

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-SECOND LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1853.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820,  
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1853.

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PUBLIC LAWS  
OF THE  
STATE OF MAINE.

1853.

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## Chapter 48.

An act in addition to chapter two hundred and eleven of the statutes of eighteen hundred and fifty-one.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. If three persons who are competent to be witnesses in civil suits, resident within the county within which the complaint shall be made, shall make complaint upon oath or affirmation before any judge of a municipal or police court or justice of the peace, that they have reason to believe and do believe, that spirituous and intoxicating liquors are kept or deposited in any building or place, other than a dwelling house no part of which is used as a shop, or for purposes of traffic, by a person or persons named in said complaint, or by a person or persons unknown, not authorized by law to sell the same, within the city, town or plantation where they are alledged to be so kept or deposited, and that said liquors are intended for sale within this state in violation of law, such magistrate shall issue his warrant, directed to any sheriff, deputy sheriff, marshal, deputy marshal, constable or police officer, having power to serve such process, commanding such officer to search the premises described in said complaint, which premises shall also be described in said warrant; also to search any yard or building, other than such dwelling house, adjoining the premises described in said warrant, if occupied by the same person occupying the premises described in said warrant; and if any spirituous or intoxicating liquors are there found, to seize the same, with the vessels in which they may be contained, and to convey them to some proper place of security to be there kept until final action upon such complaint. And the officer having such warrant shall be authorized by virtue thereof to make the search directed by such warrant to be made, and to seize and dispose of any such liquors as hereinbefore is provided. And such officer shall, in his return on such warrant, designate and describe the liquors by him so seized, and the vessels in which they are contained, with reasonable certainty. And if the name of the person or persons by whom such liquors are alledged to be so kept or deposited, shall be stated in said complaint, the officer shall be commanded in and by said warrant, if he find such liquors, to arrest such person or persons, and have them forthwith before the judge or justice by whom such warrant was issued, to answer to said complaint, and show cause why said liquors should not be forfeited. And such person so arrested and brought before such judge or justice may plead not

Warrant to search premises for spirituous liquors.

Officer authorized to seize and dispose of liquors.

Arrest of keepers of liquors.

Defense of.

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Penalty.

Liquors forfeited, how disposed of.

Officer's return.

Proceedings in case keepers, &amp;c., of liquors be unknown.

guilty to such complaint, and may shew in defense thereto that said liquors were not intended for sale contrary to law, or that they were imported under the laws of the United States, and in accordance therewith; that they are contained in the original packages in which they were imported, and in quantities not less than the laws of the United States prescribe. But custom house certificates of importation, and proofs of marks on the casks and packages corresponding thereto, shall not be received as evidence that the identical liquors contained in said packages and casks were actually imported therein. And if upon the trial neither of the said grounds of defense shall be established, and if in the opinion of the court, upon the evidence produced, said liquors were kept or deposited by such person or persons for purposes of sale contrary to law, such person or persons being found guilty shall each be punished by a fine of twenty dollars and costs, and shall be imprisoned thirty days in default of payment thereof. And the liquors so seized with the vessels in which they are contained, shall be declared forfeited, and such adjudication shall be a bar to any claim for the recovery of the same, or the value thereof, and they shall on the written order of said judge or justice be destroyed. And the officer to whom such order is directed, shall make return thereon of his doings in the premises. If, however, upon trial the judge or justice shall find the person or persons so charged in the complaint not guilty, he shall, if satisfied that the liquors so seized were so as aforesaid kept and deposited for unlawful sale by some person or persons not named in the complaint, decline to order them to be restored, and shall proceed therewith as is hereinafter provided.

