

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

viewer may recover double the amount in a civil action. (R. S. c. 84, § 203. 1961, c. 317, § 285.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action on the case” in this section.

Chapter 97.

Fire Departments and Fire Prevention.

Sections 1-9A. Fire Wards and Engineers.

Fire Wards and Engineers.

Sec. 9. Compensation for building demolished.—If the pulling down or demolishing of any building, except that in which the fire originated, is the means of stopping the fire, or if the fire is stopped before it comes to the same, then the owner of such building is entitled to recover a reasonable compensation therefor from the town in a civil action. (R. S. c. 85, § 9. 1961, c. 317, § 286.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “a special action on the case” in this section.

Sec. 9-A. Liability of drivers of fire apparatus.—In the event a fire department vehicle going to or from a call, or going to or from any call or duty assigned to it, is involved in a collision with any other vehicle, object or person, and there is any liability on the part of the operator of the said fire department vehicle, responsibility of payment for any damage or loss occasioned by such liability shall be on the municipality owning or using the fire department vehicle. (1963, c. 324; c. 414, § 3-F.)

Editor's note.—Chapter 324, P. L. 1963, 92-A of c. 22. It was reallocated by c. 414, which added this section, designated it § P. L. 1963.

Municipal Inspection of Buildings.

Sec. 20. Repealed by Public Laws 1963, c. 402, § 122.

Editor's note.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Investigation of Fire Hazards and Causes of Fire.

Sec. 22. Insurance commissioner upon complaint may inspect buildings; combustible or other dangerous matter removed; exitways.—The insurance commissioner, his deputy or the fire inspector, upon the complaint of any person or whenever he or they shall deem it necessary, may inspect or cause to be inspected all buildings and premises within their jurisdiction. Whenever any of said officers shall find any building or other structure which, for want of repairs or by reason of age or dilapidated condition or from any other cause is especially liable to fire, or which is so situated as to endanger other property or the safety of the public, or whenever such officer shall find in or around any building combustible or explosive matter or inflammable or other conditions dangerous to the safety of such buildings, or whenever such officer shall find any building which has been gutted by fire, or whenever such officer shall find that debris remains from a building which has been destroyed by fire

or otherwise, he shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner or occupant of such premises or buildings. If such order is made by any fire inspector, such owner or occupant may within 24 hours appeal to the insurance commissioner, who shall within 10 days review such order and file his decision thereon, and his decision shall be final and shall be complied with within such time as may be fixed in said order or decision of the insurance commissioner.

Every hospital, sanatorium, convalescent home, nursing home, rest home or other institution for the hospitalization or nursing care of human beings shall between sundown and sunrise maintain lighted exitways and all main exit doors shall be hung to swing outward. (R. S. c. 85, § 22. 1957, c. 37. 1961, c. 243.)

Effect of amendments. — The 1957 amendment added the last paragraph. the first paragraph and inserted the provisions relating to buildings gutted by fire

The 1961 amendment substituted "or" for "and" twice in the second sentence of or remains of buildings destroyed by fire.

Sec. 23. Buildings repaired or demolished; complaint to enforce order.—If any person fails to comply with the order of any officer under section 22 or with the decision of the insurance commissioner on review and within the time fixed, then such officer or the insurance commissioner may file a complaint in the superior court in the county where the building or premises is located to enforce the order of said officer or the insurance commissioner. After notice and hearing the court shall make such order, judgment or decree as law and justice may require, or the court may authorize the town to cause such building or premises to be forthwith repaired, torn down or demolished and such materials removed and all dangerous conditions remedied, as the case may be, at the expense of the town in which such property is situated; and if the owner thereof, within 30 days after notice in writing of the amount of such expense, fails, neglects or refuses to repay said town the expense thereby incurred, a special tax may be assessed by the assessors against the land on which said building was located for the amount of such expenses, and such amount shall be included in the next annual warrant to the tax collector of said town for collection, and shall be collected in the same manner as other state, county and municipal taxes are collected. (R. S. c. 85, § 23. 1957, c. 7. 1961, c. 317, § 287.)

