

bly of this province for the time being, and shall lay before them a faithful account of all and every sum and sums of money by them had and received for opening the said roads and in what manner the same shall be expended and laid out, that the same may be adjusted and settled.

Passed March 9, 1771. Referred for consideration by the King in Council, October 9, 1771, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIX.

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## CHAPTER DCXXXII.

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AN ACT APPOINTING WARDENS FOR THE PORT OF PHILADELPHIA AND FOR THE BETTER REGULATING PILOTS PLYING IN THE RIVER AND BAY OF DELAWARE, AND THE PRICE OF PILOTAGE TO AND FROM THE SAID PORT.

Whereas frequent and heavy losses have arisen to the merchants and others trading to and from the port of Philadelphia from the ignorance and misconduct of unskilful persons acting as pilots in the bay and river Delaware and from the want of proper regulations being established, to the great injury of the trade of the province:

For remedy whereof:

[Section I.] Be it enacted by the Honorable John Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That Peter Reeve, Michael Hulings, Robert Morris, Thomas Penrose, John Nixon, Oswell Eve, Robert White, John Maxwell Nesbitt and Samuel Mifflin are hereby nominated and appointed wardens of the said port of Philadelphia, and that it shall and may be lawful for them, or any three of them, the president hereinafter directed to be chosen being one, as soon as

conveniently may be after the publication of this act, having first taken the qualification hereinafter directed, to meet together at some convenient place in the said city at such times as are hereinafter mentioned for the executing and performing the duties hereby enjoined and required of them, and shall have full power to appoint and employ a skilful person to be their clerk, who shall keep fair minutes and entries of all their orders, regulations and transactions in a book to be kept for that purpose, and shall, before he enters upon the duties of his office, give good and sufficient security to the governor of the province for the time being for the faithful discharge of his office in the sum of fifty pounds, to be approved of by the said wardens, or any five of them, which said minutes and entries shall be public and submitted to the inspection of any person or persons who shall desire to see and peruse them, he or they so desiring the inspection paying to the clerk the sum of one shilling for each time the books shall be examined; and that the said clerk shall give true copies of any such entries or minutes made in the said books to such person or persons as shall demand the same, he or they paying an half-penny for each line the said copy shall contain, every line to consist of not less than twelve words. And the said wardens are hereby empowered to have and use one common seal in their affairs, and the same at their pleasure to change and alter.

[Section II.] And be it further enacted by the authority aforesaid, That the said wardens, or a majority of them, shall have power to choose, yearly and every year, by way of ballot, one of their own number to be their president, who shall continue in his office during the space of one year. And the said president, with any three of the other wardens, shall have full power and authority to do and perform all and every act, matter and thing herein enjoined and required of them, and in case the said president so chosen shall neglect or refuse to attend at any times appointed for the meeting of the wardens, it shall and may be lawful for the wardens met, being at least five in number, to choose, in the same manner, a president for the time being.

[Section III.] And be it further enacted by the authority aforesaid, That there shall be four meetings of the said wardens

in every year, that is to say, on the second Monday in March, June, September and December respectively, and at such other times as the president, or, in his absence, two wardens may think necessary on application made to him or them for that purpose, which said meeting shall be called by his or their order, issued to the clerk, directing him to summon all the said wardens to meet on twelve hours' notice to hear and determine all matters and things which shall and may come before them; and that the president shall receive for each day he shall attend or be employed the sum of seven shillings and six pence, and every other warden the sum of five shillings and no more.

[Section IV.] And be it further enacted by the authority aforesaid, That a board of wardens shall have full power and authority to examine all persons offering themselves to serve as pilots to and from the port of Philadelphia as to their knowledge and skill in pilotage; and to grant three kinds of certificates agreeable to the qualifications of such candidates, the first to such pilots as shall be qualified to pilot ships or vessels of any draught of water; the second to pilots for ships or vessels not exceeding in draught of water twelve feet; the third to pilots for vessels not exceeding in draught of water nine feet.

[Section V.] Provided always, and be it further enacted by the authority aforesaid, That the said persons, upon the receipt of the said certificates, shall give bond, with one sufficient surety, to the governor for the time being, to be approved by the said board of wardens, who are hereby authorized to take the same without fee or reward, in such sum as they shall think needful, not exceeding one hundred pounds nor less than fifty pounds, conditioned that they will truly and faithfully perform all and every the duties and services required and imposed on them by this act, and shall deliver up such certificates to the said wardens to be canceled upon their being declared void, and such person or persons incapable of acting as pilots agreeable to the directions of this act.

[Section VI.] And be it further enacted by the authority aforesaid, That no person who shall be bound apprentice from and after the publication of this act shall be entitled to receive a certificate as a first-class pilot unless he shall have served a

regular apprenticeship of at least four years to the business of a pilot.