SECT. 2. If the name of the person so keeping or depositing the liquors described in any such complaint is not known and stated therein, and any such liquors shall be seized upon the warrant issued upon such complaint, or if the person named in such complaint shall not be found and arrested, or if any liquors shall not be restored in the case specified in the preceding section, the judge or justice shall cause a notice of such seizure, describing such liquors with reasonable certainty, and the place where the same were seized, and of the time and place appointed for a hearing thereon, to be posted up in some public and conspicuous place in the town or place where the seizure was made, for two weeks successively before the day of said hearing, for all persons interested to appear and shew cause why said liquors and the vessels in which they are contained should not be forfeited. And if no claimant shall then appear,

such judge or justice shall, on proof of notice as aforesaid, adjudicate on the same, and the like proceedings shall be had as is provided in the preceding section in cases of forfeiture, and such adjudication shall be a bar, as is therein provided. And if any person shall then appear and claim such liquors, or any part thereof, as his own property, or as having a right to the possession or keeping thereof, he shall file such claim, in writing signed by him, with such judge or justice, stating specifically the items so claimed, and the time and place of the seizure, and the name of the officer by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale, and also state his place of residence or business in such town or place, and shall sign the same; and if the quantity so claimed shall not be more than five gallons, and the judge or justice shall be satisfied that the same was not so kept or deposited for unlawful sale, he shall give such owner or keeper an order in writing, directed to the officer having the same in custody, for the delivery of the same; and if the judge or justice shall not be satisfied that the same was not kept or deposited for unlawful sale, or if the quantity so claimed shall exceed five gallons, he shall forthwith notify one or more of the said complainants of the said claim, and if within twenty-four hours after such notice is given, a complaint shall be made in manner aforesaid by three persons who are competent to be witnesses in civil suits, who are resident in the county, against such owner or keeper, that the spirituous or intoxicating liquors claimed as aforesaid were, prior to and on the day when the same were seized, kept or deposited by said owner or keeper, or by some person with his consent, for sale as set forth in the preceding section, the judge or justice shall issue his warrant, upon which such owner or keeper shall be arrested and brought before him, and such proceedings shall be had on such arrest as on arrest on a warrant issued as is before provided; and if such owner or keeper shall avoid so that he cannot be arrested, the officer shall make return upon the warrant according to the fact, and the judge or justice shall thereupon proceed to declare the said liquors forfeited; and if no such complaint shall be made in either case, the liquors shall be restored to such owner or claimant upon the written order of the judge or justice in manner aforesaid; and these proceedings shall be a bar to any claim of damages on the part of any person for the said liquors and the vessels in which they are contained, or for the taking and detention of the same. And if the said owner or keeper, when arrested upon such warrant and tried for the offense

—in case no claimant appear.

—in case claimant appear.

Order for delivery of liquors.

Complaint and warrant for arrest of owner or keeper.

If keeper, &c., avoid arrest, liquors to be forfeited.

Liquors may be restored.

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Penalty in case of failure to establish grounds of defense.

charged in said complaint, shall not establish either of the grounds of defense stated in the preceding section, and shall be found guilty of having said liquors, or any part thereof, kept or deposited as aforesaid for unlawful sale on the day aforesaid, or prior thereto, he shall be punished by a fine of twenty dollars and costs, and at the discretion of the judge or justice with the costs of the original proceedings in which said liquors were seized, and be imprisoned thirty days in default of the payment thereof, and the liquors, so as aforesaid seized and claimed, shall be adjudicated upon and disposed of, together with the vessels in which the same are contained, as is provided in the preceding sections of this act; and such adjudication shall be a bar as is therein provided.

Proceedings in case seizure be prevented by liquors being destroyed.

SECT. 3. If any officer having a warrant issued under this act, committed to him directing him to seize any such liquors and to arrest the owner or keeper thereof, shall be prevented from seizing the liquors by their being poured out or otherwise destroyed, he shall arrest the owner or keeper and bring him before the magistrate, and he shall make return upon the warrant that he was prevented from seizing the liquors by their being poured out or otherwise destroyed, as the case may be, and in his return he shall state the quantity so poured out or destroyed as nearly as may be, and the magistrate shall put the owner or keeper so arrested upon trial; and if on the trial it shall appear by competent testimony that such liquors were so poured out or destroyed, and that the liquors so poured out or destroyed were such as were described in the warrant, and that they were so kept or deposited intended for unlawful sale, and if the person so arrested shall be found to be the owner or keeper thereof, he shall be fined and sentenced in the same manner he would be if the liquors described in the warrant and in the return had been seized on the warrant and brought before the magistrate by the officers.

