

1 IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL

2 SENATE BILL NO.105

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to codify and revise the law relat-
7 ing to civil actions and proceedings; to
8 provide a comprehensive code of civil actions
9 and proceedings; and to provide for an ef-
10 fective date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 TITLE I. GENERAL PROVISIONS

13 Article I. Limitation of Actions

14 Sec. 1.01. GENERAL LIMITATIONS ON CIVIL ACTIONS. No person
15 may commence a civil action except within the periods prescribed
16 in this article after the cause of action has accrued, except
17 when, in special cases, a different limitation is prescribed by
18 statute.

19 Sec. 1.02. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS. No
20 person may bring an action for the recovery of real property, or
21 for the recovery of the possession of it unless commenced within
22 10 years. No action may be maintained for the recovery unless it
23 appears that the plaintiff, his ancestor, predecessor, or grantor,
24 was seized or possessed of the premises in question within 10
25 years before the commencement of the action.

26 Sec. 1.03. ACTION UPON JUDGMENT OR SEALED INSTRUMENT IN 10
27 YEARS. No person may bring an action upon a judgment or decree of
28 a court of the United States, or of a state or territory within the
29 United States, and no action may be brought upon a sealed instru-

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1 ment, unless commenced within 10 years.

2 Sec. 1.04. ACTIONS TO BE BROUGHT IN SIX YEARS. No person
3 may bring (1) an action upon a contract or liability, express or
4 implied, excepting those mentioned in Sec. 1.03; (2) an action for
5 waste or trespass upon real property; or (3) an action for taking,
6 detaining, or injuring personal property, including an action for
7 its specific recovery, unless commenced within six years.

8 Sec. 1.05. ACTIONS TO BE BROUGHT IN THREE YEARS. a. No
9 person may bring an action against a peace officer or coroner upon
10 a liability incurred by the doing of an act in his official
11 capacity or by the omission of an official duty, including the non-
12 payment of money collected upon an execution, unless brought with-
13 in three years. This section does not apply to an action for an
14 escape.

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

20 Sec. 1.06. ACTIONS TO BE BROUGHT IN TWO YEARS. No person
21 may bring (1) an action for libel, slander, assault, battery,
22 seduction, false imprisonment or for any injury to the person or
23 rights of another not arising on contract and not specifically
24 provided otherwise, (2) an action upon a statute for a forfeiture
25 or penalty to the state, or (3) an action upon a liability
26 created by statute, other than a penalty for forfeiture, unless
27 commenced within two years.

28 Sec. 1.07. ACTIONS TO BE BROUGHT IN ONE YEAR. No person may
29 bring an action against a peace officer for the escape of a person

1 arrested or imprisoned on civil process, unless commenced within
2 one year.

3 Sec. 1.08. ACTIONS FOR PENALTY. No person may bring an
4 action upon a statute for the penalty given in whole or in part to
5 the person who will prosecute for the same unless commenced with-
6 in one year after the commission of the offense. If the action is
7 not commenced within one year by a private party, it may be com-
8 menced on behalf of the state within two years after the period of
9 limitation by a private party has expired.

10 Sec. 1.09. OTHER ACTIONS IN 10 YEARS. An action for a cause
11 not specifically provided for may be commenced within 10 years
12 after the cause of action has accrued.

13 Sec. 1.10. ACCRUAL OF CAUSE OF ACTION UPON MUTUAL, OPEN, AND
14 CURRENT ACCOUNT. In an action brought to recover a balance due
15 upon a mutual, open, and current account, where there have been
16 reciprocal demands between the parties, the cause of action
17 accrues from the date of the last item proved in the account on
18 either side. But when a period of more than one year elapses be-
19 tween any of a series of items or demands, they are not included
20 as part of the account for the purpose of determining when the
21 cause of action accrues.

22 Sec. 1.11. ACTIONS IN NAME OF STATE, POLITICAL SUBDIVISIONS,
23 OR PUBLIC CORPORATIONS. The limitations prescribed in this
24 article apply to actions brought in the name of or for the benefit
25 of the state, any political subdivision, or public corporation, in
26 the manner as actions by private parties.

27 Sec. 1.12. EFFECT OF ABSENCE FROM STATE OR CONCEALMENT.
28 When the cause of action accrues against a person who is out of
29 the state or concealed in the state, the action may be commenced

1 within the periods provided in this article after his return to
2 the state or when his concealment ceases. If he departs from the
3 state or conceals himself after the cause of action accrues, the
4 time of his absence or concealment is not part of the time limited
5 for the commencement of the action.

6 Sec. 1.13. DISABILITIES OF MINORITY, INSANITY, AND IMPRISON-
7 MENT. If a person entitled to bring an action mentioned in this
8 article is at the time the cause of action accrues either (1)
9 under the age of 19 years, or (2) insane, or (3) imprisoned on a
10 criminal charge, or in execution under sentence of a court for a
11 term less than his natural life, the time of the disability is not
12 a part of the time limited for the commencement of the action. But
13 the period within which the action may be brought is not extended
14 in any case longer than two years after the disability ceases.

15 Sec. 1.14. DEATH OF A PARTY BEFORE EXPIRATION OF LIMITATION
16 PERIOD. If a person entitled to bring an action dies before the
17 expiration of the time limited for its commencement, and the cause
18 of action survives, an action may be commenced by his representa-
19 tives after the expiration of that time, and within one year from
20 his death. If a person against whom an action may be brought dies
21 before the expiration of the time limited for the commencement of
22 the action, and the cause of action survives, an action may be
23 commenced against his representatives after the expiration of that
24 time, and within six months after the issuing of letters testamen-
25 tary or of administration.

26 Sec. 1.15. DISABILITY OF ALIEN DURING WAR. When a person is
27 an alien subject or citizen of a country at war with the United
28 States, the time of the continuance of the war is not a part of
29 the period limited for the commencement of the action.

1 Sec. 1.16. INJUNCTION AGAINST COMMENCEMENT OF ACTION. When
2 the commencement of an action is stayed by injunction or a statu-
3 tory prohibition, the time of the continuance of the injunction or
4 prohibition is not a part of the time limited for the commencement
5 of the action.

6 Sec. 1.17. DISABILITY. No person may avail himself of a
7 disability unless it existed when his right of action accrued or
8 began before the time for commencing the action expired.

9 Sec. 1.18. COEXISTING DISABILITIES. When two or more disa-
10 bilities coexist at the time the right of action accrues, the
11 limitation does not attach until they all are removed.

12 Sec. 1.19. ACKNOWLEDGMENT OR PROMISE. No acknowledgment or
13 promise is sufficient evidence of a new or continuing contract to
14 take the case out of the operation of this article, unless the
15 acknowledgment or promise is contained in writing, signed by the
16 party to be charged, and as to instruments affecting real estate,
17 acknowledged and recorded in the office of the recorder of the
18 district where the original contract was filed or recorded. This
19 section does not alter the effect of any payment of principal or
20 interest.

21 Sec. 1.20. PAYMENT ON ACCOUNT. When a past due payment of
22 principal or interest is made upon any evidence of indebtedness,
23 the running of the time within which an action may be commenced
24 starts from the time the last payment is made.

25 Sec. 1.21. WHEN NONRESIDENT'S CAUSE OF ACTION BARRED. When
26 a cause of action has arisen in another state, or in a territory,
27 or foreign country, between nonresidents of this state, and by the
28 laws of the state, territory, or country where the cause of action
29 arose that action cannot be maintained because of a lapse of time,

1 the action shall not be maintained in this state.

2 Sec. 1.22. CERTAIN ACTIONS RELATING TO REAL PROPERTY. No
3 person may bring an action for the determination of any right or
4 claim to or interest in real property unless commenced within the
5 limitations provided for actions for the recovery of the posses-
6 sion of real property. But no person may bring an action to set
7 aside, cancel, annul, or otherwise affect a patent to lands issued
8 by this state or the United States, or to compel any person claim-
9 ing or holding under a patent to convey the lands described in the
10 patent or a portion of them to the plaintiff in the action, or to
11 hold the lands in trust for or to the use and benefit of the
12 plaintiff, or on account of any matter, thing, or transaction
13 which has had, done, suffered, or transpired before the date of
14 the patent, unless commenced within 10 years from the date of the
15 patent. In an action upon a new promise, fraud, or mistake, the
16 running of the time within which an action may be commenced starts
17 from the making of the new promise or the discovery of the fraud
18 or mistake. This section does not bar an equitable owner in
19 possession of real property from defending his possession by means
20 of his equitable title. The right of an equitable owner to defend
21 his possession in an action, or by complaint for injunction, is
22 not barred by lapse of time while an action for the possession of
23 the real property is not barred by the provisions of this article.

24 Sec. 1.23. COMMENCEMENT OF ACTION AFTER DISMISSAL OR RE-
25 VERSAL. If an action is commenced within the time prescribed and
26 is dismissed upon the trial, or upon appeal, after the time
27 limited for bringing a new action, the plaintiff, or if he dies
28 and the cause of action in his favor survives, his heirs or repre-
29 sentatives, may commence a new action upon the cause of action

1 within one year after the dismissal or reversal on appeal. All
2 defenses available against the action, if brought within the time
3 limited, are available against the action when brought under this
4 provision.

5 Article II. Jurors

6 Sec. 2.01. QUALIFICATION OF JURORS. Any person is qualified
7 to act as a juror if he is

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

14 Sec. 2.02. DISQUALIFICATION OF JURORS. Any person is dis-
15 qualified to act as a juror if he

- 16 (1) has served as a juror in the state within one year
17 of his time of examination for service;
- 18 (2) has been convicted of a felony.

19 Sec. 2.03. EXEMPTIONS. Any person may claim exemption and
20 be excused from service as a juror on request if jury service will
21 cause him to suffer material injury or destruction to his property
22 or to the property entrusted to him, or if his health, the health
23 or proper care of his family, or the sickness or death of a member
24 of his family make it necessary for him to be excused, or if he is

- 25 (1) a judicial officer;
- 26 (2) any other civil officer of the state or United
27 States whose duties are at the time inconsistent with his
28 attendance or service as a juror;
- 29 (3) an attorney;

1 (4) a minister of the gospel or priest of any denomina-
2 tion;

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

5 (6) a practicing physician.

6 Sec. 2.04. COMPLIANCE WITH STATUTE. The selection of jurors
7 shall be made in substantial compliance with the following pro-
8 visions. Any failure in substantial compliance which prejudices
9 the rights of a party is reversible error.

10 Sec. 2.05. JURY LIST. At such times as the presiding judge
11 of the superior court in each judicial district may designate, but
12 not less than once every two years, the clerk of the superior
13 court in each judicial district shall prepare a list of the names
14 of all residents of the district who are qualified by law for jury
15 service. If the superior court is located in different cities in
16 the same judicial district, the clerk of the court located in each
17 city shall prepare, at the times designated by the judge but at
18 least every two years, a list of names of all persons qualified
19 for jury service who are residents of that portion of the judicial
20 district designated by the presiding judge. The list may be based
21 in part on the voting list prepared by the secretary of state from
22 the preceding general election and on a questionnaire for pro-
23 spective jurors adopted by the administrative director of courts.
24 A copy of the list shall be transmitted to each district magis-
25 trate within the judicial district, and shall be used to summon
26 jurors residing within the immediate area of the court.

27 Sec. 2.06. USE OF JURY BOX. The clerk of the court shall
28 write the names included in the list on separate pieces of paper
29 or prepare metal, plastic, or other types of pieces to correspond

1 to numbers on the jury list. As directed by the court, he shall
2 deposit the named or numbered pieces in the jury box in a number
3 and manner to assure a fair and impartial drawing of the jury
4 panel. The jury box and the named or numbered pieces may be
5 examined by the parties or by any attorney authorized to practice
6 law in the state within limitations and under conditions pre-
7 scribed by the court.

8 Sec. 2.07. PUBLIC DRAWING OF JURORS FOR PANEL. Under the
9 direction of the court the clerk shall conduct the public drawing
10 of jurors for the panel by shaking the box to mix the named or
11 numbered pieces. The clerk shall then draw as many pieces as are
12 ordered by the court to fill the jury panel. If the name or num-
13 ber of any person is drawn from the box and the person is deceased
14 unqualified, disqualified, or the person's attendance cannot be
15 obtained within a reasonable time or may involve a large and un-
16 necessary expense, and the fact appears to the satisfaction of the
17 court, through the use of questionnaires or otherwise, the court
18 may reject the name of that person and direct that the name or
19 number of another be drawn in his place.

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

26 Sec. 2.09. IMPANELING THE TRIAL JURY. When a civil case
27 which is to be tried by a jury is called for trial, the clerk
28 shall draw from the trial jury box containing the names of those
29 on the jury panel a number of names or numbers sufficient to name

1 a jury of 12 unless the court directs otherwise. The prospective
2 jurors shall be examined, challenged, and sworn as provided by
3 rules of the supreme court.

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

9 Article III. Witnesses and Evidence

10 Sec. 3.01. SERVICE ON CONCEALED WITNESS. If a witness is
11 concealed in a building or vessel for the purpose of preventing
12 the service of a subpoena, a peace officer may break into the
13 building or vessel to serve the subpoena upon the witness.

14 Sec. 3.02. DISOBEDIENCE TO SUBPOENA. A witness who disobeys
15 a subpoena served on him shall also forfeit to the party requiring
16 his attendance the sum of \$50.00 and all damages which that party
17 may sustain by the failure of the witness to attend. The for-
18 feiture and damages may be recovered in a civil action.