[Section VII.] And be it further enacted by the authority aforesaid, That every pilot who shall conduct any ship or vessel from the port of Philadelphia to the capes of Delaware, or from the said capes to the said port, shall have and receive for his trouble the sum of five shillings for every half foot of water which such vessel shall draw under and up to fourteen feet, and for every half foot of water which such vessel shall draw more than fourteen feet the sum of ten shillings, and so in proportion for any lesser distance, to be settled and adjusted by the said board of wardens.

Provided, That the said pilot shall not have or receive any reward for any supernumerary inches under six, and that the said wardens shall and they are hereby authorized and required to settle and adjust the reward which shall be justly due from any master, owner or merchant of a vessel to the pilot thereof for any extraordinary time he shall be detained in the river or bay by the said master, owner or merchant in the service of the said vessel, provided the same shall not exceed fifteen shillings per diem, which said reward when so adjusted, if not paid on demand, shall be sued for and recovered in the same manner before any two justices of the peace as the pilotage of the vessel is hereinafter directed to be recovered.

[Section VIII.] And be it further enacted by the authority aforesaid, That from and after the publication of this act no person or persons whatsoever shall be capable of suing, commencing or prosecuting any action, suit or complaint at law against any person or persons whatsoever for any sum or sums of money that shall be due for pilotage of any ship or vessel in the said river or bay of Delaware unless he or they shall have obtained a certificate as aforesaid of his or their being duly qualified to act as a pilot or pilots, and such pilotage shall be performed during the force of such certificate; and that if any ship or vessel shall be brought or navigated up to the port of Philadelphia (except as is hereinafter excepted) or carried from thence by any person or persons not having such certificate, if such qualified pilot may be had or procured, that then and

in every such case the master, owner or merchant of such vessel, on due proof thereof, shall forfeit and pay to the collector of tonnage appointed by the act, entitled "A supplement to the act, entitled 'An act for erecting a light house at the mouth of the bay of Delaware,'" <sup>1</sup> etc., to be by him paid over to the wardens for the use of the pilot who shall have so first offered himself, a sum of money equal to one-fourth part of the pilotage of the said vessel, settled and ascertained by virtue of this act; and that the said collector shall not, under the penalty of five pounds, give a receipt to such person or persons so navigating such vessel for the tonnage of his vessel agreeable to the directions of the said act until such quarter pilotage be paid.

[Section IX.] And be it further enacted by the authority aforesaid, That it shall and may be lawful, upon complaint made, for any two justices of the peace within this province, and they are hereby empowered and required to issue forth their precept in writing, under their hands and seals, in the nature of a summons, *capias* or attachment as the case may require, directed to any constable, commanding him to bring or cause to come before them any person or persons against whom complaint shall be made respecting any demand, matter, cause, controversy or dispute that shall or may arise between pilots, masters of vessels, merchants or others respecting pilotage, and thereupon proceed to hear the proofs and allegations of the said parties, or such of them as shall appear, and to determine and pass judgment thereon, and also to award process under the hands and seals of the said justices against the body or the goods of the person or persons against whom such judgment shall be given for the sum due, with like costs of suit as are generally recovered before a justice of the peace on debts of forty shillings and upwards and not exceeding five pounds, and that the said justices shall keep fair entries and records of all their proceedings from the commencement of the first process to the final end of such suit in a book to be provided for that purpose.

[Section X.] And be it further enacted by the authority aforesaid, That the said wardens, or a majority of them, shall

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<sup>1</sup> Passed September 22, 1764, Chapter 515.

and they are hereby authorized and empowered from time to time to make such orders and rules as shall be useful and necessary for the governing and better regulating the pilots aforesaid, and to impose and lay any fine for the breach of such orders and rules not exceeding ten pounds, to be recovered before any two justices of the peace in manner aforesaid, which said orders and rules shall be inviolably observed and executed by all persons concerned according to the tenor, true intent and meaning thereof, provided they be not repugnant to the laws of England or this government, and shall be approved of by the speaker of assembly, chief justice and attorney general of this province under their hands and seals.

[Section XI.] And be it further enacted by the authority aforesaid, That before the said wardens take upon themselves the office of wardens, each and every of them shall take an oath or affirmation,

“That he will well and faithfully, to the best of his skill, understanding and judgment, perform, do, execute and discharge the office and duty of a warden, according to the directions of this act;”

Which qualification any justice of the peace of and for the city or county of Philadelphia is hereby authorized and enjoined to administer.

[Section XII.] And be it further enacted by the authority aforesaid, That if any ship or other vessel shall come into the port of Philadelphia or shall go out of the said port (vessels under the burden of fifty tons, carpenter’s tonnage according to the mensuration prescribed by the act, entitled “A supplement to the act, entitled ‘An act for the erecting a lighthouse at the mouth of the bay of Delaware at or near Cape Henlopen, for placing and fixing buoys in the said bay and river Delaware,’” etc.,<sup>1</sup> [only] excepted) without having a pilot on board, the master, owner or merchant of such ship or vessel shall forfeit and pay to the said wardens the sum of money which shall be equal to one-fourth part of the amount of the pilotage thereof, unless it be proved that a pilot was sought for and could not be procured.