Effect of amendments. — Prior to the 1957 amendment the officer or insurance commissioner, on review, caused the repair, demolition, etc. The petition relative to the enforcement of the order is new with the amendment, as is also the court order, judgment, etc.

The 1961 amendment deleted "the provisions of" preceding "section 22" and substituted "file a complaint in the superior court" for "petition the supreme judicial court or the superior court in equity, in term time or vacation" in the first sentence of this section.

Sec. 27. Witnesses compelled to testify; false swearing; investigations private. — The insurance commissioner, the deputy insurance commissioner and the municipal officers of cities and towns shall each have the power to summon and compel the attendance of witnesses before them or either of them, to testify in relation to any matter which is by sections 24 to 26 a subject of inquiry and investigation, and to compel the production of all books, records, documents and papers pertaining to said subject of inquiry and investigation. Said insurance commissioner, deputy insurance commissioner and municipal officers may also administer oaths and affirmations to persons appearing as witnesses before them; and false swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punished as such. Said insurance commissioner and his subordinates shall have authority, at all times of the day or night, in the performance of the duties imposed by this chapter, to enter upon and examine any building or premises where a fire is in progress or has occurred and other buildings or premises adjoining or near the same. All investigations held by or under

the direction of the insurance commissioner, deputy insurance commissioner or the municipal officers may in their discretion be private, and persons other than those required to be present by the provisions hereof may be excluded from the place where such investigation is held and witnesses may be kept separate and apart from one another and not allowed to communicate with one another until they have been examined. (R. S. c. 85, § 27. 1963, c. 402, § 123.)

Effect of amendment.—The 1963 amendment substituted “power to summon and compel” for “powers of a trial justice for the purpose of summoning and compelling” and substituted “sections 24 to 26” for “the provisions of the 3 preceding sections” in the first sentence.

Application of amending act. — Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 29. Insurance commissioner may incur expense for administration of fire preventive laws; director of state fire prevention; state fire inspectors.—The insurance commissioner may incur such expense and appoint a director of state fire prevention, an assistant director of state fire prevention and such supervising state fire inspectors, subject to the provisions of the personnel law, as may be necessary to carry out the provisions of all fire preventive and investigative laws, rules and regulations which he is by law empowered to administer. He may also incur reasonable expenses in educating the public in fire prevention and protection. The director of state fire prevention, the assistant director of state fire prevention and supervising state fire inspectors appointed under the provisions of this section shall carry out those functions which the commissioner may direct. Supervising state fire inspectors shall have the same powers and duties throughout the several counties of the state as sheriffs have in their respective counties relating to fire prevention, arson and other burnings. Their power and duties shall include the duty to inquire into and arrest for violations of any of the provisions of this chapter, and to arrest for impersonation of or interference with fire inspectors. Every fire insurance company or association which does business or collects premiums or assessments in the state shall pay to the state tax assessor on the 1st day of May, annually, in addition to the taxes now imposed by law to be paid by such companies or associations, $\frac{1}{2}$ of 1% of the gross direct premiums for fire risks written in the state during the preceding calendar year, less the amount of all direct return premiums thereon and all dividends paid to policyholders on direct fire premiums during said calendar year. The state tax assessor shall pay over all receipts from such tax to the treasurer of state daily. Said funds shall be used solely to defray the expenses incurred by the insurance commissioner in administering all fire preventive and investigative laws, rules and regulations and in educating the public in fire safety and are appropriated for such purposes.

(1955, c. 166. 1957, c. 16, § 1; c. 429, § 81.)

Effect of amendments. — The 1955 amendment inserted the fourth and fifth sentences in the first paragraph.

