuance of salvage permits.

A. The aviation division of the transportation department [department of transportation] may issue a salvage permit for the salvaging and removal of any crashed aircraft which it finds to be abandoned. The permit shall be issued pursuant to rules and regulations promulgated by the aviation division; provided that:

(1) no permit shall be issued if the owner or the lessee of the land on which the crashed aircraft is located has already removed the aircraft or is currently and actively engaged in such removal;

(2) no permit shall be issued until thirty days after notice has been given to the owner of the aircraft and the owner or the lessee of the land on which the aircraft is located and if either requests a hearing within thirty days after such notification, then no permit shall be issued until a hearing has been held by the aviation division, at which all parties shall have a full and adequate opportunity to be heard, a finding of fact made and a determination that such permit should be issued or denied;

(3) no permit shall be issued until a bond is filed with the division, in the name of the owner or the lessee of the land on which the crashed aircraft is located, in an amount and on a form approved by the aviation division, issued by a corporate surety company licensed to do business in New Mexico and conditioned upon the salvaging and removing of the crashed aircraft without damage to property, unless the necessity of the bond is waived, in writing, by the owner or lessee of the land; and

(4) no permit shall be issued to a holder of a prior terminated salvage permit for the same crashed aircraft.

B. The holder of a valid permit has title to the crashed aircraft specified therein free from all claims of the owner, of any holders of a prior terminated permit, of the owner or lessee of the land on which the aircraft is located and of all persons claiming through or under them.

**History:** 1953 Comp., § 44-6-2, enacted by Laws 1975, ch. 18, § 2; 1977, ch. 250, § 32.

## ANNOTATIONS

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

### **64-5-3. Salvage of crashed aircraft; liability for damage to land; termination of permits.**

A. Any person who has been issued a valid salvage permit by the aviation division may, within sixty days after the date of issuance of the permit, enter any land specified therein for the specific purpose of salvaging and removing the crashed aircraft specified therein.

B. Any person entering land under Subsection A of this section shall be strictly liable to the owner or lessee of the land, whichever is in possession, for any damages caused by the entry or removal.

C. After removing the aircraft within six months from the date the permit was issued, the permit holder has title to the aircraft free from all claims of the previous owner, of any holders of a prior terminated permit, of the owner or lessee of the land on which the aircraft was located and of all persons claiming through or under them. The salvage permit and a notarized statement certifying that the terms and conditions under which the permit was issued have been fulfilled shall constitute valid evidence of title.

D. If the crashed aircraft, specified in any salvage permit issued by the aviation division, is not removed within six months from the date of the issuance of the permit, then the permit shall be automatically terminated and invalid.

**History:** 1953 Comp., § 44-6-3, enacted by Laws 1975, ch. 18, § 3; 1977, ch. 250, § 33.

### **64-5-4. Authority to contract with the United States.**

The aviation division may enter into contracts and agreements with the United States government relating to the salvaging and removal of crashed aircraft which are owned by the United States government.

**History:** 1953 Comp., § 44-6-4, enacted by Laws 1975, ch. 18, § 4; 1977, ch. 250, § 34.

## **ARTICLE 6**

### **Rural Air Service Enhancement**

#### **64-6-1. Short title.**

This act [64-6-1 to 64-6-5 NMSA 1978] may be cited as the "Rural Air Service Enhancement Act".

**History:** Laws 2021, ch. 47, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 47, § 6 made Laws 2021, ch. 47, § 1 effective July 1, 2021.

### **64-6-2. Definitions.**

As used in the Rural Air Service Enhancement Act:

- A. "air route" means any scheduled operation or public charter;
- B. "charter flight" means a flight operated under the terms of a charter contract between a direct air carrier and the carrier's customer. "Charter flight" does not include scheduled air transportation, scheduled foreign air transportation or nonscheduled cargo air transportation, sold on an individually ticketed or individually waybilled basis;
- C. "department" means the department of transportation;
- D. "director" means the director of the division;
- E. "division" means the aviation division of the department;
- F. "expanded air route" means an air route served by the rural air service enhancement grant program that expands passenger capacity or the number of scheduled operations or public charter flights from what was served at the time a grant was made;
- G. "minimum revenue guarantee" means the amount of money guaranteed by a municipality or county to be earned by an airline providing scheduled air services to and from that municipality or county, which is the difference between the minimum flight charge revenue specified in the contract between the municipality or county and the airline and the amount of actual flight charge revenue received by the airline that is less than that contractual amount;
- H. "new air route" means an air route to be served by the rural air service enhancement grant program that was not served prior to January 1, 2021;
- I. "public charter" means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator; and



J. "scheduled operation" means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier for which the air carrier or the air carrier's representatives offers in advance the departure location, departure time and arrival location.