In case of appeal.

SECT. 4. If any person shall appeal from any sentence of such judge or justice, as set forth in the preceding sections, the judge or justice shall grant his appeal and order him to recognize in the sum of two hundred dollars with sufficient sureties for his appearance and for prosecuting his appeal, and he shall stand committed till the order is complied with. And the judge or justice whose judgment is appealed from shall furnish a full copy of all the papers and proceedings in the case at the expense of the appellant. And if judgment is rendered against the appellant in the appellate court, he shall be punished, and the liquors seized, with the vessels in which they are contained,

shall be dealt with, and disposed of, as before is provided. And if said appellant shall fail to appear and prosecute his appeal, or to abide and perform the order and judgment of the appellate court, the recognizance shall be forfeited, and the liquor shall be disposed of as aforesaid by order of said court.

Penalty, if judgment be rendered against appellant.

SECT. 5. It shall be the duty of any mayor, alderman, selectman, assessor, city marshal, or deputy, or constable, or police officer, if he shall have information that any intoxicating liquors are kept or sold in any tent, shanty, hut, or place of any kind for selling refreshments in any public place, or near the ground of any camp-meeting, cattle show, agricultural exhibition, military muster, or public occasion of any kind, and shall believe said information to be true, forthwith to enter a complaint, before some judge of a municipal or police court or justice of the peace, against the keeper or keepers of such place, alledging in said complaint that he has reason to believe, and does believe, that such liquors are so kept in such place, (describing the same) by such keeper or keepers, contrary to law. And upon such complaint, the said judge or justice shall issue his warrant, commanding the officer who may serve the same to search the place described in said complaint, and which shall be described in said warrant.

Places of public resort, the keeping or sale of liquors prohibited.

And if he shall find upon said premises any such liquors, to seize the same with the vessels in which they may be contained, and to arrest the keeper or keepers thereof, and have said keeper or keepers, with the liquors and vessels so seized, as soon as may be, before said judge or justice, to be dealt with according to law.

Seizure.

And the officer to whom said warrant may be committed, shall forthwith execute the same, and said keeper or keepers when arrested shall be tried thereon, in due course of law, and upon proof that said liquors are intoxicating, that they were found in the possession of the accused, in a tent, shanty, hut, or other place, as aforesaid, he or they shall be found guilty, and sentenced to be punished by imprisonment in the county jail for thirty days, and to pay all costs of such proceedings, and the liquors and vessels so seized shall be destroyed by order of the court, in the manner before provided in this act.

Arrest of keeper.

Any mayor or alderman, selectman, assessor, city marshal or his deputy, constable, police officer, or watchman, in his city or town, may take into his custody any such liquors, and the vessels in which they are contained, which he shall find at any place, by day or night, if he have reason to believe they are kept or deposited and intended for unlawful sale, at the place

Penalty.

City or town authorities, may seize and detain liquors.



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In case of appeal.

Penalty, if judgment be rendered against appellant.

Cases of appeal.

Allegation to be set forth in complaint, &c.

—may be amended.

Chemists, &c., not prohibited from keeping liquors.

of seizure, and detain the same until a warrant can be procured under which proceedings shall be had against such liquors, and the owner or keeper, in like manner as is provided in case of such liquors taken in a tent, shanty, hut, or other place. If any person arrested, tried, and sentenced, as set forth in this section, shall appeal from such sentence, the judge or justice shall grant the appeal, and order him to recognize in the sum of one hundred dollars, with sufficient sureties for his appearance, and for prosecuting his appeal, and he shall stand committed till the order is complied with; and the judge or justice, whose judgment is appealed from, shall furnish full copies of all the proceedings in the case, at the expense of the appellant. And if judgment is rendered against the appellant in the appellate court, he shall be punished and the liquors seized and vessels dealt with as is above provided in this section; and if said appellant shall fail to appear and prosecute his appeal, or to abide and perform the judgment of the appellate court, the recognizance shall be forfeited, and the liquors and vessels shall be disposed of as aforesaid by order of the court.