19 Sec. 3.03. COMPELLING PERSON TO TESTIFY. A person present
20 in court, or before a judicial officer, may be required to testify
21 in the same manner as if he were in attendance before the court or
22 officer on a subpoena.

23 Sec. 3.04. WITNESSES ARE EXONERATED FROM CIVIL ARREST. Every
24 person who has been served in good faith with a subpoena to attend
25 as a witness before a court, judge, referee, or other person, is
26 exonerated from arrest in a civil action while going to the place
27 of attendance, necessarily remaining there, and returning from
28 there. The arrest of a witness contrary to this section is void,
29 and when wilfully made is a contempt of court. The officer

1 wilfully making it is responsible to the witness arrested for
2 double the amount of damages which may be assessed against him,
3 and is also liable to an action at the suit of the party serving
4 the witness with the subpoena for the damages sustained by him in
5 consequence of the arrest.

6 Sec. 3.05. OFFICER LIABILITY FOR IMPROPER ARREST. a. An
7 officer who arrests a witness exonerated from arrest is not liable
8 to the party for making the arrest in ignorance of the facts
9 creating the exoneration, but is liable for a subsequent detention
10 of the party, if the party claims the exemption and makes an affi-
11 davit stating that

12 (1) he has been served with a subpoena to attend as a
13 witness before a court, judge, or other person, specifying the
14 place of attendance and the action or proceeding in which the
15 subpoena was issued;

16 (2) he has not been served by his own procurement, with
17 the intention of avoiding an arrest; and

18 (3) he is at the time going to the place of attendance
19 or returning from there, or remaining there in obedience to the
20 subpoena.

21 b. The affidavit may be taken by the officer, and exonerates
22 him from liability for discharging the witness when arrested.

23 Sec. 3.06. DISCHARGE FROM IMPROPER ARREST. The court, judge,
24 referee, or other person before whom the attendance of the witness
25 is required, may discharge a witness from an arrest made in vio-
26 lation of Sec. 3.04.

27 Sec. 3.07. INTERPRETERS. When a witness does not understand
28 and speak the English language, an interpreter shall be sworn to
29 interpret for him.

1 Sec. 3.08. EXCLUSION OF WITNESSES FROM COURT ROOM. Upon the
2 request of either party the judge may exclude from the court room
3 any witness of the adverse party not under examination at the
4 time, so that he may not hear the testimony of other witnesses.

5 Sec. 3.09. OFFICERS AUTHORIZED TO ADMINISTER OATHS OR
6 AFFIRMATIONS. Every justice, judge, magistrate, clerk of a court,
7 notary public, and the commanding officer of a vessel of the
8 United States Coast Guard may administer oaths or affirmations.

9 Sec. 3.10. EFFECT OF PRIVATE SEALS AND SCROLLS. Private
10 seals and scrolls as a substitute for seals are abolished. They
11 are not required to any instrument, but when used their effect
12 remains unchanged.

13 Sec. 3.11. STATUTE OF FRAUDS. a. In the following cases
14 and under the following conditions an agreement, promise or under-
15 taking is unenforceable unless it or some note or memorandum of it
16 is in writing and subscribed by the party charged, or by his
17 agent:

18 (1) An agreement that by its terms is not to be per-
19 formed within a year from the making of it;

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

1 (3) A special promise to answer for the debt of
2 another;

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

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

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

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

13 (8) An agreement authorizing or employing an agent or
14 broker to sell or purchase real estate for compensation or commis-
15 sion; However, if the note or memorandum of the agreement is in
16 writing, subscribed by the party to be charged, or by his lawfully
17 authorized agent, contains a description of the property suf-
18 ficient for identification, authorizes or employs the agent or
19 broker named in it to sell the property, and expresses with
20 reasonable certainty the amount of the commission or compensation
21 to be paid the agent or broker, the agreement of authorization or
22 employment is not unenforceable for failure to state a considera-
23 tion;

24 (9) An agreement to establish a trust;

25 (10) A subsequent or new promise to pay a debt dis-
26 charged in bankruptcy;

27 (11) A conveyance or assignment of a trust in personal
28 property;

29 (12) An agreement to pay compensation for services

1 rendered in negotiating a loan, effecting the procurement of a
2 business, opportunity, or the purchase and sale of a business, its
3 good will, inventory, fixtures or an interest in it, including a
4 majority of the voting stock interest in a corporation and includ-
5 ing the creating of a partnership interest, other than an agree-
6 ment to pay compensation to an auctioneer, or an attorney at law;

7 (13) An agreement to sell or transfer a boat or vessel.

8 b. No party may raise the defense of statute of frauds un-
9 less he denies the existence of an agreement, or a material part
10 of it. If the original party to an agreement is deceased, this
11 requirement does not apply as against his personal representative.

12 Sec. 3.12. AUCTION MEMORANDUM. If goods are sold at public
13 auction, and the auctioneer at the time of the sale enters in a
14 sale book a memorandum specifying the nature and price of the
15 property sold, the terms of the sale, the name of the purchaser,
16 and the name of the person on whose account the sale was made, the
17 memorandum is equivalent in effect to a note of the contract or
18 sale, subscribed by the party to be charged with it.

19 Sec. 3.13. EXCEPTIONS TO STATUTE OF FRAUDS. A contract,
20 promise or agreement which is subject to Sec. 3.11 which does not
21 satisfy the requirements of that section, but which is otherwise
22 valid, is enforceable if either

23 (1) there has been full performance on one side,
24 accepted by the other in accordance with the contract; or

25 (2) there is a memorandum which would satisfy the re-
26 quirements of Sec. 3.11 except for error or omission in the re-
27 cital of past events; or

28 (3) there is a memorandum which would satisfy the re-
29 quirements of Sec. 3.11 except for error or omission which could

1 be corrected by reformation if it occurred in a formal contract;
2 or

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

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

9 Sec. 3.14. REPRESENTATIONS AS TO CREDIT, SKILL OR CHARACTER
10 OF A THIRD PERSON. No evidence is admissible to charge a person
11 upon a representation as to the credit, skill, or character of a
12 third person, unless the representation, or some memorandum of it,
13 is in writing, and either subscribed by or in the handwriting of
14 the party to be charged.

15 Sec. 3.15. CREATION OR TRANSFER OF INTEREST IN REAL PROPERTY.
16 No estate or interest in real property, other than a lease for a
17 term not exceeding one year, nor any trust or power concerning the
18 property, may be created, transferred, or declared, otherwise than
19 by operation of law, or by a conveyance or other instrument in
20 writing, subscribed by the party creating, transferring, or de-
21 claring it or by his agent under written authority, and executed
22 with the formalities that are required by law. This section does
23 not affect the power of a testator in the disposition of his real
24 property by will, nor prevent a trust arising or being extinguished
25 by implication or operation of law, nor affect the power of a
26 court to compel specific performance of an agreement in relation
27 to the property.

28 Sec. 3.16. RULES FOR CONSTRUING REAL ESTATE DESCRIPTIONS.
29 The following are the rules for construing the descriptive part of

1 a conveyance of real property, when the construction is doubtful
2 and there are no other sufficient circumstances to determine it:

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

8 (2) When permanent and visible or ascertained bound-
9 aries or monuments are inconsistent with the measurement, either
10 of lines, angles, or surfaces, the boundaries or monuments are
11 paramount;

12 (3) Between different measurements which are inconsis-
13 tent with each other, that of angles is paramount to that of sur-
14 faces, and that of lines paramount to both;

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

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

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

26 Sec. 3.17. CONCLUSIVE EVIDENCE OF ADVERSE POSSESSION. The
27 uninterrupted adverse notorious possession of real property under
28 color and claim of title for seven years or more is conclusively
29 presumed to give title to the property, except as against the

1 state or the United States.

2 Sec. 3.18. SALE OR TRANSFER OF PERSONAL PROPERTY. Every
3 sale or assignment of personal property, unless accompanied by the
4 immediate delivery and the actual and continued change of posses-
5 sion of the thing sold or assigned, is presumed prima facie to be
6 a fraud against the creditors of the vendor or assignor, and sub-
7 sequent purchasers in good faith and for a valuable consideration,
8 during the time the property remains in the possession of the
9 vendor or assignor.

10 Sec. 3.19. EVIDENCE OF PUBLICATION. Evidence of the publi-
11 cation of a document or notice required by law, or by an order of
12 a court or a judge, to be published in a newspaper, may be given
13 by the affidavit of the printer of the newspaper or his foreman
14 or principal clerk, annexed to a copy of the document or notice,
15 specifying the times when, and the paper in which, the publication
16 was made. If the affidavit is made in an action pending in a
17 court, it may be filed with the court and is primary evidence of
18 the facts stated in it.

19 Sec. 3.20. ADULTERY CONFESSION IN DIVORCE. In an action for
20 divorce on the ground of adultery, a confession of adultery is not
21 alone sufficient to justify a judgment of divorce.

22 Sec. 3.21. RIGHT TO RECEIPT UPON PAYMENT OR DELIVERY. Any
23 person who pays money, or delivers an instrument or property, is
24 entitled to a receipt for it from the person to whom the payment
25 or delivery is made, and may demand a proper signature to the
26 receipt as a condition of the payment or delivery.

27 Sec. 3.22. OBJECTIONS TO TENDER. The person to whom a ten-
28 der is made shall at the time specify any objection he may have
29 to the money, instrument, or property, or he waives it. If the

1 objection is to the amount of money, the terms of the instrument,
2 or the amount or kind of property, he shall specify the amount,
3 terms, or kind which he requires, or is precluded from objecting
4 later.

5 Sec. 3.23. DISPOSITION OF TAX INFORMATION. Any information
6 in the possession of the Department of Revenue which discloses the
7 particulars of the business or affairs of a taxpayer, or other
8 person, is not a matter of public record, except for purposes of
9 investigation and law enforcement. The information shall be kept
10 confidential except when its production is required in an official
11 investigation or court proceeding. These restrictions do not pro-
12 hibit the publication of statistics presented in a manner that pre-
13 vents the identification of particular reports and items or pro-
14 hibit the publication of tax lists showing the names of taxpayers
15 who are delinquent and relevant information which may assist in
16 the collection of delinquent taxes.

17 Sec. 3.24. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless
18 specifically provided otherwise the books, records, papers, files,
19 accounts, writings and transactions of all agencies and depart-
20 ments are public records and are open to inspection by the public
21 under reasonable rules during regular office hours. The public
22 officer having the custody of public records shall give on request
23 and payment of costs a certified copy of the public record.

24 Sec. 3.25. PUBLIC INSPECTION OF RECORDER RECORDS. Every
25 person has the right to inspect any public writing or record in
26 the office of any recorder except: (1) records of vital sta-
27 tistics and adoption proceedings which shall be treated in the
28 manner required by the state Vital Statistics Act, (2) records
29 pertaining to juveniles, (3) medical and related public health

1 records, (4) records required to be kept confidential by any
2 federal law or regulation or by state law. Recorders shall permit
3 memoranda, transcripts, and copies of public writing and records
4 in their offices to be made by photography or otherwise for the
5 purpose of examining titles to real estate described therein,
6 making abstracts of title or guaranteeing or insuring the titles
7 thereof, or building and maintaining title and abstract plants,
8 and shall furnish proper and reasonable facilities therefor, sub-
9 ject to reasonable rules and regulations of the supreme court as
10 shall be necessary for the protection of the writings and records
11 and to prevent interference with the regular discharge of the
12 duties of recorders and their employees.

13 Article IV. Judgments

14 Sec. 4.01. RECORDING COPY OF JUDGMENT AS LIEN. A certified
15 copy of the judgment or decree of a court of this state, or a
16 court of record of the United States upon which execution may
17 issue, the enforcement of which has not been stayed, may be re-
18 corded with the recorder of a recording district. From the re-
19 cording, the judgment or decree becomes a lien upon the real pro-
20 perty of the defendant which is in the recording district, which
21 is not exempt from execution, and which is owned by him at the
22 time or acquired by him afterward but before the lien expires.
23 The lien continues during the time execution may issue on the
24 judgment or decree but for not more than 10 years from date of
25 entry of the judgment or decree. After expiration of the lien,
26 the court may grant leave for issuance of execution upon the judg-
27 ment or decree and from the date of recordation of the judgment or
28 decree, together with the order allowing issuance of execution,
29 the judgment or decree becomes a lien in the manner as above

1 provided.

2 Sec. 4.02. PRIORITY OF LIEN OF JUDGMENT. A conveyance of
3 real property or interest in real property is void against a
4 judgment lien that is recorded before the conveyance is recorded.

5 Sec. 4.03. JUDGMENTS AGAINST BOROUGHS AND CITIES. Where
6 judgment is against a borough, city or other public corporation,
7 no execution may issue on it but the judgment may be satisfied
8 only as follows:

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

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

20 Sec. 4.04. CONFESSION OF JUDGMENT. A judgment by confession
21 may be entered without action against a defendant for any amount
22 or relief. The confession may be made only by the defendant in
23 person, or if the defendant is a corporation, only by a person
24 who at that time has a relation to the corporation which would
25 authorize the service of summons on him.

26 Sec. 4.05. PROPERTY LIABLE ON CONFESSION JUDGMENTS. When
27 the action is upon a contract and against one or more defendants
28 jointly liable, judgment may be given on the confession of one or
29 more defendants against all the defendants jointly liable,

1 whether all defendants have been served with the summons or not.
2 However, the judgment may be enforced only against their joint
3 property and against the joint and separate property of the defen-
4 dant making the confession.