The first 1957 amendment made this section applicable to an assistant director of state fire prevention and added the word “supervising” preceding the words “state fire inspectors.” The second 1957 amend-

ment, effective October 31, 1957, substituted “Supervising state” for “State supervising” at the beginning of the fourth sentence of the first paragraph.

As the second paragraph was not changed by the amendments, it is not set out.

Fire Prevention.

Sec. 36. Repealed by Public Laws 1955, c. 406, § 3.

Cross reference.—See c. 36, § 94-A, for present provisions re kindling fires on land of another.

Sec. 38. When lawful fires kindled.—Whoever for a lawful purpose kindles a fire on his own land shall do so at a suitable time and in a careful and prudent manner; and is liable in a civil action to any person injured by his failure to comply with this provision. (R. S. c. 85, § 37. 1961, c. 317, § 288.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action on the case” in this section.

Sec. 41. Common law remedy not taken away. — The common law right to an action for damages done by fire is not taken away or diminished and it may be pursued notwithstanding the penalties set forth in this chapter, but any person availing himself of the provisions of section 38 is barred of his action at common law for the damage so sued for. No action shall be brought at common law for kindling fires in the manner described in section 39; but if such fire spreads and does damage, the person who kindled it and any persons present and concerned in driving the lumber, by whose act or neglect such fire is suffered to do damage, are liable in a civil action for such damage. (R. S. c. 85, § 40. 1961, c. 317, § 289.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action on the case” in the last sentence of this section.

Sec. 42. Penalties, how recovered and appropriated.—Penalties provided in sections 32 to 39 and section 41 may be recovered by complaint, indictment or civil action, half to the town where the offense is committed and half to the prosecutor. (R. S. c. 85, § 41. 1961, c. 317, § 290.)

Effect of amendment.—The 1961 amendment substituted “civil action” for “action of debt” in this section.

Sec. 43. Regulations relating to explosives or inflammable liquids.—The insurance commissioner shall make, amend or rescind, after public hearing thereon, notice of which has been duly advertised in the state paper, reasonable rules and regulations for the keeping, dispensing or transporting from place to place in the state of all gunpowder, petroleum, coal oils, burning fluids, naphtha, benzine and all other explosives and illuminating substances which such commissioner believes dangerous to the lives or safety of citizens.

This section will not apply to the purchase, sale, transportation or storage of smokeless powder in amounts not in excess of 15 pounds, or primers not in excess of 1,000 in number.

Such rules and regulations shall become effective when approved in writing by the governor and council and when a certified copy thereof has been filed with the secretary of state. Any person aggrieved by any such rule or regulation or the reasonableness of same, or any act or order of the insurance commissioner in enforcing any such rule or regulation, may appeal to the superior court by filing a complaint therefor and the court shall fix a time and place of hearing and cause notice thereof to be given to the commissioner and, after the hearing, the court may affirm or reverse the rule, regulation, act or order of the commissioner and the decision of the court shall be final.

Said commissioner may waive the requirements of any such rules or regulations to cover any special circumstances, conditions or localities.

No person shall keep or transport any such article in any quantity or manner, except as prescribed in such regulations, unless waived by the commissioner as hereinbefore provided, under a penalty of not less than \$20 nor more than \$100, for each offense; all such articles may be seized by any peace officer and forfeited; and within 20 days after such seizure, may be libeled according to law. Cities and towns may also make and enforce reasonable ordinances or by-laws, not inconsistent with said rules and regulations. (R. S. c. 85, § 42. 1961, c. 250; c. 317, § 291. 1963, c. 292.)

Effect of amendments.—Chapter 250, P. L. 1961, added the present second paragraph. Prior to c. 317, P. L. 1961, the appeal provided for in this section was to “a justice of the superior court by presenting

to him a petition”, in term time or vacation, and the hearing was set by and held before the justice.

The 1963 amendment added “dispensing” in the first paragraph.

Sec. 43-A. Repealed by Public Laws 1957, c. 397, § 47.

