

MAINE STATE LEGISLATURE

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giving 6 months' notice, not required to build; verbal agreements for division, to be enforced. R. S. c. 32, § 13. When a fence between owners of improved lands is divided either by fence-viewers or by the written agreement of the parties recorded in the town clerk's office where the land lies, the owners shall erect and support it accordingly; but if any person lays his lands common, and determines not to improve any part of them adjoining such fence, and gives 6 months' notice to all occupants of adjoining lands, he shall not be required to maintain such fence while his land so lies common and unimproved; but all partition fences divided by parol agreement and actually built in pursuance of such agreement, including fences so built heretofore, shall be deemed legal fences as if divided by fence-viewers or written agreement, and the adjoining owners shall support their respective portions of fence under such agreement, until otherwise ordered by the fence-viewers on application to them by either party. When a party has constructed his part of a fence in pursuance of a parol or written agreement or assignment of fence-viewers, no assignment shall thereafter be made by fence-viewers depriving him of the full value of such fence or any part thereof.

60 Me. 560.

Sec. 201. Foregoing provisions not applicable to house-lots, nor to agreements. R. S. c. 32, § 14. Nothing herein extends to house-lots, the contents of which do not exceed half an acre; but if the owner of such lot improves it, the owner of the adjacent land shall make and maintain one-half of the fence between them, whether he improves or not; nor do the provisions of sections 188 to 203, inclusive, make void any written agreement respecting partition fences.

2 Me. 73.

Sec. 202. Neglect of duty by fence-viewers. R. S. c. 32, § 15. Any fence-viewer who, when requested, unreasonably neglects to view any fence or to perform any other duties herein required of him forfeits \$3 to any person suing therefor within 40 days after such neglect, and is liable for all damages to the party injured.

Sec. 203. Compensation; recovery. R. S. c. 32, § 16. Each fence-viewer shall be paid by the person employing him at the rate of \$3 a day for the time employed. If the party liable neglects to pay the same for 30 days after demand, each fence-viewer may recover double the amount in an action on the case.

CHAPTER 85.

FIRE DEPARTMENTS AND FIRE PREVENTION.

- Sections 1-9 Election of Fire Wards and Fire Engineers; Their Authority and Duty.
Sections 10-20 Municipal Inspection of Buildings.
Sections 21-31 Investigation of Fire Hazards and Causes of Fire.
Sections 32-59 Fire Prevention.
Sections 60-69 Licensing of Steam Engineers and Firemen.

Election of Fire Wards and Fire Engineers; Their Authority and Duty

Sec. 1. Election of fire wards; penalty for omitting to notify acceptance. R. S. c. 35, § 6. Each town, at its annual meeting, may elect as many fire wards as it deems necessary; and each person so chosen shall be notified in

3 days, and shall enter his acceptance or refusal of the office, with the town clerk, within 3 days after such notice, on penalty of \$10, unless excused by the town; and if excused, the town shall elect another in his place.

See §§ 21-23.

Sec. 2. Duties and powers of fire wards and other officers at fires; penalty for refusing to obey them. R. S. c. 35, §§ 7, 8. When a fire breaks out in any town, the fire wards shall immediately attend at the place; and when there, any three of them may direct any building to be pulled down or demolished, if they judge it necessary to prevent the spread of the fire; but in their absence the major part of the municipal, or any two civil or military officers present, in the order in which they are named, have the same power.

During the continuance of any fire, said fire wards or other officers in charge may require assistance in extinguishing the fire and removing merchandise and furniture; appoint guards to secure the same and to aid in pulling down or demolishing buildings and suppressing disorder and tumult; and generally may direct all operations to prevent further destruction or damage; any person refusing to obey their orders forfeits \$10.

40 Me. 391; 63 Me. 47.

Sec. 3. Fire engines and apparatus; management by towns, corporations, and individuals; employment and compensation of men. R. S. c. 35, § 1. Any town, corporation, or individuals providing fire engines, hose, ladders, or other apparatus or equipment used for the extinguishment of fires, or the preservation of life or property from destruction at fires, may, by ordinances or by-laws, prescribe rules and regulations for the care and management thereof, for the employment and compensation of men, not exceeding sixty to each engine, whether enginemen or other persons, and for the appointment of officers to govern them when on duty and to take charge of such apparatus and/or equipment and may prescribe their style, rank, powers, and duties.

*78 Me. 119.

Sec. 4. Engineers and officers to have powers and duties of fire wards; towns responsible for their acts. R. S. c. 35, § 2. The engineers, or other officers chosen by any town under any ordinance or by-law, shall, in addition to the powers thereby conferred, exercise all the powers and duties of fire wards as prescribed in this chapter, unless restricted by the ordinance or by-law under which they are chosen; and such towns are responsible for the acts of their said officers as for the acts or orders of fire wards in similar cases; and such firemen and enginemen, so employed, have all the powers and privileges, and are subject to all the duties and liabilities of enginemen, as prescribed in this chapter.