5 Article V. Miscellaneous

6 Sec. 5.01. SUCCESSIVE ACTIONS. Successive actions may be
7 maintained upon the same contract or transaction when a new cause
8 of action arises under the contract.

9 Sec. 5.02. CORPORATE SURETIES. When, by the laws of the
10 state, or by a charter, ordinance, rule or regulation of a politi-
11 cal subdivision, municipality, public corporation, or by a board,
12 body, organization, court or judge, a recognizance, stipulation,
13 bond, undertaking, or bail in an action, suit, proceeding or mat-
14 ter conditioned for the faithful performance of an act or duty, or
15 for the doing of an act or thing, is permitted or required to be
16 given with sureties, it is sufficient compliance if the instrument
17 is executed by a corporation which has complied with the laws of
18 the state and is authorized by law to act as surety upon instru-
19 ments and in proceedings, actions, suits and matters as set out
20 above.

21 Sec. 5.03. PARTIES EXEMPT FROM GIVING BOND. In an action or
22 proceeding in any court in which the state is a party, or in which
23 a state officer, in his official capacity or on behalf of the
24 state, is a party, no bond or undertaking is required of the state,
25 or an officer of the state. But the state or a state officer
26 acting in his official capacity has the same rights, remedies and
27 benefits as if the bond or undertaking were given and approved as
28 required by law.

29 Sec. 5.04. LIS PENDENS. In an action affecting the title

1 to, or the right of possession of real property, the plaintiff at
2 the time of filing the complaint, or afterwards, and the defen-
3 dant, when affirmative relief is claimed, at the time of filing
4 the answer, or afterwards, may record in the office of the recor-
5 der of the recording district in which the property is situated,
6 a notice of the pendency of the action, containing the names of
7 the parties, and the object of the action or defense, and a
8 description of the property affected in that district. From the
9 time of filing the notice for record, a purchaser, holder of a
10 contract or option to purchase, or encumbrancer of the property
11 affected, has constructive notice of the pendency of the action,
12 and of its pendency against parties designated by their real names.

13 Sec. 5.05. JURISDICTION OF THE PARTIES. From the time of
14 the service of a copy of the summons and complaint, or of the
15 completion of the publication when service by publication is
16 ordered, the court acquires jurisdiction of the parties and has
17 control of all the subsequent proceedings. The voluntary appear-
18 ance of the defendant is equivalent to personal service of a copy
19 of the summons and complaint upon him.

20 Sec. 5.06. DEFENSE NOT PREJUDICED BY ASSIGNMENT. If there
21 is an assignment of a thing in action, the action by the assignee
22 is without prejudice to any setoff, or other defense existing at
23 the time of, or before notice of, the assignment. But this sec-
24 tion does not apply to a negotiable promissory note or bill of
25 exchange, transferred in good faith, and upon valuable considera-
26 tion before due.

27 Sec. 5.07. LIABILITY OF GUARDIAN FOR COSTS. No person
28 appointed guardian ad litem by a court for an infant or incompe-
29 tent defendant is liable for the costs of the action. When costs

1 or disbursements are adjudged against an infant or incompetent
2 plaintiff, the guardian by whom he appeared in the action is
3 responsible for the payment and payment may be enforced against
4 him as if he were the actual plaintiff.

5 Sec. 5.08. COSTS WHERE PARTY IS A REPRESENTATIVE. In
6 actions in which an executor, administrator, trustee of an express
7 trust, or a person authorized to represent a party is a party,
8 costs may be allowed as in other cases. However when costs are
9 allowed against that party, they are chargeable solely upon the
10 estate, fund, or party represented, unless the court orders the
11 costs to be paid by that party personally for mismanagement or bad
12 faith in the conduct of the action.

13 Sec. 5.09. COSTS AWARDED AGAINST STATE, BOROUGH, CITY,
14 DISTRICT, OR OTHER PUBLIC AGENCIES. When the state or any borough
15 city, or other public agency or entity or any officer thereof in
16 his official capacity is a party, costs shall be awarded against
17 it on the same basis as against any other party. However, when
18 the action is brought upon the information of a natural person,
19 that person shall be liable for costs awarded against the state.
20 The costs shall not be recovered from the state until after
21 execution has issued for the costs against that person and re-
22 turned unsatisfied in whole or in part.

23 Sec. 5.10. SECURITY FOR COSTS WHERE PLAINTIFF A NONRESIDENT
24 OR FOREIGN CORPORATION. When the plaintiff in an action resides
25 out of the state, or is a foreign corporation, security for the
26 costs and charges, which may be awarded against the plaintiff, may
27 be required by the defendant. When required, all proceedings in
28 the action shall be stayed until an undertaking executed by one or
29 more sufficient sureties is filed with the court, to the effect

1 that they will pay the costs and charges which are awarded against
2 the plaintiff, not exceeding the sum of \$200.00. A new or an
3 additional undertaking may be ordered by the court, upon proof
4 that the original undertaking is insufficient security.

5 Sec. 5.11. SUITS AGAINST LOCAL GOVERNMENTS AND PUBLIC COR-
6 PORATIONS. An action may be maintained against any unit of local
7 government or public corporation in its corporate character and
8 within the scope of its authority, or for an injury to the rights
9 of the plaintiff arising from some act or omission of the unit of
10 local government or public corporation.

11 TITLE II. SPECIAL CIVIL ACTIONS

12 Article VI. Adverse Claims

13 Sec. 6.01. ACTION TO DETERMINE ADVERSE CLAIM. Any person
14 in possession, by himself or his tenant, of real property may
15 bring an action against another who claims an estate or interest
16 in the property adverse to him for the purpose of determining the
17 claim.

18 Sec. 6.02. ACTION TO ESTABLISH BOUNDARIES. When any dispute
19 exists between two or more owners of adjacent or contiguous lands
20 concerning the boundary lines of their lands, any owner may bring
21 an action for the purpose of having the dispute determined, and
22 the boundary lines ascertained and marked.

23 Sec. 6.03. MARKING OF BOUNDARIES. In an action to estab-
24 lish boundaries, the court shall appoint three disinterested
25 referees, one of whom is a surveyor, to establish and mark the
26 boundary lines as ascertained and determined by the court.

27 Sec. 6.04. OATHS AND REPORT OF REFEREES. Before entering
28 upon the discharge of their duties the referees shall file a
29 written oath to faithfully and impartially perform their duties.

1 After designating the boundary lines by proper marks, they shall
2 file with the court a report describing the location of the marks.

3 Sec. 6.05. EXCEPTIONS TO THE REPORT. The report may be con-
4 firmed unless a party excepts to the report. Upon the hearing,
5 the court may confirm, modify, or set aside the report, and in
6 the latter case may appoint new referees or refer the matter to
7 the same referees with appropriate instructions.

8 Article VII. Attachment

9 Sec. 7.01. ACTIONS IN WHICH ATTACHMENT IS AUTHORIZED. a.
10 At any time after an action has been commenced the plaintiff may
11 make application to the court to have the property of the defend-
12 ant attached as security for the satisfaction of any judgment that
13 may be recovered in the following cases:

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

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

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

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

26 Sec. 7.02. UNDERTAKING. Before the writ is issued, the
27 plaintiff shall give a written undertaking with sufficient sureties
28 to the effect that if the defendant recovers judgment, the plain-
29 tiff will pay all costs that may be awarded to the defendant, and

1 all damages which he may sustain by reason of the attachment, not
2 exceeding the sum specified in the undertaking, and that if the
3 attachment is discharged on the ground that the plaintiff was not
4 entitled to it under this article, the plaintiff will pay all
5 damages which the defendant may have sustained by reason of the
6 attachment, not exceeding the sum specified in the undertaking.
7 The sum specified in the undertaking shall be equal to the amount
8 claimed by the plaintiff, but not less than \$100.00.

9 Sec. 7.03. PROPERTY SUBJECT TO ATTACHMENT. All property in
10 the state not exempt from execution may be attached.

11 Sec. 7.04. THIRD PARTY LIABILITY. All persons having in
12 their possession any personal property belonging to the defendant
13 or owing a debt to the defendant at the time of service upon them
14 of the writ and notice shall deliver, transfer or pay the pro-
15 perty or debts to the peace officer, or be liable to the plaintiff
16 for the amount of the property or debts until the attachment is
17 discharged or any judgment recovered by plaintiff is satisfied.
18 Debts and other personal property may be delivered, transferred,
19 or paid to the peace officer without suit and the receipt of the
20 officer is a sufficient discharge.

21 Sec. 7.05. LIEN ON REAL ESTATE. If real property is at-
22 tached, the peace officer shall make a certificate containing the
23 title of the cause, the names of the parties, a description of the
24 property attached, the date of attachment, a statement that a writ
25 of attachment has been issued, and the date of issuance, and shall
26 within 10 days deliver the certificate to the recorder of the re-
27 cording district in which the real property is situated. The
28 recorder shall file the certificate in his office and record it in
29 a book to be kept for that purpose. When the certificate is filed

1 for record the lien in favor of the plaintiff attaches to the real
2 property described in the certificate from the date of the attach-
3 ment, but if filed afterwards it only attaches, as against third
4 persons, from the date of the subsequent filing. Whenever the
5 lien is discharged, it is the duty of the recorder, when requested,
6 to record the transcript of any order, entry of satisfaction of
7 judgment, or other proceeding of record whereby it appears that
8 the lien has been discharged.

9 Sec. 7.06. THIRD PARTY INDEBTED TO DEFENDANT OR POSSESSING
10 PROPERTY OF DEFENDANT. Whenever a peace officer with a writ of
11 attachment applies to any person for the purpose of attaching
12 property mentioned in the attachment, the person shall furnish the
13 peace officer with a statement designating the amount and des-
14 cription of any personal property in his possession belonging to
15 the defendant, or any debt he owes to the defendant. If such
16 person refuses to do so, or if the statement is unsatisfactory to
17 the plaintiff, the person may be ordered to appear before the
18 court and be examined concerning the property or debt.

19 Sec. 7.07. SALE OF PERISHABLE PROPERTY. If any of the
20 property attached is perishable, the peace officer shall sell the
21 property in the manner in which property is sold on execution.
22 The proceeds, and other property attached, shall be retained by
23 him to answer any judgment that may be recovered in the action,
24 unless sooner subjected to execution upon another judgment re-
25 covered previous to the levy of attachment.

26 Sec. 7.08. LIABILITY ON UNDERTAKING. In a proceeding
27 brought against the principal or his sureties upon an undertaking
28 given to secure the release of attached property, it is a defense
29 that the property for which the undertaking was given did not, at

1 the execution of the writ of attachment, belong to the defendant
2 against whom it was issued.

3 Sec. 7.09. DISPOSITION OF PROPERTY AFTER JUDGMENT IN PLAIN-
4 TIFF'S FAVOR. When plaintiff recovers judgment, and property
5 attached in the suit was not sold as perishable property or dis-
6 charged from the attachment, the court shall order the property to
7 be sold to satisfy the plaintiff's demands. If execution is
8 issued upon the judgment, the peace officer shall apply the pro-
9 perty attached by him, or the proceeds from the sale of the pro-
10 perty, upon the execution. If there is any of the property or
11 proceeds remaining after satisfying the execution, the peace
12 officer shall, upon demand, deliver the property or proceeds to
13 the defendant.

14 Sec. 7.10. RETURN OF PROPERTY UPON JUDGMENT FOR DEFENDANT.
15 If the defendant recovers judgment against the plaintiff, and no
16 appeal is taken, all the property attached, the proceeds from pro-
17 perty attached, and the undertaking received in the action shall
18 be delivered to the defendant upon his serving upon the peace
19 officer a certified copy of the order discharging the attachment.

20 Article VIII. Change of Name

21 Sec. 8.01. JURISDICTION IN ACTION FOR CHANGE OF NAME. Any
22 person may bring an action for change of name in the superior
23 court. No change of name of a person except a woman upon her
24 marriage or divorce shall be made unless the court finds suf-
25 ficient reasons for the change and also finds it consistent with
26 the public interest.

27 Article IX. Civil Arrest

28 Sec. 9.01. ARREST AND BAIL IN CIVIL ACTIONS. The plaintiff
29 in a civil action may have the defendant arrested and held to

1 bail in the manner provided in this article. The writ of ne
2 exeat is abolished.

3 Sec. 9.02. GROUNDS FOR ARREST. The defendant may be ar-
4 rested in the following cases:

5 (1) In an action for the recovery of money or damages
6 when the defendant is about to remove from the state with intent
7 to defraud his creditors, or when the action is for an injury to
8 person, or for wilfully injuring or wrongfully taking, detaining,
9 or converting property.

10 (2) In an action for a fine or penalty, or for money
11 or property embezzled or fraudulently misapplied or converted to
12 his own use by a public officer, or by an attorney, or by an
13 officer or agent of a corporation in the course of his employment
14 in that capacity, or by a factor, agent, broker, or other person
15 in a fiduciary capacity, or for misconduct or neglect in office
16 or in a professional employment.

17 (3) In an action to recover the possession of personal
18 property unjustly detained, when the property or a part of it has
19 been concealed, removed, or disposed of to prevent its being found
20 or taken by a peace officer.

21 (4) When the defendant has been guilty of a fraud in
22 contracting the debt or incurring the obligation for which the
23 action is brought, or in concealing or disposing of the property
24 for the taking, detention, or conversion of which the action is
25 brought.

26 (5) When the defendant has removed or disposed of his
27 property, or is about to do so, with the intent to defraud his
28 creditors.