**History:** Laws 2021, ch. 47, § 2; 2022, ch. 11, § 1.

## ANNOTATIONS

**The 2022 amendment**, effective May 18, 2022, defined "air route", "charter flight", "expanded air route", "new air route", "public charter", and "scheduled operation", as used in the Rural Air Service Enhancement Act; added new Subsections A and B and redesignated former Subsections A through C as Subsections C through E, respectively; added a new Subsection F and redesignated former Subsection D as Subsection G; and added Subsections H through J.

### **64-6-3. Rural air service enhancement grant program.**

A. The "rural air service enhancement grant program" is created in the division to be administered by the director.

B. The director shall:

(1) establish and publish deadlines and guidelines for the submission of grant applications;

(2) develop procedures for receipt, review and approval of grant applications;

(3) receive, review and approve grant applications;

(4) monitor municipalities' and counties' use of grant money by reviewing annual reports submitted to the director to ensure that grants are used consistently with the terms of the grant awards;

(5) establish grant reporting requirements that meet the general purpose of the Rural Air Service Enhancement Act; and

(6) perform other duties as necessary to carry out the provisions of the Rural Air Service Enhancement Act.

C. Each fiscal year, competitive grants for minimum revenue guarantees shall be awarded to applicants for the sole purpose of funding rural air service enhancement grants.

D. The director shall award grants to applicants through a competitive process and based upon the following criteria:

(1) the demand for service on the proposed new air routes or expanded air routes;

(2) the economic impact on the municipality or county of the proposed new air routes or expanded air routes; and

(3) the feasibility of a common carrier licensed by the state servicing proposed new air routes or expanded air routes.

E. Applicants shall meet the following minimum criteria to be eligible for a grant:

(1) municipalities or counties shall have a minimum population of twenty thousand persons residing within a fifty-mile radius of the airport unless the municipality or county has existing air routes;

(2) aircraft to be used to service proposed new air routes or expanded air routes served by the rural air service enhancement grant program shall have a passenger capacity of not more than thirty persons; and

(3) minimum matching funds from a municipality or county shall be:

(a) ten percent if the municipality or county has no existing scheduled air routes at the time of application; and

(b) twenty percent if the municipality or county has existing scheduled air routes at the time of application.

F. Individual grants awarded through the rural air service enhancement grant program shall not:

(1) exceed two million two hundred fifty thousand dollars (\$2,250,000) per year for municipalities or counties with existing scheduled air routes;

(2) exceed two million seven hundred fifty thousand dollars (\$2,750,000) per year for municipalities or counties not served by existing scheduled air routes; or

(3) be used for infrastructure improvement.

G. Individual grants awarded through the rural air service enhancement grant program shall cover a time frame of at least two years. If funds are available in the rural air service enhancement fund, the director may extend the term of an existing grant up to three additional years.

H. No more than ten percent of the balance of the rural air service enhancement fund on July 1 of any year may be used by the division for infrastructure improvements

associated with individual grants awarded through the rural air service enhancement grant program.

I. Funds received through individual grants awarded through the rural air service enhancement grant program shall be expended by the grantee municipality or county only to airlines that have been selected through a competitive process pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

