

CHAPTER 99

AN ACT

Relating to statute of limitations in criminal prosecutions; and providing for an effective date.

(H.B. 486)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 1.02, Ch. 34, SLA 1962, is repealed and re-enacted to read:

Sec. 1.02. General Time Limitation.

A prosecution for murder may be commenced at any time. Except as otherwise provided by law, no person shall

be prosecuted, tried, or punished for any offense, not murder, unless the indictment is found or the information or complaint is instituted within five years next after such offense shall have been committed.

Sec. 2. This Act takes effect January 1, 1963.

Approved April 11, 1962

CHAPTER 100

AN ACT

Relating to the issuance of general obligation bonds of the state for hospital construction and equipment; amending Sec. 2, Ch. 66, SLA 1961; and providing for an effective date.

(H.B. 490)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 2, Ch. 66, SLA 1961, is amended to read:

Sec. 2. That there be and is hereby created a special fund of the state to be known as the "Hospital Construction Fund," into which shall be paid the proceeds of the sale of the bonds described

in Section 1 of this chapter, except for accrued interest. For the purpose of carrying out the provisions of said Ch. 173, SLA 1960, and this Act, there is hereby appropriated from the Hospital Construction Fund to the Department of Health and Welfare the sum of \$354,000.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 11, 1962

CHAPTER 101

CODE OF CIVIL PROCEDURE

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CHAPTER 101

AN ACT

To codify and revise the law relating to civil procedure; and providing for an effective date.

Be it enacted by the Legislature of the State of Alaska:

Title I. General Provisions

Article I. Limitation of Actions

Sec. 1.01. General Limitations on Civil Actions. No person may commence a civil action except within the periods prescribed in this article after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

Sec. 1.02. When Action Commenced. An action shall be considered commenced when the complaint is filed and the summons issued.

Sec. 1.03. Actions to Recover Real Property in 10 Years. No person may bring an action for the recovery of real property, or for the recovery of the possession of it unless commenced within 10 years. No action may be maintained for the recovery unless it appears that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within 10 years before the commencement of the action.

Sec. 1.04. Action upon Judgment or Sealed Instrument in 10 Years. No person may bring an action upon a judgment or decree of a court of the United States, or of a state or territory within the United States, and no action may be brought upon a sealed instrument unless commenced within 10 years.

Sec. 1.05. Actions to Be Brought in Six Years. No person may bring (1) an action upon a contract or liability, express or implied, excepting those mentioned in Sec. 1.03; (2) an action for waste or trespass upon real property; or (3) an action for taking, detaining, or injuring personal property, including an action for its specific recovery, unless commenced within six years.

Sec. 1.06. Actions to Be Brought in Three Years. a. No person may bring an action against a peace officer or coroner upon a liability incurred by the doing of an act in his official capacity or by the omission of an official duty, including the nonpayment of money collected upon an execution, unless brought within three years. This section does not apply to an action for an escape.

b. No person may bring an action upon a statute for penalty or forfeiture where the action is given to the party aggrieved or to that party and the state unless brought within three years, except where the statute imposing it prescribes a different limitation.

Sec. 1.07. Actions to Be Brought in Two Years. No person may bring (1) an action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not specifically provided otherwise; (2) an action upon a statute for a forfeiture or penalty to the state; or (3) an action upon a liability created by statute, other than a penalty for forfeiture, unless commenced within two years.

Sec. 1.08. Actions to Be Brought in One Year. No person may bring an action against a peace officer for the escape of a person arrested or imprisoned on civil process unless commenced within one year.

Sec. 1.09. Actions for Penalty. No person may bring an action upon a statute for the penalty given in whole or in part to the person who will prosecute for the same unless commenced within one year after the commission of the offense. If the action is not commenced within one year by a private party, it may be commenced on behalf of the state within two years after the period of limitation by a private party has expired.

Sec. 1.10. Other Actions in 10 Years. An action for a cause not otherwise provided for may be commenced within 10 years after the cause of action has accrued.

Sec. 1.11. Accrual of Cause of Action upon Mutual, Open, and Current Account. In an action brought to recover a balance due upon a mutual, open, and current account where there have been reciprocal demands between the parties, the cause of action accrues from the date of the last item proved in the account on either side. But when a period of more than one year elapses between any of a series of items or demands, they are not included as part of the account.

Sec. 1.12. Actions in Name of State, Political Subdivisions, or Public Corporations. An action brought in the name of or for the benefit of the state, any political

subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action. However, if the action is for relief on the ground of fraud, the limitation shall commence from the time of discovery by the aggrieved party of the facts constituting the fraud.

Sec. 1.13. Effect of Absence from State or Concealment. When the cause of action accrues against a person who is out of the state or concealed in the state, the action may be commenced within the periods provided in this article after his return to the state or when his concealment ceases. If he departs from the state or conceals himself after the cause of action accrues, the time of his absence or concealment is not part of the time limited for the commencement of the action.

Sec. 1.14. Disabilities of Minority, Insanity, and Imprisonment. If a person entitled to bring an action mentioned in this article is at the time the cause of action accrues either (1) under the age of 19 years, or (2) insane, or (3) imprisoned on a criminal charge, or in execution under sentence of a court for a term less than his natural life, the time of the disability is not a part of the time limited for the commencement of the action. But the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

Sec. 1.15. Death of a Party before Expiration of Limitation Period. If a person entitled to bring an action dies before the expiration of the time limited for its commencement and the cause of action survives, an action may be commenced by his personal representatives after the expiration of that time and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement of the action and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time and within six months after the issuing of letters testamentary or of administration.

Sec. 1.16. Disability of Alien during War. When a person is an alien subject or citizen of a country at war with the United States, the time of the continuance of the war is not a part of the period limited for the commencement of the action.

Sec. 1.17. Injunction against Commencement of Action. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition is not a part of the time limited for the commencement of the action.

Sec. 1.18. Disability. No person may avail himself of a disability unless it existed when his right of action accrued or began before the time for commencing the action expired.

Sec. 1.19. Coexisting Disabilities. When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they all are removed.

Sec. 1.20. Acknowledgment or Promise. No acknowledgment or promise is sufficient evidence of a new or continuing contract to take the case out of the operation of this article unless the acknowledgment or promise is contained in writing, signed by the party to be charged, and, as to instruments affecting real estate, acknowledged and recorded in the office of the recorder of the district where the original contract was filed or recorded. This section does not alter the effect of any payment of principal or interest.

Sec. 1.21. Payment on Account. When a past due payment of principal or interest is made upon any evidence of indebtedness, the running of the time within which an action may be commenced starts from the time the last payment is made.

Sec. 1.22. When Nonresident's Cause of Action Barred. When a cause of action has arisen in another state or in a territory or foreign country between nonresidents of this state, and by the laws of the state, territory, or country where the cause of action arose that action cannot be maintained because of a lapse of time, the action shall not be maintained in this state.

Sec. 1.23. Certain Actions Relating to Real Property. No person may bring an action for the determination of any right or claim to or interest in real property unless commenced within the limitations provided for actions for the recovery of the possession of real property. But no person may bring an action to set aside, cancel, annul, or otherwise affect a patent to lands issued by this state or the United

States, or to compel any person claiming or holding under a patent to convey the lands described in the patent or a portion of them to the plaintiff in the action, or to hold the lands in trust for or to the use and benefit of the plaintiff, or on account of any matter, thing, or transaction which was had, done, suffered, or transpired before the date of the patent unless commenced within 10 years from the date of the patent. In an action upon a new promise, fraud, or mistake, the running of the time within which an action may be commenced starts from the making of the new promise or the discovery of the fraud or mistake. This section does not bar an equitable owner in possession of real property from defending his possession by means of his equitable title. The right of an equitable owner to defend his possession in an action or by complaint for injunction is not barred by lapse of time while an action for the possession of the real property is not barred by the provisions of this article.

Sec. 1.24. Commencement of Action after Dismissal or Reversal. If an action is commenced within the time prescribed and is dismissed upon the trial or upon appeal after the time limited for bringing a new action, the plaintiff or, if he dies and the cause of action in his favor survives, his heirs or representatives may commence a new action upon the cause of action within one year after the dismissal or reversal on appeal. All defenses available against the action, if brought within the time limited, are available against the action when brought under this provision.

Article II. Jurors

Sec. 2.01. Qualification of Jurors. Any person is qualified to act as a juror if he is

- (1) a citizen of the United States;
- (2) a resident of the state;
- (3) at least 21 years of age;
- (4) of sound mind;
- (5) in possession of his natural faculties; and
- (6) able to read or speak the English language.

Sec. 2.02. Disqualification of Jurors. Any person is disqualified to act as a juror if he

(1) has served as a juror in the state within one year of his time of examination for service;

(2) has been convicted of a felony and his civil rights not restored.

Sec. 2.03. Exemptions. Any person may claim exemption and may be excused from service as a juror if it be shown that jury service will cause him to suffer material injury or destruction to his property or to the property entrusted to him, or if his health, the health or proper care of his family, or the sickness or death of a member of his family makes it necessary for him to be excused, or if he is

(1) a judicial officer;

(2) any other civil officer of the state or United States whose duties are at the time inconsistent with his attendance or service as a juror;

(3) an attorney;

(4) a minister of the gospel or priest of any denomination;

(5) a teacher in a university, college, academy, or school;

(6) a practicing physician.

Sec. 2.04. Compliance with Statute. The selection of jurors shall be made in substantial compliance with the following provisions. Any failure in substantial compliance which prejudices the rights of a party is reversible error.

Sec. 2.05. Jury List. At such times as the presiding judge of the superior court in each judicial district may designate, but not less than once every two years, the clerk of the superior court in each judicial district shall prepare a list of the names of residents of the district who are qualified by law for jury service and who voted in the preceding general election. If the superior court is located in different cities in the same judicial district, the clerk of the court located in each city shall prepare, at the times designed by the judge but at least every two years, a list of names of persons qualified for jury service and who voted in the preceding general election and who are residents of that portion of the judicial district designated by the presiding judge. The list shall be based on the voting list prepared by the secretary of state from the preceding general election. A questionnaire for pro-

spective jurors may be adopted and submitted to them by the administrative director of courts. A copy of the list shall be transmitted to each district magistrate within the judicial district and shall be used to summon jurors residing within the immediate area of the court.

Sec. 2.06. Use of Jury Box. The clerk of the court shall write the names included in the list on separate pieces of paper or prepare metal, plastic, or other types of pieces to correspond to numbers on the jury list. As directed by the court, he shall deposit the named or numbered pieces in the jury box in a number and manner to assure a fair and impartial drawing of the jury panel. The jury box and the named or numbered pieces may be examined by the parties or by any attorney authorized to practice law in the state within limitations and under conditions prescribed by the court.

Sec. 2.07. Public Drawing for Jurors for Panel. Under the direction of the court the clerk shall conduct the public drawing of jurors for the panel by shaking the box to mix the named or numbered pieces. The clerk shall then draw as many names or numbers as are ordered by the court to fill the jury panel. If the name or number of any person is drawn from the box and the person is deceased, unqualified, disqualified, or the person's attendance cannot be obtained within a reasonable time or may involve a large and unnecessary expense, and the fact appears to the satisfaction of the court through the use of questionnaires or otherwise, the court may reject the name of that person and direct that the name or number of another be drawn in his place.

Sec. 2.08. Jury Panel. The jury panel for the trial of civil cases consists of at least 24 jurors or more as determined by the court. If at any time the number of jurors on the panel falls below 24 or the regular panel is exhausted, the court shall order the clerk to complete the panel or secure additional jurors by drawing sufficient names from the jury box.

Sec. 2.09. Impaneling the Trial Jury. When a civil case which is to be tried by a jury is called for trial, the clerk shall draw from the trial jury box containing the names of those on the jury panel a number of names or numbers sufficient to name a jury of 12 unless the court directs otherwise. The prospective jurors shall

be examined, challenged, and sworn as provided by rules of the supreme court.

Sec. 2.10. Verdicts. In civil cases tried by a jury in any court, whether of record or not, not less than five-sixths of the jury may render a verdict, which is entitled to the legal effect of a unanimous verdict at common law. Special verdicts need not be concurred in by the same jurors.

Article III. Witnesses and Evidence

Sec. 3.01. Service on Concealed Witness. If a witness is concealed in a building or vessel for the purpose of preventing the service of a subpoena, a peace officer may break into the building or vessel to serve the subpoena upon the witness.

Sec. 3.02. Disobedience to Subpoena. A witness who disobeys a subpoena served on him shall also forfeit to the party requiring his attendance the sum of \$50 and all damages which that party may sustain by the failure of the witness to attend. The forfeiture and damages may be recovered in a civil action.

Sec. 3.03. Proceedings for Examination of Prisoner as a Witness. a. If a witness is a prisoner confined in a prison in the state, a state court may order his temporary removal and production before a state court for the purpose of being orally examined as follows:

(1) by the court or a judge of the court in which the action or proceeding is pending, unless it is a magistrate's court;

(2) by any judge of the superior or supreme court when the action or proceeding is pending in a magistrate's court, or when the witness's oral examination is required before a judge or other persons out of court.

b. In any other case, a state court may order the examination in prison upon a deposition.

Sec. 3.04. Compelling Person to Testify. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance before the court or officer on a subpoena.

Sec. 3.05. Witnesses Are Exonerated from Civil Arrest. Every person who has been served in good faith with a subpoena to attend as a witness before a court, judge, referee, or other official is exon-

erated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning from there. The arrest of a witness contrary to this section is void, and when wilfully made is a contempt of court. The officer wilfully making it is responsible to the witness arrested for double the amount of damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpoena for the damages sustained by him in consequence of the arrest.

Sec. 3.06. Affidavit as Prerequisite to Officer's Liability. a. The officer making the arrest is not liable in any way therefor unless the person claiming exoneration from arrest, if required, makes an affidavit stating that

(1) he has been served a subpoena to attend as a witness before a court, judge, referee, or other official, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued; and

(2) he has not been served by his own procurement with the intention of avoiding an arrest.

b. The affidavit may be taken by the officer, and exonerates him from liability for not making the arrest or for discharging the witness when arrested.

Sec. 3.07. Discharge from Improper Arrest. The court, judge, referee, or other person before whom the attendance of the witness is required may discharge a witness from an arrest made in violation of Sec. 3.05.

Sec. 3.08. Exclusion of Witnesses from Court Room. Upon the request of either party the judge may exclude from the court room any witness of the adverse party not under examination at the time so that he may not hear the testimony of other witnesses.

Sec. 3.09. Officers Authorized to Administer Oaths or Affirmations. Every justice, judge, magistrate, clerk of a court, notary public, United States Postmaster, and the commanding officer of a vessel of the United States Coast Guard may administer oaths or affirmations.

Sec. 3.10. Effect of Private Seals and

Scrolls. Private seals and scrolls as a substitute for seals are abolished. They are not required to any instrument, but when used their effect remains unchanged.