29 Sec. 9.03. ORDER FOR ARREST. An order for the arrest of
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1 the defendant may be obtained only from a judge of the court in
2 which the action is brought. The order may be made whenever it
3 appears to the judge that a sufficient claim and proper grounds
4 exist.

5 Sec. 9.04. UNDERTAKING BY PLAINTIFF. Before making the
6 order, the judge shall require an undertaking on the part of the
7 plaintiff, with sufficient sureties, to the effect that the plain-
8 tiff will pay all costs which may be adjudged to the defendant, and
9 all damages which he may sustain by reason of the arrest, if the
10 same be wrongful, or without sufficient cause, not exceeding the
11 sum specified in the undertaking. The undertaking shall be in a
12 sum to be fixed by the judge, but not less than \$300.00.

13 Sec. 9.05. TIME FOR ORDER FOR ARREST. The order may be made
14 at the time of the issuing of the summons or afterwards but before
15 judgment. It shall require a peace officer to immediately arrest
16 the defendant, and to hold him to bail in the amount specified.

17 Sec. 9.06. DISCHARGE ON BAIL OR DEPOSIT. The defendant, at
18 any time before execution, shall be discharged from the arrest
19 either upon giving bail or upon depositing the amount mentioned in
20 the order for arrest.

21 Sec. 9.07. AMOUNT OF BAIL. The defendant may give bail by
22 causing a written undertaking to be executed by sufficient sure-
23 ties, to the effect that they are bound in the amount mentioned in
24 the order for arrest, that the defendant will render himself
25 amenable to the process of the court during the pendency of the
26 action, and to processes which may be issued to enforce the judg-
27 ment, or that they will pay the plaintiff the amount of the judg-
28 ment which may be recovered in the action. Where the action is to
29 recover possession of personal property, the undertaking shall be

1 executed by two or more sufficient sureties in a sum equal to
2 double the value of the property.

3 Sec. 9.08. SURRENDER OF DEFENDANT BY BAIL OR IN PERSON. At
4 any time before failure to comply with the undertaking the bail
5 may surrender the defendant in their exoneration, or the defend-
6 ant may surrender himself to a peace officer of the court where
7 the action is pending.

8 Sec. 9.09. ARREST OF DEFENDANT BY OR ON AUTHORITY OF BAIL.
9 For the purpose of surrendering the defendant, the bail, at any
10 time and place before they are finally charged, may personally
11 arrest him, or by a written authority endorsed on a certified
12 copy of the undertaking, may empower a peace officer to do so.
13 Upon the arrest of the defendant by a peace officer, or upon his
14 delivery to the officer by the bail, or upon his own surrender,
15 the bail are exonerated, if the arrest, delivery, or surrender
16 takes place at a time prior to judgment. But if the arrest, de-
17 livery, or surrender does not take place prior to judgment, the
18 bail are finally charged on their undertaking, and bound to pay
19 the amount of the judgment.

20 Sec. 9.10. EXONERATION OF BAIL. The bail are exonerated by
21 the death of the defendant or his imprisonment in a penitentiary,
22 or by his legal discharge from the obligation to render himself
23 amenable to the process.

24 Sec. 9.11. MOTION TO VACATE ORDER FOR ARREST OR TO REDUCE
25 BAIL. A defendant arrested may, at any time before judgment,
26 apply on a motion to the court or a judge of the court in which
27 the action is pending to vacate the order for arrest or to reduce
28 the amount of bail. If upon the hearing of the motion it appears
29 that there was not sufficient cause for the arrest, the order

1 shall be vacated; or if it appears that the bail was fixed too
2 high, the amount shall be reduced.

3 Article X. Contempt

4 Sec. 10.01. ACTS OR OMISSIONS CONSTITUTING CONTEMPT. The
5 following acts or omissions, in respect to a court of justice or
6 court proceedings, are contempts of the authority of the court:

7 (1) Disorderly, contemptuous, or insolent behavior to-
8 ward the judge while holding the court, tending to impair its
9 authority or to interrupt the course of a trial or other judicial
10 proceeding;

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

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

18 (4) Deceit or abuse of the process or proceedings of-
19 the court by a party to an action or proceeding;

20 (5) Disobedience of any lawful judgment, order, or
21 process of the court;

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

24 (7) Rescuing a person or property in the custody of an
25 officer by virtue of an order or process of the court;

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

29 (9) Any other unlawful interference with the process or

1 proceedings of the court;

2 (10) Disobedience of a subpoena duly served, or refus-
3 ing to be sworn or answer as a witness;

4 (11) When summoned as a juror in a court, neglecting to
5 attend or serve, or improperly conversing with a party to an action
6 or proceeding to be tried at the court, or with any other person
7 in relation to the merits of the action, or receiving a communi-
8 cation from a party or other person in respect to it without im-
9 mediately disclosing it to the court;

10 (12) Disobedience by an inferior court, magistrate,
11 referee, master or officer of the lawful judgment, order or pro-
12 cess of a superior court, or proceeding in an action or proceed-
13 ing contrary to law, after the action or proceeding is removed
14 from the jurisdiction of that inferior court, magistrate, or
15 officer.

16 Sec. 10.02. PENALTY. Any person who is guilty of contempt
17 is punishable by fine not exceeding \$300.00 or imprisonment not
18 exceeding six months. However, when the contempt is one mentioned
19 in Secs. 10.01(3) to 10.01(12) inclusive, the person is punishable
20 by a fine not exceeding \$100.00, unless it appears that a right
21 or remedy of a party to an action or proceeding was affected by
22 the contempt.

23 Sec. 10.03. JURY TRIAL. Any person who is charged with con-
24 tempt of court which constitutes a criminal prosecution has a
25 right to a jury trial.

26 Sec. 10.04. INDEMNIFICATION OF PARTY AGGRIEVED. If a loss
27 or injury to a party in an action or proceeding has been caused
28 by the contempt, the court, in addition to the punishment im-
29 posed for the contempt, may give judgment in favor of the party

1 agrieved and against the person guilty of contempt for a sum of
2 money sufficient to indemnify him and to satisfy his costs and
3 disbursements. The judgment and the acceptance of that amount is
4 a bar to an action or proceeding by the aggrieved party for the
5 loss or injury.

6 Sec. 10.05. IMPRISONMENT TO COMPEL PERFORMANCE OF AN ACT.

7 When the contempt consists of the omission or refusal to perform
8 an act which is yet in the power of the defendant to perform, he
9 may be imprisoned until he has performed it.

10 Sec. 10.06. PROSECUTION ON NONAPPEARANCE. If the defendant

11 does not appear on the day ordered by the court, the court may
12 order the undertaking to be prosecuted. If the undertaking is
13 prosecuted, the measure of damages is the extent of the loss or
14 injury sustained by the aggrieved party by reason of the miscon-
15 duct for which the warrant was issued, and the costs of the pro-
16 ceeding.

17 Article XI. Declaration of Death

18 Sec. 11.01. PETITION. Whenever a person has disappeared
19 and after due and diligent search cannot be found, and the cir-
20 cumstances surrounding the disappearance afford reasonable grounds
21 for the belief that the person has suffered death, the court,
22 upon petition, may declare that person to be dead.

23 Article XII. Divorce and Annulment

24 Sec. 12.01. RIGHT OF ACTION BY HUSBAND OR WIFE FOR DIVORCE.

25 A husband or wife may maintain an action against the other for
26 divorce or to have the marriage declared void.

27 Sec. 12.02. INCESTUOUS OR BIGAMOUS MARRIAGES ARE VOID. A
28 marriage which is prohibited by law on account of consanguinity
29 between the persons, or a subsequent marriage contracted by a

1 person during the life of a former husband or wife which marriage
2 has not been annulled or dissolved, is void.

3 Sec. 12.03. MARRIAGES WHICH MAY BE DECLARED VOID. A
4 marriage may be declared void for any of the following causes
5 existing at the time of the marriage:

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

12 (2) That either party was of unsound mind, unless that
13 party, after coming to reason, freely cohabited with the other as
14 husband or wife.

15 (3) That the consent of either party was obtained by
16 fraud, unless that party afterwards, with full knowledge of the
17 facts constituting the fraud, freely cohabited with the other as
18 husband or wife.

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

22 Sec. 12.04. ACTION TO DECLARE MARRIAGE VALID. When either
23 the husband or wife claim or pretend that the marriage is void or
24 voidable, the other spouse may bring an action to have the mar-
25 riage declared valid. The court may determine if the marriage is
26 void from the beginning or from the time of the judgment or that
27 it is valid.

28 Sec. 12.05. GROUNDS FOR DIVORCE. A divorce may be granted
29 for any of the following grounds:

1 (1) Impotency existing at the time of the marriage and
2 continuing at the commencement of the action.

3 (2) Adultery.

4 (3) Conviction of a felony.

5 (4) Wilful desertion for a period of one year.

6 (5) Either (a) cruel and inhuman treatment calculated
7 to impair health or endanger life, or (b) personal indignities
8 rendering life burdensome, or (c) incompatibility of temperament.

9 (6) Habitual gross drunkenness contracted since marriage
10 and continuing for one year prior to the commencement of the
11 action.

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

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

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

24 Sec. 12.06. RESIDENCE REQUIREMENTS FOR ACTION TO DECLARE
25 MARRIAGE VOID. When a marriage has been solemnized in the state
26 and the plaintiff is a resident of the state, an action to declare
27 the marriage void may be brought at any time. If the marriage has
28 not been solemnized in the state, the action may be maintained
29 only when the plaintiff has been a resident for at least one year

1 before the commencement of an action.

2 Sec. 12.07. RESIDENCE REQUIREMENT FOR DIVORCE. No person
3 may commence an action for divorce until he has been a resident of
4 the state for at least one year before the commencement of the
5 action.

6 Sec. 12.08. USE OF HUSBAND'S RESIDENCE WHERE WIFE IS PLAIN-
7 TIFF. Where the wife is plaintiff in an action for divorce or to
8 declare void a marriage which was not solemnized in the state, the
9 residence of the husband in this state inures to her benefit and
10 she may institute the action if her husband is at the time of its
11 commencement qualified as to residence to institute a similar
12 action.

13 Sec. 12.09. MILITARY PERSONNEL DEEMED RESIDENTS. Persons
14 serving in a military branch of the United States government who
15 have been continuously stationed in any military base or instal-
16 lation in the state for a period of one year are residents for the
17 purposes of this article.

18 Sec. 12.10. SEPARATE DOMICILE OR RESIDENCE. In actions for
19 divorce wives may acquire a separate residence or domicile from
20 that of the husband, without reference among other factors to mis-
21 conduct or consent of the husband.

22 Sec. 12.11. DEFENSES TO ADULTERY. In a divorce action for
23 adultery, the following defenses may be made:

- 24 (1) Procurement;
25 (2) Connivance;
26 (3) The act has been expressly forgiven, or impliedly
27 forgiven by the voluntary cohabitation of the parties after
28 knowledge of the act;
29 (4) The plaintiff is also guilty of adultery and

1 without procurement or connivance of the defendant and not for-
2 given as provided in the defenses to adultery; or

3 (5) The action has not been commenced within two years
4 after the discovery of the act by the plaintiff.

5 Sec. 12.12. DEFENSES TO OTHER DIVORCE GROUNDS. When the
6 divorce action is for any of the grounds provided in Paragraphs
7 (4), (5), or (6) of Sec. 12.05, the defense of procurement or that
8 the defendant has been expressly forgiven may be made. When the
9 divorce action is for the ground provided in Paragraph (3) of Sec.
10 12.05, the defense of procurement, or that the defendant has been
11 expressly forgiven, or that the action was not brought within two
12 years after conviction may be made.

13 Sec. 12.13. ORDERS DURING ACTION. a. During the pendency
14 of the action, the court may provide by order:

15 (1) That the husband pay an amount of money as may be
16 necessary to enable the wife to prosecute or defend the action;

17 (2) For the care, custody, and maintenance of the minor
18 children of the marriage during the pendency of the action;

19 (3) For the freedom of the wife from the control of the
20 husband during the pendency of the action.

21 b. The court may restrain either or both parties from dis-
22 posing of the property of either party during the pendency of the
23 action.

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

27 (1) For the care and custody of the minor children of
28 the marriage as it considers just and proper, having due regard to
29 the age and sex of the children, and, unless otherwise manifestly

1 improper, giving the preference to the party not in fault;

2 (2) For the payment from the party in fault, not
3 allowed the care and custody of the children, an amount of money,
4 in gross or installments, as may be just and proper for that party
5 to contribute toward the nurture and education of the children;

6 (3) For the recovery from the party in fault an amount
7 of money, in gross or in installments, as may be just and proper
8 for the party to contribute to the maintenance of the other;

9 (4) For the delivery to the wife, when she is not the
10 party in fault, of her personal property in the possession or con-
11 trol of the husband at the time of giving the judgment;

12 (5) For the appointment of one or more trustees to col-
13 lect, receive, expend, manage, or invest, in the manner the court
14 directs, any sum of money adjudged for the maintenance of the wife
15 or the nurture and education of minor children committed to her
16 care and custody;

17 (6) For the division between the parties of their joint
18 property, or the separate property of each, in the manner as may be
19 just, and without regard as to which of the parties is the owner of
20 the property; and to accomplish this end the judgment may require
21 one of the parties to assign, deliver or convey any of his or her
22 real or personal property to the other party;

23 (7) To change the name of the wife when she is not the
24 party in fault.

25 Sec. 12.15. ENFORCEMENT OF JUDGMENT. The judgment or order
26 of the court may be enforced by the court by execution or by order
27 or orders as in its discretion it may from time to time consider
28 necessary.