**History:** Laws 2021, ch. 47, § 3; 2022, ch. 11, § 2.

## ANNOTATIONS

**The 2022 amendment**, effective May 18, 2022, expanded the eligibility for rural air service enhancement grant program, increased the maximum amount of rural air service enhancement grants, and authorized the director of the aviation division of the department of transportation to extend the time frame of existing grants; in Subsection D, Paragraph D(1), after "proposed", added "new air routes or expanded", in Paragraph D(2), after "proposed new", added "air routes or expanded", and in Paragraph D(3), after "proposed new", added "air routes or expanded"; in Subsection E, Paragraph E(1), after "existing", deleted "scheduled air service" and added "air routes", in Paragraph E(2), after "proposed new", added "air routes or expanded", after "not more than", deleted "nine" and added "thirty", deleted Paragraph E(3) and redesignated former Paragraph E(4) as Paragraph E(3), in Subparagraph E(3)(a), after "existing scheduled air", deleted "service" and added "routes", and in Subparagraph E(3)(b), deleted "fifty" and added "twenty", and after "existing scheduled air", deleted "service" and added "routes"; in Subsection F, Paragraph F(1), after "exceed", deleted "one million two hundred fifty thousand dollars (\$1,250,000)" and added "two million two hundred fifty thousand dollars (\$2,250,000)", and after "existing scheduled air", deleted "service" and added "routes", in Paragraph F(2), after "exceed", deleted "one million seven hundred fifty thousand dollars (\$1,750,000)" and added "two million seven hundred fifty thousand dollars (\$2,750,000)", and after "existing scheduled air", deleted "service" and added "routes"; and in Subsection G, added "If funds are available in the rural air service enhancement fund, the director may extend the term of an existing grant up to three additional years."

### **64-6-4. Grant applications.**

A municipality or county may submit an application to the director for a rural air service enhancement grant. An applicant shall comply with deadlines and guidelines published by the director. A grant application shall include:

A. a description of the facility that will serve the proposed new air routes or expanded air routes;

B. an estimate of the demand for the proposed new air routes or expanded air routes;

C. identification of the air common carrier that will service the proposed new air routes or expanded air routes and the aircraft to be used on the proposed air routes;

D. a description of existing air routes serving the applicant;

E. a description and schedule of the proposed new air routes or expanded air routes to serve the applicant;

F. a justification for the proposed air routes;

G. the requested grant amount and the amount of any matching funds; and

H. the time frame for a commitment to subsidize the proposed new air routes or expanded air routes.

**History:** Laws 2021, ch. 47, § 4; 2022, ch. 11, § 3.

## **ANNOTATIONS**

**The 2022 amendment**, effective May 18, 2022, revised the required contents of a grant application; in Subsection A, after "proposed new", deleted "scheduled" and added "air routes or expanded", and after the next occurrence of "air", deleted "service" and added "routes"; in Subsection B, after "proposed new", deleted "scheduled" and added "air routes or expanded", and after the next occurrence of "air", deleted "service"; in Subsection C, after "proposed new", deleted "scheduled" and added "air routes or expanded", after the next occurrence of "air", deleted "service", after "used on the", deleted "new scheduled" and added "proposed", and after the next occurrence of "air", deleted "service"; in Subsection D, after "existing", deleted "scheduled" and after "air", deleted "service"; in Subsection E, after "proposed new", deleted "scheduled" and added "air routes or expanded", and after the next occurrence of "air", deleted "service"; in Subsection F, after "justification for the", deleted "new", after "proposed", deleted "scheduled", and after "air", deleted "service"; and in Subsection H, after "the proposed new", deleted "scheduled" and added "air routes or expanded", and after "air", deleted "service".

### **64-6-5. Rural air service enhancement fund; created.**

A. The "rural air service enhancement fund" is created as a nonreverting fund in the state treasury. All appropriations, gifts, devises, grants and donations received shall be deposited in the fund. Money in the fund is appropriated to the division for the purpose of carrying out the rural air service enhancement grant program and related infrastructure improvements pursuant to the provisions of the Rural Air Service Enhancement Act.

B. The fund shall be administered by the division. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration

pursuant to vouchers signed by the director or the director's designee for the purpose of carrying out the rural air service enhancement grant program and related infrastructure improvements pursuant to the provisions of the Rural Air Service Enhancement Act.

**History:** Laws 2021, ch. 47, § 5; 2022, ch. 11, § 4.

### **ANNOTATIONS**

**The 2022 amendment**, effective May 18, 2022, clarified that the rural air service enhancement fund is a nonreverting fund in the state treasury; and in Subsection A, after "is created", added "as a nonreverting fund", and deleted the last sentence of the subsection, which provided "Money in the fund shall not revert at the end of a fiscal year."