SECT. 6. In all cases of appeal under this act, and that to which it is additional, from the judgment of such judge or justice, except where the proceeding is by action of debt, they shall be conducted in the appellate court by the prosecuting officer of the government; but no costs in such cases shall be remitted or reduced by the prosecuting officer or the court. In any suit, complaint, indictment, or other proceeding against any person for a violation of any of the provisions of this act, or that to which it is additional, other than for the first offense, it shall not be requisite to set forth particularly the record of a former conviction, but it shall be sufficient to alledge, briefly, that such person has been convicted of a violation of any particular provision of this or the said act, or as a common seller, as the case may be, and such allegation in any civil or criminal process, legally amendable in any stage of the proceedings, before final judgment, may be amended, without terms, and as a matter of right. Any process, civil or criminal, legally amendable under this or the said act, may, in any stage of the proceedings, be amended in any matter of form, without costs, on motion at any time before final judgment.

SECT. 7. Nothing in this act contained shall be construed to prevent any chemist, artist or manufacturer, in whose art or trade they may be necessary, from keeping at his place of business such reasonable and proper quantity of such liquors as he may have occasion to use in his art or trade, but not for

sale; nor to prohibit the manufacture of cider, and the sale thereof by the manufacturer.

SECT. 8. No such liquors owned by any city, town or plantation, or kept by any agent of any city, town or plantation, as is provided in the act to which this is additional, or by any such chemist, artist or manufacturer, shall be protected against seizure and forfeiture, under the provisions of this and of said act, by reason of such ownership, unless all the casks and vessels in which they are contained shall be at all times plainly and conspicuously marked with the name of such city, town or plantation, and of its agent, or as the case may be, with the name, residence, and business, of every such chemist, artist, and manufacturer. No such agent shall have any interest in such liquors, or in the profits of the sales thereof. He shall not sell any such liquors to any minor, or servant, or apprentice, knowing them to be such, without the written order of the parent, guardian, or master of such person, nor to any intemperate person, knowing him to be such, under a penalty of twenty dollars and costs for each offense. And if he knowingly makes sale of any such liquors, for purposes not allowed by this and said act, he shall be liable to a penalty of twenty dollars and costs for each offense, and be removed from office and his bond forfeited. If any such agent shall knowingly and willfully, with intent to prevent the same being seized on any such warrant, or to cause the same to be released, having been seized on such warrant, make claim to any such liquors as being the property of the city, town or plantation, for which he is such agent, when in fact such liquors were not the property of such city, town or plantation, he shall on conviction, be sentenced to pay a fine of one hundred dollars and costs, and shall be removed from his office, with forfeiture of his bond. Whenever any such liquors shall be seized, bearing such marks as are by this act required to be put upon liquors owned by cities, towns or plantations, or by chemists, artists or manufacturers, when such liquors are in fact not owned by any such city, town or plantation, or by any such chemist, artist or manufacturer, such false and fraudulent marking shall be conclusive evidence that the same are kept or deposited for unlawful sale, and render them liable to forfeiture under the provisions of this act. The liquors kept for sale, by such agent, shall not be adulterated or factitious; and if the liquors so kept, are adulterated or factitious, they shall not be protected from seizure and forfeiture by reason of being kept for sale by such agents.

Cider, manufacture of.

Casks, &c., containing liquors belonging to towns, &c., to be conspicuously marked.

Agents prohibited from selling liquors to certain persons.

Penalty for violation.

Penalty, if agent claim liquors to prevent seizure, &c.,

Fraudulent marking, &c.

Adulteration of liquors prohibited.

Unlawful sale, proof of, &c.

SECT. 9. Whenever an unlawful sale is alledged, and a de-

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Liability of partners, &c., in business.

Name of owner, &c., not necessary in complaint, &c.

Bond, &c.; prosecution of.

Neglect of officers to execute process, &c., penalty for.