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<sup>1</sup> Passed September 22, 1764, Chapter 515.

[Section XIII.] And be it further enacted by the authority aforesaid, That if it shall so happen that any first-rate pilot having his boat attending him at the capes shall be carried from thence to the sea by any ship or vessel contrary to his inclination, the master or owner of such ship or vessel shall pay to such pilot, his executors or administrators, the sum of six pounds per month for every month he shall be necessarily absent until his return to the said capes, or in case he shall die while so absent, then to the time of his death; and if no boat shall attend such pilot; the said master or owner shall pay him the sum of three pounds per month as aforesaid; and if any second-rate pilot shall be carried off as aforesaid, having his boat attending him as aforesaid, he shall be paid the sum of four pounds per month; if without his boat, forty shillings per month; and if any third-rate pilot shall be carried off as aforesaid with his boat attending him, he shall be paid three pounds per month; if without his boat, forty shillings per month, by the said master or owner of such ship or vessel who shall so convey or carry off such pilots respectively, for every month until his death or return to the said capes as aforesaid. And if any master of a vessel shall carry off to sea any pilot contrary to his inclination, when his boat or any other boat is ready and offers to take him out of the said vessel and the same may be done without endangering the vessel aforesaid, every such master or the owner of such vessel shall pay to the said pilot so carried off the sum of fifty pounds over and above the said wages, to be recovered by action of debt, bill, plaint or information, wherein no essoin, protection or wager of law nor more than one imparlance shall be allowed.

[Section XIV.] And be it further enacted by the authority aforesaid, That if any pilot duly qualified in virtue of this act shall neglect or refuse on due notice given to him to aid and assist any ship or vessel which shall be in distress within six leagues to the southward of Cape Henlopen and the same distance to the eastward of Cape May, or in the river or bay of Delaware aforesaid, or in case any ship or vessel shall be lost or damaged by the manifest neglect of the pilot having charge of her, every such pilot so refusing to aid or assist or neglecting his duty shall, on due proof made thereof before any board of

wardens, be rendered incapable of exercising the office and duty of a pilot, and the certificate before given him shall be utterly void, and that all contracts and agreements made or to be made by and between any pilot and the master of any ship or vessel in distress for his aid and assistance shall be also void, and such pilot shall be entitled to ask, demand or recover no more than a reasonable reward for his said aid, assistance and service, any such contract notwithstanding.

[Section XV.] And be it further enacted by the authority aforesaid, That if any person or persons shall conceive him or themselves aggrieved by any judgment given by two justices in pursuance of this act, it shall and may be lawful for such person or persons to appeal to the next county court of common pleas to be held for the county where the said judgment shall be given; which said appeal shall be allowed by the said justices upon sufficient security given for prosecuting the same, and that the proceedings on such appeal shall be prosecuted on the same terms, in the same manner and under the same penalties as are directed by the act, entitled "An act for the more easy and speedy recovery of small debts."<sup>1</sup>

[Section XVI.] And be it further enacted by the authority aforesaid, That if any person or persons whatsoever shall take up any anchor and stock or cable in the bay or river Delaware, every such person or persons shall bring, or cause to be brought, every such anchor and stock or cable to the port of Philadelphia and deliver them to the president or one of the said wardens under the penalty of one hundred pounds, to be recovered in the court of common pleas for any county of this province, by action of debt, to be brought by the said president of the wardens for the time being or the person who shall rightfully own such anchor and stock or cable; and that upon the delivery of such anchor and stock or cable to the said president as aforesaid, and an appraisement thereof by any two of the said wardens to be appointed by the board for that purpose, the said board shall pay to the person or persons so taking up the said anchor and stock or cable such salvage not exceeding one-half of the value as in the judgment of a board of wardens shall be reason-

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<sup>1</sup> Passed March 1, 1745-46, Chapter 365.



able; and the said president shall, without delay, advertise the said anchor and stock or cable so delivered to him three times in some of the public newspapers published in the city of Philadelphia, unless the owner thereof or his factor do immediately appear and claim the same, and shall permit and suffer the said anchor and stock or cable to be viewed by any person or persons who shall make application to him for that purpose; and if any person or persons shall claim and make satisfactory proof of his or her right and property therein within the space of twelve months next after the date of the first advertisement before a board of wardens, the said anchor and stock or cable the property whereof shall be so proved shall be restored to such claimant upon his paying the salvage, with lawful interest for the same, and reasonable costs; but if no person or persons shall within the time aforesaid claim and make proof of his or their property in such anchor and stock or cable, then and in such case the said president shall expose the same to sale at public vendue at the London Coffee House or some other public place, and after deducting the salvage so paid as aforesaid, with the lawful interest thereof as aforesaid, and the charges reasonably accruing thereon, shall pay the overplus of the money proceeding from such sale to the person or persons who took up the said anchor and stock or cable so sold, and that the said wardens shall keep a fair record of the time of the delivery and name or names of the person or persons so delivering any anchor or cable, and of the weight, marks, claims and proofs thereof.