Sec. 5. Enginemen; tenure of office; election of officers; rules and regulations. R. S. c. 35, § 3. Enginemen, chosen under the provisions of this chapter, shall: continue in office during the pleasure of the municipal officers; meet annually to elect such officers as are deemed necessary to give efficiency to their operations; establish such rules and regulations respecting their duty, as are approved by said municipal officers and not repugnant to law, and affix penalties to be recovered by their clerk, of not more than \$6 for any one offense.

Sec. 6. Duty of engine companies. R. S. c. 35, § 4. Companies of enginemen shall meet once every month, and oftener if necessary, to examine the state

of their engines and the appendages thereof; and by night or by day without delay, under the direction of the fire wards, they shall use their best endeavors to extinguish all fires in the town or in its immediate vicinity.

Sec. 7. Discharge of negligent enginemen, and selection of enginemen for other duties at fires. R. S. c. 35, § 5. On proof of negligence, the municipal officers may discharge any engineman or member of the company organized under special laws, and appoint some other person in his stead; and they may select from the enginemen any number for each engine in their town, who shall, under the direction of the fire wards, attend fires therein with axes, fire-hooks, fire sails, and ladders, and perform such further duty as said officers from time to time prescribe.

Sec. 8. Officers appointed under special laws have same powers as fire wards. R. S. c. 35, § 9. The chief engineer, engineers, fire wards, and other officers appointed for particular localities under special laws have the same power as fire wards to pull down or demolish buildings in order to prevent the spreading of fires, and to do other things for the extinguishment thereof; and the town to which they belong is liable to pay such compensation for damages consequent upon their acts, as other towns are for similar damages; and the members of the fire department in such localities shall enjoy all the privileges, and be liable to all the duties of their firemen; but nothing herein shall be construed to control the manner of their election.

See § 2; 63 Me. 47.

Sec. 9. Compensation for building demolished. R. S. c. 35, § 10. 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 special action on the case.

Municipal Inspection of Buildings

Sec. 10. Inspector of buildings; election; qualifications; compensation; jurisdiction; deputy. R. S. c. 35, § 25. 1931, c. 112. In every town and city of more than 2,000 inhabitants, and in every town of 2,000 inhabitants or less, if such a town shall so vote at a town meeting, and in each village corporation if such corporation shall so vote at the annual meeting thereof, the municipal officers shall annually in the month of April appoint an inspector of buildings, who shall be a man skilled in the construction of buildings, and shall determine his compensation. The municipal officers shall define the limits within which the inspector of buildings shall have jurisdiction, which shall include the thickly settled portion of each such city, or of each village in each such city or town. Whenever the inspector of buildings shall become incapacitated, the municipal officers may appoint or authorize the inspector of buildings to appoint a deputy inspector of buildings who shall serve until removed by the municipal officers, but in no event beyond the term for which the inspector of buildings was appointed. Such deputy inspector shall perform such duties as may be required of him by the inspector. His compensation shall be determined by the municipal officers.

117 Me. 17; 102 Me. 286; 120 Me. 201.

Sec. 11. Inspector may enter any building. R. S. c. 35, § 29. An inspector of buildings in the performance of his official duty may enter any building for the purpose of making the inspection required by this chapter.

Sec. 12. Duty to inspect new buildings, in process of construction. R. S. c. 35, § 26. The inspector of buildings shall inspect each new building during the process of construction, so far as may be necessary, to see that all proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made safe, and that proper cut-offs are placed between the timbers in the walls and floorings where fire would be likely to spread; and may give such directions in writing to the owner or contractor, as he deems necessary, concerning the construction of such building so as to render the same safe from the catching and spreading of fire.

102 Me. 286.

Sec. 13. Inspection of buildings while being repaired. R. S. c. 35, § 27. The inspector of buildings shall inspect all buildings while in process of being repaired, and see that all reasonable safeguards are used against the catching and spreading of fire, and that the chimneys and flues are made safe; and he may give such directions in writing to the owner as he deems necessary concerning such repairs, so as to render such building safe from the catching and spreading of fire.

*117 Me. 17.

Sec. 14. Inspection of chimneys, flues, funnels, etc., when required. R. S. c. 35, § 28. The inspector of buildings shall at least once in 3 years, and oftener when required by the municipal officers, inspect chimneys, flues, funnels, stoves, furnaces, boilers, boiler connections, and heating apparatus in all the buildings within his jurisdiction, in which fire is kept or used, to ascertain if the same are safe against fire. He may give such directions in writing as he may deem necessary to the owner of said building to make changes in the construction or situation of such chimneys, flues, funnels, stoves, furnaces, boilers, boiler connections, and heating apparatus so as to make the same safe as aforesaid. The municipal officers may require such inspection of any particular building at any time.

Sec. 15. Appeal. R. S. c. 35, § 30. An appeal in writing may be taken from any order or direction of the inspector of buildings to the municipal officers, whose order thereon shall be final.