Sec. 3.11. Statute of Frauds. a. In the following cases and under the following conditions an agreement, promise, or undertaking is unenforceable unless it or some note or memorandum of it is in writing and subscribed by the party charged or by his agent:

(1) an agreement that by its terms is not to be performed within a year from the making of it;

(2) an agreement the performance of which is not to be completed by the end of a lifetime. This provision includes a contract to bequeath property or make a testamentary disposition of any kind, a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of that type of policy. But this provision does not include an insurer's promise to issue a policy of insurance, or any promise or assignment with respect to a policy of industrial life or health or accident insurance;

(3) a special promise to answer for the debt of another;

(4) an agreement by an executor or administrator to pay the debts of his testator or intestate out of his own estate;

(5) an agreement made upon consideration of marriage other than mutual promises to marry;

(6) an agreement for leasing for a longer period than one year, or for the sale of real property, or of any interest in real property, or to charge or encumber real property;

(7) an agreement concerning real property made by an agent of the party sought to be charged unless the authority of the agent is in writing;

(8) an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or commission; however, if the note or memorandum of the agreement is in writing, subscribed by the party to be charged or by his lawfully authorized agent, contains

a description of the property sufficient for identification, authorizes or employs the agent or broker named in it to sell the property, and expresses with reasonable certainty the amount of the commission or compensation to be paid the agent or broker, the agreement of authorization or employment is not unenforceable for failure to state a consideration;

- (9) an agreement to establish a trust;
- (10) a subsequent or new promise to pay a debt discharged in bankruptcy;
- (11) a conveyance or assignment of a trust in personal property;

(12) an agreement to pay compensation for services rendered in negotiating a loan, effecting the procurement of a business opportunity, or the purchase and sale of a business, its good will, inventory, fixtures, or an interest in it, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest, other than an agreement to pay compensation to an auctioneer or an attorney at law.

b. No estate or interest in real property, other than a lease for a term not exceeding one year, nor any trust or power concerning the property may be created, transferred, or declared, otherwise than by operation of law, or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring it or by his agent under written authority and executed with the formalities that are required by law. This subsection does not affect the power of a testator in the disposition of his real property by will, nor prevent a trust's arising or being extinguished by implication or operation of law, nor affect the power of a court to compel specific performance of an agreement in relation to the property.

Sec. 3.12. Exceptions to Statute of Frauds. A contract, promise, or agreement which is subject to Sec. 3.11, which does not satisfy the requirements of that section, but which is otherwise valid is enforceable if either

- (1) there has been full performance on one side accepted by the other in accordance with the contract; or
- (2) there is a memorandum which would satisfy the requirements of Sec. 3.11

except for error or omission in the recital of past events; or

(3) there is a memorandum which would satisfy the requirements of Sec. 3.11 except for error or omission which could be corrected by reformation if it occurred in a formal contract; or

(4) the party against whom enforcement is sought admits, voluntarily or involuntarily, in his pleadings or at any other stage of this or any other action or proceeding the making of an agreement; or

(5) it is a contract of employment for a period not exceeding one year from the commencement of work under its terms.

Sec. 3.13. Representations as to Credit, Skill, or Character of a Third Person. No evidence is admissible to charge a person upon a representation as to the credit, skill, or character of a third person unless the representation or some memorandum of it is in writing, and either subscribed by or in the handwriting of the party to be charged.

Sec. 3.14. Rules for Construing Real Estate Descriptions. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

(1) where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by those particulars if they constitute a sufficient description to ascertain its application;

(2) when permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount;

(3) between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both;

(4) when a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or bed of the stream is held under another title;

(5) when tidewater is the boundary, the rights of the grantor to low-water mark are included in the conveyance;

(6) when the description refers to a map and that reference is inconsistent with other particulars, it controls them if it appears that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

Sec. 3.15. Conclusive Evidence of Adverse Possession. The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States.

Sec. 3.16. Sale or Transfer of Personal Property. Every sale or assignment of personal property unless accompanied by the immediate delivery and the actual and continued change of possession of the thing sold or assigned is presumed prima facie to be a fraud against the creditors of the vendor or assignor, and subsequent purchasers in good faith and for a valuable consideration during the time the property remains in the possession of the vendor or assignor, except that retention of possession in good faith and current course of trade by a merchant seller for a commercially reasonable time after a sale or identification is not fraudulent, and nothing contained herein shall supersede the provisions of the Uniform Commercial Code.

Sec. 3.17. Evidence of Publication. Evidence of the publication of a document or notice required by law to be published in a newspaper may be given by the affidavit of the printer of the newspaper or his foreman or business manager, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made.

Sec. 3.18. Adultery Confession in Divorce. In an action for divorce on the ground of adultery, a confession of adultery is not alone sufficient to justify a judgment of divorce.

Sec. 3.19. Right to Receipt upon Payment or Delivery. Any person who pays money or delivers an instrument or property is entitled to a receipt for it from the person to whom the payment or delivery is made, and may demand a proper signa-

ture to the receipt as a condition of the payment or delivery.

Sec. 3.20. Objections to Tender. The person to whom a tender is made shall at the time specify any objection he may have to the money, instrument, or property, or he waives it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, he shall specify the amount, terms, or kind which he requires, or is precluded from objecting later. This section shall not be construed to modify or change in any manner corresponding provisions of the Uniform Commercial Code.

Sec. 3.21. Disposition of Tax Information. Any information in the possession of the Department of Revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes.

Sec. 3.22. Inspection and Copies of Public Records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

Sec. 3.23. Inspection and Copying of Public Records. Every person has a right to inspect any public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by Ch. 118, SLA 1960; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by any federal law or regulation or by state law. Every public officer having

the custody of records not included in the exceptions is bound to permit such inspection, and to give on demand and on payment of the legal fees therefor a certified copy of such writing or record, and such copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of such public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described therein, making abstracts of title or guaranteeing or insuring the titles thereof, or building and maintaining title and abstract plants, and shall furnish proper and reasonable facilities therefor to persons having lawful occasion for access thereto for such purposes, subject to such reasonable rules and regulations, in conformity to the direction of the court, as shall be necessary for the protection of such writings and records and to prevent interference with the regular discharge of the duties of such recorders and their employees.

Article IV. Judgments

Sec. 4.01. Recording Copy of Judgment as Lien. A certified copy of the judgment or decree of a court of this state or a court of record of the United States upon which execution may issue, the enforcement of which has not been stayed, may be recorded with the recorder of a recording district. From the recording, the judgment or decree becomes a lien upon the real property of the defendant which is in the recording district, which is not exempt from execution, and which is owned by him at the time or acquired by him afterward but before the lien expires. The lien continues during the time execution may issue on the judgment or decree but for not more than 10 years from date of entry of the judgment or decree. After expiration of the lien, the court may grant leave for issuance of execution upon the judgment or decree. From the date of recording the judgment or decree, together with the order allowing issuance of execution, the judgment or decree becomes a lien in the manner as above provided.

Sec. 4.02. Priority of Lien of Judgment. A conveyance of real property or interest in real property is void against a judgment lien that is docketed before the conveyance is recorded.

Sec. 4.03. Judgment Where Summons

Not Served on All Defendants. When an action is against two or more defendants jointly indebted upon a contract and the summons is served on one or more but not all of them and judgment is recovered, it may be entered against all the defendants jointly indebted only so far that it may be enforced against the joint property of all and the separate property of the defendants served and, if they are subject to arrest, against the persons of the defendants served.

Sec. 4.04. Judgments against Boroughs and Cities. Where judgment is against a borough, city, or other public corporation, no execution may issue on it but the judgment may be satisfied only as follows:

(1) the party in whose favor the judgment is given may, at any time within 10 years of the date of the judgment, present a certified copy of the judgment to the officer of the borough, city, or other public corporation authorized to draw orders on its treasurer;

(2) upon presentation, the officer shall draw an order on the treasurer for the amount of the judgment in favor of the party for whom the judgment was given. After that the order may be presented for payment and paid in the manner and with the effect of other orders upon the treasurer of a borough, city, or other public corporation.

Sec. 4.05. Confession of Judgment. A judgment by confession may be entered with or without action against a person for any amount or relief. The confession may be made only by the confessor in person or by his attorney in fact under a power of attorney so authorizing, or, if the confessor is a corporation, only by a person who at that time has a relation to the corporation which would authorize the service of summons on him.

Sec. 4.06. Property Liable on Confession Judgments. When an action upon a contract is pending against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants jointly liable, whether all defendants have been served with the summons or not. However, the judgment may be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

Sec. 4.07. **Interest on Judgments.** The rate of interest on judgments and decrees for the payment of money is six percent per annum, except that a judgment or decree founded on a contract in writing providing for the payment of interest until paid at a specified rate exceeding six percent per annum and not exceeding eight percent per annum bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

Article V. Miscellaneous

Sec. 5.01. **Successive Actions.** Successive actions may be maintained upon the same contract or transaction when a new cause of action arises under the contract.

Sec. 5.02. **Corporate Sureties.** When, by the laws of the state or by a charter, ordinance, rule, or regulation of a political subdivision, municipality, public corporation, or by a board, body, organization, court, or judge, a recognizance, stipulation, bond, undertaking, or bail in an action, suit, proceeding, or matter conditioned for the faithful performance of an act or duty or for the doing of an act or thing is permitted or required to be given with one or more sureties, it is sufficient compliance if the instrument is executed by a corporation which has complied with the laws of the state and is authorized by law to act as surety upon instruments and in proceedings, actions, suits, and matters as set out above.

Sec. 5.03. **Parties Exempt from Giving Bond.** In an action or proceeding in any court in which the state is a party or in which the state is interested, no bond or undertaking is required of the state or an officer of the state.

Sec. 5.04. **Lis Pendens.** In an action affecting the title to or the right of possession of real property, the plaintiff at the time of filing the complaint, or afterwards, and the defendant, when affirmative relief is claimed, at the time of filing the answer, or afterwards, may record in the office of the recorder of the recording district in which the property is situated a notice of the pendency of the action, containing the names of the parties, and the object of the action or defense, and a description of the property affected in that district. From the time of filing the notice for record, a purchaser, holder of a contract or option to purchase, or encumbrancer of the property affected has con-

structive notice of the pendency of the action and of its pendency against parties designated by their real names.

Sec. 5.05. **Jurisdiction of the Parties.** From the time of the service of a copy of the summons and complaint, or of the completion of the publication when service by publication is ordered, the court acquires jurisdiction and has control of all the subsequent proceedings. The voluntary appearance of the defendant is equivalent to personal service of a copy of the summons and complaint upon him.

Sec. 5.06. **Death or Disability of a Party.** In case of the death or disability of a party to an action, the court may at any time within two years after the death or disability, on motion, allow the action to be continued by or against his personal representatives or successor in interest.

Sec. 5.07. **Defense Not Prejudiced by Assignment.** If there is an assignment of a thing in action, the action by the assignee is without prejudice to any setoff or other defense existing at the time of, or before notice of the assignment. But this section does not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon valuable consideration before due.

Sec. 5.08. **Liability of Guardian Ad Litem for Costs.** No person appointed guardian ad litem by a court for an infant or incompetent defendant is liable for the costs of the action.

Sec. 5.09. **Guardian's Responsibility for Allowance against Infant Plaintiff.** When costs or disbursements are adjudged against an infant plaintiff or incompetent, the guardian by whom he appeared in the action is responsible for the payment, and payment may be enforced against him as if he were the actual plaintiff.

Sec. 5.10. **Costs Where Party Is a Representative.** In actions in which an executor, administrator, trustee of an express trust, or a person authorized to represent a party is a party, costs may be allowed as in other cases. However, when costs are allowed against that party, they are chargeable solely upon the estate, fund, or party represented unless the court orders the costs to be paid by that party personally for mismanagement or bad faith in the conduct of the action.

Sec. 5.11. Costs Awarded against State, Borough, City, District, or Other Public Agencies. When the state or any borough, city, or other public agency or entity or any officer thereof in his official capacity is a party, costs shall be awarded against it on the same basis as against any other natural person or party. However, when the action is brought upon the information of a natural person, that person shall be liable for costs awarded against the state. The costs shall not be recovered from the state until after execution has issued for the costs against that person and returned unsatisfied in whole or in part.

Sec. 5.12. Security for Costs Where Plaintiff a Nonresident or Foreign Corporation. When the plaintiff in an action resides out of the state or is a foreign corporation, security for the costs and attorney fees, which may be awarded against the plaintiff, may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking executed by one or more sufficient sureties is filed with the court to the effect that they will pay the costs and attorney fees which are awarded against the plaintiff, not less than the sum of \$200. A new or an additional undertaking may be ordered by the court upon proof that the original undertaking is insufficient in amount or security.

Sec. 5.13. Suits against Local Governments and Public Corporations. An action may be maintained against any unit of local government or public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of the unit of local government or public corporation.

Sec. 5.14. Costs Allowed Prevailing Party. Except as otherwise provided by statute, the supreme court of Alaska shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case.

Title II. Special Civil Actions and Provisional Remedies

Article VI. Adverse Claims

Sec. 6.01. Action to Determine Adverse Claim. Any person in possession, by himself or his tenant, of real property may bring an action against another who claims an estate or interest in the property ad-

verse to him for the purpose of determining the claim.

Sec. 6.02. Action to Establish Boundaries. When any dispute exists between two or more owners of adjacent or contiguous lands concerning the boundary lines of their lands, any owner may bring an action for the purpose of having the dispute determined and the boundary lines ascertained and marked.

Sec. 6.03. Marking of Boundaries. In an action to establish boundaries, the court shall appoint three disinterested referees, one of whom is a surveyor, to establish and mark the boundary lines as ascertained and determined by the court.

Sec. 6.04. Oaths and Report of Referees. Before entering upon the discharge of their duties, the referees shall file a written oath to faithfully and impartially perform their duties. After designating the boundary lines by proper marks, they shall file with the court a report describing the location of the marks.

Sec. 6.05. Exceptions to the Report. The report may be confirmed unless a party excepts to the report. Upon the hearing, the court may confirm, modify, or set aside the report, and, in the latter case, may appoint new referees or refer the matter to the same referees with appropriate instructions.

Article VII. Attachment

Sec. 7.01. Actions in Which Attachment Is Authorized. a. At any time after an action has been commenced the plaintiff may make application to the court to have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(1) in an action upon an express or implied contract for the payment of money if the contract is neither secured by mortgage, lien, nor pledge upon real or personal property, or, if secured, the security is insufficient to satisfy any judgment that may be recovered by the plaintiff;

(2) in an action upon an express or implied contract against a defendant not residing in the state;

(3) in an action for the collection of any state tax or license fee.

b. No attachment shall issue if the defendant gives security to pay any judgment that may be recovered as provided in this article.

Sec. 7.02. Undertaking. Before the writ is issued, the plaintiff shall give a written undertaking with sufficient sureties to the effect that, if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that, if the attachment is discharged on the ground that the plaintiff was not entitled to it under this article, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking. The sum specified in the undertaking shall be equal to the amount claimed by the plaintiff, but not less than \$100.