And whereas, in pursuance of the direction of an act of general assembly of this province, entitled "An act for erecting a lighthouse at the mouth of the bay of Delaware, at or near Cape Henlopen, for placing and fixing buoys in the said bay and river Delaware," etc.,<sup>1</sup> a lighthouse has been erected on Cape Henlopen and sundry buoys and beacons have been and are to be fixed in the bay and river Delaware for the more convenient and safe navigation to and from the said port of Philadelphia, at a great expense:

[Section XVII.] Be it therefore enacted by the authority aforesaid, That if any person or persons shall, after the publica-

<sup>1</sup> Passed September 30, 1763, Chapter 502.

tion of this act, remove or destroy or be aiding and assisting in the removal or destruction of any of the said buoys or beacons, or shall burn or otherwise destroy or be aiding or assisting in the burning or destroying the said lighthouse and shall be apprehended in this province for the same and duly convicted thereof in any court of quarter sessions of the city or county where he shall be so apprehended, shall forfeit and pay the sum of one thousand pounds and suffer three years' imprisonment without bail or mainprise, and be whipped once in every year during such imprisonment at the common whipping-post with any number of lashes well laid on his bare back not exceeding thirty-nine.

[Section XVIII.] And be it further enacted by the authority aforesaid, That all fines, forfeitures, penalties and sums of money not hereinbefore appropriated shall be applied and appropriated by the said wardens for and towards the payment of the salvage aforesaid, the wages which shall from time to time become due to them, the salary of their clerk, the rent of a convenient office or place for holding their board and other necessary and incidental expenses arising from the execution of this act and all other costs, charges and expenses which have accrued by the execution of the several acts appointing wardens for the port of Philadelphia and remain unsatisfied; and in case the said fines, penalties, forfeitures and sums of money shall not be sufficient for the purposes aforesaid, that it shall and may be lawful to and for the said wardens to draw orders on the treasurer for the time being appointed by virtue of the before recited act, which said orders the said treasurer is hereby enjoined and required to pay and discharge.

And in order to enable the said treasurer to pay and discharge the said orders:

[Section XIX.] Be it enacted by the authority aforesaid, That there shall be laid, raised, collected and paid a further duty of tonnage upon all ships and other vessels (shallops and other small vessels trading within the bay and river Delaware, and along the coast as far as Sandy Hook, to the eastward, and Indian River, to the southward, only excepted), That is to say, for every ton of the burden or contents of all and every of the

said ships or vessels, the sum of one penny over and above the tonnage imposed by the several acts of assembly of this province imposing a duty of tonnage on ships and other vessels, which said duty of tonnage shall be raised, collected and paid by the same persons respectively and in the same manner, under the same penalties, as the duty of tonnage mentioned in the same several acts of assembly is directed to be thereby raised, collected and paid; and in case the said duty of tonnage hereby imposed shall be more than sufficient to discharge the said orders and the expenses incident to the laying, raising, collecting and paying the same, such surplus shall be applied towards discharging the certificates issued for moneys legally borrowed by the commissioners for building and erecting a lighthouse at the mouth of the bay of Delaware.

[Section XX.] And be it further enacted by the authority aforesaid, That so much of the said act of general assembly, entitled "An act for erecting a lighthouse at the mouth of the bay of Delaware, at or near Cape Henlopen," etc.,<sup>1</sup> as relates to the penalty imposed on such person or persons as shall designedly take up, remove or destroy the buoys placed in the bay or river Delaware shall be and is hereby declared to be repealed, null and void.

[Section XXI.] And be it further enacted by the authority aforesaid, That the said wardens shall yearly and every year lay their accounts of the money by them received and disbursed for the purposes herein mentioned before the committee of assembly for the time being appointed for the settlement of the public accounts, to be by them examined, adjusted and laid before the assembly then sitting.

[Section XXII.] And be it further enacted by the authority aforesaid, That this act shall be and continue in force for and during the term of seven years and from thence to the end of the next sitting of assembly, and no longer.

Passed March 9, 1771. Referred for consideration by the King in Council, October 9, 1771, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIX, and the note to the Act of Assembly passed February 8, 1766, Chapter 536. Repealed by the Act of Assembly passed February 26, 1773, Chapter 671.

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<sup>1</sup> Passed September 30, 1768, Chapter 502.