Sec. 16. New building not to be occupied unless inspector certifies as to safety from fire; penalty; appeal. R. S. c. 35, § 31. No new building shall be occupied until the inspector of buildings has given a certificate that the same has been built in accordance with the provisions of section 12, and so as to be safe from fire; if the owner permits it to be so occupied without such certificate, he shall be liable to a fine of \$10 for each week he permits such building to be so occupied, to be recovered by complaint or indictment. In case the inspector of buildings for any cause declines to give his certificate and the builder has in his own judgment complied with the provisions of section 12, an appeal may be taken to the municipal officers, and if on such appeal, it shall be decided by them that the provisions of said section have been complied with, the owner of said building shall not be liable to a fine for want of the certificate of the inspector.

Sec. 17. Owner neglecting or refusing to comply with orders of inspector; penalty. R. S. c. 35, § 32. If the owner of any building neglects or refuses

for more than 30 days to comply with any direction of the inspector of buildings given as aforesaid, concerning the repairs on any building, as provided in section 13, or to make such changes in the construction or situation of chimneys, flues, funnels, stoves, furnaces, boilers, boiler connections, and heating apparatus, as may be required by such inspector of buildings, under the provisions of section 14, or as may be confirmed by the municipal officers on appeal, he shall be punished by a fine of \$10 for each week he so neglects or refuses, to be recovered by complaint or indictment.

Sec. 18. Owner refusing inspector admission to building; penalty. R. S. c. 35, § 33. Any owner or occupant of a building, who refuses to permit an inspector of buildings to enter his buildings, or wilfully obstructs him in the inspection of such building as required by this chapter, shall be punished by a fine of not less than \$1, nor more than \$20, to be recovered by complaint or indictment.

Sec. 19. Inspector and municipal officers may enter building in their jurisdiction; authority and duty to remedy dangerous conditions; appeal. R. S. c. 35, § 34. The inspector of buildings, the fire inspector, and the municipal officers of any city or town may at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such buildings or premises, they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said buildings or premises; provided, however, that if the said owner or occupant shall deem himself aggrieved by such order when made by the inspector of buildings or the fire inspector, he may, within 24 hours, appeal to the municipal officers, and the cause of the complaint shall be at once investigated by the direction of the latter and, unless by their authority the order above named is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant. The inspector of buildings, the fire inspector, or the municipal officers shall make, or cause to be made, an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction, upon complaint of any person having an interest in said buildings or premises or property adjacent thereto. Any owner or occupant of buildings or premises, failing to comply with the orders of the authorities above specified, shall be punished by a fine of not less than \$5 for each day's neglect.

See §§ 22, 23; c. 128, §§ 23-27, re certain buildings nuisances.

Sec. 20. Trial justices; jurisdiction. R. S. c. 35, § 35. 1933, c. 118, § 1. Trial justices shall have jurisdiction of the offenses named in the 4 preceding sections.

Investigation of Fire Hazards and Causes of Fire

Sec. 21. Election of fire ward required who shall be a fire inspector; duties and compensation of fire inspectors. R. S. c. 35, § 47. Each town at its annual meeting shall elect at least 1 fire ward, who shall be a fire inspector and shall perform the several duties prescribed by this section and the 2 following sections; if more than 1 fire ward is elected by any town, one of said fire wards shall be designated as fire inspector of said town, and the other fire wards shall, under the direction of the fire inspector, assist in performing the duties imposed

upon said fire inspector by said sections. Fire inspectors shall receive reasonable compensation for their services, to be determined by the town. In towns and cities having an organized fire department, the chief of such fire department shall perform the duties of fire inspector. The municipal officers may authorize such fire inspectors to perform the duties imposed upon them by sections 24, 25, and 27, and, when so authorized, said fire inspectors shall have all the powers thereby conferred, and shall perform all the duties therein prescribed. Such fire inspectors shall furnish the insurance commissioner with such information as he may require and shall perform such inspections as the insurance commissioner may direct.

Sec. 22. Insurance commissioner upon complaint may inspect buildings; combustible or other dangerous matter may be removed. R. S. c. 35, § 48. 1939, c. 192, § 4. 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, and which is so situated as to endanger other property or the safety of the public, and 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, 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.

See § 19.

Sec. 23. Buildings to be repaired or demolished; special tax may be assessed. R. S. c. 35, § 49. If any person fails to comply with the order of any officer under the provisions of the preceding section or with the decision of the insurance commissioner on review, and within the time fixed, then such officer may 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 of taxes 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 collector of taxes of said town, for collection, and shall be collected in the same manner as state, county, and municipal taxes are collected.

Sec. 24. Municipal officers to investigate origin of fires; insurance commissioner may direct investigation. R. S. c. 35, § 50. When property is destroyed or damaged by fire the municipal officers in cities and towns shall immediately notify the insurance commissioner of the same, and shall investigate the cause, circumstances, and origin of the fire, and especially examine whether it was the result of carelessness or of design. The investigation shall be commenced within 3 days after the occurrence of the fire, not including the Lord's day, and the

insurance commissioner may supervise and direct such investigation whenever he deems it expedient or necessary.