Sec. 7.03. Property Subject to Attachment. All property in the state not exempt from execution may be attached.

Sec. 7.04. Third Party Liability. All persons having in their possession any personal property belonging to the defendant or owing a debt to the defendant at the time of service upon them of the writ and notice shall deliver, transfer, or pay the property or debts to the peace officer, or be liable to the plaintiff for the amount of the property or debts until the attachment is discharged or any judgment recovered by plaintiff is satisfied. Debts and other personal property may be delivered, transferred, or paid to the peace officer without suit, and the receipt of the officer is a sufficient discharge.

Sec. 7.05. Lien on Real Estate. If real property is attached, the peace officer shall make a certificate containing the title of the cause, the names of the parties, a description of the property attached, the date of attachment, a statement that a writ of attachment has been issued, and the date of issuance, and shall within 10 days deliver the certificate to the recorder of the recording district in which the real property is situated. The recorder shall file the certificate in his office and record it in a book to be kept for that purpose. When the certificate is filed for record, the lien in favor of the plaintiff attaches to the real property described in the certi-

ficate from the date of the attachment, but if filed afterwards, it only attaches as against third persons from the date of the subsequent filing. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of any order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged.

Sec. 7.06. Third Party Indebted to Defendant or Possessing Property of Defendant. Whenever a peace officer with a writ of attachment applies to any person for the purpose of attaching property mentioned in the attachment, the person shall furnish the peace officer with a statement designating the amount and description of any personal property in his possession belonging to the defendant, or any debt he owes to the defendant. If such person refuses to do so, or if the statement is unsatisfactory to the plaintiff, the person may be ordered to appear before the court and be examined concerning the property or debt.

Sec. 7.07. Sale of Perishable Property. If any of the property attached is perishable, the peace officer shall sell the property in the manner in which property is sold on execution. The proceeds and other property attached shall be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the levy of attachment.

Sec. 7.08. Liability on Undertaking. In a proceeding brought against the principal or his sureties upon an undertaking given to secure the release of attached property, it is a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

Sec. 7.09. Disposition of Property after Judgment in Plaintiff's Favor. When plaintiff recovers judgment, and property attached in the suit was not sold as perishable property or discharged from the attachment, the court shall order the property to be sold to satisfy the plaintiff's demands. If execution is issued upon the judgment, the peace officer shall apply the property attached by him, including money or the proceeds from the sale of the property, upon the execution. If there is any of the property or proceeds remaining after satis-

ying the execution, the peace officer shall, upon demand, deliver the property or proceeds to the defendant.

Sec. 7.10. Return of Property upon Judgment for Defendant. If the defendant recovers judgment against the plaintiff and no appeal is taken, all the property attached, the proceeds from property attached, and the undertaking received in the action shall be delivered to the defendant upon his serving upon the peace officer a certified copy of the order discharging the attachment.

Sec. 7.11. Delivery of Property to Defendant and Redelivery Bond. The peace officer may deliver any of the property attached to the defendant, or to any person claiming it, upon his giving a written undertaking for the property executed by one or more sufficient sureties, engaging to redeliver it or pay the value of the property to the peace officer to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Article VIII. Change of Name

Sec. 8.01. Jurisdiction in Action for Change of Name. Any person may bring an action for change of name in the superior court. No change of name of a person except a woman upon her marriage or divorce shall be made unless the court finds sufficient reasons for the change and also finds it consistent with the public interest.

Article IX. Civil Arrest

Sec. 9.01 Arrest and Bail in Civil Actions. The plaintiff in a civil action may have the defendant arrested and held to bail in the manner provided in this article. The writ of ne exeat is abolished.

Sec. 9.02. Grounds for Arrest. The defendant may be arrested in an action for debt when the defendant is about to remove from the state with intent to defraud his creditors, or is absconding.

Sec. 9.03. Order for Arrest. An order for the arrest of the defendant may be obtained only from a judge of the court in which the action is brought. The order shall be made immediately whenever it appears to the judge that a sufficient claim and proper grounds exist.

Sec. 9.04. Undertaking by Plaintiff. Before making the order, the judge shall

require an undertaking on the part of the plaintiff, with one or more sufficient sureties, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking shall be in a sum to be fixed by the judge, but not less than \$300.

Sec. 9.05. Time for Order for Arrest. The order may be made at the time of the issuing of the summons or afterwards but before judgment. It shall require a peace officer to immediately arrest the defendant and to hold him to bail in the amount specified.

Sec. 9.06. Discharge on Bail or Deposit. The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount mentioned in the order for arrest.

Sec. 9.07. Amount of Bail. The defendant may give bail by causing a written undertaking to be executed by one or more sufficient sureties to the effect that they are bound in the amount mentioned in the order for arrest, that the defendant will render himself amenable to the process of the court during the pendency of the action and to processes which may be issued to enforce the judgment, or that they will pay the plaintiff the amount of the judgment which may be recovered in the action.

Sec. 9.08. Surrender of Defendant by Bail or in Person. At any time before failure to comply with the undertaking, the bail may surrender the defendant in their exoneration, or the defendant may surrender himself to a peace officer of the court where the action is pending.

Sec. 9.09. Arrest of Defendant by or on Authority of Bail. For the purpose of surrendering the defendant, the bail, at any time and place before they are finally charged, may personally arrest him, or, by a written authority endorsed on a certified copy of the undertaking, may empower a peace officer to do so. Upon the arrest of the defendant by a peace officer, or upon his delivery to the officer by the bail, or upon his own surrender, the bail are exonerated if the arrest, delivery, or surrender takes place at a time prior to

judgment. But if the arrest, delivery, or surrender does not take place prior to judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment.

Sec. 9.10 Exoneration of Bail. The bail are exonerated by the death of the defendant or his imprisonment in a penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

Sec. 9.11. Motion to Vacate Order for Arrest or to Reduce Bail. A defendant arrested may, at any time before judgment, apply on a motion to the court or a judge of the court in which the action is pending to vacate the order for arrest or to reduce the amount of bail. If upon the hearing of the motion it appears that there was not sufficient cause for the arrest, the order shall be vacated; or if it appears that the bail was fixed too high, the amount shall be reduced.

Article X. Contempt

Sec. 10.01. Acts or Omissions Constituting Contempt. The following acts or omissions in respect to a court of justice or court proceedings are contempts of the authority of the court:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority or to interrupt the course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the course of a trial or other judicial proceeding;

(3) misbehavior in office, or other wilful neglect or violation of duty by an attorney, clerk, peace officer, or other person appointed or elected to perform a judicial or ministerial service;

(4) deceit or abuse of the process or proceedings of the court by a party to an action or proceeding;

(5) disobedience of any lawful judgment, order, or process of the court;

(6) falsely pretending to act under authority of an order or process of the court;

(7) rescuing a person or property in

the custody of an officer by virtue of an order or process of the court;

(8) unlawfully detaining a witness or party to an action or proceeding while going to, remaining at, or returning from the court where the witness or party is for trial;

(9) any other unlawful interference with the process or proceedings of the court;

(10) disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;

(11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action or proceeding to be tried at the court or with any other person in relation to the merits of the action, or receiving a communication from a party or other person in respect to it without immediately disclosing it to the court;

(12) disobedience by an inferior court, magistrate, referee, master, or officer of the lawful judgment, order, or process of a higher court, or proceeding in an action or proceeding contrary to law after the action or proceeding is removed from the jurisdiction of that inferior court, magistrate, or officer.

Sec. 10.02. Penalty. Any person who is guilty of contempt is punishable by fine not exceeding \$300 or imprisonment not exceeding six months. However, when the contempt is one mentioned in Secs. 10.01 (3) to 10.01 (12), inclusive, or in an action before a deputy magistrate, the person is punishable by a fine not exceeding \$100 unless it appears that a right or remedy of a party to an action or proceeding was defeated or prejudiced by the contempt, in which case, the penalty shall be as prescribed for contempts described in Sec. 10.01 (1) and (2).

Sec. 10.03. Jury Trial. Any person who is charged with contempt of court not committed in the presence of the court, where the act or thing so charged as a contempt is of such nature as to constitute also a criminal offense under any statute of the United States or any of the laws of the State of Alaska, has a right to jury trial.

Sec. 10.04. Indemnification of Party Aggrieved. If a loss or injury to a party in

an action or proceeding has been caused by the contempt, the court, in addition to the punishment imposed for the contempt, may give judgment in favor of the party aggrieved and against the person guilty of contempt for a sum of money sufficient to indemnify him and to satisfy his costs and disbursements. The judgment and the acceptance of that amount is a bar to an action or proceeding by the aggrieved party for the loss or injury.

Sec. 10.05. Imprisonment to Compel Performance of an Act. When the contempt consists of the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he has performed it.

Sec. 10.06. Prosecution on Nonappearance. If the defendant does not appear on the day ordered by the court, the court may order the undertaking to be prosecuted. If the undertaking is prosecuted, the measure of damages is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding.

Article XI. Declaration of Death

Sec. 11.01. Petition and Inquiry. Whenever a petition is presented by an interested person to a district or deputy magistrate alleging that a designated person has disappeared and after diligent search cannot be found, and when it appears to the satisfaction of the magistrate that the circumstances surrounding the disappearance afford reasonable grounds for the belief that the person has suffered death from accidental or other violent means, the magistrate shall summon and impanel a jury of six qualified persons to inquire into the facts surrounding and the presumption to be raised from the disappearance. If no one submits a petition within 40 days, the magistrate may submit the petition from any knowledge he has of the case.

Sec. 11.02. Verdict and Entry of Order. If the jury by their unanimous verdict in writing find that sufficient evidence has been presented to them from which it fairly may be presumed that the missing person has met death, and if the magistrate approves the finding, then, after a period of six months has elapsed, the person shall be presumed to be dead and the magistrate shall enter an order to that effect. However, in cases where there is clear and

convincing evidence of the presumed death the magistrate, in his discretion, may sooner enter the order.

Sec. 11.03. Compensation and Expenses Allowed. The members of the jury and witnesses are entitled to the same compensation as in civil actions in a district magistrate's court, and the compensation and other incidental expenses shall be audited and allowed as in the case of other similar expenses. When the magistrate has submitted the petition in compliance with Sec. 11.01 of this article and there is no interested party or an estate from which the costs of the proceedings can be audited and allowed, then the costs shall be paid from "The Relief Fund" created by the laws dealing with lost persons, upon vouchers made out, signed, and sworn to by the magistrate.

Sec. 11.04. Effect of Presumptive Death Certificate. After the magistrate has entered an order declaring that the person is presumed to be dead either under this article or under the laws dealing with missing persons, the magistrate shall make out and sign a certificate entitled "Presumptive Death Certificate" in the form and manner and containing the information required by the Bureau of Vital Statistics. The certificate shall be recorded by the magistrate and then filed with the Bureau of Vital Statistics. Upon the entry of the order and the recording and filing of the "Presumptive Death Certificate" as herein provided, the missing person is presumed to be dead, and his estate may be administered in accordance with the then existing provisions of law applicable to the administration of the estates of deceased persons.

Sec. 11.05. Correction or Removal of Presumptive Certificates. The Bureau of Vital Statistics shall make provisions for the correction, substitution, or removal of the certificates where the body of the person is later found, where additional facts are brought to light, or where the person is later discovered to be alive.

Article XII. Divorce and Annulment

Sec. 12.01. Right of Action by Husband or Wife for Divorce. A husband or wife may maintain an action against the other for divorce or to have the marriage declared void.

Sec. 12.02. Incestuous or Bigamous Mar-

riages Are Void. A marriage which is prohibited by law on account of consanguinity between the persons, or a subsequent marriage contracted by a person during the life of a former husband or wife which marriage has not been annulled or dissolved is void.

Sec. 12.03. Marriages Which May Be Declared Void. A marriage may be declared void for any of the following causes existing at the time of the marriage:

(1) that the party in whose behalf it is sought to have the marriage declared void was under the age of legal consent, and the marriage was contracted without the consent of his or her parents or guardian or person having charge of him or her, unless, after attaining the age of consent, the party for any time freely cohabited with the other as husband or wife;

(2) that either party was of unsound mind, unless that party, after coming to reason, freely cohabited with the other as husband and wife;

(3) that the consent of either party was obtained by fraud, unless that party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

(4) that the consent of either party was obtained by force, unless that party afterwards freely cohabited with the other as husband and wife.

Sec. 12.04. Action to Declare Marriage Valid. When either the husband or wife claims or pretends that the marriage is void or voidable, the other spouse may bring an action to have the marriage declared valid. The court may determine if the marriage is void from the beginning or from the time of the judgment or that it is valid.

Sec. 12.05. Grounds for Divorce. A divorce may be granted for any of the following grounds:

(1) impotency existing at the time of the marriage and continuing at the commencement of the action;

(2) adultery;

(3) conviction of a felony;

(4) wilful desertion for a period of one year;

(5) either (a) cruel and inhuman

treatment calculated to impair health or endanger life, or (b) personal indignities rendering life burdensome, or (c) incompatibility of temperament;

(6) habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action;

(7) wilful neglect of the husband for a period of 12 months to provide for his wife the common necessities of life, he having the ability to do so, or his failure to do so by reason of idleness, profligacy, or dissipation;

(8) incurable mental illness when the spouse has been confined to an institution for a period of at least 18 months immediately preceding the commencement of the action. The status as to the support and maintenance of the mentally ill person is not altered in any way by the granting of the divorce;

(9) addiction of either party, subsequent to the marriage, to the habitual use of opium, morphine, cocaine, or a similar drug.

Sec. 12.06. Residence Requirements for Action to Declare Marriage Void. When a marriage has been solemnized in the state and the plaintiff is a resident of the state, an action to declare the marriage void may be brought at any time. If the marriage has not been solemnized in the state, the action may be maintained only when the plaintiff has been a resident for at least one year before the commencement of an action.

Sec. 12.07. Residence Requirement for Divorce. No person may commence an action for divorce until he has been a resident of the state for at least one year before the commencement of the action.

Sec. 12.08. Use of Husband's Residence Where Wife Is Plaintiff. Where the wife is plaintiff in an action for divorce or to declare void a marriage which was not solemnized in the state, the residence of the husband in this state inures to her benefit and she may institute the action if her husband is at the time of its commencement qualified as to residence to institute a similar action.

Sec. 12.09. Military Personnel Deemed Residents. Persons serving in a military branch of the United States government

who have been continuously stationed in any military base or installation in the state for a period of one year shall for the purposes of this article be deemed residents in good faith of the state.

Sec. 12.10. Separate Domicile or Residence. In actions for divorce wives may acquire a separate residence of domicile from that of the husband without reference among other factors to misconduct or consent of the husband.

Sec. 12.11. Defenses to Adultery. In a divorce action for adultery, the following defenses may be made:

- (1) procurement;
- (2) connivance;
- (3) the act has been expressly forgiven or impliedly forgiven by the voluntary cohabitation of the parties after knowledge of the act;
- (4) the plaintiff is also guilty of adultery and without procurement or connivance of the defendant and not forgiven as provided in the defenses to adultery; or
- (5) the action has not been commenced within two years after the discovery of the act by the plaintiff.

