

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1961 CUMULATIVE SUPPLEMENT

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IN FIVE VOLUMES

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Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
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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 or by indictment. (R. S. c. 85, § 53. 1961, c. 317, § 293.)

Effect of amendment.—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.

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 of such vessel, which charge together with the cost of the crew for removing such vessel the harbor master may collect by civil action. (R. S. c. 86, § 5. 1961, c. 317, § 294.)

Effect of amendment.—The 1961 amendment substituted “civil action” for “suit” at the end of this section. As the first paragraph of the section was not affected by the amendment, it is not set out.

Operation of Motor Vessels.

Sec. 6-A. Speed restrictions.—Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motor boat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this state at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing, shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 90 days, or by both. (1961, c. 326.)

Sec. 6-B. Endangering person or property by operation.—Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motor-boat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this state in such a manner as to endanger any person or property shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 90 days, or by both. (1961, c. 326.)

Sec. 6-C. Operating recklessly.—Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motor boat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this state recklessly, or in a wanton manner causing injury to any person or property, shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment for not more than 3 months, or by both. Whoever is convicted a 2nd time for a violation of this section shall be punished by a fine of not less than \$200 nor more than \$500, or by imprisonment for not more than 11 months, or by both. (1961, c. 326.)

Sec. 6-D. Operation while under the influence of drugs or intoxicated.—Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this state while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana, shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 90 days, or by both. (1961, c. 326.)

Sec. 6-E. Enforcement of sections 6-A to 6-E.—Every law enforcement officer in this state, including harbor masters and their deputies, shall have the authority to enforce sections 6-A to 6-E, and in the exercise thereof shall have the authority to stop and board any such watercraft, vessel or motorboat found in violation of said sections. It shall be unlawful for the operator of any such watercraft, vessel or motorboat to fail to stop upon hail from any such officer, and a violation of the same shall be punished as provided in section 6-B. (1961, c. 326.)

Wharves and Fish Weirs.

Sec. 7. Application for license to build or extend wharves and fish weirs.—Any person intending to build or extend any wharf, fish weir or trap in tidewaters, within the limits of any city or town, may apply in writing to the municipal officers thereof, stating the location, limits and boundaries, as nearly as may be, of such intended erection or extension, and asking license therefor. Upon receiving such application, said officers shall give at least 3 days' public notice thereof in a newspaper, published in the town, or, if there be no newspaper published in the town, in a newspaper published within the county, and shall therein designate a day and time on which they will meet on or near the premises described, to examine the same and hear all parties interested. If, upon such examination and hearing of all parties interested, said officers decide that such erection or extension would not be an obstruction to navigation or injury to the rights of others, and determine to allow the same, they shall issue a license under their hands to the applicant, authorizing him to make such an erection or extension, and to maintain the same within the limits mentioned in such license; the applicant for license to build or extend a fish weir or trap as aforesaid shall first give bond to the town, with sureties, in the sum of \$500, conditioned that upon the termination of such license he shall remove all stakes and brush from the location therein described. Said municipal officers shall, within 10 days after the date of hearing, give written notice by registered mail of their decision to all parties interested. Any person aggrieved by the decision of the municipal officers, in either granting or refusing to grant a license as provided, may appeal to the superior court within 10 days after the mailing of such written notice. The court shall set a time and place for hearing and give notice thereof in the same manner as provided for a hearing before the municipal officers. The decision of said justice shall be communicated within 10 days after the date of hearing to the appellant and to the municipal officers of the town in which the proposed wharf, weir or trap is to be located; and this decision shall be binding in said municipal officers, who shall issue a license, if so directed by the decision of said justice,

within 3 days after said decision has been communicated to them. If said appeal is sustained by said justice in whole or in part, the appellant shall have his costs against the appellee. If the appeal is not so sustained, the appellee shall have his costs against the appellant. If any owner to whom a license has been issued, or his heirs or assigns, fails to remove all stakes and brush within a period of 1 year after the termination of the license, as provided in the following section, any person can remove the same without charge against said owner, his heirs or assigns.

In the case of islands not within the jurisdiction of any town all powers of municipal officers to issue licenses to build weirs are conferred upon the owner or owners of such islands. If said owner or owners are unable to agree as to the issuance of a license they shall submit the question of such issuance to the commissioner of sea and shore fisheries, who shall, after a hearing at which all parties may be represented, decide as to the issuance of such license. (R. S. c. 86, § 7. 1955, c. 277. 1961, c. 317, § 295.)

Effect of amendments.—The 1955 amendment substituted in the third sentence the words “with sureties, in the sum of \$500” for the words “without sureties, in the sum of \$100.”