Sec. 25. Municipal officers to file statement of facts relating to cause of fire; record, open to public. R. S. c. 35, § 51. When the municipal officers have completed their investigation, which shall be within 2 weeks after the occurrence of the fire, they shall immediately file with the insurance commissioner a written statement of all the facts relating to the cause, circumstances, and origin of the fire; the kind, value, and ownership of the property destroyed or damaged, and such other information as may be required by said commissioner. The insurance commissioner shall make a record of all fires investigated under the provisions of sections 24 to 31, inclusive, together with all facts, statistics, and circumstances connected therewith. Such record shall at all times be open to public inspection, and such portions of it as the said commissioner deems expedient shall be published in his annual report to the governor and council.

Sec. 26. Insurance commissioner may examine into cause and origin of all fires; to take testimony on oath; if evidence is sufficient, to cause arrest of person accused. R. S. c. 35, § 52. The insurance commissioner may, whenever he deems it expedient or advisable, examine or cause to be examined the cause, circumstances, and origin of all fires occurring in the cities and towns within the state, of which he has knowledge, by which property is damaged or destroyed, and may specially examine and decide whether the same was the result of carelessness or design. The insurance commissioner shall, when in his opinion said proceedings are necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters as to which such examination is made, and may cause the same to be reduced to writing. If he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson or incendiarism, he shall cause such person to be arrested and charged with such offense, and shall furnish to the proper county attorney all such evidence, together with the names of witnesses and all information obtained by him, including a copy of all pertinent and material testimony in the case.

Sec. 27. Witnesses may be compelled to attend hearing, and give testimony under oath; penalty for false swearing; commissioner may enter any building when fire is in progress; investigations may be private. R. S. c. 35, § 53. 1939, c. 192, § 5. The insurance commissioner, the deputy insurance commissioner, and the municipal officers of cities and towns shall each have the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses before them or either of them, to testify in relation to any matter which is by the provisions of the 3 preceding sections 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.

See c. 122, § 1, re perjury.

Sec. 28. Insurance companies to report to commisisoner adjustment of all losses. R. S. c. 35, § 54. Every fire insurance company or association transacting business in the state shall report to the insurance commisisoner, within 10 days after the adjustment of every loss, the amount of all policies issued by said company on the property destroyed or damaged, the amount paid or payable on account of such loss, and such other information relating to the matter as the commissioner may require.

Sec. 29. Insurance commisisoner may incur expense for investigators and inspections. R. S. c. 35, § 55. 1939, c. 2. 1941, c. 158. The insurance commisisoner may incur such expense as may be necessary to carry out his duties in investigating or causing to be investigated the origin of fires and the inspection of buildings and property. Every fire insurance company or association which does business or collects premiums or assessments in the state shall pay to the insurance department 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. Said funds shall be used solely to defray the expenses of such investigations and inspections and are appropriated for such purposes.

Whenever there shall accumulate in the special fund created by this section a surplus sufficient to defray the expenses of such investigations and inspections for an ensuing period of 1 year, then, in the discretion of the insurance commisisoner, the foregoing special tax for that year may be omitted.

Sec. 30. Municipal officers to keep record of returns. R. S. c. 35, § 56. 1939, c. 192, § 6. Municipal officers shall record or cause to be recorded all returns made under the provisions of the 6 preceding sections.

Sec. 31. Penalty for violation of §§ 24-30. R. S. c. 35, § 57. Any city or town officer or any insurance company neglecting or refusing to perform any duty required by the provisions of the 7 preceding sections shall be punished by a fine of not less than \$10, nor more than \$100, for each offense.

Fire Prevention

Sec. 32. Certain occupations in maritime towns regulated; penalty. R. S. c. 35, § 12. No person shall occupy any tenement in a maritime town for sail-making, rigging, or as a livery-stable, except where the municipal officers direct; whoever violates the provisions of this section forfeits \$10 a month during the continuance of such occupancy.

See § 41.

Sec. 33. Municipal officers to direct defective chimneys and other dangerous conditions to be removed or repaired; penalty. R. S. c. 35, § 13. On complaint of any citizen that a chimney, stove, stovepipe, oven, furnace, boiler, or appar-

tenance is defective, out of repair, or so placed in any building as to endanger it or any other building, the municipal officers of any town of not more than 2,000 inhabitants, if satisfied that such complaint is well founded, shall give written notice to the owner or occupant of such building, and if he unnecessarily neglects for 3 days to remove or repair the same effectually, he forfeits not less than \$10, nor more than \$100.

See § 41; 102 Me. 286.

Sec. 34. Lighting or smoking pipe, cigarette, or cigar in mills, shipyards, etc., contrary to notice; penalty. R. S. c. 35, § 14. 1939, c. 192, § 1. No person shall enter any mill, millyard, factory, machine shop, shipyard, covered bridge, stable, or other building with a lighted pipe, cigarette, or cigar, or shall light or smoke any pipe, cigarette, or cigar therein under a penalty of \$5, if a notice in plain legible characters that no smoking is allowed therein is kept in a conspicuous position over or near each principal entrance to such building or place; and whoever defaces, removes, or destroys such notice forfeits \$10.