Sec. 12.12. Defenses to Other Divorce Grounds. When the divorce action is for any of the grounds provided in paragraphs (4), (5), or (6) of Sec. 12.05, the defense of procurement or that the defendant has been expressly forgiven may be made. When the divorce action is for the ground provided in paragraph (3) of Sec. 12.05, the defense of procurement or that the defendant has been expressly forgiven or that the action was not brought within two years after conviction may be made.

Sec. 12.13. Orders during Action. a. During the pendency of the action, the court may provide by order:

- (1) that the husband pay an amount of money as may be necessary to enable the wife to prosecute or defend the action;
- (2) for the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;
- (3) for the freedom of the wife from the control of the husband during the pendency of the action.

b. The court may restrain either or both parties from disposing of the property of either party during the pendency of the action.

Sec. 12.14. Judgment. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide:

- (1) for the care and custody of the minor children of the marriage as it considers just and proper, having due regard to the age and sex of the children, and, unless otherwise manifestly improper, giving the preference to the party not in fault;
- (2) for the payment from the party in fault, not allowed the care and custody of the children, an amount of money, in gross or installments, as may be just and proper for that party to contribute toward the nurture and education of the children;
- (3) for the recovery from the party in fault an amount of money, in gross or in installments, as may be just and proper for the party to contribute to the maintenance of the other;
- (4) for the delivery to the wife of her personal property in the possession or control of the husband at the time of giving the judgment;
- (5) for the appointment of one or more trustees to collect, receive, expend, manage, or invest, in the manner the court directs, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;
- (6) for the division between the parties of their joint property or the separate property of each, in the manner as may be just, and without regard as to which of the parties is the owner of the property; and to accomplish this end the judgment may require one of the parties to assign, deliver, or convey any of his or her real or personal property to the other party;
- (7) to change the name of the wife.

Sec. 12.15. Modification of Judgment. Any time after judgment, the court, upon the motion of either party, may set aside, alter, or modify so much of the judgment as may provide for alimony, or for the appointment of trustees for the care and

custody of the minor children, or for their nurture and education, or for the maintenance of either party to the action.

Sec. 12.16. Effect of Divorce. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

Article XIII. Eminent Domain

Sec. 13.01. Uses for Which Authorized; Rights-of-Way. a. The right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of an organized or unorganized borough, city, town, village, school district, or other municipal division, whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any organized or unorganized borough, city, town, or other municipal division, whether incorporated or unincorporated; raising the banks of streams, removing obstructions from them and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of an organized or unorganized borough, city, town, or other municipal division whether incorporated or unincorporated, or its inhabitants, which may be authorized by the legislature;

(4) wharves, docks, piers, chutes, booms, ferries, bridges of all kinds, private roads, plant and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water;

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or

possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water;

(6) private roads leading from highways to residences, mines, or farms;

(7) telephone lines;

(8) telegraph lines;

(9) sewerage of an organized or unorganized borough, city, town, village, or other municipal division, whether incorporated or unincorporated, or any subdivision of it, or of a settlement consisting of not less than 10 families, or of public buildings belonging to the state or to a college or university;

(10) tramway lines;

(11) electric power lines;

(12) for the location of pipelines for gathering, transmitting, transporting, storing, or delivering natural or artificial gas or oil or any liquid or gaseous hydrocarbons, including, but not limited to, pumping stations, terminals, storage tanks, or reservoirs, and related installations.

b. The use of water for mining, power, and municipal purposes and the use of pole and tower lines for telephone and telegraph wires, for aerial trams, and for the transmission of electric light and electric power, by whomever utilized, are each declared to be beneficial to the public and to be a public use within the provisions of this article. Rights-of-way across private property whenever they are necessary for the operation of the mine or other project in connection with which it is intended to be used may be condemned in the manner as for any other condemnation. The right-of-way may extend only to a right-of-way along, upon, and across the surface of the lands to be condemned and to a strip of the land of sufficient width to permit the construction on the land of a ditch, flume, pipeline, canal, or other means of conveying water as is adequate for the purposes intended, for the setting of poles or the construction of towers upon which to string wires for telephone and telegraph lines and lines for the transmission of electric light or power for the operation of aerial trams, and to permit maintaining the lines and keeping them in repair.

Sec. 13.02. Classification of Estates and Lands Subject to Be Taken. The following is a classification of the estates and rights in lands subject to be taken for public use:

(1) a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned by them, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or when, in the judgment of the Department of Public Works, a fee simple is necessary for any of the purposes for which the department, on behalf of the state, is authorized by law to acquire real property by condemnation;

(2) an easement when taken for any other use;

(3) the right of entry upon an occupation of lands, and the right to take from the land earth, gravel, stones, trees, and timber as may be necessary for a public use.

Sec. 13.03. Private Property Subject to Be Taken. The private property which may be taken under this article includes:

(1) all real property belonging to any person;

(2) lands belonging to the state or to any organized or unorganized borough, city, town, village, or other municipal division, whether incorporated or unincorporated, not appropriated to a public use;

(3) property appropriated to public use, but the property shall not be taken unless for a more necessary purpose than that to which it has already been appropriated;

(4) franchises for a public utility, but those franchises shall not be taken unless for a more necessary public use;

(5) all rights-of-way for any of the purposes mentioned in Sec. 13.01, and any structures and improvements on the rights-of-way, and the lands held and used in connection with them shall be subject to be connected with, crossed, or intersected by any other right-of-way or improvements or structures on them. They shall also be subject to a limited use, in common with the owner, when necessary; but the uses, crossings, intersections, and connections shall be made in the manner most com-

patible with the greatest public benefit and least private injury;

(6) all classes of private property not enumerated may be taken for public use when the taking is authorized by law.

Sec. 13.04. Prerequisites. Before property can be taken, it shall appear:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to the use;

(3) if already appropriated to a public use, that the public use to which it is to be applied is a more necessary public use.

Sec. 13.05. Entry upon Land. In all cases where land is required for public use, the state, public entity, or persons having the authority to condemn, or its agents in charge of the use may enter upon the land and make examination, surveys, and maps and locate the boundaries; but it shall be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of Sec. 13.07. The entry shall constitute no cause of action in favor of the owners of the land except for injuries resulting from negligence, wantonness, or malice.

Sec. 13.06. Jurisdiction. Eminent domain proceedings may be commenced in the superior court.

Sec. 13.07. Powers of Court. The court has power

(1) to regulate and determine the place and manner of making the connections and crossings or of enjoying the common uses mentioned in paragraph (5), Sec. 13.03, of this article, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by law;

(2) to limit the amount of property sought to be condemned if, in its opinion, the quantity sought to be condemned is not necessary;

(3) if the court determines that the property is to be taken for a public use, the court shall appoint a master to ascertain and determine the amount to be paid by the plaintiffs to each owner or other

person interested in the property as compensation and damages by reason of the appropriation of the property.

Sec. 13.08. Hearing. The master shall hear the allegations and evidence of persons interested and shall ascertain and assess the following:

(1) the value of the property sought to be condemned, and all improvements on it pertaining to the realty, and of each separate estate or interest in it; if it consists of different parcels, the value of each parcel and each estate or interest in each parcel shall be separately assessed;

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff;

(3) separately, how much the portion not sought to be condemned and each estate or interest in it will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and, if the benefit is equal to the damages assessed under paragraph (2), the owner of the parcel shall be allowed no damages except the value of the portion taken; but if the benefits are less than the damages so assessed, the former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value;

(4) if the property sought to be condemned is for a railroad, the cost of good and sufficient fences along the line of the railroad, and the cost of cattle guards where fences may cross the line of the railroad;

(5) as far as practicable, compensation shall be assessed for each source of damages separately.

Sec. 13.09. Right to Jury Trial as to Damages and Value of Property. Any interested party may appeal the master's award of damages and his valuation of the property, in which case there shall be a trial by jury on the question of the amount of damages and the value of the property, unless the jury is waived by the consent of all parties to the appeal.

Sec. 13.10. Compensation and Damages.

For the purpose of assessing compensation and damages, the right to them accrues at the date of issuance of the summons, and its actual value at that date is the measure of compensation of the property to be actually taken, and the basis of damages to property not actually taken but injuriously affected in the cases where the damages are allowed. If an order be made letting the plaintiff into possession, as provided in Sec. 13.15, the compensation and damages awarded shall draw lawful interest from the date of the order. No improvements put upon the property after the date of the service of summons shall be included in the assessment of compensation or damages.

Sec. 13.11. Defective Title. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same as provided in this article.

Sec. 13.12. Time for Paying Compensation or Damages; Bond to Build Railroad Fences and Cattle Guards. The plaintiff shall, within 30 days after final judgment, pay the sum of money assessed. If the use is for railroad purposes, the plaintiff may, at the time of or before the payment, elect to build the fences and cattle guards. If he so elects, he shall execute to the defendant a bond, with one or more sureties to be approved by the court, in double the assessed cost of the same to build such fences and cattle guards within eight months from the time the railroad is built on the land taken. If the bond is given, the plaintiff need not pay the cost of the fences and cattle guards. In an action on the bond, the plaintiff may recover reasonable attorney fees.

Sec. 13.13. Payment or Deposit and Execution. Payment may be made to the defendants entitled to payment, or the money may be deposited in court for the defendants and be distributed to those entitled to it. If the money is not so paid or deposited, the defendants may have execution as in civil cases. If the money cannot be obtained on execution, the court, upon a showing to that effect, shall set aside and annul the entire proceedings and restore possession of the property to the defendants if possession has been taken by the plaintiff.

Sec. 13.14. Final Order of Condemnation. When payments have been made and

the bond given, if the plaintiff elects to give one as required by Sec. 13.12, the court shall make a final order of condemnation, which shall describe the property condemned and the purposes of the condemnation. A copy of the order shall be filed in the office of the recording district where the land is located, at which time the property described in the order vests in the plaintiff for the purposes specified in the order.

Sec. 13.15. Order Authorizing Plaintiff to Continue in or Take Possession. Upon application of the plaintiff at any time after the master's report has been filed in the court, the court may make an order that, upon payment into court of the amount of damages assessed in the report or by the jury, the plaintiff, if already in possession of the property sought to be condemned, may continue in possession and, if not in possession, the court may authorize the plaintiff to take possession of the property and use and possess it until the final conclusion of the proceedings, and that all actions and proceedings against the plaintiff on that account be stayed until that time. However, where an appeal is taken by the defendant, the court may also require the plaintiff to give a bond or undertaking with sufficient sureties before continuing or taking possession. The bond or undertaking shall be approved by the court and shall be in the sum the court may direct, and conditioned to pay defendant any additional damages and costs given by the judgment over and above the amount assessed, and the damages which defendant sustains if the property is not taken for public uses. For the purposes of this section the amount assessed as damages in the report or by the jury shall be considered as just compensation for the property appropriated until reassessed or changed in further proceedings. However, the plaintiff, by payment into court of the amount assessed or by giving security as above provided, shall not be precluded from an appeal, but may appeal in the manner and with the effect as if no money had been deposited or security given. If the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property and there is no dispute as to the ownership of the property, the defendant may at any time demand and receive from the court the money deposited, and the demand or receipt shall not bar or preclude him from his right of appeal.

However, if the amount of the assessment is reduced on appeal by either party, the defendant who has received the amount of the assessment deposited shall be liable to the plaintiff for the difference between the amount received by him and the amount finally assessed with legal interest from the time the defendant received the money deposited, and it may be recovered by action.

Sec. 13.16. Acquisition of Easements; Additional Powers of the Court to Require Surrender of Possession to Plaintiff. The right to take possession under this section is in addition to any other right to take possession provided in this article. In proceedings for the acquisition of easements for the transmission and distribution of electric energy, communications, water, steam, and gas, the court may, upon motion and after a hearing, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the plaintiff. If the court finds that urgent public necessity requires, it may grant the plaintiff possession at any time after the action has been commenced. Notice of the hearing shall be as provided in the Rules of Civil Procedure, except that, where service by publication is required, notice may be given at any time following the date of the last publication by registered mail addressed to the defendant and to parties in possession at their last known addresses as shown on the latest tax roll of the political subdivision in which the premises are located or as indicated by other evidence which shall be satisfactory to the court.

Sec. 13.17. Acquisition of Easement; Deposit into Court of Estimated Compensation and Damages. The order given under the provisions of Sec. 13.16 requiring the parties in possession to surrender possession to the plaintiff shall require that the plaintiff deposit with the clerk of the court an amount of money determined by the court fairly to represent the estimated compensation and the estimated damages to the defendant and for the speedy occupation, including reasonable relocation costs if required. In addition, the court shall include in its order a further requirement that the plaintiff execute and file with the clerk of the court a bond, approved as to form and as to sufficiency of the sureties by the court, in an amount equal to the amount of money required to be deposited, conditioned upon payment

to the defendant of additional damages and costs found to be due to the defendant in the action. No costs or attorney fees shall be assessed against the defendant in any action brought under Sec. 13.16.

Sec. 13.18. Acquisition of Easements; Withdrawal of Funds by Party in Interest. The money deposited in the court or a part of it may be withdrawn by a party in interest in the manner provided in Sec. 13.21, and the court shall have the power to direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation and to make orders with respect to encumbrances, liens, rents, insurance, and other charges as shall be just and equitable.

Sec. 13.19. Declaration of Taking by State, First Class City, Public Utility District, or School District. Where a proceeding is instituted pursuant to this article by the state, public utility district, or school district, it may file a declaration of taking with the complaint or at any time after the filing of the complaint, but before judgment. Where a proceeding is instituted pursuant to this article by a first class city in the exercise of eminent domain for street or highway, school, sewer, water, telephone, electric, other utility, and slum clearance purposes or use granted to cities of the first class, the governing body of the first class city may exercise the power through the filing of a declaration of taking with the complaint or at any time after the filing of the complaint, but before judgment. The declaration of taking procedure may not be used with relation to the property of rural electrification or telephone cooperatives or nonprofit associations receiving financial assistance from the federal government under the Rural Electrification Act.

Sec. 13.20. Contents of Declaration of Taking. The declaration of taking shall contain

- (1) a statement of the authority under which the property or an interest in it is taken;
- (2) a statement of the public use for which the property or an interest in it is taken;
- (3) a description of the property sufficient for the identification of it;
- (4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it.

Sec. 13.21. Vesting of Title and Compensation. a. Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include interest at the rate of six percent per year on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

b. Upon motion of a party in interest and notice to all parties, the court may order that the money deposited or any part of it be paid immediately to the person or persons entitled to it for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess.

Sec. 13.22. Right of Entry and Possession. a. Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after the running of the time for the defendant to file an objection to the declaration of taking. Where the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during such possession.

b. The court may direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation, and make orders with respect to encumbrances, liens, rents, insurance, and other charges as shall be just and equitable.

c. The right to take possession and title in advance of final judgment where a declaration of taking is filed shall be in addition to any other right to take possession provided in this article.