The 1961 amendment deleted “hereinbefore” preceding “provided” in the fifth

and sixth sentences of this section, deleted “any justice of” preceding “the superior court” in the fifth sentence and substituted “The court” for “On receiving such an appeal, said justice in term time or vacation” at the beginning of the sixth sentence.

Sec. 8. License void.—The license for the building or extension of a fish weir or trap issued under the provisions of the preceding section or any right or privilege granted by the legislature for the building or extension of any such fish weir or trap shall terminate and become void unless such weir or trap shall be built within 1 year from the date of the license or the granting of such right or privilege, and maintained and operated in good faith for some part of each year thereafter. A weir that is not under active construction by July 15th in any year shall not be considered a weir for the remainder of the year. (R. S. c. 86, § 8. 1959, c. 281, § 1.)

Effect of amendment.—The 1959 amendment added the last sentence to this section.

Sec. 11. Extension of weirs and wharves; application to herring weirs and traps.—No fish weir, trap or wharf shall be extended, erected or maintained except in accordance with sections 7 to 11. No fish weir, trap or wharf shall be erected or maintained in tidewaters below lowwater mark in front of the shore or flats of another without the owner’s consent, under a penalty of \$50 for each offense, to be recovered in a civil action by the owner of said shore or flats. This section and sections 7 to 10 apply to all herring weirs and traps, but do not apply to other weirs or traps, the materials of which are chiefly removed annually, provided such weirs or traps do not obstruct navigation nor interfere with the rights of others. This section shall not affect any wharves so erected or maintained on the 21st day of April 1901. (R. S. c. 86, § 11. 1961, c. 317, § 296.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences, deleted “the provisions of” formerly preceding “sections 7 to 11” in the present first sen-

tence, substituted “a civil action” for “an action of debt” in the present second sentence and substituted “sections 7 to 10” for “the 4 preceding sections” in the present third sentence.

Sec. 12. “Fish weir” defined.—The words “fish weir” mentioned in sections 7 to 11 are defined to be a fixed structure erected and maintained during part of each fishing season in the tidewater, constructed of at least 25 spiling or stakes fastened together by binders, surrounded by brush, lath racks or net-

ting, forming the catch pound into which fish are led or guided by one or more fixed leaders constructed of spiling or stakes not more than 20 feet apart and at least 100 feet long, fastened together by binders surrounded by lath racks, brush or netting and from which catch pound they cannot readily escape. (1947, c. 257, 1959, c. 281, § 2.)

Effect of amendment.—The 1959 amendment rewrote this section.

Chapter 99.

Pilots. Ship Owners. Port Wardens. Lighters and Harbors.

Ship Owners.

Sec. 5. Ship owner's liability to freighters. — No ship owner is answerable beyond the amount of his interest in the vessel and freight for the embezzlement, loss or destruction, by the master and mariners, of any property put on board of such vessel, nor for any act of theirs without his privity or knowledge. If several owners of property on the same voyage suffer such damage, and the whole vessel and her freight for the voyage are not sufficient to compensate each of them, they shall be compensated by the owner of the vessel in proportion to their respective losses, and for that purpose, they or the owner of the vessel, or any of them, may file a complaint for discovery and payment of the sum, for which said owner is liable to the parties entitled thereto. (R. S. c. 87, § 5, 1961, c. 317, § 297.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted “file a complaint” for “prosecute a bill in equity” in the present second sentence and made other minor changes in the section.

Port Wardens.

Sec. 12. Jurisdiction; performing duties of port wardens without authority.—In the cities and towns for which they are elected, port wardens shall have exclusive jurisdiction in all matters pertaining to their duties, as specified in this chapter. Any other person who performs or attempts to perform any such duties in any city or town wherein there is a port warden forfeits for each offense \$100, to be recovered in a civil action by any prosecutor. (R. S. c. 87, § 12, 1961, c. 317, § 298.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “a civil action” for “an action of debt” in the present second sentence.

Lighters and Harbors.

Sec. 14. Using lighters without marks and for falsely marking.—The master or owner who uses his craft without such marks prescribed in section 13 and any person who falsely marks any such boat or lighter forfeits \$50 to be recovered by any prosecutor in a civil action. (R. S. c. 87, § 14, 1961, c. 317, § 299.)

Effect of amendment.—The 1961 amendment substituted “section 13” for “the preceding section” and “a civil action” for “an action of debt” in this section.

Sec. 16. Throwing ballast into roadstead, port or harbor; or taking stone from shore or island without consent.—No master of any vessel shall throw overboard ballast in any road, port or harbor, under penalty of \$60, and no person shall take any stone or other ballast from any island, beach or other land, without consent of the owner, under a penalty of not more than \$7 for each offense, to be recovered in a civil action by any prosecutor, ½ for himself