See § 41.

Sec. 35. Kindling fire on land, without consent of owner; penalty. R. S. c. 35, § 15. Whoever kindles a fire on land not his own, without consent of the owner, forfeits \$10. If such fire spreads and damages the property of others, he forfeits not less than \$10, nor more than \$500, and in either case he shall stand committed until fine and costs are paid, or he shall be imprisoned for not more than 3 years.

See § 41.

Sec. 36. Kindling fire with intent to injure another; penalty. R. S. c. 35, § 16. Whoever with intent to injure another, causes a fire to be kindled on his own or another's land, whereby the property of any other person is injured or destroyed, shall be punished by a fine of not less than \$20, nor more than \$1,000, or by imprisonment for not less than 3 months, nor more than 3 years.

See § 41.

Sec. 37. When lawful fires may be kindled. R. S. c. 35, § 17. 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 an action on the case, to any person injured by his failure to comply with this provision.

See §§ 40, 41; c. 32, § 68 et seq., re slash, burning of blueberry lands, etc.; *54 Me. 258; 62 Me. 290; 87 Me. 410; 123 Me. 197; 128 Me. 409; 131 Me. 129.

Sec. 38. Lumber drivers may kindle necessary fires. R. S. c. 35, § 18. Persons engaged in driving lumber may kindle fires when necessary, but shall use the utmost caution to prevent them from spreading and doing damage, and if they fail to do so, they are subject to all the foregoing liabilities and penalties, as if said privilege had not been allowed.

See §§ 40, 41.

Sec. 39. Penalty for not extinguishing camp, cooking, or other fires; exceptions; fines, how disposed of. R. S. c. 11, § 36. Whoever by himself, or by his servant, agent, or guide, or as the servant, agent, or guide of any other person, shall build a camp, cooking, or other fire, or use an abandoned camp, cooking, or other fire in or adjacent to any woods in this state, shall, before leaving such fire, totally extinguish the same, and upon failure to do so such person shall be punished by a fine of \$50, provided that such fires built upon the sea beach in such situation that they cannot spread into forest land, woodland, or cultivated

lands or meadows shall not be construed as prohibited by this section. One-half of any fine imposed and collected under the provisions of this section shall be paid to the complainant.

See § 59, re penalty not substitute.

Sec. 40. Common law remedy not taken away; exception. R. S. c. 35, § 19. The common law right to an action for damages done by fires 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 37 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 38; 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 an action on the case, for such damage.

See § 41.

Sec. 41. Penalties, how recovered and appropriated. R. S. c. 35, § 24. Penalties provided in sections 32 to 38, inclusive, and section 40, may be recovered by complaint, indictment, or action of debt, half to the town where the offense is committed, and half to the prosecutor.

Sec. 42. Regulations relating to explosives or inflammable liquids; penalty. R. S. c. 35, § 20. 1939, c. 192, § 2. 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 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.

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 a justice of the superior court by presenting to him a petition therefor in term time or vacation, and he shall fix a time and place of hearing which may be at chambers, or in vacation, and cause notice thereof to be given to the commissioner; and after the hearing, the justice may affirm or reverse the rule, regulation, act, or order of the commissioner, and the decision of such justice 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 office 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.

See c. 128, § 10, re buildings for manufacture of powder as nuisances; 102 Me. 286; 138 Me. 117.

Sec. 43. Recovery of damages by sufferers by explosion. R. S. c. 35, § 21. A person injured by the explosion of such articles in the possession of any per-

son contrary to such regulations has an action for damages against such possessor, or against the owner if conusant of such neglect.

Sec. 44. Town officers may search for explosives, etc. R. S. c. 35, § 22. Any municipal officer, with a lawful search warrant, may enter any building or other place in his town to search for such articles supposed to be unlawfully concealed there.

102 Me. 286.

Sec. 45. Doors of public buildings to open outwards. R. S. c. 35, § 37. Every building intended temporarily or permanently for public use, and every schoolhouse of more than 1 story in height, and every school room therein, shall have all doors, intended for egress, open outwards.

See c. 37, § 22, re schoolhouses to have proper exits.

Sec. 46. Fire escapes for hotels, factories, places of amusement, tenement houses, and school buildings. R. S. c. 35, § 38. Every public house where guests are lodged, and every building in which any trade, manufacture, or business is carried on, requiring the presence of workmen above the 1st story, and all rooms used for public assembly or amusement, and all tenement-houses 3 stories in height where only 1 stairway or means of egress from the upper stories of the building is provided, and all tenement-houses of four or more stories in height intended to be occupied by families, boarders, or lodgers above the 3rd story, and all buildings used for school purposes, including school dormitories 2 stories or more in height, shall at all times be provided with proper egresses or other means of escape from fire sufficient for the use of all persons accommodated, assembled, employed, lodged, or resident therein. These egresses and means of escape shall be kept unobstructed, in good repair, and ready for use, and the sufficiency thereof shall be determined as provided in the following section.