Sec. 13.23. Effect of Appeal. a. No appeal or any bond or undertaking given operates to prevent or delay the vesting of title to real property or the right to possession of it.

b. The plaintiff may not be divested of any title acquired except where the court finds that the property was not taken for a public use. In the event of that finding, the court shall enter the judgment necessary (1) to compensate the persons entitled to it for the period during which the property was in the possession of the plaintiff, and (2) to recover for the plaintiff any award paid to any person.

Article XIV. Escheat

Sec. 14.01. Property Subject to Escheat. When a person dies intestate, without heirs, leaving real or personal property in the state, or when no claim of ownership has been made to bank deposits, cash, or personal property for more than seven years, the property escheats to and becomes the property of the state.

Sec. 14.02. Enforcement of Rights by State. The state may maintain an action to recover the possession of escheated property, or for the enforcement of its rights to the property.

Sec. 14.03. Transmittal of Personal Property to State. Whenever the administrator of any estate finds that his intestate left no heirs, or after due search fails to find that his intestate left heirs, he shall certify these facts to the superior court. When the administrator's final account is settled, the court shall enter a decree adjudging that the balance of the estate has escheated to and become the property of the state. The administrator shall transmit to the commissioner of revenue a certified copy of the decree with the

money or personal property which has escheated.

Sec. 14.04. Action by Attorney General. When the attorney general is informed or has reason to believe that any real or personal property has escheated to the state, he shall bring an action in the superior court to establish whether or not the property has escheated to the state.

Sec. 14.05. Claim to Escheated Property. Within seven years after the judgment, a person not a party to the escheat proceeding may bring an action in the superior court to prove his claim to the property. If the plaintiff establishes his claim and that he had no knowledge of the prior escheat proceeding, the court shall award the property to the plaintiff. If it is determined that the plaintiff is entitled to the property or the proceeds from the sale of the property, the commissioner of revenue shall deliver the property or the proceeds to the plaintiff upon payment of the costs of the escheat proceedings, the cost of sale, and other expenses connected with the conversion of the property to cash. Any rents, profits, interest, or dividends which accrue to the state during its possession of the property are the property of the state and may not be recovered. The time limitation of seven years does not apply to any minor or person of unsound mind, but such person may bring an action to prove his claim only within one year after his disability ceases.

Sec. 14.06. Sale of Property by State. a. The commissioner of revenue may sell personal property which has escheated to the state as he considers advantageous and shall execute the proper conveyance. When the value of the property exceeds \$50, the sale shall be at public auction to the highest and best bidder after public notice of the time and place of the auction has been given by posting notices in three public places in the political subdivision where the property is to be sold, and by publication once in a newspaper of general circulation nearest the place of sale 10 days before the auction.

b. The commissioner of revenue may sell real property which has escheated to the state with the approval of the governor, and the governor shall sign the conveyance on behalf of the state. Sale of real property shall be at public auction to the highest and best bidder after public notice of the time and place of the auction has been

given by publication once a week for four weeks in a newspaper of general circulation nearest the property to be sold.

Sec. 14.07. Claims to Escheated Property. Whenever property or the proceeds from the sale of the property which has escheated to the state amounts to \$1,000 or less and a rightful heir or owner is discovered and makes a written claim to the property, supported by convincing proof of his heirship or ownership, the commissioner of revenue, with approval of the attorney general, shall either return the property if still unliquidated, or issue a voucher for the amount of the proceeds or for the amount of money which has escheated in favor of the heir or owner.

Sec. 14.08. Banks and Financial Institutions; Duty to Report Escheated Property. Every bank, banker, or financial institution having custody of a fund or other property to which no owner is known to them or the owner of which has not been heard from by them for more than seven years shall inform the attorney general of that fact.

Sec. 14.09. Escheat of Money or Property of Defunct Organizations or Corporations. Whenever any organization or corporation becomes defunct and leaves money or property belonging to it, and no person institutes any proceeding to have the money or property distributed within four years after the organization becomes defunct, the money or property escheats to the state and shall be delivered to the commissioner of revenue. If the person in possession of the money or property refuses to deliver it to the state, the attorney general shall bring an action to recover the money or property for the state.

Sec. 14.10. Recovery by Claimant of Money or Property of Defunct Organizations or Corporations. A person having a claim or interest in money or property of a defunct organization or corporation may bring an action for recovery of escheated money or property only within seven years after the corporation or organization becomes defunct.

Article XV. Execution

Sec. 15.01. Judgments Enforceable by Execution. The party in whose favor a judgment is given which requires the payment of money or the delivery of real or

personal property or either of them may have a writ of execution issued for its enforcement.

Sec. 15.02. Issuance of Execution after Five Years. When a period of five years has elapsed after the entry of judgment and without an execution being issued on the judgment, no execution may issue except by order of the court in which judgment is entered. The court shall grant the motion if the court determines that there are just and sufficient reasons for the failure to obtain the writ of execution within five years after the entry of judgment.

Sec. 15.03. Substance of Writ. Writs of execution may be against the property of the judgment debtor, another against his person, and a third for the delivery of the possession of real or personal property, including damages for withholding the property. A writ of execution shall require the officer or person to whom it is directed to proceed substantially as follows:

(1) If the writ is against the property of the judgment debtor and the judgment directs particular property to be sold, it shall require the officer or person to sell the particular property and apply the proceeds as directed by the judgment. Otherwise, it shall require the officer or person to satisfy the judgment, with interest, out of the personal property of the debtor, and, if sufficient personal property cannot be found, then out of the real property belonging to the debtor on the day when the judgment became a lien or at any time after that day.

(2) If the writ is against real or personal property in the hands of the judgment debtor's personal representatives, heirs, devisees, legatees, tenants, or trustees, it shall require the officer or person to satisfy the judgment, with interest, out of that property.

(3) If the writ is against the person of an absconding judgment debtor, it shall require the officer or person to arrest the debtor and commit him to jail until he pays the judgment, with interest, or is discharged according to law. If the writ is against the person of any judgment debtor and the application for the writ is made under oath, upon probable cause, and describing the things to be seized as in a warrant, the officer may search and seize valuables from that debtor.

(4) If the writ is for the delivery of the possession of real or personal property, it shall require the officer or person to deliver the possession of the property, describing it, to the party entitled to it, and may at the same time require the officer or person to satisfy any costs, charges, damages, rents, or profits recovered by that judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was recovered to be specified in the writ, if a delivery cannot be had; and, if sufficient personal property cannot be found, then out of the real property as provided in paragraph (1) of this section.

Sec. 15.04. Execution against Person. Execution against the person of the judgment debtor may issue after the return of the execution against his property unsatisfied in whole or in part if it appears that the action is one in which the defendant might be provisionally arrested as provided in Sec. 9.02. The execution against the person may be applied for, allowed, and the defendant discharged in the manner provided in Article IX of this Code, but the undertaking shall not be for an amount exceeding the judgment.

Sec. 15.05. Imprisonment on Execution. A person arrested on execution shall be imprisoned in jail and kept at his own expense until satisfaction of the execution or his legal discharge.

Sec. 15.06. Execution after Death of Judgment Debtor. If the judgment debtor dies after judgment, execution may be issued on the judgment in the manner and with the effect as if he were still living, except that no action may be taken within six months from the granting of letters testamentary or of administration upon the estate of the deceased without leave of the court having jurisdiction over the probate of the estate.

Sec. 15.07. Property Liable. All goods, chattels, monies, or other property, both real and personal, or any interest in the property of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution.

Sec. 15.08. Exemptions. The following property is exempt from execution, except as otherwise specifically provided when selected and reserved by the judgment

debtor or his agent at the time of the levy, or as soon after levy and before sale as the existence of the levy becomes known to him:

(1) the earnings of the judgment debtor received for his personal services rendered at any time within 30 days immediately preceding the levy, but not exceeding \$350 if he is the head of a family, and the amount of \$200 if he is a single man, and when it appears by the debtor's affidavit or otherwise that the earnings are necessary for his use or for the use of his family which is supported in whole or in part by his labor;

(2) books, pictures, and musical instruments belonging to the judgment debtor or not to exceed \$300 in value;

(3) necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed \$200 in value;

(4) the tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of \$1,800, including sufficient quantity of food to support the animals, if any, for six months;

(5) the following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of \$1,200, including food sufficient to support the animals, if any, for six months, and provisions actually provided for family use and necessary for the support of that person and family for six months;

(6) all property of a public or municipal corporation;

(7) no article of property mentioned in this section is exempt from execution issued on a judgment recovered for its price, and, in the event the article of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution.

Sec. 15.09. Homestead Exemption. The homestead of any family is, or the proceeds of the homestead are exempt from

judicial sale for the satisfaction of any liability contracted or judgment on debt except as provided in this section. The homestead consists of the actual abode of and owned by the family or some member of the family. It shall not exceed \$8,000 in value, and not exceed 160 acres in extent if located outside a town or city laid off into blocks or lots, or not exceed one-fourth of one acre if located in any such town or city. This section does not apply to decrees for the foreclosure of any mortgage or deed of trust properly executed. If the owners of a homestead are married, it shall be executed by husband and wife. When any officer levies upon a homestead, the owner or the wife, husband, agent, or attorney of such owner may notify the officer that he claims the premises as his homestead, describing it by metes and bounds, lot or block, or legal subdivision. The officer shall notify the creditor of the claim, and, if the homestead exceeds the maximum in this section and he deems it of greater value than \$8,000, then he may apply to the court for the appointment of three disinterested persons to appraise the homestead, commencing with the 20 acres of the lot upon which the dwelling is located, appraising each lot or 20 acres separately; and, if the homestead exceeds \$8,000, then the officer shall proceed to sell all in excess of \$8,000 by lots or smallest legal subdivisions, offering them in the order directed by the judgment debtor if he chooses to direct; otherwise, he shall sell them so as to leave the homestead as compact as possible. The homestead is exempt from sale or any legal process after the death of the person entitled to the homestead for the collection of any debts for which it could not have been sold during his lifetime.

Sec. 15.10. Execution against Property. The person to whom the writ is directed shall execute the writ against property of the judgment debtor until the judgment is satisfied.

Sec. 15.11. Execution Procedure. All property shall be levied upon or released from levy in the manner that similar property is attached or released from attachment, and the proceedings against garnishee and the liability of the garnishee are the same. Until a levy, property is not affected by the execution. Any excess in proceeds over the judgment and costs shall be returned to the judgment debtor.

Sec. 15.12. Retention of Personal Property by Judgment Debtor. The judgment debtor may retain the personal property levied upon or any of the property which is in his possession until the day of sale upon executing a written undertaking with sufficient surety in double the value of the property to the effect that the property will be delivered to the person levying the execution at the time and place of sale.

Sec. 15.13. Third Party Claims. If property levied upon is claimed by a third person as his property by an affidavit of his title to the property, or right to the possession of the property and the ground of the title or right, stating the value of the property, and delivered to the person making the levy, that person shall release the property. However, the plaintiff, on demand of the person, may give the person an undertaking executed by two sufficient sureties in a sum equal to double the value of the property levied upon. The undertaking shall be in favor of and shall indemnify the third person against loss, liability, damages, and costs, by reason of the taking or sale of the property by the person.

Sec. 15.14. Notice of Sale on Execution. Before the sale of property on execution, notice of the sale shall be given as follows:

(1) Notice of the sale of personal property is given by posting a written or printed notice of the time and place of sale in three public places within five miles of the place where the sale is to be held, not less than 10 days prior to the day of sale. One of the notices shall be posted at the post office nearest to the place where the sale is to take place.

(2) Notice of the sale of real property is given by posting a similar notice particularly describing the property not less than four weeks prior to the day of sale in three public places, as provided in paragraph (1) of this section, and publishing a copy of the notice four times, once a week for four successive weeks in a newspaper of general circulation published nearest to the place of sale.

Sec. 15.15. Sale. All sales of property upon execution shall be made at auction between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more may be sold. Neither the officer holding the execution nor his

deputy may become a purchaser or be interested in any purchase at the sale. When the sale is of personal property capable of manual delivery, it shall be within view of those who attend the sale unless the court directs the sale to be at some other place. The property shall be sold in parcels which are likely to bring the highest price. When the sale is of real property consisting of several known lots or parcels, they shall be sold separately or otherwise, as is likely to bring the highest price. When a portion of real property is claimed by a third person, he may require it to be sold separately.

Sec. 15.16. Postponement of Sale. a. If, at the time appointed for the sale, the person conducting it considers it to the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale from time to time, but each postponement may not exceed one week. Notice of every postponement shall be made by public proclamation. Whenever a request in writing is made by the judgment creditor for a postponement of the sale to a later date and hour and is given to the person conducting the sale, he shall by public declaration postpone the sale to the date and hour so fixed.

b. If for any reason the sale cannot be held at the time appointed or within 30 days from the original sale date in the case of real property, the officer who is to conduct the sale shall notify the parties or their attorneys and designate a future day for the sale and give notice in the manner provided in Sec. 15.14.

Sec. 15.17. Bill of Sale for Personal Property. When the purchaser of any personal property capable of manual delivery and not in the possession of a third person, association, or corporation shall pay the purchase money, the peace officer shall deliver to him the property, and, if desired, shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property, the peace officer shall give the purchaser a bill of sale with the like acknowledgment.

Sec. 15.18. Confirmation of Sale or Re-sale. a. Where real property executed upon has been sold, the judgment creditor may, upon motion, apply for an order confirming the sale. The judgment debtor may object to the confirmation of the sale

on the grounds that there were substantial irregularities in the proceedings of sale which caused probable loss or injury to the judgment debtor.

b. If the court finds that there were substantial irregularities in the proceedings concerning the sale to the probable loss or injury of the party objecting, it shall deny the motion and direct that the property be resold in whole or in part as upon an execution.

c. Upon a resale, the bid of the purchaser at the former sale shall be considered to be renewed and continued in force, and no bid may be taken except for a greater amount. If the property sells to any person other than the former purchaser, he shall be repaid his bid out of the proceeds of the resale.

d. An order confirming a sale is a conclusive determination of the regularity of the proceedings concerning the sale, as to all persons, in any other action or proceeding.

Sec. 15.19. Eviction of Purchaser. If the purchaser of real property sold on execution, or his successor in interest is evicted from the property because of irregularities in the proceedings concerning the sale or the reversal or discharge of the judgment, he may recover the price paid with interest, costs, and disbursements from the judgment creditor.

Sec. 15.20. Contribution among Joint Judgment Debtors. When property liable to an execution against several persons is sold and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them or one of them pays more than his proportion without a sale, he may compel contributions from the others. When a judgment is against several and is upon an obligation of one of them as security for another and the surety pays the amount or a part of it, either by sale of his property or before sale, he may compel repayment from the principal. In that case, the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment if he files notice of his payment and claim to contribution or repayment with the court where the judgment was rendered within 30 days after his payment.