Writ of error, &c.,

Fees.

livery proved, it shall not be necessary to prove a payment, but such delivery shall be sufficient evidence of sale. Whenever an unlawful sale is made by one person, a delivery by another, and payment received by a third, each shall be liable to the penalties of this and the said act for the offense. A partner in business shall be liable for the unlawful keeping or selling of his copartner, done in the copartnership business, or by any other person, in any shop, store, or other place of business, of such copartnership, with his knowledge and assent. A principal and his agent, clerk and servant, may all be included in the same complaint and process. The name of the owner and the kind and quantity of liquors to be seized need not be set forth in the complaint and warrant, provided the description is sufficiently certain to show what is intended to be seized; the process may be amended in any matter legally amendable at any time before final judgment. Any mayor or alderman, selectman or assessor, may cause a suit to be commenced on any bond or recognizance given under this or said act in which his city, town, or plantation is interested, and the same shall be prosecuted to final judgment unless paid in full with costs. If any execution or other final process, issued in any civil or criminal suit instituted under this or said act, shall be placed in the hands of any proper officer to be by him executed, and he shall unreasonably neglect or refuse so to do, an action may be commenced against him by any voter in the county for such neglect, and prosecuted to final judgment, which shall be for the full amount of the debt, costs, and interest on such execution; and if it be a process that requires him to take and commit an offender to prison, the damages shall not be less than fifty dollars nor more than five hundred dollars. Such suit shall be an action on the case, in the name of the city, town or place, in which the original offense, on account of which said process was issued, was committed, or which might be entitled to the proceeds of such original final process.

SECT. 10. No writ of error, or other process, shall lie to quash or make void the doings of any such magistrate, under this or said act, by reason of any defect or want of sufficiency in any complaint, warrant, or other process, under this or said act, which might before final judgment have been amended on motion. In addition to the fees allowed by law, there shall be paid to such judge or justice, for taking any bond, fifty cents; for making the order for the destruction of the liquors and vessels, fifty cents; to the officer for seizing the liquors and vessels, one dollar; for removing and keeping the same, fifty cents and

reasonable expenses; for executing and making return of an order to destroy the liquors and vessels, one dollar; all of which fees shall be taxed in the costs to be paid by the defendant. All fines, forfeitures, and penalties, under this or said act, shall go to the several cities, towns or plantations, in which the offenses are committed, for the use and benefit of the poor. If the offense is committed, or trial had in a plantation organized for election purposes, the fines, forfeitures and penalties shall go to the plantation for the use of schools.

Fines, penalties, &c., how disposed of.

SECT. 11. No warrant shall issue for the search of any dwelling house in which or a part of which a shop is not kept, or other place is not kept for the sale of such liquors, unless it shall first be shown to the magistrate, before a warrant is issued for such search, by the testimony of witnesses upon oath, that there is reasonable ground for believing that such liquors are kept or deposited in such dwelling house or its appurtenances, intended for unlawful sale in such dwelling house or elsewhere, which testimony the magistrate shall reduce to writing, and cause to be signed and verified by oath or affirmation of such witnesses, and upon such testimony so produced and verified, he may, upon complaint of three persons competent to be witnesses in civil suits, resident in the county, issue his warrant in like manner and form as is provided in the first section of this act, commanding the officer to search such dwelling house and its appurtenances, and if any such liquors are found therein, to seize the same together with the vessels in which they are contained, and also to arrest the owner or keeper thereof, if named in said complaint, and the subsequent proceedings shall be conformable to the requirements of the first section, or second section of this act, as the case may be. And any of the said witnesses, who shall be convicted of giving false testimony, knowingly and willfully, in the statements so subscribed and verified, shall be punished therefor by imprisonment in the state prison for the term of two years. The finding of such liquors, upon such search in a dwelling house, shall not of itself be evidence that they are kept or deposited therein intended for unlawful sale.

Searching of dwelling houses.

False testimony.

SECT. 12. Any person hereafter found intoxicated in any of the streets or highways, or being intoxicated in his own house, or in any other building or place, who shall become quarrelsome, or in any way disturb the public peace, or that of his own or any other family, so as to render it necessary for the police or peace officers to interfere, may be taken into custody by any sheriff, deputy sheriff, constable, marshal, deputy

Penalty for persons becoming intoxicated and disturbing the public peace, &c.