29 Sec. 12.16. MODIFICATION OF JUDGMENT. Any time after

1 judgment, the court, upon the motion of either party, may set
2 aside, alter, or modify the judgment to provide for alimony or for
3 the appointment of trustees for the care and custody of the minor
4 children, or their nurture and education or the maintenance of
5 either party to the action.

6 Sec. 12.17. EFFECT OF DIVORCE. The effect of a judgment
7 decreeing a divorce is to restore the parties to the state of un-
8 married persons.

9 Article XIII. Eminent Domain

10 Sec. 13.01. PUBLIC USES FOR EMINENT DOMAIN. a. The right of
11 eminent domain may be exercised for the following public uses:

12 (1) All public uses authorized by the government of the
13 United States.

14 (2) Public buildings and grounds for the use of the
15 state and all other public uses authorized by the legislature of
16 the state.

17 (3) Public buildings and grounds for the use of an
18 organized or unorganized borough, city, town, village, school dis-
19 trict, or other municipal division, whether incorporated or unin-
20 corporated; canals, aqueducts, flumes, ditches, or pipes conduct-
21 ing water, heat or gas for the use of the inhabitants of any
22 organized or unorganized borough, city, town, or other municipal
23 division, whether incorporated or unincorporated; raising the
24 banks of streams, removing obstructions from them and widening,
25 deepening, or straightening their channels; roads, streets, and
26 alleys, and all other public uses for the benefit of an organized
27 or unorganized borough, city, town, or other municipal division,
28 whether incorporated or unincorporated, or its inhabitants, which
29 may be authorized by the legislature.

1 (4) Wharves, docks, piers, chutes, booms, ferries,
2 bridges of all kinds, private roads, plant and turnpike roads,
3 railroads, canals, ditches, flumes, aqueducts, and pipes for pub-
4 lic transportation, supplying mines and farming neighborhoods with
5 water, and draining and reclaiming lands, and for floating logs
6 and lumber on streams not navigable, and sites for reservoirs
7 necessary for collecting and storing water.

8 (5) Roads, tunnels, ditches, flumes, pipes, and dumping
9 places for working mines; also outlets, natural or otherwise, for
10 the flow, deposit, or conduct of tailings or refuse matter from
11 mines; also an occupancy in common by the owners or possessors of
12 different mines of any place for the flow, deposit, or conduct of
13 tailings or refuse matter from their several mines, and sites for
14 reservoirs necessary for collecting and storing water.

15 (6) Private roads leading from highways to residences,
16 mines, or farms.

17 (7) Telephone lines.

18 (8) Telegraph lines.

19 (9) Sewerage of an organized or unorganized borough,
20 city, town, village, or other municipal division, whether incor-
21 porated or unincorporated, or any subdivision of it, or of a set-
22 tlement consisting of not less than 10 families, or of public
23 buildings belonging to the state or to a college or university.

24 (10) Tramway lines.

25 (11) Electric power lines.

26 (12) For the location of pipelines for gathering, trans-
27 mitting, transporting, storing or delivering natural or artificial
28 gas or oil or any liquid or gaseous hydrocarbons, including, but
29 not limited to, pumping stations, terminals, storage tanks or

1 reservoirs and related installations.

2 b. The use of water for mining, power, and municipal pur-
3 poses and the use of pole and tower lines for telephone and tele-
4 graph wires, for aerial trams and for the transmission of electric
5 light and electric power, by whomever utilized, are each declared
6 to be beneficial to the public and to be a public use within the
7 provisions of this article. Rights-of-way across private property
8 whenever they are necessary for the operation of the mine or other
9 project in connection with which it is intended to be used may be
10 condemned in the manner as for any other condemnation. The right-
11 of-way may extend only to a right-of-way along, upon, and across
12 the surface of the lands to be condemned and to a strip of the
13 land of sufficient width to permit the construction on the land of
14 a ditch, flume, pipe line, canal, or other means of conveying
15 water as is adequate for the purposes intended, for the setting of
16 poles or the construction of towers upon which to string wires for
17 telephone and telegraph lines and lines for the transmission of
18 electric light or power for the operation of aerial trams and to
19 permit maintaining the lines and keeping them in repair.

20 Sec. 13.02. CLASSIFICATION OF ESTATES AND LANDS SUBJECT TO
21 BE TAKEN. The following is a classification of the estates and
22 rights in lands subject to be taken for public use:

23 (1) A fee simple, when taken for public buildings or
24 grounds, or for permanent buildings, for reservoirs and dams, and
25 permanent flooding occasioned by them, or for an outlet for a
26 flow, or a place for the deposit of debris or tailings of a mine,
27 or when in the judgment of the Department of Public Works a fee
28 simple is necessary for any of the purposes for which the depart-
29 ment, on behalf of the state, is authorized by law to acquire real

1 property by condemnation.

2 (2) An easement when taken for any other use.

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

6 Sec. 13.03. PRIVATE PROPERTY SUBJECT TO BE TAKEN. The pri-
7 vate property which may be taken under this article includes:

8 (1) All real property belonging to any person;

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

13 (3) Property appropriated to public use; but the pro-
14 perty shall not be taken unless for a more necessary purpose than
15 that to which it has already been appropriated;

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

18 (5) All rights-of-way for any of the purposes mentioned
19 in Sec. 13.01, and any structures and improvements on the rights-
20 of-way, and the lands held and used in connection with them shall
21 be subject to be connected with, crossed, or intersected by any
22 other right-of-way or improvements or structures on them. They
23 shall also be subject to a limited use, in common with the owner,
24 when necessary; but the uses, crossings, intersections, and con-
25 nections shall be made in the manner most compatible with the
26 greatest public benefit and least private injury;

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

29 Sec. 13.04. PREREQUISITES. Before property can be taken, it

1 shall appear:

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

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

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

8 Sec. 13.05. ENTRY UPON LAND. In all cases where land is re-
9 quired for public use, the state, public entity, or person having
10 the authority to condemn, or its agents in charge of the use, may
11 enter upon the land and make examination, surveys, and maps and
12 locate the boundaries; but it shall be located in the manner which
13 will be most compatible with the greatest public good and the least
14 private injury, and subject to the provisions of Sec. 13.07. The
15 entry shall constitute no cause of action in favor of the owners
16 of the land, except for injuries resulting from negligence,
17 wantonness, or malice.

18 Sec. 13.06. JURISDICTION. Eminent Domain proceedings may be
19 commenced in the superior court.

20 Sec. 13.07. POWERS OF COURT. The court has power:

21 (1) To regulate and determine the place and manner of
22 making the connections and crossings or of enjoying the common uses
23 mentioned in Paragraph (5), Sec. 13.03 of this article, and of the
24 occupying of canyons, passes, and defiles for railroad purposes, as
25 permitted and regulated by law.

26 (2) To hear and determine adverse and conflicting claims
27 to the property sought to be condemned and the damages for the
28 taking.

29 (3) To limit the amount of property sought to be

1 condemned, if in its opinion the quantity sought to be condemned
2 is not necessary.

3 (4) If the court determines that the property is to be
4 taken for a public use, the court may appoint a master to report on
5 the matters submitted by it.

6 Sec. 13.08. HEARING. The court, jury or master shall hear
7 the allegations and evidence of persons interested and may, if
8 applicable, ascertain and assess the following among other facts:

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

14 (2) If the property sought to be condemned constitutes
15 only a part of a larger parcel, the damages which will accrue to
16 the portion not sought to be condemned by reason of its severance
17 from the portion sought to be condemned, and the construction of
18 the improvements in the manner proposed by the plaintiff.

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

28 (4) If the property sought to be condemned is for a
29 railroad, the cost of good and sufficient fences along the line of

1 the railroad, and the cost of cattle guards where fences may cross
2 the line of the railroad.

3 (5) As far as practicable, compensation shall be assessed
4 for each source of damage separately.

5 Sec. 13.09. COMPENSATION AND DAMAGES. For the purpose of
6 assessing compensation and damages, the right to them accrues at
7 the date of issuance of the summons, and its actual value at that
8 date is the measure of compensation of the property to be actually
9 taken, and the basis of damages to property not actually taken but
10 injuriously affected in the cases where the damages are allowed.
11 If an order be made letting the plaintiff into possession, as pro-
12 vided in Sec. 13.14, the compensation and damages awarded shall
13 draw lawful interest from the date of the order. No improvements
14 put upon the property after the date of the service of summons
15 shall be included in the assessment of compensation or damages.

16 Sec. 13.10. DEFECTIVE TITLE. If the title attempted to be
17 acquired is found to be defective from any cause, the plaintiff
18 may again institute proceedings to acquire the same as provided in
19 this article.

20 Sec. 13.11. TIME FOR PAYING COMPENSATION OR DAMAGES; BOND TO
21 BUILD RAILROAD FENCES AND CATTLE GUARDS. The plaintiff shall,
22 within 30 days after final judgment, pay the sum of money assessed
23 If the use is for railroad purposes, the plaintiff may, at the time
24 of or before the payment, elect to build the fences and cattle
25 guards. If he so elects, he shall execute to the defendant a bond,
26 with sureties to be approved by the court, in double the assessed
27 cost of the same to build such fences and cattle guards within
28 eight months from the time the railroad is built on the land taken
29 If the bond is given, the plaintiff need not pay the cost of the

1 fences and cattle guards. In an action on the bond, the plaintiff
2 may recover reasonable attorney fees.

3 Sec. 13.12. PAYMENT OR DEPOSIT AND EXECUTION. Payment may
4 be made to the defendants entitled to payment, or the money may be
5 deposited in court for the defendants and be distributed to those
6 entitled to it. If the money is not so paid or deposited, the
7 defendants may have execution as in civil cases. If the money can-
8 not be obtained on execution, the court, upon a showing to that
9 effect, shall set aside and annul the entire proceedings and re-
10 store possession of the property to the defendant, if possession
11 has been taken by the plaintiff.

12 Sec. 13.13. FINAL ORDER OF CONDEMNATION. When payments have
13 been made and the bond given, if the plaintiff elects to give one
14 as required by Sec. 13.11, the court shall make a final order of
15 condemnation, which shall describe the property condemned and the
16 purposes of the condemnation. A copy of the order shall be filed
17 in the office of the recording district where the land is located,
18 at which time the property described in the order vests in the
19 plaintiff for the purposes specified in the order.

20 Sec. 13.14. ORDER AUTHORIZING PLAINTIFF TO CONTINUE IN OR
21 TAKE POSSESSION. In jury and non-jury actions, the court after
22 notice and hearing may adopt the master's report or may modify it
23 or may reject it in whole or in part or may receive further evi-
24 dence or may recommit it with instructions. Upon application of
25 the plaintiff after the master's report has been adopted by the
26 court, the court may make an order that upon payment into court of
27 the amount of damages assessed in the report, the plaintiff, if
28 already in possession of the property sought to be condemned, may
29 continue in possession, and if not in possession, the court may

1 authorize the plaintiff to take possession of the property and
2 use and possess it until the final conclusion of the proceedings,
3 and that all actions and proceedings against the plaintiff on that
4 account be stayed until that time. However, where an appeal is
5 taken by the defendant, the court may also require the plaintiff
6 to give a bond or undertaking with sufficient sureties before con-
7 tinuing or taking possession. The bond or undertaking shall be
8 approved by the court and shall be in the sum the court may direct
9 and conditioned to pay defendant any additional damages and costs
10 given by the judgment over and above the amount assessed, and the
11 damages which defendant sustains if the property is not taken for
12 public uses. For the purposes of this section the amount assessed
13 as damages in the report adopted by the court shall be considered
14 as just compensation for the property appropriated until reassessed
15 or changed in further proceedings. However, the plaintiff, by
16 payment into court of the amount assessed or by giving security as
17 above provided, shall not be precluded from an appeal, but may ap-
18 peal in the manner and with the effect as if no money had been
19 deposited or security given. If the plaintiff deposits the amount
20 of the assessment and continues in possession or takes possession
21 of the property and there is no dispute as to the ownership of the
22 property, the defendant may at any time demand and receive from
23 the court the money deposited, and the demand or receipt shall not
24 bar or preclude him from his right of appeal. However, if the
25 amount of the assessment is reduced on appeal by either party, the
26 defendant who has received the amount of the assessment deposited
27 shall be liable to the plaintiff for the difference between the
28 amount received by him and the amount finally assessed, with legal
29 interest from the time the defendant received the money deposited,

1 and it may be recovered by action.

2 Sec. 13.15. ADDITIONAL POWERS OF THE COURT TO REQUIRE SUR-
3 RENDER OF POSSESSION TO PLAINTIFF. The right to take possession
4 under this section is in addition to any other right to take pos-
5 session provided in this article. In proceedings for the acquisi-
6 tion of easements for the transmission and distribution of elec-
7 tric energy, communications, water, steam, and gas, the court may,
8 upon motion, and after a hearing, fix the time during which and
9 the terms upon which the parties in possession are required to sur-
10 render possession to the plaintiff. If the court finds that ur-
11 gent public necessity requires, it may grant the plaintiff posses-
12 sion at any time after the action has been commenced. Notice of
13 the hearing shall be as provided in the Rules of Civil Procedure,
14 except that, where service by publication is required, notice may
15 be given at any time following the date of the last publication by
16 registered mail addressed to the defendant and to parties in pos-
17 session at their last known addresses, as shown on the latest tax
18 roll of the political subdivision in which the premises are
19 located or as indicated by other evidence which shall be satis-
20 factory to the court.