Sec. 15.21. Absolute Sales and Right of Redemption. Sales of real property, when

the estate is less than a leasehold of two years unexpired term, are absolute. In all other cases, the real property or interest in real property is subject to redemption. The person conducting the sale shall give to the purchaser a certificate of the sale which indicates the date of the judgment under which the sale was made and contains

- (1) a particular description of the real property sold;
- (2) the price bid for each distinct lot or parcel;
- (3) the whole price paid; and
- (4) whether or not the property is subject to redemption.

Sec. 15.22. Redemption. Property sold subject to redemption or any part separately sold may be redeemed by the following persons or their successors in interest:

- (1) the judgment debtor; and
- (2) a creditor having a lien by judgment or mortgage on the property sold or on some part of it subsequent in time to that on which the property was sold. A lien creditor after having redeemed the property is a redemptioner.

Sec. 15.23. Redemption by Lien Creditor from Purchaser. A lien creditor may redeem the property at any time within 60 days after the date of the order confirming the sale on paying the amount of the purchase money, with interest at the rate of eight percent per annum from the date of the sale, together with the amount of any taxes which the purchaser may have paid. If the purchaser is also a creditor having a lien prior to that of the redemptioner, he shall also pay the amount of that lien with interest. When unpatented mining claims are redeemed, taxes include the annual assessment work required by law to be performed.

Sec. 15.24 Subsequent Redemptions. The property may be again, and as often as any lien creditor or redemptioner is disposed, redeemed from the previous redemptioner within 60 days after the last redemption on paying the sum paid on the last redemption, with interest at eight percent a year from the date of the last redemption, together with any taxes which the last redemptioner may have paid and

the amount of any liens held by the last redemptioner previous to his own.

Sec. 15.25. Redemption by Judgment Debtor or Successor. The judgment debtor or his successor in interest may redeem the property before the confirmation of sale on paying the amount of the purchase money, with interest at the rate of eight percent from the date of sale, together with the amount of any taxes, and, in the case of unpatented mining claims, the annual assessment work required to be performed by law which the purchaser may have paid after the purchase. If the judgment debtor does not redeem before the confirmation of the sale, he may only redeem within 12 months from the order of confirmation.

Sec. 15.26. Conveyance of Property. If no redemption is made within the time prescribed, the purchaser or last redemptioner is entitled to a conveyance. If the judgment debtor redeems, the effect of the sale is terminated and he is restored to his estate.

Sec. 15.27. Procedure for Redemption.
a. Redemption is made by paying the sum required to the peace officer. Upon a redemption, the peace officer shall give the person redeeming a certificate of redemption containing the sum paid on redemption, from whom redeemed, and the date of such redemption, and he shall immediately give notice of the redemption to the party from whom redeemed.

b. A judgment debtor or redemptioner shall submit to the peace officer

(1) a copy of the judgment under which he claims the right to redeem, certified by the clerk of the court; or, if he redeems upon a mortgage, the certificate of the record of the mortgage;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent;

(3) an affidavit by himself or agent showing the amount then actually due on the judgment or mortgage.

Sec. 15.28. Priority of Redemption. If more than one person applies to the peace officer at the same time to redeem, the person having the prior lien is entitled to redeem first.

Sec. 15.29. Redemption; Payment of Money by Peace Officer; Refusal to Per-

mit Redemption. The peace officer shall immediately pay the money over to the person from whom the property is redeemed. A person's right to redeem shall not be prejudiced by the refusal of the peace officer to allow the redemption.

Sec. 15.30. **Waste.** Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property by order granted with or without notice on the application of the purchaser or judgment creditor. It is not waste for the person in possession of the property at the time of sale or entitled to possession afterwards to continue to use it during the period allowed for redemption in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings or fences, or to use wood or timber on the property for the repairs or for fuel for his family while he occupies the property.

Sec. 15.31. **Rights of Purchaser and Redemptioner.** The purchaser, from the time of sale until a resale or a redemption, or a redemptioner, from the time of his redemption until another redemption, is entitled to the possession of the property purchased or redeemed. Where the property is in the possession of a tenant, the purchaser or redemptioner is entitled to receive the rents of the property or the value of the use and occupation of the property.

Sec. 15.32. **Arrest of Judgment Debtor and Undertaking.** The court may order a peace officer to arrest the judgment debtor and bring him before the court upon satisfactory proof that he is leaving the state with intent to defraud his creditors or absconding. Upon being brought before the court, he may be ordered to enter into an undertaking with one or more sufficient sureties that he will appear before the court when directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into the undertaking, he may be committed to jail.

Sec. 15.33 **Satisfaction of Judgment When Judgment Debtor Is Creditor of State or Political Subdivision.** Any salary, wages, credits, or other personal property in the possession or under the control of the state, or any organized or unorganized borough, city, incorporated town, school

district, or other political subdivision, or any board, institution, commission, or officer of the state, belonging or owed to any person, is subject to attachment and execution in the manner and with the effect as property in the possession of private persons. No clerk or officer of any court is required to answer as to any monies or property in his possession in the custody of the law.

Article XVI. Actions on Official Bonds and for Fines and Forfeitures

Sec. 16.01. **Suits on Undertakings.** a. The official undertaking or other security of a public officer to the state, any borough, city, town, or other municipal or public corporation of like character therein is considered a security to the state or to the borough, city, town, or other municipal or public corporation, as the case may be, and also to all persons severally for the official delinquency against which it is intended to provide.

b. When a public officer, by official misconduct or neglect of duty, forfeits his official undertaking or other security or renders his sureties liable upon the undertaking or other security, a person injured by the misconduct or neglect or who is by law entitled to the benefit of the security may maintain an action thereon in his own name against the officer and his sureties to recover the amount to which he may be entitled.

Sec. 16.02. **Subsequent Actions on Same Undertaking.** A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same undertaking or other security for another delinquency.

Sec. 16.03. **Amount of Judgment.** In an action upon an official undertaking or other security, if judgment has already been recovered against the surety therein other than by confession equal in the aggregate to the penalty or any part of the penalty of the undertaking or other security and if the recovery be established on the trial, judgment shall not be given against the surety for an amount exceeding the penalty or such portion of the penalty as is not already recovered against him.

Sec. 16.04. **Actions for Fines or Forfeitures.** Fines and forfeitures may be recovered by an action in the name of the state or the officer or person to whom

they were given by law, or in the name of the state, officer, or person who is authorized to prosecute for them.

Sec. 16.05. Amount Which May Be Claimed and Recovered. When an action is commenced for a penalty which by law is not to exceed a certain amount, the action may be commenced for that amount, and, if judgment is given for the plaintiff, it may be for that amount or less, in the discretion of the court, in proportion to the offense.

Sec. 16.06. Collusive Judgment Not a Bar to Another Action. Recovery of a judgment for a penalty or forfeiture obtained by collusion between the plaintiff and defendant with intent to save the defendant wholly or partially from the consequences contemplated by law in cases where penalty or forfeiture is given wholly or partly to the person who prosecutes, does not bar the recovery of a penalty or forfeiture by another person in a separate action.

Article XVII. Forcible Entry and Detainer

Sec. 17.01. Prohibition of Use of Force for Entry on Realty. No person may enter upon any land, tenement, or other real property except in cases where entry is given by law. In those cases the entry shall not be made with force but only in a peaceable manner.

Sec. 17.02. Action for Forcible Entry or Detention. a. When a forcible entry is made upon any premises, or when an entry is made in a peaceable manner and the possession is held by force, the person entitled to the premises may maintain an action to recover the possession.

b. The plaintiff may unite a cause of action for arrears of rent on the property in question or for damage to the premises and all the causes are considered to arise out of the same transaction.

Sec. 17.03. Undertaking on Appeal. If judgment is rendered against the defendant for the restitution of the real property described in the complaint or any part of it, no appeal may be taken by the defendant from the judgment until he gives, in addition to any undertaking required upon appeal, an undertaking to the adverse party with two sureties. The sureties shall justify, in the manner as bail upon arrest, for the payment to the plaintiff of twice

the rental value of the real property of which restitution shall be adjudged from the rendition of the judgment until final judgment in the action, if the judgment is affirmed upon appeal.

Sec. 17.04. Unlawful Holding by Force. The following are cases of unlawful holding by force within the meaning of this article:

(1) when the tenant or person in possession of any premises fails or refuses to pay any rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for 10 days after demand made in writing for the possession;

(2) when, after a notice to quit as provided in this article, a person continues in the possession of the premises at the expiration of the time limited in the lease or agreement under which that person holds, or contrary to a condition or covenant in the lease or agreement, or without a written lease or agreement;

(3) when, after a notice to terminate the tenancy as provided in this code with reference to termination of estate at will or by sufferance, a person continues in possession of the premises after expiration of the time for determining the tenancy.

Sec. 17.05. Requisites of Notice to Quit. A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being delivered to him or left at the premises in case of his absence from the premises, or the notice may be sent by registered or certified mail, in which case an additional three days shall be added to the 10 days.

Sec. 17.06. Period between Service of Notice and Action Brought. An action for the recovery of the possession of the premises may be maintained in the cases specified in paragraph (2) of Sec. 17.04 when the notice to quit has been served upon the tenant or person in possession for the period of 10 days before the commencement of the action unless the leasing or occupation is for the purpose of farming or agriculture, in which case the notice shall be served 90 days before commencement of the action.

Sec. 17.07. Summons; Continuance. Summons in actions for forcible entry and detainer shall be served not less than two

nor more than four days before the date of trial. No continuance shall be granted for a longer period than two days unless the defendant applying therefor shall give an undertaking to the adverse party, with sureties approved by the court conditioned to the payment of the rent that may accrue if judgment is rendered against the defendant.

Sec. 17.08. Action against Persons Paying Rent in Advance. The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of the premises until the expiration of any period for which that tenant or person may have paid rent for the premises in advance. To authorize an action against a tenant or person in possession who has paid rent in advance, notice must be given at least 10 days prior to the date the rent is due again in case of a month-to-month tenancy or at least three days before in the case of a week-to-week tenancy.

Sec. 17.09. Agricultural Tenant. When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of the lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by him before the service of the notice to quit.

Sec. 17.10. Inquiry into Merits of Title. In an action to recover the possession on any land, tenement, or other real property where the entry is forcible or when the possession is unlawfully held by force, there shall be no inquiry into the merits of the title. Three years' quiet possession of the premises immediately preceding the commencement of the action by the party in possession or those under whom he holds may be pleaded in bar thereof unless the estate of the party in the premises is ended.

Sec. 17.11. Actions for Possession of Realty. In an action to recover the possession of real property as provided in Sec. 25.01, notice to quit, when necessary, may be given as prescribed in this article, and nothing in this article shall be construed so as to prevent such an action being maintained for the recovery of the possession.

Article XVIII. Foreclosure of Liens on Real Property

Sec. 18.01. Judgment on Foreclosure of Lien. A person having a lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, to secure a debt or other obligation may bring an action to foreclose the lien. In the action, the court may direct the sale of the encumbered property or a portion of it and the application of the proceeds of the sale to the payment of costs, expenses of sale, and the amount due the plaintiff. The judgment shall also determine the personal liability of any defendant for the payment of the debt secured by the lien and be entered accordingly.

Sec. 18.02. Sale of Encumbered Property. The sale of the encumbered property shall be conducted in the same manner as the sale of real property on execution. Any deficiency between the amount of the judgment and the sale price may be enforced by execution.

Sec. 18.03. Redemption after Foreclosure of Lien. Property sold upon a judgment of foreclosure may be redeemed in the manner and with the effect as real property sold on an execution issued upon a judgment for the payment of an unsecured debt.

Sec. 18.04. Effect of Action to Recover Debt. During or after the pendency of an action for the recovery of a debt secured by a lien mentioned in Sec. 18.01, an action cannot be maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff recover the debt or a part of it, and an execution issued in the action against the property of the defendant is returned unsatisfied in whole or in part.

Sec. 18.05. Proceedings When Debt Secured Is Not All Due. When an action is commenced to foreclose a lien by which a debt is secured, which debt is payable in installments either of interest or principal, and any of the installments is not then due, the court shall adjudge a foreclosure of the lien, and may also adjudge a sale of the property for the satisfaction of the whole of the debt or so much of it as may be necessary to satisfy the installment then due, with costs of action. In the latter case the judgment of foreclosure as to the remainder of the property may be enforced by an order of sale, in whole

or in part, whenever default shall be made in the payment of the installments not then due.

Sec. 18.06. Effect of Payment before Judgment or Sale. If, before a judgment is given, the amount then due, with the costs of action, is brought into court and paid to the clerk, the action shall be dismissed, and, if the same be done after judgment and before sale, the effect of the judgment as to the amount then due and paid shall be terminated and the execution, if any have issued, be recalled by the clerk. When an installment not due is adjudged to be paid, the court shall determine and specify in the judgment what sum shall be received in satisfaction thereof, which sum may be equal to such installment or otherwise, according to the present value thereof.

Article XIX. Injunction

Sec. 19.01. Authorization for Injunction. When it appears (1) that the plaintiff is entitled to the relief demanded, and the relief or any part of it includes restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff; or (2) that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done some act in violation of the plaintiff's rights concerning the subject of the action and tending to render the judgment ineffectual; or (3) that the defendant threatens or is about to remove or dispose of his property or a part of it with intent to delay or defraud his creditors, an injunction may be allowed to restrain such act, removal, or disposition.

Article XX. Abatement of Lewd Houses

Sec. 20.01. Abatement of Places Used for Immoral Act. Whoever erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for the purposes of lewdness, assignation, or prostitution or any other immoral act is guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or upon which or in any part of which the lewdness, assignation, or prostitution is conducted, permitted, or carried on continues or exists, and the furniture, fixtures, and other contents constitute a nuisance and may be enjoined and abated.

Sec. 20.02. Injunction. Whenever there is reason to believe that a nuisance as defined in this article exists, the attorney general shall, or any citizen may bring an action to perpetually enjoin the nuisance, the person maintaining it, and the owner, lessee, or agent of the building or ground upon which the nuisance exists.

Sec. 20.03. Dismissal. If the complaint is filed by a citizen, the action may be dismissed only upon approval of the attorney general and affidavit of the complainant and his attorney giving the reasons why the suit should be dismissed. The court may refuse to dismiss the suit and may direct the attorney general to prosecute the action.

Sec. 20.04. Contempt Proceeding. If an injunction granted under the provisions of this article is violated, the court may summarily try and punish the offender. A party found guilty of contempt under the provisions of this article is punishable by a fine of not more than \$1,000, or by imprisonment for not less than three months nor more than six months, or by both fine and imprisonment.

Sec. 20.05. Order of Abatement. Upon judgment that a nuisance exists, an order of abatement shall be entered directing the removal from the building or place of the fixtures, furniture, and movable property used in the nuisance and their sale in the manner provided for the sale of chattels under execution. The order shall also direct the closing of the building or place against its use for any purpose for a period of one year unless sooner released. If a person breaks and enters or uses a building, structure, or other place so directed to be closed, he is guilty of contempt and shall be punished for contempt as provided in Sec. 20.04.