See c. 25, § 4, re power of state factory inspector or agent to enter manufacturing establishments; *97 Me. 250; *99 Me. 436; 122 Me. 309.

Sec. 47. Inspection of fire escapes by municipal officers or fire inspector, by board of engineers, by chief of fire department. R. S. c. 35, § 39. In towns or parts of towns having no organized fire department, the municipal officers shall annually make or direct the fire inspector to make careful inspection of the precautions and safeguards provided in compliance with the foregoing requirements, and pass upon their sufficiency as to arrangement and number, and upon their state of repair; and direct such alterations, additions, and repairs as they adjudge necessary. In cities, towns, and villages with a population of over 5,000, having an organized fire department, the duties aforesaid shall be discharged by the board of engineers and in cities, towns, and villages with a population of less than 5,000, having an organized fire department, the duties aforesaid shall be discharged by the chief of the fire department.

97 Me. 250.

Sec. 48. Notice as to sufficiency of safeguards. R. S. c. 35, § 40. The 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.

97 Me. 251.

Sec. 49. Failure to comply with orders for safeguards; penalty. R. S. c. 35, § 41. Any owner or occupant who neglects to comply with such order made under the provisions of the 2 preceding sections, within the time so allowed, forfeits \$50, besides \$5 for every day's continuance of such neglect; and the building or part of a building so occupied shall be deemed a common nuisance, without any other evidence than proof of its use; and the keeper shall be punished accordingly. Said officers may forbid the use of such building for any public purpose until their order has been complied with. If the owner or occupant of said building lets or uses the same in violation of such order, he forfeits not less than \$20, nor more than \$50, for each offense.

See § 53; c. 128, § 1, re nuisances; 97 Me. 251, 253.

Sec. 50. Issuance of certificate of sufficiency of safeguards; compensation for inspection; return. R. S. c. 35, § 42. Whenever the municipal officers or chief of the fire department, upon inspection, find that proper safeguards and precautions for escape in case of fire, or of alarm, have been provided, they shall give to the occupant of such building a certificate, under their hands, of such fact; which shall be valid for 1 year only from its date; and a reasonable compensation for such inspection shall be paid by the city or town in which any such building is located, by an order drawn upon its treasurer. Such officers shall return to the clerk's office of their town, monthly, a list of such certificates by them issued, which the clerk shall record in a suitable book.

Sec. 51. Certificate posted in building, evidence; penalty for neglect. R. S. c. 35, § 43. Every person receiving such certificate provided for in the preceding section shall keep the same posted in such building. Such annual certificate, so posted, is prima facie evidence of the inspection of such building, and of the presence of such suitable safeguards and precaution. Every occupant of such building who neglects or refuses to procure such certificate, or to post the same as aforesaid, forfeits \$10 for every week that he so neglects and refuses.

Sec. 52. Penalty for town officers' neglect. R. S. c. 35, § 44. Every municipal officer or fire inspector or chief of a fire department who refuses or neglects to perform the duties imposed upon him by the 7 preceding sections forfeits \$50.

Sec. 53. Fines, how recovered. R. S. c. 35, § 45. All fines and forfeitures imposed by the 4 preceding sections may be recovered by the town where the building is located, by an action on the case, or by indictment.

102 Me. 286.

Sec. 54. Investigation by state factory inspector or insurance commissioner. R. S. c. 35, § 46. 1939, c. 192, § 3. Whenever it comes to the knowledge of the state factory inspector or his deputy, or to the insurance commissioner or his deputy, or if complaint is made to such state factory inspector or his deputy, or to the insurance commissioner or his deputy by any citizen of the state, that any of the above named officers have failed to comply with any provision of sections 45 to 52, inclusive, the state factory inspector or his deputy, or the insurance commissioner or his deputy shall at once proceed to investigate such complaint, and if sufficient evidence can be obtained, he shall at once institute proceedings against such officer, and the county attorney shall prosecute the same.

Sec. 55. Plundering at fires declared larceny. R. S. c. 35, § 11. Whoever takes, carries away, or conceals any property not his own, at a fire, or exposed

by reason thereof, and does not give notice of it to the owner or one of the fire wards shall be deemed guilty of larceny and punished accordingly.

See c. 119, § 4, re larceny at a fire; c. 123, § 16, re penalty for giving false alarms of fire.

Sec. 56. Inquiry to be made into origin of woodland fires. R. S. c. 11, § 42. Municipal officers in towns shall proceed immediately to a strict inquiry into the cause and origin of fires within woodlands; and in all cases where such fires are found to have originated from the unlawful act of any person, to cause the offender to be prosecuted without delay.

See § 59, re penalty not substitute.