21 Sec. 13.16. DEPOSIT INTO COURT OF ESTIMATED COMPENSATION AND
22 DAMAGES. The order given under the provisions of Sec. 13.15 re-
23 quiring the parties in possession to surrender possession to the
24 plaintiff shall require that the plaintiff deposit with the clerk
25 of the court an amount of money determined by the court fairly to
26 represent the estimated compensation and the estimated damages to
27 the defendant and for the speedy occupation, including reasonable
28 relocation costs, if required. In addition, the court shall in-
29 clude in its order a further requirement that the plaintiff execute

1 and file with the clerk of the court a bond, approved as to form
2 and as to sufficiency of the sureties by the court, in an amount
3 equal to the amount of money required to be deposited, conditioned
4 upon payment to the defendant of additional damages and costs
5 found to be due to the defendant in the action.

6 Sec. 13.17. WITHDRAWAL OF FUNDS BY PARTY IN INTEREST. The
7 money deposited in the court, or a part of it, may be withdrawn by
8 a party in interest in the manner provided in Sec. 13.20, and the
9 court shall have the power to direct the payment of delinquent
10 taxes and special assessments out of the amount determined to be
11 just compensation and to make orders with respect to encumbrances,
12 liens, rents, insurance, and other charges as shall be just and
13 equitable.

14 Sec. 13.18. DECLARATION OF TAKING BY STATE, FIRST CLASS CITY,
15 PUBLIC UTILITY DISTRICT OR SCHOOL DISTRICT. Where a proceeding is
16 instituted pursuant to this article by the state, public utility
17 district, or school district, it may file a declaration of taking
18 with the complaint or at any time after the filing of the com-
19 plaint but before judgment. Where a proceeding is instituted
20 pursuant to this article by a first class city in the exercise of
21 eminent domain for street or highway, school, sewer, water, tele-
22 phone, electric, other utility, and slum clearance purposes or use
23 granted to cities of the first class, the governing body of the
24 first class city may exercise the power through the filing of a
25 declaration of taking with the complaint or at any time after the
26 filing of the complaint but before judgment. The declaration of
27 taking procedure may not be used with relation to the property of
28 rural electrification or telephone cooperatives or non-profit
29 associations receiving financial assistance from the federal

1 government under the Rural Electrification Act.

2 Sec. 13.19. CONTENTS OF DECLARATION OF TAKING. The declara-
3 tion of taking shall contain:

4 (1) a statement of the authority under which the pro-
5 perty or an interest in it is taken;

6 (2) a statement of the public use for which the pro-
7 perty or an interest in it is taken;

8 (3) a description of the property sufficient for the
9 identification of it;

10 (4) a statement of the estate or interest in the pro-
11 perty;

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

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

16 Sec. 13.20. VESTING OF TITLE AND COMPENSATION. a. Upon the
17 filing of the declaration of taking and the deposit with the court
18 of the amount of the estimated compensation stated in the declara-
19 tion, title to the estate as specified in the declaration vests in
20 the plaintiff and that property is condemned and taken for the use
21 of the plaintiff and the right to just compensation for it vests in
22 the persons entitled to it. The compensation shall be ascertained
23 and awarded in the proceeding and established by judgment. The
24 judgment shall include interest at the rate of six per cent per
25 year on the amount finally awarded which exceeds the amount paid
26 into court under the declaration of taking. The interest runs
27 from the date title vests to the date of payment of the judgment.

28 b. Upon motion of a party in interest and notice to all
29 parties, the court may order that the money deposited, or any part

1 of it, be paid immediately to the person or persons entitled to it
2 for or on account of the just compensation to be awarded in the
3 proceedings. If the compensation finally awarded exceeds the
4 amount of money deposited, the deposit shall be offset against the
5 award. If the compensation finally awarded is less than the amount
6 of money deposited, the court shall enter judgment in favor of the
7 plaintiff and against the proper parties for the amount of the
8 excess.

9 Sec. 13.21. RIGHT OF ENTRY AND POSSESSION. a. Upon the
10 filing of the declaration of taking and the deposit of the esti-
11 mated compensation, the court may, upon motion, fix the time dur-
12 ing which and the terms upon which the parties in possession are
13 required to surrender possession to the petitioner. However, the
14 right of entry shall not be granted the plaintiff until after the
15 running of the time for the defendant to file an objection to the
16 declaration of taking. Where the party in possession withdraws
17 any part of the award and remains in possession, the court may fix
18 a reasonable rental for the premises to be paid by that party to
19 the plaintiff during such possession.

20 b. The court may direct the payment of delinquent taxes and
21 special assessments out of the amount determined to be just com-
22 pensation, and make orders with respect to encumbrances, liens,
23 rents, insurance, and other charges, as shall be just and equit-
24 able.

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

29 Sec. 13.22. EFFECT OF APPEAL. a. No appeal or any bond or

1 undertaking given operates to prevent or delay the vesting of title
2 to real property or the right to possession of it.

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

10 Article XIV. Escheat

11 Sec. 14.01. PROPERTY SUBJECT TO ESCHEAT. When a person dies
12 intestate, without heirs, leaving real or personal property in the
13 state, or when no claim of ownership has been made to personal
14 property for more than seven years, the property escheates to and
15 becomes the property of the state.

16 Sec. 14.02. ENFORCEMENT OF RIGHTS BY STATE. The state may
17 maintain an action to recover the possession of escheated property,
18 or for the enforcement of its rights to the property.

19 Sec. 14.03. TRANSMITTAL OF PERSONAL PROPERTY TO STATE. When
20 ever the administrator of any estate finds that his intestate left
21 no heirs, or after due search fails to find that his intestate left
22 heirs, he shall certify these facts to the probate court. When the
23 administrator's final account is settled, the court shall enter a
24 decree adjudging that the balance of the estate has escheated to
25 and become the property of the state. The administrator shall
26 transmit to the commissioner of revenue a certified copy of the
27 decree with the personal property which has escheated.

28 Sec. 14.04. ACTION BY ATTORNEY GENERAL. When the attorney
29 general is informed or has reason to believe that any real or per-

1 sonal property has escheated to the state, he shall bring an
2 action in the superior court to establish whether or not the pro-
3 perty has escheated to the state.

4 Sec. 14.05. CLAIM TO ESCHEATED PROPERTY. Within seven years
5 after the judgment, a person not a party to the escheat proceeding
6 may bring an action in the superior court to prove his claim to
7 the property. If the plaintiff establishes his claim and that he
8 had no knowledge of the prior escheat proceeding, the court shall
9 award the property to the plaintiff. If it is determined that the
10 plaintiff is entitled to the property or the proceeds from the sale
11 of the property, the commissioner of revenue shall deliver the
12 property or the proceeds to the plaintiff upon payment of the costs
13 of the escheat proceedings, the cost of sale, and other expenses
14 connected with the conversion of the property to cash. Any rents,
15 profits, interest or dividends which accrue to the state during
16 its possession of the property are the property of the state and
17 may not be recovered. The time limitation of seven years does not
18 apply to any minor or person of unsound mind, but such person may
19 bring an action to prove his claim only within one year after his
20 disability ceases.

21 Sec. 14.06. SALE OF PROPERTY BY STATE. The commissioner of
22 revenue may sell property which has escheated to the state as he
23 considers desirable. Where the value of the property exceeds
24 \$50.00, the sale shall be at public auction to the highest and
25 best bidder after public notice of the time and place of the
26 auction has been given by publication in at least one newspaper
27 once a week for three successive weeks.

28 Sec. 14.07. CLAIMS TO ESCHEATED PROPERTY. Whenever property
29 or the proceeds from the sale of the property, which has escheated

1 to the state amounts to \$1,000.00 or less and a rightful heir or
2 owner is discovered and makes a written claim to the property,
3 supported by convincing proof of his heirship or ownership, the
4 commissioner of revenue, with approval of the attorney general,
5 shall either return the property, if still unliquidated, or issue
6 a voucher for the amount of the proceeds, or for the amount of
7 money which has escheated, in favor of the heir or owner.

8 Sec. 14.08. BANKS AND FINANCIAL INSTITUTIONS; DUTY TO REPORT
9 ESCHEATED PROPERTY. Every bank, banker, or financial institution
10 having custody of a fund or other property to which no owner is
11 known to them, or the owner of which has not been heard from by
12 them for more than seven years, shall inform the attorney general
13 of that fact.

14 Sec. 14.09. ESCHEAT OF PROPERTY OF DEFUNCT ORGANIZATIONS OR
15 CORPORATIONS. Whenever any organization or corporation becomes
16 defunct and leaves property belonging to it, and no person insti-
17 tutes any proceeding to have the property distributed within four
18 years after the organization becomes defunct, the property escheats
19 to the state and shall be delivered to the commissioner of revenue.
20 If the person in possession of the property refuses to deliver it
21 to the state, the attorney general shall bring an action to re-
22 cover the property for the state.

23 Sec. 14.10. RECOVERY BY CLAIMANT OF PROPERTY OF DEFUNCT
24 ORGANIZATIONS OR CORPORATIONS. A person having a claim or in-
25 terest in property of a defunct organization or corporation may
26 bring an action for recovery of escheated property only within
27 seven years after the corporation or organization becomes defunct.

28 Article XV. Execution

29 Sec. 15.01. JUDGMENTS ENFORCEABLE BY EXECUTION. The party

1 in whose favor a judgment is given which requires the payment of
2 money, the delivery of real or personal property, or either of
3 them, may have a writ of execution issued for its enforcement.

4 Sec. 15.02. ISSUANCE OF EXECUTION AFTER FIVE YEARS. When a
5 period of five years has elapsed after the entry of judgment and
6 without an execution being issued on the judgment, no execution
7 may issue except by order of the court in which judgment is
8 entered. The court shall grant the motion if the court determines
9 that there are just and sufficient reasons for the failure to ob-
10 tain the writ of execution within five years after the entry of
11 judgment.

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

18 (1) If the writ is against the property of the judgment
19 debtor and the judgment directs particular property to be sold, it
20 shall require the officer or person to sell the particular property
21 and apply the proceeds as directed by the judgment. Otherwise, it
22 shall require the officer or person to satisfy the judgment, with
23 interest, out of the personal property of the debtor, and if suf-
24 ficient personal property cannot be found, then out of the real
25 property belonging to the debtor on the day when the judgment be-
26 came a lien or at any time after that day.

27 (2) If the writ is against real or personal property in
28 the hands of the judgment debtor's personal representatives, heirs,
29 devisees, legatees, tenants or trustees, it shall require the

1 officer or person to satisfy the judgment, with interest, out of
2 that property.

3 (3) If the writ is against the person of the judgment
4 debtor, it shall require the officer or person to arrest the
5 debtor and commit him to jail until he pays the judgment, with
6 interest, or is discharged according to law.

7 (4) If the writ is for the delivery of the possession
8 of real or personal property, it shall require the officer or per-
9 son to deliver the possession of the property, describing it, to
10 the party entitled to it, and may at the same time require the
11 officer or person to satisfy any costs, charges, damages, rents, or
12 profits recovered by that judgment out of the personal property of
13 the person against whom it was rendered, and the value of the pro-
14 perty for which the judgment was recovered to be specified in the
15 writ, if a delivery cannot be had; and if sufficient personal
16 property cannot be found, then out of the real property as pro-
17 vided in Paragraph (1) of this section.

18 Sec. 15.04. EXECUTION AGAINST PERSON. Execution against the
19 person of the judgment debtor may issue after the return of the
20 execution against his property unsatisfied in whole or in part if
21 it appears that the action is one in which the defendant might be
22 provisionally arrested as provided in Sec. 9.02. The execution
23 against the person may be applied for, allowed, and the defendant
24 discharged, in the manner provided in Article IX of this Code,
25 but the undertaking shall not be for an amount exceeding the judg-
26 ment.

27 Sec. 15.05. IMPRISONMENT ON EXECUTION. A person arrested on
28 execution shall be imprisoned in jail and kept at his own expense
29 until satisfaction of the execution or his legal discharge.

1 Sec. 15.06. EXECUTION AFTER DEATH OF JUDGMENT DEBTOR. If the
2 judgment debtor dies after judgment, execution may be issued on the
3 judgment in the manner and with the effect as if he were still
4 living, except that no action may be taken within six months from
5 the granting of letters testamentary or of administration upon the
6 estate of the deceased without leave of the court having juris-
7 diction over the probate of the estate.

8 Sec. 15.07. PROPERTY LIABLE. All goods, chattels, monies or
9 other property, both real and personal, or any interest in the pro-
10 perty, of the judgment debtor not exempt by law, and all property
11 and rights of property seized and held under attachment in the
12 action. are liable to execution.

13 Sec. 15.08. EXEMPTIONS. The following property is exempt
14 from execution, except as otherwise specifically provided when
15 selected and reserved by the judgment debtor or his agent at the
16 time of the levy, or as soon after levy and before sale as the
17 existence of the levy becomes known to him:

18 (1) The earnings of the judgment debtor received for
19 his personal services rendered at any time within 30 days im-
20 mediately preceding the levy, but not exceeding \$300.00, if it
21 appears that the earnings are necessary for the use of his family
22 which is supported in whole or in part by his labor;

23 (2) Books, pictures, and musical instruments belonging
24 to the judgment debtor not to exceed \$300.00 in value;

25 (3) Necessary wearing apparel belonging to the judgment
26 debtor for the use of himself or his family, including watches or
27 jewelry not to exceed \$200.00 in value;

28 (4) The tools, implements, apparatus, motor vehicles,
29 books, office furniture, business files, animals, laboratory, and

1 any other article necessary to enable any person to carry on the
2 trade, occupation, or profession by which that person habitually
3 earns his living to the value of \$1,800.00, including sufficient
4 quantity of food to support the animals, if any, for six months;

5 (5) The following property belonging to the judgment
6 debtor and in actual use or kept for use by and for his family:
7 animals, household goods, furniture, and utensils to the value of
8 \$1,200.00, including food sufficient to support the animals, if
9 any, for six months, and provisions actually provided for family
10 use and necessary for the support of that person and family for
11 six months;

12 (6) All property of a public or municipal corporation;

13 (7) No article of property mentioned in this section is
14 exempt from execution issued on a judgment recovered for its price,
15 and in the event the article of property has been sold or ex-
16 changed for other property, the proceeds of the sale or the article
17 for which it was exchanged is not exempt from execution.