Sec. 20.06. Proceeds of Sale. a. The proceeds of the sale of the contents shall be applied as follows:

- (1) to the payment of fees and costs of the removal and sale;
- (2) to payment of the allowances and costs of closing and keeping closed the buildings or places;
- (3) to the payment of plaintiff's costs;
- (4) to the payment of any balance remaining to the owner of the property sold.

b. If the proceeds do not fully discharge all the costs, fees, and allowances, the premises may also be sold under execution issued upon the order of the court and the proceeds of the sale applied in like manner. However, the building or realty in which the nuisance is conducted or real estate on which it stands may not be subject to any lien, judgment, or costs unless the owner, his agent, or representative has been duly served with process in the action and been given an opportunity to show his good faith and to immediately abate the nuisance.

Sec. 20.07. Release of Premises to Owner. If the owner of the premises has not been guilty of a contempt in the proceedings, and appears and pays all costs, fees, and allowances which are a lien on the premises, and files a bond with sureties approved by the court in the full value of the property as determined by the court to the effect that he will abate the nuisance that exists at the building or place and prevent the nuisance from being established within a period of one year thereafter, the court may order the premises to be delivered to the owner and cancel the order of abatement. The release of the property does not release it from a judgment, lien, penalty, or liability to which it may be subject by law.

Sec. 20.08. Fine for Contempt as Lien on Premises. Any fine imposed as punishment for contempt against the owner is a lien upon the premises to the extent of the interest of that person in the premises and is enforceable and collectible by execution issued by the order of the court.

Article XXI. Nuisances

Sec. 21.01. Action to Abate or Enjoin Private Nuisance. An action may be brought by a person whose property is injuriously affected or whose personal enjoyment is lessened by a private nuisance, and, by the judgment in the action, the nuisance may be enjoined or abated as well as damages recovered.

Sec. 21.02. Manner of Abatement. If judgment is in favor of the plaintiff, an order may issue at any time within six months of the date of the judgment at plaintiff's request directing the issuance of a warrant to a peace officer to abate the nuisance. The expense of abating the nuisance is a part of the judgment and

may be enforced by execution against the property of the defendant.

Sec. 21.03. Order Staying Issue of Warrant. At any time before the order is made, the defendant may apply to the court for an order to stay the issuance of the warrant for a period not exceeding six months to allow the defendant to abate the nuisance. The court may grant the stay if the defendant gives an undertaking to the plaintiff in a sufficient amount and with satisfactory sureties that the nuisance will be abated within the time and in the manner specified in the order. If the defendant fails to abate the nuisance within the time specified, an order directing the issuance of the warrant for the abatement of the nuisance may be made.

Article XXII. Partition

Sec. 22.01. Right of Action for Partition or Sale. When several persons own real property as tenants in common, in which one or more of them have an estate of inheritance or for life or years, or when real property is subject to a life estate with remainder over, an action may be brought by one or more of those persons or by the life tenant for a portion of it according to the respective rights of the interested persons, and for a sale of the property or a part of it if it appears that a partition cannot be had without great prejudice to the parties.

Sec. 22.02. Lien on Undivided Interest. When a lien is on an undivided interest or estate of any of the parties and a partition is made, the lien is then only upon the share assigned to that party, but the share shall first be charged with its just proportion of the costs of the partition, in preference to the lien.

Sec. 22.03. Determination of Rights of Parties. The rights of the several parties may be determined in the action. If a party having a share or interest in or lien upon the property is unknown, or any of the known parties reside out of the state or cannot be found in the state, the summons may be served upon the absent or unknown party by publication as in other actions. Where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the sale may be ordered.

Sec. 22.04. Order for Partition or Sale. If it appears that the property or a part

of it is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale of the property. Otherwise, upon the requisite proofs being made, the court shall order a partition according to the respective rights of the parties as ascertained by it, may appoint one or more referees to partition the property, and shall designate the portion to remain undivided for the owners whose interests remains unknown or are not ascertained.

Sec. 22.05. Report of Referees. In making the partition the referees shall divide the property and allot its several portions to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, and designating the several portions by proper landmarks. The referees may employ a surveyor with the necessary assistants to aid them.

Sec. 22.06. Effect of Judgment. Upon hearing and confirmation of the report, the court shall give judgment that the partition be effectual forever, which judgment is binding and conclusive

(1) on all parties named as parties to the action, and their legal representatives, who have at the time an interest in the property divided or a part of it as owners in fee or as tenants for life or for years or as entitled to the reversion, remainder, or inheritance of the property or a part of it, after the termination of a particular estate, and who by any contingency may be entitled to a beneficial interest in the property or who have an interest in an undivided share of it as tenants for years or for life;

(2) on persons interested in the property, who may be unknown, to whom notice was given of the action for partition by publication;

(3) on other persons claiming from the parties or persons or either of them.

Sec. 22.07. Tenant Not Affected by Judgment. The judgment and partition shall not affect tenants for years or for life of the whole of the property which is the subject of partition, and shall not preclude any person except those specified in Sec. 22.06 from claiming title to the property in question or from contraverting the title of the parties between whom the partition was made.

Sec. 22.08. Order of Sale. If it appears by evidence to the satisfaction of the court that a partition cannot be made without great prejudice to the owners, it shall order a sale of the property.

Sec. 22.09. Estate of Life or Years. When a part of the property only is ordered to be sold, if there is an estate for life or years in an undivided share of the property, the estate may be set off in a part of the property not ordered to be sold.

Sec. 22.10. Reference to Determine Liens. If it appears that there are outstanding liens upon the property or a part of it and the persons holding the liens were not made parties to the action, the court may appoint a referee to ascertain whether or not those liens have been paid, and, if not paid, what amount remains due, and their order among the liens severally held by those persons and the parties to the action.

Sec. 22.11. Appearance of Lienholders Before Referee. Persons having outstanding liens shall be notified to appear before the referee at a specified time and place to prove the amount due or to become due, contingently or absolutely.

Sec. 22.12. Effect of Confirmation of Report. If the report of the referee is confirmed by the court, the order of confirmation is binding and conclusive on the parties to the action and upon the lien creditors who have been duly served with notice to appear before the referee.

Sec. 22.13. Application of Proceeds from Sale of Encumbered Property. The proceeds of the sale of the encumbered property shall be applied under the direction of the court as follows:

(1) to pay its just proportion of the general cost of the action;

(2) to pay the costs of the reference;

(3) to satisfy the several liens in their order of priority by payment of the sums due and to become due;

(4) the residue among the owners of the property sold according to their respective shares, as found by the court.

Sec. 22.14. Lienholder Having Other Securities. Whenever a party to an action or a person who holds a lien upon the property or a part of it has other securities for the payment of the amount of the lien,

the court may order the securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on that account.

Sec. 22.15. Distribution of Proceeds of Sale. The proceeds of sale and the securities taken by the referees, or any part of the proceeds shall be distributed to the persons entitled to them whenever the court directs. But if no direction is given, all the proceeds and securities shall be paid into court.

Sec. 22.16. Continuation of Action to Determine Claims to Proceeds. When the proceeds of the sale of a share or parcel belonging to persons who are parties to the action are paid into court, the action may be continued as between the parties for the determination of their respective claims to the proceeds, which shall be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original action.

Sec. 22.17. Sale Procedure. All sales of real property made by the referee shall be made at public auction to the highest bidder in the manner required for the sale of real property on execution. The notice shall state the time, place, and terms of sale, and, if the property or a part of it is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Sec. 22.18. Credit Terms. In the order of sale, the court shall direct the terms of credit which may be allowed for the purchase money of a portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions contained in this article, to be invested for the benefit of unknown owners, infants, and parties out of the state.

Sec. 22.19. Credit Security. Separate mortgages and other securities may be taken for the whole or convenient portions of the purchase money of those parts of the property directed by the court to be sold on credit in the name of any known owner of full age, otherwise competent, or in the name of the clerk of the court as the court directs.

Sec. 22.20. Disposal of Estate for Life or Years. When the estate of a tenant for life or years in a undivided part of the property in question is admitted by the parties or ascertained by the court to be existing at the time of the order of sale, and the person entitled to that estate is a party to the action, the estate may be first set off out of a part of the property and a sale made of that part, subject to the unsold estate of that tenant in that part. But, if in the judgment of the court a due regard to the interest of all the parties requires the sale of that estate also, the sale may be ordered.

Sec. 22.21. Compensation for Sale of Estate for Life or Years. A person entitled to an estate for life or years in an undivided part of the property, whose estate has been sold, is entitled to receive a sum as reasonable satisfaction for the estate, the sum being based on principles of law applicable to annuities. The person so entitled shall consent to accept the sum for his estate by an instrument duly acknowledged or proved in the same manner as deeds for the purpose of record and filed with the clerk of court.

Sec. 22.22. Determination of Value of Estate for Life or Years Sold without Consent. If the consent is not given as provided in Sec. 22.21 before the report of sale, the court shall determine what proportion of the proceeds of the sale, after deducting expenses, is a just and reasonable sum to be invested for the benefit of the person entitled to the estate for life or years, and shall order the sum to be deposited in court for investment.

Sec. 22.23. Rules for Determining Value.
a. The proportion of the proceeds of the sale to be invested as provided in Sec. 22.22 shall be determined as follows:

(1) if an estate in dower is included in the order of sale, its proportion shall be one-third of the proceeds of the sale of the property, or of the sale of the undivided share in the property on which the claim of dower existed;

(2) if an estate for life or years be included in the order of sale, its proportion shall be the whole proceeds of the sale of the property, or of the sale of the undivided share in which that estate may be.

b. In all cases, the proportion of the expenses of the proceeding shall be deducted from the proceeds of the sale.

Sec. 22.24. Protection of Unknown Tenants. If the persons entitled to the estate for life or years are unknown, the court shall provide for the protection of their rights in a similar manner, as far as possible, as if they were known and had appeared.

Sec. 22.25. Inchoate Right of Dower and Vested or Contingent Future Rights or Estate. In cases of sales in partition, when it appears that a married woman has an inchoate right of dower or that any person has a vested or contingent future right or estate in any of the property sold, the court shall determine the proportional value of the inchoate, contingent, or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct that portion of the proceeds of the sale to be invested, secured, or paid over in a manner which will protect the rights and interests of the parties.

Sec. 22.26. Separate Sales of Farms or Lots. The terms of sales of property shall be known at the time of sale, and, if the premises consist of distinct farms or lots, they shall be sold separately unless the court directs otherwise.

Sec. 22.27. Persons Ineligible to Purchase. A referee or any person for the benefit of a referee shall not be interested in any purchase. A guardian of an infant party shall not be interested in the purchase of real property's being the subject of the action except for the benefit of the infant. All sales contrary to the provisions of this section are void.

Sec. 22.28. Report of Sale. After the sale of property ordered to be sold, a report shall be made to the court, with a description of the different parcels of lands sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and any securities taken.

Sec. 22.29. Confirmation or Vacation of Sale. a. After the filing of the report, a party entitled to a share of the proceeds may move the court to confirm or set aside the sale or sales reported. If the sale is set aside, the court may order a new sale. If the sale is confirmed, the court shall enter an order directing conveyances to be executed and securities to be taken under the sale.

b. The order confirming the sale discharges the property of the estate or interest of every person mentioned in Sec. 22.06 and of tenants for life or years of the property sold, and is binding and conclusive on all those persons in the same manner as a judgment of partition. The order is conclusive evidence as to the regularity of the proceedings relating to the sale.

Sec. 22.30. Investment of Proceeds Belonging to Unknown or Nonresident Owner. When there are proceeds of a sale belonging to an unknown owner or to a person outside the state who has no legal representatives within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years which are paid into the court or otherwise deposited by order of the court, the court may order the proceeds to be invested in securities bearing interest for the benefit of the persons entitled to the proceeds.

Sec. 22.31. Security Taken and Investments Made in Name of Court Clerk. When the security for the proceeds of sale is taken or when an investment of any proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Sec. 22.32. Security Taken in Names of Parties When Interests Ascertained. When security is taken on a sale and the parties interested in the security agree on the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of and payable to the parties respectively entitled to them, and shall be delivered to the parties.

Sec. 22.33. Duties of Clerk in Securities and Investments. The clerk in whose name a security is taken or by whom an investment is made shall receive the interest and principal as it becomes due, and apply and invest it as the court may direct. The clerk shall deposit in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and money received by him from the investments, and their disposition.

Sec. 22.34. Compensation for Unequal Partition. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, and a partition is ordered, the court may adjudge compensation to be made by one party to another on account of the inequality. However, the compensation shall not be required to be made to others by owners unknown or by infants unless it appears that the infant has personal property sufficient for that purpose and that his interest will be promoted by giving compensation.

Sec. 22.35. Payment to Guardian of Share of Infant. When the share of an infant is sold, the proceeds of the sale may be paid to his general guardian or the special guardian appointed for him in the action upon the guardian's giving the security required by law or directed by order of the court.

Sec. 22.36. Payment to Guardian of Share of Insane or Incompetent Person. The guardian who may be entitled to the custody and management of the estate of an insane person or other person adjudged incapable of conducting his own affairs whose interest in real property has been sold may receive in behalf of that person his share of the proceeds of the real property on executing an undertaking, with sufficient sureties and approved by the judge of the court, that he will faithfully discharge the trust reposed in him and will render a true and just account to the person entitled or to his legal representatives.

Sec. 22.37. Apportionment of Cost of Partition. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided in proportion to their respective interests in the property, and may be included and specified in the judgment. In that case they are a lien on the several shares, and the judgment may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expenses of the litigation to be paid by any or all of the parties to the litigation.

Article XXIII. Receivers

Sec. 23.01. Appointment of Receivers. A

receiver may be appointed by the court in any action or proceeding except an action for the recovery of specific personal property

(1) provisionally, before judgment, on the application of either party, when his right to the property which is the subject of the action or proceeding and which is in the possession of an adverse party is probable, and where it is shown that the property or its rents or profits are in danger of being lost or materially injured or impaired;

(2) after judgment, to carry the judgment into effect;

(3) after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply his property in satisfaction of the judgment;

(4) in the cases when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights;

(5) in the cases when a debtor has been declared insolvent.

Sec. 23.02. Oath and Undertaking of Receiver. Before entering upon his duties, a receiver shall be sworn to perform them faithfully, and shall file with the clerk of court an undertaking with one or more sufficient sureties in whatever sum the court may direct to the effect that he will faithfully discharge the duties of receiver and obey the orders of the court.

Article XXIV. Recovery of Personal Property

Sec. 24.01. Claim for Delivery of Personal Property. In an action to recover possession of personal property, the plaintiff may, at any time after the action is commenced and before judgment, claim the immediate delivery of the property to him.

Sec. 24.02. Undertaking. A peace officer shall not take personal property into custody until the plaintiff delivers to him the affidavit and undertaking of sufficient sureties to the effect that they are bound in double the value of the property for the prosecution of the action and the return of the property to the defendant, if

return be adjudged, and for the payment to the defendant of any sum which may be recovered against the plaintiff.