Cross reference.—See now § 45-A of transportation of explosives, which provisions are verbatim with former § 43-A.

Sec. 43-B. Repealed by Public Laws 1957, c. 429, § 82.

Cross reference.—See now § 45-B of this chapter for provisions identical to those of former § 43-B.

Effective date.—The 1957 act repealing this section became effective on its approval, October 31, 1957.

Sec. 45-A. Transportation of explosives.—As a condition to the granting of a permit or license to transport explosives, the insurance commissioner may require that the vehicle used in transportation of explosives may be accompanied by a representative of the commissioner, who shall be paid mileage by the person to whom the license is issued at the rate allowed to fire inspectors by the state for the use of his car. This condition is not applicable to loads of 4,000 pounds or less. Explosives referred to herein shall not include petroleum products. (1957, c. 397, § 48.)

Sec. 45-B. Installation of certain gas burning appliances to conform to standards.—No artificial, liquefied petroleum, manufactured or natural gas burning appliances of whatever type shall hereafter be installed unless such installation complies with regulations issued by the insurance commissioner. Such regulations shall be the applicable standards of National Fire Protection Association as amended from time to time and shall be issued in accordance with the procedure set forth in section 43. Such regulations may be amended or rescinded in accordance with said procedure and any person aggrieved thereby shall have all the rights granted to such a person by section 43.

This section shall not apply to those types of heating units such as bunsen burners, torches, flares, urn burners, etc., which are not an integral part of the appliance.

Any violation of the regulations issued by the insurance commissioner hereunder shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both. (1957, c. 429, § 83.)

Effective date.—The 1957 act adding this section became effective on its approval, October 31, 1957.

Sec. 47-A. Construction permit, when required.—No person, firm or corporation shall construct a public building, schoolhouse, hospital, convalescent home, nursing home, theater or other place of public assembly to which admission is to be charged or any building to be state owned or operated, without first obtaining from the insurance commissioner a permit therefor. If any such building be damaged by fire or otherwise to the extent of 50% or more, no person, firm or corporation shall repair or reconstruct such building without first obtaining from the insurance commissioner a permit therefor. A request for a permit shall be accompanied by a true copy of the plans and specifications for such construction or reconstruction. The commissioner shall issue a permit only if the plans comply with statutes and lawful regulations promulgated to reduce fire hazards. (1957, c. 397, § 50.)

Sec. 47-B. Penalty.—Whoever shall construct or reconstruct a public building, schoolhouse, hospital, convalescent home, nursing home, theater or other place of public assembly to which admission is to be charged or any building to

be owned or operated by the state, without first obtaining the permit required by section 47-A, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than \$100. (1957, c. 397, § 50.)

Sec. 47-C. Examinations by division of state fire prevention.—The fee for examination by the insurance commissioner through the division of state fire prevention of each set of plans for construction, reconstruction or repairs of public buildings, hospitals, convalescent homes, nursing homes, theaters or other place of public assembly shall be \$15. Such fee shall be credited to the division of state fire prevention to defray the expenses of the division. Any balance of said fees shall not lapse but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years. (1959, c. 182, § 1.)

Sec. 48. Doors of public buildings to open outwards.—Every building intended temporarily or permanently for public use, and every schoolhouse and every schoolroom therein, shall have all doors, intended for egress, open outwards. (R. S. c. 85, § 45. 1959, c. 66.)

Effect of amendment.—The 1959 amendment deleted the words “of more than one story in height”, formerly appearing after the word “schoolhouse” in this section.

Sec. 48-A. Exits in buildings and other structures.—The insurance commissioner shall adopt and may amend, after notice and public hearing, reasonable regulations governing exits in all buildings or other structures within his jurisdiction. Such regulations shall not apply to boarding or lodging homes having 5 or less boarders or lodgers or to nursing homes having 3 or less patients.