18 Sec. 15.09. HOMESTEAD EXEMPTION. The homestead of any
19 family is, or the proceeds of the homestead are, exempt from
20 judicial sale for the satisfaction of any liability contracted or
21 judgment on debt except as provided in this section. The homestead
22 consists of the actual abode of and owned by the family or some
23 member of the family. It shall not exceed \$8,000.00 in value, and
24 not exceed 160 acres in extent if located outside a town or city
25 laid off into blocks or lots, or not exceed one-fourth of one acre
26 if located in any such town or city. This section does not apply
27 to decrees for the foreclosure of any mortgage properly executed.
28 If the owners of a homestead are married, it shall be executed by
29 husband and wife. When any officer levies upon a homestead, the

1 owner or the wife, husband, agent or attorney of such owner may
2 notify the officer that he claims the premises as his homestead,
3 describing it by metes and bounds, lot or block, or legal sub-
4 division. The officer shall notify the creditor of the claim, and
5 if the homestead exceeds the maximum in this section, and he deems
6 it of greater value than \$8,000.00, then he may apply to the court
7 for the appointment of three disinterested persons to appraise the
8 homestead, commencing with the 20 acres of the lot upon which the
9 dwelling is located, appraising each lot or 20 acres separately;
10 and if the homestead exceeds \$8,000.00, then the officer shall pro-
11 ceed to sell all in excess of \$8,000.00 by lots or smallest legal
12 subdivisions offering them in the order directed by the judgment
13 debtor, if he chooses to direct; otherwise he shall sell them so as
14 to leave the homestead as compact as possible. The homestead is
15 exempt from sale or any legal process after the death of the per-
16 son entitled to the homestead for the collection of any debts for
17 which it could not have been sold during his lifetime.

18 Sec. 15.10. EXECUTION AGAINST PROPERTY. The person to whom
19 the writ is directed shall execute the writ against property of
20 the judgment debtor until the judgment is satisfied, as follows:

21 (1) If property has been attached, he shall endorse on
22 the execution, and pay into court without delay the amount of the
23 proceeds of sales of perishable property or debts due the de-
24 fendant received by him, or sell other attached property, the pro-
25 ceeds of which will satisfy the judgment;

26 (2) If any portion of the judgment remains unsatisfied,
27 and no property has been attached, or the attachment has been dis-
28 charged, he shall levy on the property of the judgment debtor suf-
29 ficient to satisfy the judgment.

1 Sec. 15.11. EXECUTION PROCEDURE. All property shall be
2 levied upon or released from levy in the manner that similar pro-
3 perty is attached or released from attachment, and the proceedings
4 against garnishee and the liability of the garnishee are the same.
5 Until a levy, property is not affected by the execution. Any
6 excess in proceeds over the judgment and costs shall be returned
7 to the judgment debtor.

8 Sec. 15.12. RETENTION OF PERSONAL PROPERTY BY JUDGMENT DEB-
9 TOR. The judgment debtor may retain the personal property levied
10 upon or any of the property which is in his possession until the
11 day of sale upon executing a written undertaking with sufficient
12 sureties in double the value of the property to the effect that
13 the property will be delivered to the person levying the execution
14 at the time and place of sale.

15 Sec. 15.13. THIRD PARTY CLAIMS. If property levied upon is
16 claimed by a third person as his property by an affidavit of his
17 title to the property, or right to the possession of the property
18 and the ground of the title or right, stating the value of the pro-
19 perty, and delivered to the person making the levy, the person
20 shall release the property. However, the plaintiff, on demand of
21 the person, may give the person an undertaking executed by two
22 sufficient sureties in a sum equal to double the value of the pro-
23 perty levied upon. The undertaking shall be in favor of and shall
24 indemnify the third person against loss, liability, damages and
25 costs, by reason of the taking or sale of the property by the
26 person.

27 Sec. 15.14. NOTICE OF SALE ON EXECUTION. Before the sale of
28 property on execution, notice of the sale shall be given as follows:

29 (1) Notice of the sale of personal property is given

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

6 (2) Notice of the sale of real property is given by
7 posting a similar notice particularly describing the property not
8 less than four weeks prior to the day of sale in three public
9 places, as provided in Paragraph (1) of this section, and publish-
10 ing a copy of the notice once a week for the same period in a news-
11 paper published nearest to the place of sale.

12 Sec. 15.15. SALE. All sales of property upon execution
13 shall be made at auction between nine o'clock in the morning and
14 four o'clock in the afternoon. After sufficient property has been
15 sold to satisfy the execution, no more may be sold. Neither the
16 officer holding the execution nor his deputy may become a pur-
17 chaser or be interested in any purchase at the sale. When the
18 sale is of personal property capable of manual delivery, it shall
19 be within view of those who attend the sale, unless the court
20 directs the sale to be at some other place. The property shall be
21 sold in parcels which are likely to bring the highest price. When
22 the sale is of real property consisting of several known lots or
23 parcels, they shall be sold separately or otherwise, as is likely
24 to bring the highest price. When a portion of real property is
25 claimed by a third person, he may require it to be sold separately.

26 Sec. 15.16. POSTPONEMENT OF SALE. a. If, at the time
27 appointed for the sale, the person conducting it considers it to
28 the advantage of all concerned to postpone the sale for want of
29 purchasers, or other sufficient cause, he may postpone the sale

1 from time to time, but each postponement may not exceed one week.
2 Notice of every postponement shall be made by public proclamation.
3 Whenever a request in writing signed by the debtor and creditor
4 for a postponement of the sale to an agreed date and hour is given
5 to the person conducting the sale, he shall by public declaration
6 postpone the sale to the date and hour so fixed.

7 b. If for any reason the sale cannot be held at the time
8 appointed, the person who is to conduct the sale shall at the
9 earliest possible time designate a future day for the sale and
10 give notice of it in the manner provided in Sec. 15.14.

11 Sec. 15.17. BILL OF SALE FOR PERSONAL PROPERTY. When the
12 purchaser of personal property capable of manual delivery pays the
13 purchase money, the person making the sale shall deliver the pro-
14 perty to the purchaser, and if desired, execute and deliver to him
15 a bill of sale. If the personal property is not capable of manual
16 delivery, the person making the sale shall execute and deliver to
17 the purchaser a bill of sale. The bill of sale conveys to the
18 purchaser all the right which the debtor had in the property on
19 the day the execution or attachment was levied.

20 Sec. 15.18. CONFIRMATION OF SALE OR RESALE. a. Where real
21 property executed upon has been sold, the judgment creditor may,
22 upon motion, apply for an order confirming the sale. The judgment
23 debtor may object to the confirmation of the sale on the grounds
24 that there were substantial irregularities in the proceedings of
25 sale which caused probable loss or injury to the judgment debtor.

26 b. If the court finds that there were substantial irregulari-
27 ties in the proceedings concerning the sale, to the probable loss
28 or injury of the party objecting, it shall deny the motion and
29 direct that the property be resold, in whole or in part, as upon

1 an execution.

2 c. Upon a resale the bid of the purchaser at the former sale
3 shall be considered to be renewed and continued in force, and no
4 bid may be taken except for a greater amount. If the property
5 sells to any person other than the former purchaser, he shall be
6 repaid his bid out of the proceeds of the resale. An order con-
7 firming a sale is a conclusive determination of the regularity of
8 the proceedings concerning the sale, as to all persons, in any
9 other action or proceeding.

10 Sec. 15.19. EVICTION OF PURCHASER. If the purchaser of real
11 property sold on execution, or his successor in interest, is
12 evicted from the property because of irregularities in the proceed-
13 ings concerning the sale or the reversal or discharge of the judg-
14 ment, he may recover the price paid with interest from the judg-
15 ment creditor.

16 Sec. 15.20. CONTRIBUTION AMONG JOINT JUDGMENT DEBTORS. When
17 property liable to an execution against several persons is sold and
18 more than a due proportion of the judgment is satisfied out of the
19 proceeds of the sale of the property of one of them or one of them
20 pays more than his proportion without a sale, he may compel con-
21 tributions from the others. When a judgment is against several,
22 and is upon an obligation of one of them as security for another
23 and the surety pays the amount or a part of it, either by sale of
24 his property or before sale, he may compel repayment from the
25 principal. In that case the person so paying or contributing is
26 entitled to the benefit of the judgment to enforce contribution or
27 repayment if he files notice of his payment and claim to contribu-
28 tion or repayment with the court where the judgment was rendered,
29 within 30 days after his payment.

1 Sec. 15.21. ABSOLUTE SALES AND RIGHT OF REDEMPTION. Sales
2 of real property, when the estate is less than a leasehold of two
3 years unexpired term, are absolute. In all other cases the real
4 property or interest in real property is subject to redemption.
5 The person conducting the sale shall give to the purchaser a cer-
6 tificate of the sale which indicates the date of the judgment under
7 which the sale was made, and contains:

- 8 (1) a particular description of the real property sold;
- 9 (2) the price bid for each distinct lot or parcel;
- 10 (3) the whole price paid; and
- 11 (4) whether the property is subject to redemption.

12 Sec. 15.22. REDEMPTION. Property sold subject to redemption,
13 or any part separately sold, may be redeemed by the following per-
14 sons or their successors in interest:

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

20 Sec. 15.23. REDEMPTION BY LIEN CREDITOR FROM PURCHASER. A
21 lien creditor may redeem the property at any time within 60 days
22 after the date of the order confirming the sale on paying the
23 amount of the purchase money, with interest at the rate of eight
24 per cent per annum from the date of the sale, together with the
25 amount of any taxes which the purchaser may have paid. If the
26 purchaser is also a creditor having a lien prior to that of the
27 redemptioner, he shall also pay the amount of that lien with
28 interest. When unpatented mining claims are redeemed, taxes include
29 the annual assessment work required by law to be performed.

1 Sec. 15.24. SUBSEQUENT REDEMPTIONS. The property may be
2 again, and as often as any lien creditor or redemptioner is dis-
3 posed, redeemed from the previous redemptioner, within 60 days
4 after the last redemption, on paying the sum paid on the last re-
5 demption with interest at eight per cent a year from the date of
6 the last redemption, together with any taxes which the last re-
7 demptioner may have paid and the amount of any liens held by the
8 last redemptioner previous to his own.

9 Sec. 15.25. REDEMPTION BY JUDGMENT DEBTOR OR SUCCESSOR. The
10 judgment debtor or his successor in interest may redeem the pro-
11 perty before the confirmation of sale on paying the amount of the
12 purchase money, with interest at the rate of eight per cent from
13 the date of sale, together with the amount of any taxes, and in
14 the case of unpatented mining claims, the annual assessment work
15 required to be performed by law which the purchaser may have paid
16 after the purchase. If the judgment debtor does not redeem before
17 the confirmation of the sale, he may redeem within 12 months from
18 the order of confirmation.

19 Sec. 15.26. CONVEYANCE OF PROPERTY. If no redemption is
20 made within the time prescribed, the purchaser or last redemp-
21 tioner is entitled to a conveyance. If the judgment debtor redeems,
22 the effect of the sale is terminated and he is restored to his
23 estate.

24 Sec. 15.27. PROCEDURE FOR REDEMPTION. a. Redemption is
25 made by paying the sum required to the peace officer. Upon a re-
26 demption, the peace officer shall give the person redeeming a
27 certificate of redemption containing the sum paid on redemption,
28 from whom redeemed, and the date of such redemption, and he shall
29 immediately give notice of the redemption to the party from whom

1 redeemed.

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

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

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

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

11 Sec. 15.28. PRIORITY OF REDEMPTION. If more than one person
12 applies to the peace office at the same time to redeem, the per-
13 son having the prior lien is entitled to redeem first.

14 Sec. 15.29. REDEMPTION; PAYMENT OF MONEY BY PEACE OFFICER;
15 REFUSAL TO PERMIT REDEMPTION. The peace officer shall immediately
16 pay the money over to the person from whom the property is re-
17 deemed. A person's right to redeem shall not be prejudiced by the
18 refusal of the peace officer to allow the redemption.

19 Sec. 15.30 WASTE. Until the expiration of the time allowed
20 for redemption, the court may restrain the commission of waste on
21 the property by order granted with or without notice on the appli-
22 cation of the purchaser or judgment creditor. It is not waste for
23 the person in possession of the property at the time of sale, or
24 entitled to possession afterwards, to continue to use it during the
25 period allowed for redemption in the same manner in which it was
26 previously used, or to use it in the ordinary course of husbandry,
27 or to make the necessary repairs to buildings or fences, or to use
28 wood or timber on the property for the repairs or for fuel for his
29 family while he occupies the property.