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marshal, police officer, or watchman, and committed to the watch house or restrained in some other suitable place till a complaint can be made and warrant issued in due form, upon which he may be arrested and tried, and if found guilty of being so intoxicated in the streets or highways, or of being intoxicated in his own house or any other building or place, and becoming quarrelsome and disturbing the public peace, or that of his own or any other family, he shall be punished by imprisonment in the common gaol for thirty days; but said judge or justice may remit any portion of said punishment, and order the prisoner to be discharged, whenever he shall become satisfied that the objects of this law and the good of the public and of the prisoner would be advanced thereby. And in case of appeal from such sentence the same shall be granted as provided in the fifth section of this act, and on recognizance as therein required.

Penalties on conviction, established.

SECT. 13. In all cases under this or said act in which the punishment on the first conviction is a fine of twenty dollars and costs and commitment until paid, for the second conviction it shall be a fine of twenty dollars and costs and thirty days imprisonment, for the third it shall be a fine of twenty dollars and costs and sixty days imprisonment, and for the fourth and every subsequent conviction it shall be a fine of twenty dollars and costs and four months imprisonment. No person who shall be sentenced to pay any such fine and costs, and shall be committed in default of the payment thereof, shall be entitled to the benefit of chapter one hundred and seventy-five of the revised statutes until he shall have been imprisoned under such commitment sixty days. In all cases under this act in which the punishment on the first conviction is thirty days imprisonment, for the second and every subsequent conviction thirty days additional imprisonment shall be imposed. Any penalties or forfeitures, the recovery of which is not otherwise provided for in this act or that to which it is additional, may be recovered by complaint or indictment in any court proper to try the same. If any mayor, alderman, selectman or assessor, shall endorse his approval of the suit upon any writ issued pursuant to the provisions of any section of this act or that to which it is additional, in which his city, town or plantation is interested, the defendant, if he prevail in such suit, shall recover no costs. All bonds and recognizances given by appellants shall be to the State of Maine, except as otherwise provided in this and said act. All the provisions of the fifth, seventh, ninth, tenth, sixteenth and seventeenth sections of the act to which

—how recovered.

Appellant bonds, &c., how given.

this is additional, shall apply to this act. In all cases of appeal from the judgment of a judge of a municipal or police court or justice of the peace, the appellant, if convicted by the jury, shall be sentenced to pay and suffer the same fines, penalties, and imprisonment which might be awarded against him by such judge or justice with additional costs. All complaints to be made under this act or that to which it is additional, may be made by three persons, resident in the county, who are competent to be witnesses in civil suits. The word plantation in this and said act shall apply to and include plantations organized for election purposes, as well as other plantations. All that part of the sixth section of the act to which this is additional, which directs a different sentence, in the case of a conviction before a jury, from that provided upon conviction before a municipal or police court or justice of the peace for the same offense, and also so much of said sixth section as provides that in cases of an appeal, the appellant shall, before such appeal shall be allowed, recognize in the sum of one hundred dollars with two good and sufficient sureties, to prosecute his appeal, and to pay all costs, fines and penalties that may be awarded against him, is hereby repealed; and if any person shall claim an appeal as specified in said sixth section, the judge or justice shall grant his appeal, and order him to recognize in the sum of one hundred dollars, with sufficient sureties, for his appearance, and for prosecuting his appeal, and he shall stand committed until the order is complied with, and he shall also give a bond as therein provided. Sections eleven, twelve, thirteen, fourteen and fifteen of the act to which this is additional are hereby repealed, saving all suits pending, and all rights acquired under the same, and all acts and parts of acts inconsistent with this act are hereby repealed.

SECT. 14. This act shall take effect on the first day of June, eighteen hundred and fifty-three.

[Approved March 31, 1853.]

In case of appeal, appellant subject to additional cost.

Complaints, how made.

Certain statutes repealed.

## Chapter 49.

An act in relation to the affairs of the state prison.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. There shall hereafter be two inspectors of the state prison, instead of three, as provided in chapter one hundred

Inspectors of state prison, number of, established.