I. Effective date. The regulations, and amendments thereto, become effective when a certified copy of them has been approved in writing by the governor and council and filed with the secretary of state.

II. Rights declared. Any person aggrieved by a regulation or by an act of the commissioner in enforcing it may have his rights declared by bringing an action for declaratory judgment under chapter 107, sections 38 to 50, naming the commissioner as defendant.

III. Violation. Any person who violates a regulation issued by the commissioner under this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both. (1959, c. 163. 1961, c. 365. 1963, c. 390, § 1; c. 414, § 111.)

Effect of amendments. — The 1961 amendment added what is now the second sentence of the first paragraph.

Chapter 390, P. L. 1963, rewrote the section, reducing the number of subsections from four to three and deleting any reference to the building exits code. Chapter 414, P. L. 1963, which did not refer or give effect to c. 390, substituted “an action” for “a petition” in what is now subsection II.

Editor’s note.—P. L. 1959, c. 163, added this section to this chapter relative to exits in buildings and other structures, designating it “Sec. 48-A”. Since former section 48-A had already been repealed by Public Laws 1957, c. 397, § 49, the number assigned to the new section by the legislature was retained, thus obviating the necessity of treating it as a pre-empted number.

Sec. 48-B. Repealed by Public Laws 1957, c. 397, § 49.

Cross reference.—See now §§ 47-A and 47-B of this chapter for provisions relative to permits for construction of public buildings, which sections are similar to former §§ 48-A and 48-B.

Sec. 49. Fire escapes for certain buildings; appeal.

Any person or corporation aggrieved by any order of the commissioner issued under this section may appeal to the superior court by filing within 30 days from the effective date of such order, a complaint therefor and the court shall fix a time and place of hearing and cause notice thereof to be given to the commissioner and, after the hearing, the court may affirm or reverse in full or in part

any such order of the commissioner and the decision of the court shall be final. If the commissioner in the interest of public safety, because he deems there is immediate danger, forbids the use of such buildings for any public purpose until satisfactory compliance with his order, such order shall become immediately effective and the filing of the complaint shall not operate as a stay thereof. (R. S. c. 85, § 46. 1947, c. 271. 1949, c. 301. 1961, c. 317, § 292.)

Effect of amendment.—The 1961 amendment rewrote the last paragraph of this section.

As the rest of the section was not affected by the amendment, it is not set out.

Failure to perform duty as evidence of actionable negligence.—The failure of a defendant to perform a duty imposed by this section, for the benefit of tenants, which

proximately results in harm or is the natural and probable result thereof, is, at least, evidence of actionable negligence to be submitted to the jury. *Kimball v. Breton*, 153 Me. 476, 138 A. (2d) 637.

Violation prima facie evidence of negligence. — The violation of this section is prima facie evidence of negligence. *Kimball v. Breton*, 153 Me. 476, 138 A. (2d) 637.

Sec. 51. Notice as to sufficiency of safeguards.—The insurance commissioner, municipal officers or chief of the fire department shall give written notice to the occupant of such building, also to the owner thereof if known, of their determination as to the sufficiency of said precautions and safeguards, specifying in said notice any alteration, addition or repair which they require. Sixty days are allowed for compliance with such notice and order. (R. S. c. 85, § 48. 1957, c. 16, § 2.)

Effect of amendment. — The 1957 amendment made this section applicable to the insurance commissioner.

Sec. 56. Fines.—All fines and forfeitures, imposed by sections 52 to 55, may be recovered by the town where the building is located by a civil action. (R. S. c. 85, § 53. 1961, c. 317, § 293. 1963, c. 182.)

Effect of amendments. — The 1961 amendment substituted “sections 52 to 55” for “the 4 preceding sections” and substituted “a civil action” for “an action on the

case” in this section.

The 1963 amendment deleted “or by indictment” at the end of the section.

Sec. 60. Forest fire fighter pay and aid to towns.