Sec. 57. Selectmen to make report of any forest fire. R. S. c. 11, § 43. The selectmen of towns in which a forest fire of more than 1 acre in extent has occurred, within a month shall report to the forest commissioner the extent of area burned over to the best of their information, together with the probable amount of property destroyed, specifying the value of timber, as near as may be, and the amount of cord-wood, logs, bark, or other forest product, fencing, bridges, and buildings that have been burned. They shall also report the causes of these fires, if they can be ascertained, and the measures employed and found effective in checking their progress. Blanks for such reports shall be furnished by the forest commissioner at the expense of the state.

See § 59, re penalty not substitute.

Sec. 58. Selectmen to be fire wardens; duties and authority; compensation; penalty for refusing to assist; damages in case of neglect of selectmen; application to cities. R. S. c. 11, § 34. The selectmen of towns shall be forest fire wardens therein and may appoint one or more persons to act as deputy forest fire wardens. The services of such selectmen acting as said fire wardens shall be paid for at the same rate as is paid for their other official services, and the services of said deputy forest fire wardens shall be paid for at the rate hereinafter fixed for persons assisting in the extinguishment of forest fires. Whenever a fire is discovered, fire wardens or deputy wardens shall take such measures as may be necessary for its control and extinguishment. For this purpose they may call upon any persons in the town for assistance, and such persons shall receive such compensation, not exceeding 30c per hour, as said selectmen may determine, and they shall be provided with subsistence during said service, the same to be paid by the town; provided that no town shall be holden to pay for extinguishing forest fires in any year an amount greater than 2% upon its valuation for purposes of taxation. If any person so ordered to assist and not excused from said service by said forest fire wardens or deputy wardens on account of sickness, disability, or some important business or engagement shall neglect to comply with any such order, he shall forfeit the sum of \$10, to be recovered in an action of debt in the name and to the use of the town, by the treasurer thereof. If any person shall suffer damage from fire in consequence of the negligence or neglect of the selectmen of any town to perform the duties required by this section, such person shall have an action on the case to recover from the town where the fire occurs to the amount of his damages so sustained not to exceed 2% of the valuation of said town. This section shall also apply to cities. The chief engineers of the fire departments of cities shall be forest fire

wardens and shall have the same powers and duties in carrying out the provisions hereof as selectmen of towns.

See § 59, re penalty not substitute; c. 32, § 9, re duties of fire wardens to post notices furnished by forest commissioner; c. 32, § 86, re towns becoming part of Maine forestry district, effect on duties of town officers; *120 Me. 281.

Sec. 59. Penalties not substitutes for existing liabilities. R. S. c. 11, § 61. None of the penalties imposed by sections 39, 56, 57, and 58 shall be considered as substitutes for or as repealing the provisions of existing laws, making persons guilty of acts of trespass or liable for civil damages to persons injured by such acts.

Licensing of Steam Engineers and Firemen

Sec. 60. Sections 61-69, inclusive, not applicable to places of less than 40,000. R. S. c. 5, § 154. Sections 61 to 69, inclusive, shall not apply to cities and towns having less than 40,000 inhabitants.

Sec. 61. Municipal examiners of steam engineers and firemen; appointment of. R. S. c. 5, § 145. The municipal officers of cities and towns shall annually in the month of April, or as soon as practical thereafter, appoint an examiner of steam engineers and firemen, who has had not less than 5 years practical experience operating boilers and engines.

Sec. 62. Operators to obtain certificates of competency; application; exemption. R. S. c. 5, § 146. It shall be unlawful for any person or persons to operate a steam plant consisting of boiler and engine where the services of an engineer or fireman are required, without first obtaining a certificate of competency from said examiner; the provisions of sections 60 to 69, inclusive, shall not apply to dwelling-houses, apartment-houses, and buildings where the steam plant is used for heating purposes only.

Any person intending to operate a steam plant except as herein provided shall make application in writing to the city clerk, who will notify him in writing when to appear for examination.

See § 68.

Sec. 63. Licenses graded; qualifications and exemptions. R. S. c. 5, § 147. Licenses shall be granted as follows:

First grade, horse-power unlimited.

Second grade, limited to 500 horse-power.

Third grade, limited to 200 horse-power.

Special grade, limited to engineers and firemen operating some special steam plant, and to night engineers and firemen, and to engineers handling donkey, hoisting, and steam roller engines. A special license shall state for what purposes such license is issued and the location of the plant.

An engineer or fireman who has been granted a second grade certificate may operate a plant as specified in the first grade under direction of an engineer or fireman who has been granted a first grade certificate, and an engineer or fireman who has been granted a third grade certificate may operate a plant as specified in the second grade under direction of an engineer or fireman who has been granted a second grade certificate. All persons holding engineer's or fireman's licenses issued by the United States local inspectors of steam vessels shall be exempt from the provisions of sections 60 to 69, inclusive, and said sections shall not apply to buildings owned by the United States government.

See § 68.