Sec. 24.03. Undertaking for Return of Property to Defendant. The defendant, may, within the time set by the court, require the return of the property upon delivering to the peace officer having custody of his property a written undertaking approved by the clerk of the court and executed by sufficient sureties to the effect that they are bound in double the value of the property for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant.

Sec. 24.04. Property Concealed in Building or Enclosure; Demand; Entry to Effect Seizure. If the property or any part of it is concealed in a building or enclosure, the peace officer shall publicly demand its delivery. If it is not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession.

Sec. 24.05. Custody of Property Seized. When the peace officer has taken the property into custody, he is responsible for it and shall keep it in a secure place and deliver it to the party entitled to it upon receiving his lawful fees for taking and his necessary expenses for keeping it.

Sec. 24.06. Third Party Claims. If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of his title to the property or his right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in his custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies him against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties.

Article XXV. Recovery of Real Property

Sec. 25.01. Actions for Recovery of Real Property. Any person who has a legal estate in real property and has a present right to the possession of the property may bring an action to recover the possession of the property with damages for withholding it.

Sec. 25.02. Damages for Withholding Property; Value of Improvements as Setoff. When property is recovered from a defendant who, in good faith, holds the property under color of title adversely to the claim of the plaintiff, the value of any permanent improvements which the defendant or those under whom he claims have made to the property shall be allowed as a setoff against damages allowed for the withholding of the property. The plaintiff may recover damages for withholding the property for a term of six years before the commencement of the action and for the period from the commencement to the verdict, both excluding the use of permanent improvements made by the defendant.

Sec. 25.03. Termination of Right to Recover Property during Pendency of Action. Where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, he may only recover damages for the withholding of the property.

Sec. 25.04. Order for Survey and Measurement of Property. The court in which the action is pending may allow a party and his surveyors to go on the property to make a survey for the purposes of the action.

Sec. 25.05. Effect of Alienation by Person in Possession. An action for the recovery of the possession of real property against a person in possession cannot be prejudiced by an alienation made by that person either before or after the commencement of the action. If the alienation is made after the commencement of the action and the defendant does not satisfy the judgment recovered for damages for withholding the possession, the damages may be recovered by action against the purchaser.

Sec. 25.06. Mortgage Not a Conveyance. A mortgage of real property is not a conveyance which will enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Sec. 25.07. Failure to Pay Rent. Unless otherwise provided in the lease, a landlord has a right to re-enter leased premises when a tenant fails to pay rent, and may bring action to recover the possession of the premises and the action is equivalent to a demand of the rent. If, at any time before judgment, the lessee or his successor in

interest pays the amount of rent in arrears with interest and costs of the action and performs the other covenants or agreements, he is entitled to continue in possession unless otherwise provided in the lease.

Sec. 25.08. Judgment in Actions to Recover Possession. The judgment in an action to recover the possession of real property is conclusive as to the estate in the property and the right to the possession so far as it is determined upon the party against whom it is given and against all persons claiming from, through, or under that party after the commencement of the action. However, when service of the summons is by publication and judgment is given for failure of a party to answer, that party or his successor in interest is at any time within two years from the entry of the judgment, upon application to the court, entitled to an order vacating the judgment and granting him a new trial upon the payment of the costs of the action.

Sec. 25.09. Possession When New Trial Granted. If the judgment is set aside and a new trial granted as provided in Sec. 25.08 after the plaintiff has taken possession of the property, he shall remain in possession. But if judgment is given for the defendant in the new trial, the defendant shall be entitled to restitution by execution as if he were plaintiff.

Sec. 25.10. Actions to Recover Possession by Tenant in Dower. In an action to recover the possession of real property by a tenant in dower or his successor in interest, execution on the judgment may not issue until admeasurement of dower. If the dower has not been admeasured prior to the commencement of the action, the dower may be admeasured after entry of the judgment, as follows:

(1) Upon motion of either party, the court shall conduct proceedings to admeasure the dower out of the real property recovered in the action in the manner provided in actions for partition unless it appears probable that a partition of the property would prejudice the interests of the other owners. If the court finds that a partition would prejudice the interests of the other owners, it shall deny the motion. The plaintiff shall then proceed for partition or sale of the real property by independent action in the manner provided in actions for partition.

(2) At any time after the confirmation of the report of the referees, the plaintiff may have execution for the delivery of the possession of the property according to the admeasurement and for the damages recovered.

Article XXVI. Tort Claims Against State

Sec. 26.01 Actionable Claims against the State. Any person or corporation having a claim against the state may bring an action against the state in the superior court. However, no action may be brought under this section if the claim

(1) is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid; or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

Sec. 26.02. Undertaking. At the time of filing the complaint in an action against the state, the plaintiff shall file an undertaking in a sum fixed by the court. The undertaking shall be conditioned upon payment by the plaintiff of costs incurred by the state in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

Sec. 26.03. Payment of Judgment against the State. No attachment or execution shall issue against the state. Whenever a final judgment is rendered against the state in an action, the clerk of the court shall immediately transmit a certified copy of the judgment to the Department of Administration which shall either approve payment of the judgment against the state if a sufficient appropriation exists for payment, or audit the amount and transmit a copy to the legislature with the recommendation that an appropriation be made for its payment.

Sec. 26.04. **Judgment for Plaintiff.** If judgment is rendered for the plaintiff, it shall be for the legal amount found due from the state with legal interest only from the date of judgment and without punitive damages.

Sec. 26.05. **Trial by Court.** Actions against the state under this article shall be tried by the court without a jury.

Sec. 26.06. **Compromise by Attorney General.** The attorney general may, with the approval of the court, arbitrate, compromise, or settle any action filed under this article.

Article XXVII. Trespass

Sec. 27.01. **Trespass by Cutting or Injuring Trees or Shrubs.** Any person who cuts down, girdles, or otherwise injures or carries off a tree, timber, or shrub on the land of another person or on the street or highway in front of a person's house, or of a village, town, or city lot, or cultivated grounds, or on the commons or public grounds of a village, town, or city, or on the street or highway in front of them, without lawful authority, is liable to the owner of that land, or to the village, town, or city for treble the amount of damages which may be assessed in a civil action. However, if the trespass was casual or involuntary, or the defendant had probable cause to believe that the land on which the trespass was committed was his own or that of the person in whose service or by whose direction the act was done, or where the timber was taken from unenclosed woodland for the purpose of repairing any public highway or bridge upon the land or adjoining it, only actual damages may be recovered.

Article XXVIII. Usurpation

Sec. 28.01. **Action for Usurpation of Office or Franchise.** An action may be brought by the attorney general upon his own information or upon complaint of a private party against (1) any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or any office in a corporation, either public or private; (2) any public officer who has acted to forfeit his office; or (3) any number of persons acting as a corporation without being incorporated.

Sec. 28.02. **Action on Information or Ap-**

plication of Private Party. When the action is brought upon the information or application of a private party, the attorney general may require that party to enter into an undertaking with sureties to be approved by the attorney general, conditioned on that party's paying a judgment for costs or damages recovered against the plaintiff and costs and expenses incurred in the prosecution of the action.

Sec. 28.03. **Determination of Rights of Defendant and Claimant.** Whenever the action is brought and the claim is made that another person is rightfully entitled to the office, judgment may be given upon the right of the defendant and also upon the right of the person so claimed to be entitled, or only upon the right of the defendant as justice may require.

Sec. 28.04. **Judgment for Claimant.** If judgment is for the person claiming the franchise or office, he is entitled to the possession and enjoyment of the franchise, or to take upon himself the execution of the office after qualifying himself as required by law.

Sec. 28.05. **Recovery of Damages by Claimant.** If judgment is for the person claiming the franchise or office, he may recover the damages which he may have sustained by reason of the usurpation of the office by the defendant. In the action, the defendant may be provisionally arrested and held to bail in the manner as in actions where the defendant is subject to arrest.

Sec. 28.06. **Multiple Claimants.** When several persons claim to be entitled to the same office or franchise, one action may be brought against all those persons in order to try their respective rights to that office or franchise.

Sec. 28.07. **Judgment against Defendant.** If a defendant is adjudged guilty of usurping or intruding into or unlawfully holding or exercising an office or franchise, judgment shall be given that the defendant be excluded from holding or exercising the office or franchise. The court may also, in its discretion, impose a fine upon the defendant not exceeding \$2,000. If a corporation is defendant and a judgment is given which causes the corporation to cease to exist, the corporation shall dissolve.

Sec. 28.08. **Enforcement of Judgment for Costs.** A judgment given in any action

provided for in this article in respect to costs and disbursements may be enforced by execution as a judgment which requires the payment of money.

Article XXIX. Waste

Sec. 29.01. Right of Action for Waste. If a guardian, tenant for life or years, or tenant in common of real property commits waste on the property, any person injured by the waste may bring an action for damages for the injury. In an action for waste there may be judgment for treble damages. Where the plaintiff has a reversionary interest and the injury due to waste equals or exceeds the value of the interest held by the one committing the waste, or the waste is committed with malice, judgment may be for forfeiture of the estate and eviction.

Article XXX. Miscellaneous

Sec. 30.01. Parent or Guardian May Sue for Injuries or Death to Child. A father or, in case of his death or desertion of his family, the mother may maintain an action as plaintiff for the injury or death of a child below the age of majority. A guardian may maintain an action as plaintiff for the injury or death of his ward.

Sec. 30.02. Parents or Guardian May Sue for Seduction of Daughter. A father or, in case of his death or desertion of his family, the mother may maintain an action as plaintiff for the seduction of a daughter below the age of majority. The guardian may maintain an action as plaintiff for the seduction of a ward. The action may be maintained even though the daughter or ward is not living with or in the service of the plaintiff at the time of the seduction or afterwards and there is no loss of service.

Sec. 30.03. Unmarried Females May Sue for Seduction. An unmarried female over the age of majority may maintain an action as plaintiff for her own seduction and may recover any damages assessed in her favor.

Sec. 30.04. Joining Unknown Heirs as Defendants in Real Property Suits. When the heirs of a deceased person are proper parties defendant to an action relating to real property in this state, and when the names and residences of the heirs are unknown, the heirs may be proceeded against under the name and title of "the unknown heirs" of the deceased.

Sec. 30.05. Service on Unknown Heirs by Publication. Upon presenting an affidavit to the court or judge showing to his satisfaction that the heirs of the deceased person are proper parties to the action and that their names and residences cannot with the use of reasonable diligence be ascertained, the court or judge may grant an order that service of the summons in the action may be made on the "unknown heirs" by publication of the summons in the same manner as in actions against nonresident defendants.

Sec. 30.06. Unknown Claimants in Real Property Suits. In any action brought to determine an adverse claim, estate, lien, or interest in real property or to quiet title to real property, the plaintiff may include as a defendant in the action and insert in the title of the action, in addition to the names of the persons or parties which appear of record to have, and other persons or parties who are known to have some title, claim, estate, lien, or interest in the lands in controversy, the following: "Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint in this action." Service of summons may be had upon all unknown persons or parties defendant by publication as provided by law in cases of nonresident defendants.

Sec. 30.07. Rights of Unknown Heirs and Parties Served by Publication. All the unknown heirs of deceased persons and all the unknown persons or parties served by publication as provided in Sec. 30.06 of this Act have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the action shall proceed against the unknown heirs or unknown persons or parties in the same manner as against defendants who are named and upon whom service is made by publication, and with the same effect. Any of the unknown heirs or unknown persons or parties who have or claim any interest, right, estate, or lien in the said real property in controversy at the time of the commencement of the action and who are served as aforesaid shall be bound and concluded by the judgment or decree in the action as effectually as if the action was brought against the defendant by his name and constructive service of summons obtained.

Title III. Formal Provisions

Sec. 31.01. **Short Title.** This Act may be cited as the "Code of Civil Procedure."

Sec. 31.02. **Repeals.** The following laws and parts of laws are repealed: Secs. 55-1-1 through 55-11-86, ACLA 1949, inclusive, as amended by Ch. 45, SLA 1949, Ch. 74, SLA 1953, Ch. 138, SLA 1953, Ch. 44, SLA 1955, Ch. 52, SLA 1955, Ch. 49, SLA 1957, Ch. 61, SLA 1957, Ch. 65, SLA 1957, and Ch. 37, SLA 1959, and Ch. 87, SLA 1961; Secs. 56-1-1 through 56-6-9, ACLA 1949, inclusive, as amended by Ch. 119, SLA 1949, Ch. 136, SLA 1957, Ch. 22, SLA 1959, and Ch. 51, SLA 1959; Secs. 57-1-1 through 57-9-2, ACLA 1949, inclusive, as amended by Ch. 5, SLA 1949, Ch. 50, SLA 1951, Ch. 91, SLA 1953, and Ch. 9, SLA 1957; Secs. 58-1-1 through 58-9-6, ACLA 1949, inclusive, as amended by Ch. 32, SLA 1955, Ch. 96, SLA 1955, Ch. 13, SLA 1957, and Ch. 54, SLA 1957; Secs. 67-1-1 through 67-1-9, ACLA 1949, inclusive,

as amended by Ch. 17, SLA 1949; Secs. 68-1-1 through 68-9-15, ACLA 1949, inclusive, as amended by Ch. 69, SLA 1955; Secs. 1 through 3, Ch. 22, SLA 1951, inclusive; Secs. 1 through 7, Ch. 89, SLA 1953, inclusive, as amended by Ch. 21, SLA 1955; Secs. 1 through 6, Ch. 90, SLA 1953, inclusive, as amended by Ch. 138, SLA 1955, and Ch. 146, SLA 1959; Secs. 1 through 10, Ch. 170, SLA 1957, inclusive; Sec. 1, Ch. 87, SLA 1959; and Secs. 1 through 6, Ch. 134, SLA 1960, inclusive.

Sec. 31.03. **How Code to Take Effect.** This Act takes effect on January 1, 1963. It governs all proceedings in actions brought after that date and all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the rules takes effect would not be feasible or would work injustice, in which event, the laws repealed by this Act apply.

Approved April 12, 1962

CHAPTER 102**AN ACT**

To provide for a preference to veterans in the disposition of certain state lands.

(H.B. 436)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Art. IV, Ch. 169, SLA 1959, as amended by Sec. 9, Ch. 61, SLA 1960, is amended by adding a new section to read:

Sec. 4. **Veterans Preference.** a. Before offering to the general public any unoccupied residential lands, the director shall offer the land at a restricted sale, at which only veterans may buy, to be held from 30 to 60 days before the offering to the general public.

b. For the purpose of this Act, the term "veteran" means any person with 90 days or more of active service in the armed forces of the United States who

has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and January 31, 1955.

c. The director shall not sell the lands under this section at less than their fair appraised market value. The director shall make regulations necessary to ensure that lands sold under this section are for bona fide residential use and not for speculation.

d. Insofar as not in conflict with this section, other provisions of this article apply to sales under this section.

Approved April 12, 1962

CHAPTER 103**AN ACT**

Relating to the powers of the district directors of civil defense.

(S.B. 296)