IV. Payment of forest fire suppression costs; state ½ reimbursement. Municipalities, within the state, outside the limits of the Maine forestry district, shall be holden to pay for controlling and extinguishing forest fires up to 1% of their state valuation and the state shall reimburse them ½ the above costs incurred by the forest fire warden in charge therein. Reimbursement will not be allowed for use or loss of municipally owned equipment within the town in which the fire occurred. A town going to the aid of another, even to protect itself, when requested by the state forest fire warden in charge, shall be paid by the town aided if the total suppression cost of the town is not over 1% of its state valuation.

V. Payment of forest fire suppression costs beyond 1% of state valuation. All forest fire suppression costs in municipalities within the state, outside the limits of the Maine forestry district, in an amount greater than 1% of the state valuation of the municipality in which the fire occurred shall be paid by the state. Any municipality in order to pay labor quickly may pay beyond 1% of its state valuation and submit for full state reimbursement or forward the unpaid bills, approved by the state forest fire warden in charge, for payment.

(1963, c. 86.)

Effect of amendment.—The 1963 amendment substituted “Municipalities” for “Towns, cities, or plantations” at the be-

ginning of subsection IV, substituted “1% of their state” for “2% of their tax” in the first sentence of that subsection, substi-

tuted "1% of its state valuation" for "2% of its tax valuation" at the end of the subsection, substituted "municipalities" for "towns, cities and plantations" near the beginning of subsection V, substituted "1% of the state valuation of the municipality" for "2% of the town tax valuation" in the first sentence of that subsection, substi-

tuted "municipality" for "town, city or plantation" in the last sentence of such subsection and substituted "1% of its state" for "the 2% town tax" in that sentence.

As the other subsections were not affected by the amendment, they are not set out.

Chapter 98.

Harbor Masters. Wharves and Fish Weirs.

Sections 6-A to 6-E. Operation of Motor Vessels.

Harbor Masters.

Sec. 2. Rules for channel lines; enforcement.—The municipal officers of all maritime towns and plantations shall make rules and regulations for the keeping open of convenient channels for the passage of vessels in the harbors and waterways of the towns for which they act, and shall establish the boundary lines of such channels and assign suitable portions of their harbors for anchorages.

Such rules and regulations as may be made by such municipal officers shall be enforced and carried out by the harbor master of said town, who may appoint a deputy to act in case of his absence or disability. (R. S. c. 86, § 2. 1961, c. 395, § 36.)

Effect of amendment.—The 1961 amendment, effective on its approval, June 17, 1961, substituted "officers" for "authorities" twice in this section.

Sec. 3. Location where vessels moored.—In all harbors wherein channel lines have been established by the municipal officers, as provided in section 2, and in all other harbors where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, he shall assign and indicate to the master or owner of boats and vessels the location which they may occupy with or for mooring purposes, the kind of mooring to be used and shall change the location of said moorings from time to time when the crowded condition of such harbor or other conditions render such change desirable. He shall assign mooring privileges in such waters in all cases where individuals who own the shore rights or have an interest in the same are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently as the case may be, fronting their land, if so requested, but not thereby to encroach upon the natural channel or channels established by municipal officers. The municipal officers shall fix the compensation of the harbor master for such services rendered. (R. S. c. 86, § 3. 1961, c. 395, § 37.)

Effect of amendment.—The 1961 amendment, effective on its approval, June 17, 1961, divided the former first sentence into two sentences and substituted "officers" for "authorities" near the beginning of the present first sentence and at the end of the present second sentence.

Sec. 5. Vessels obstructing anchorage removed by harbor master; crew on board to move vessel.

If such vessel has no crew on board, or if the master or other person in charge neglects or refuses to move such vessel as directed by the harbor master, then and in that case such harbor master may put a suitable crew on board and move such vessel to a suitable berth, at a wharf or anchorage at the cost and risk of the owners thereof, and shall charge \$2, to be paid by the master or owner