Sec. 64. Examination; form of certificate; original filed with clerk; certified copy furnished applicant; disposition of fee. R. S. c. 5, § 148. An examiner's fee of \$2 for every applicant shall be paid to the city clerk when application is made. It shall be the duty of the city clerk to forward all applications to the examiner. The examiner shall examine all applicants in writing, and shall issue a certificate in the following form, if the applicant is of temperate habits and has suitable competency:

"STATE OF MAINE.

This is to certify that _____, having made application to the city clerk for permission to take charge of and to operate a steam plant, and having produced evidence of his competency to act in said capacity as _____, I have issued to him this certificate as approved by law this _____ day of _____."

Said certificate when issued shall be filed in the office of the city clerk and said clerk shall issue and deliver to said applicant a duly attested copy of said certificate; and the copy so issued shall be posted by the holder thereof in a frame under glass in a conspicuous place in or near the boiler room of the steam plant to be operated.

The city clerk shall pay the examiner the sum of \$1.75 out of the fee of \$2 deposited with him for that purpose, retaining the sum of 25c as payment for the attested copy issued by said city clerk.

Sec. 65. Term of certificate. R. S. c. 5, § 149. The term of certificate shall be 1 year from date granted unless revoked as hereinafter provided.

Sec. 66. Renewal of license; procedure; applicant entitled to hearing when refused renewal; duplication in case of loss. R. S. c. 5, § 150. When an engineer or fireman shall apply for a renewal of his license for the same grade, the presentation of the attested copy of the original certificate shall be considered sufficient evidence of his title to renewal, which certificate shall be retained by the examiner upon the official files as the evidence upon which the license was renewed, and a new certificate shall be issued upon the payment of a fee of \$1, unless such license shall be forfeited or unless facts shall have come to the knowledge of the examiner which would render a renewal improper. In such case the applicant shall be entitled to a hearing before the examiner. In case of loss or destruction of applicant's certified copy of his license, the city clerk shall, by direction of the examiner, issue to the applicant a duplicate attested copy, upon payment of a fee of 25c.

Sec. 67. Incompetency; holder of certificate entitled to hearing; license may be revoked when charge sustained; notice to owners of plant; temporary operator. R. S. c. 5, § 151. When the examiner receives notice in writing signed by ten or more residents of the city or town where the steam plant in question is located stating that in their opinion the person in charge of such steam plant is incompetent to discharge his duties, or by reason of negligence, intemperance, or other cause, such person ought not to longer remain in charge of such steam plant, the said examiner may temporarily suspend the authority of such person to act in said capacity until the investigation and hearing as herein provided can be made; provided, however, that said certificate shall not be permanently revoked until the said examiner shall have given a hearing to the person against whom a complaint has been filed, and shall have given him a written copy of said complaint at least 48 hours before said hearing is to be held. Said ex-

aminer shall immediately cause an investigation to be made as to the habits and qualifications of the person so complained of; and if such person is found to be incompetent to remain in charge of said steam plant, said examiner shall cause the certificate granted under the provisions of sections 60 to 69, inclusive, to be revoked, and notice of such revocation shall be filed with the city clerk; if the examiner shall after hearing revoke said license he shall then give the person or corporation having control of such plant notice of his findings. If after the receipt of such notice the person or corporation having control of such steam plant shall neglect or refuse to cause said steam plant to be placed in charge of some person qualified under the provisions of sections 60 to 69, inclusive, within a reasonable time thereafter, such person or corporation shall be subject to the penalty provided in section 69. The person or corporation in control of a steam plant, in case of sickness, emergency, or other good and sufficient reason, may temporarily employ some competent person, not holding a license as herein provided, to operate said plant for a period not exceeding 2 weeks.

Sec. 68. Persons operating steam plant for 1 year exempt from examination. R. S. c. 5, § 152. Any engineer or fireman, who has operated a steam plant for 1 year and who shall produce satisfactory evidence of the same, shall be entitled to a license to operate a steam plant of the same or lower grade without examination, upon payment of the fees prescribed for the granting of licenses by examination, and any engineer or fireman who now holds a license shall be entitled to receive a renewal of the same without examination.

Sec. 69. Penalty for violation. R. S. c. 5, § 153. Whoever violates any provision of sections 60 to 69, inclusive, shall be punished by a fine of not more than \$50.

CHAPTER 86.

HARBOR MASTERS. WHARVES AND FISH WEIRS.

Sections 1- 6 Harbor Masters.

Sections 7-11 Wharves and Fish Weirs.

Harbor Masters

Sec. 1. Appointment of harbor masters; compensation. R. S. c. 5, § 181. Selectmen of towns, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall annually appoint a harbor master who shall be subject to all the duties and liabilities of said office as prescribed by law, and in case of the failure or refusal of said harbor master to perform said duties, he shall be subject to a fine of \$25, for the benefit of the town, for each wilful neglect or refusal to attend the same. The selectmen may establish his compensation and may for cause by them declared in writing, after due notice to such officer and hearing thereon, if requested, remove him and appoint another in his stead.

See c. 87, § 7, re appointment of port wardens; P. & S. L. 1915, c. 184, re appointment of harbor masters and pilots for the harbor of Portland.