1 Sec. 15.31. RIGHTS OF PURCHASER AND REDEMPTIONER. The pur-
2 chaser, from the time of sale until a resale or a redemption, or
3 a redemptioner, from the time of his redemption until another re-
4 demption, is entitled to the possession of the property purchased
5 or redeemed. Where the property is in the possession of a tenant,
6 the purchaser or redemptioner is entitled to receive the rents of
7 the property, or the value of the use and occupation of the pro-
8 perty.

9 Sec. 15.32. ARREST OF JUDGMENT DEBTOR AND UNDERTAKING. The
10 court may order a peace officer to arrest the judgment debtor and
11 bring him before the court upon satisfactory proof that there is
12 danger of his leaving the state or concealing himself within the
13 state and that there is reason to believe he has property which he
14 unjustly refuses to apply to the judgment. Upon being brought be-
15 fore the court he may be ordered to enter into an undertaking with
16 sufficient sureties that he will appear before the court when
17 directed, and that he will not, during the pendency of the pro-
18 ceedings, dispose of any portion of his property not exempt from
19 execution. In default of entering into the undertaking, he may be
20 committed to jail.

21 Sec. 15.33. SATISFACTION OF JUDGMENT WHEN JUDGMENT DEBTOR IS
22 CREDITOR OF STATE OR POLITICAL SUBDIVISION. Any salary, wages,
23 credits, or other personal property in the possession or under the
24 control of the state, or any organized or unorganized borough,
25 city, incorporated town, school district, or other political sub-
26 division, or any board, institution, commission, or officer of the
27 state, belonging or owed to any person, is subject to attachment
28 and execution in the manner and with the effect as property in the
29 possession of private persons. No clerk or officer of any court

1 is required to answer as to any monies or property in his posses-
2 sion in the custody of the law.

3 Article XVI. Fines

4 Sec. 16.01. SUITS ON UNDERTAKINGS. An official undertaking
5 or other security given and executed by an officer of the state, of
6 an organized or unorganized borough, city, town, or public or
7 municipal corporation, is in force and obligatory upon the princi-
8 pal and sureties to and for:

9 (1) the state or the organized or unorganized borough,
10 city, town, or public or municipal corporation;

11 (2) the use and benefit of persons who are entitled to
12 the benefit and who are injured by the misconduct or neglect of
13 duty of the officer in his official capacity.

14 Sec. 16.02. SUCCESSIVE ACTIONS. No official undertaking is
15 void on the first recovery of a judgment on it. Until the whole
16 penalty of the undertaking or other security is exhausted, suit
17 may be brought, from time to time, and judgment recovered on the
18 undertaking by a person to whom a right of action has accrued
19 against the officer and his sureties.

20 Sec. 16.03. ACTIONS FOR FINES OR FORFEITURES. Fines and
21 forfeitures may be recovered by an action in the name of the
22 officer or person to whom they were given by law, or in the name
23 of the officer or person who is authorized to prosecute for them.

24 Sec. 16.04. COLLUSIVE JUDGMENT NOT A BAR TO ANOTHER ACTION.
25 Recovery of a judgment for a penalty or forfeiture obtained by
26 collusion between the plaintiff and defendant, with intent to save
27 the defendant wholly or partially from the consequences contem-
28 plated by law, in cases where penalty or forfeiture is given
29 wholly or partly to the person who prosecutes, does not bar the

1 recovery of a penalty or forfeiture by another person in a separ-
2 ate action.

3 Article XVII. Forcible Entry and Detainer

4 Sec. 17.01. PROHIBITION OF USE OF FORCE FOR ENTRY ON REALTY.

5 No person may enter upon any land, tenement, or other real pro-
6 perty except in cases where entry is given by law. In those
7 cases the entry shall not be made with force but only in a peace-
8 able manner.

9 Sec. 17.02. ACTION FOR FORCIBLE ENTRY OR DETENTION. When a
10 forcible entry is made upon any premises, or when an entry is made
11 in a peaceable manner and the possession is held by force, the
12 person entitled to the premises may maintain an action to recover
13 the possession.

14 Sec. 17.03. UNDERTAKING ON APPEAL. If judgment is rendered
15 against the defendant for the restitution of the real property
16 described in the complaint or any part of it, no appeal may be
17 taken by the defendant from the judgment until he gives, in addi-
18 tion to any undertaking required upon appeal, an undertaking to the
19 adverse party, with two sureties. The sureties shall justify, in
20 the manner as bail upon arrest, for the payment to the plaintiff
21 of twice the rental value of the real property of which restitu-
22 tion shall be adjudged from the rendition of the judgment until
23 final judgment in the action, if the judgment is affirmed upon
24 appeal.

25 Sec. 17.04. UNLAWFUL HOLDING BY FORCE. The following are
26 cases of unlawful holding by force within the meaning of this
27 article:

28 (1) When the tenant or person in possession of any
29 premises fails or refuses to pay any rent due on the lease or

1 agreement under which he holds, or deliver up the possession of
2 the premises for 10 days after demand made in writing for the
3 possession;

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

9 (3) When, after a notice to terminate the tenancy as
10 provided in Sec. 22-1-4, ACLA 1949, a person continues in posses-
11 sion of the premises after expiration of the time for determining
12 the tenancy.

13 Sec. 17.05. REQUISITES OF NOTICE TO QUIT. A notice to quit
14 shall be in writing and shall be served upon the tenant or person
15 in possession by being delivered to him or left at the premises,
16 in case of his absence from the premises.

17 Sec. 17.06. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION
18 BROUGHT. An action for the recovery of the possession of the
19 premises may be maintained in the cases specified in Paragraph (2)
20 of Sec. 17.04 when the notice to quit has been served upon the
21 tenant or person in possession for the period of 10 days before
22 the commencement of the action, unless the leasing or occupation
23 is for the purpose of farming or agriculture, in which case the
24 notice shall be served 90 days before commencement of the action.

25 Sec. 17.07. ACTION AGAINST PERSON PAYING RENT IN ADVANCE.
26 The service of a notice to quit upon a tenant or person in posses-
27 sion does not authorize an action to be maintained against him for
28 the possession of the premises before the expiration of any period
29 for which that tenant or person may have paid the rent of those

1 premises in advance.

2 Sec. 17.08. AGRICULTURAL TENANT. When the leasing or
3 occupation is for the purpose of farming or agriculture, the ten-
4 ant or person in possession shall, after the termination of the
5 lease or occupancy, have free access to the premises to cultivate
6 and harvest or gather any crop or produce of the soil planted or
7 sown by him before the service of the notice to quit.

8 Sec. 17.09. INQUIRY INTO MERITS OF TITLE. In an action to
9 recover the possession on any land, tenement, or other real pro-
10 perty, where the entry is forcible or when the possession is un-
11 lawfully held by force, there shall be no inquiry into the merits
12 of the title. Three years' quiet possession of the premises im-
13 mediately preceding the commencement of the action by the party in
14 possession, or those under whom he holds, may be pleaded in bar
15 thereof, unless the estate of the party in the premises is ended.

16 Sec. 17.10. ACTIONS FOR POSSESSION OF REALTY. In an action
17 to recover the possession of real property, as provided in Sec.
18 25.01, notice to quit, when necessary, may be given as prescribed
19 in this article, and nothing in this article shall be construed
20 so as to prevent such an action being maintained for the recovery
21 of the possession.

22 Article XVIII. Foreclosure

23 Sec. 18.01. JUDGMENT ON FORECLOSURE OF LIEN. A person hav-
24 ing a lien upon real property, other than that of a judgment,
25 whether created by mortgage or otherwise, to secure a debt or
26 other obligation may bring an action to foreclose the lien. In
27 the action the court may direct the sale of the encumbered pro-
28 perty, or a portion of it, and the application of the proceeds of
29 the sale to the payment of costs, expenses of sale, and the amount

1 due the plaintiff. The judgment shall also determine the personal
2 liability of any defendant for the payment of the debt secured by
3 the lien.

4 Sec. 18.02. SALE OF ENCUMBERED PROPERTY. The sale of the
5 encumbered property shall be conducted in the manner as the sale of
6 real property on execution. Any deficiency between the amount of
7 the judgment and the sale price may be enforced by execution.

8 Sec. 18.03. REDEMPTION AFTER FORECLOSURE OF LIEN. Property
9 sold upon a judgment of foreclosure may be redeemed in the manner
10 and with the effect as real property sold on an execution issued
11 upon a judgment for the payment of an unsecured debt.

12 Sec. 18.04. EFFECT OF ACTION TO RECOVER DEBT. During or
13 after the pendency of an action for the recovery of a debt secured
14 by a lien mentioned in Sec. 18.01, an action cannot be maintained
15 for the foreclosure of the lien unless judgment is given in that
16 action that the plaintiff recover the debt or a part of it, and an
17 execution issued in the action against the property of the defend-
18 ant is returned unsatisfied in whole or in part.

19 Sec. 18.05. PROCEEDINGS WHEN DEBT SECURED IS NOT ALL DUE.
20 If the debt for which the lien is held is not all due, as soon as
21 sufficient of the property has been sold to pay the amount due,
22 with costs, the sale shall cease. As often as more becomes due,
23 for principal or interest, the court may, on motion, order more to
24 be sold. If the property cannot be sold in portions, without in-
25 jury to the parties, the whole may be ordered to be sold in the
26 first instance, and the entire debt and costs paid, there being a
27 rebate of interest where a rebate is proper.

28 Sec. 18.06. EFFECT OF PAYMENT BEFORE JUDGMENT OR SALE. If,
29 before judgment is given, the amount then due, with the costs of

1 action, is paid into court, the action shall be dismissed. If the
2 amount due, with costs, is paid into court after judgment and be-
3 fore sale, the effect of the judgment as to the amount then due
4 shall be terminated, and any execution recalled.

5 Article XIX. Injunction

6 Sec. 19.01. AUTHORIZATION FOR INJUNCTION. When it appears
7 (1) that the plaintiff is entitled to the relief demanded, and the
8 relief of it includes restraining the commission or continuance of
9 some act, the commission or continuance of which during the liti-
10 gation would produce injury to the plaintiff; or (2) that the
11 defendant is doing, or threatens or is about to do, or is procur-
12 ing or suffering to be done, some act in violation of the plain-
13 tiff's rights concerning the subject of the action and tending to
14 render the judgment ineffectual; or (3) that the defendant threat-
15 ens or is about to remove or dispose of his property, or a part of
16 it, with intent to delay or defraud his creditors; an injunction
17 may be allowed to restrain such act, removal, or disposition.

18 Article XX. Lewd Houses

19 Sec. 20.01. ABATEMENT OF PLACES USED FOR IMMORAL ACT. Who-
20 ever erects, establishes, continues, maintains, uses, owns, or
21 leases a building, structure or other place used for the purpose
22 of lewdness, assignation, or prostitution or any other immoral act,
23 is guilty of maintaining a nuisance, and the building, structure
24 or place, or the ground itself, in or upon which, or in any part
25 of which the lewdness, assignation, or prostitution is conducted,
26 permitted, or carried on, continues or exists, and the furniture,
27 fixtures, and other contents constitute a nuisance and may be en-
28 joined and abated.

29 Sec. 20.02. INJUNCTION. Whenever there is reason to believe

1 that a nuisance as defined in this article exists, the attorney
2 general shall, or any citizen may, bring an action to perpetually
3 enjoin the nuisance, the person maintaining it, and the owner,
4 lessee, or agent of the building or ground upon which the nuisance
5 exists.

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

12 Sec. 20.04. CONTEMPT PROCEEDING. If an injunction granted
13 under the provisions of this article is violated, the court may
14 summarily try and punish the offender. A party found guilty of
15 contempt under the provisions of this article is punishable by a
16 fine of not more than \$1,000.00, or by imprisonment for not less
17 than three months nor more than six months, or by both fine and
18 imprisonment.

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

1 Sec. 20.06. PROCEEDS OF SALE. a. The proceeds of the sale
2 of the contents shall be applied as follows:

3 (1) To the payment of fees and costs of the removal and
4 sale;

5 (2) To payment of the allowances and costs of closing
6 and keeping closed the buildings or places;

7 (3) To the payment of plaintiff's costs;

8 (4) To the payment of any balance remaining to the
9 owner of the property sold.

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

19 Sec. 20.07. RELEASE OF PREMISES TO OWNER. If the owner of
20 the premises has not been guilty of a contempt in the proceedings,
21 and appears and pays all costs, fees, and allowances which are a
22 lien on the premises, and files a bond with sureties approved by
23 the court in the full value of the property, as determined by the
24 court, to the effect that he will abate the nuisance that exists
25 at the building or place and prevent the nuisance from being
26 established within a period of one year thereafter, the court may
27 order the premises to be delivered to the owner, and cancel the
28 order of abatement. The release of the property does not release
29 it from a judgment, lien, penalty or liability to which it may be

1 subject by law.

2 Sec. 20.08. FINE FOR CONTEMPT AS LIEN ON PREMISES. Any fine
3 imposed as punishment for contempt against the owner is a lien
4 upon the premises to the extent of the interest of that person in
5 the premises and is enforceable and collectible by execution
6 issued by the order of the court.

7 Article XXI. Nuisances

8 Sec. 21.01. ACTION TO ABATE OR ENJOIN PRIVATE NUISANCE. An
9 action may be brought by a person whose property is injuriously
10 affected, or whose personal enjoyment is lessened by a private
11 nuisance, and by the judgment in the action the nuisance may be
12 enjoined or abated as well as damages recovered.

13 Sec. 21.02. MANNER OF ABATEMENT. If judgment is in favor of
14 the plaintiff, an order may issue at any time within six months of
15 the date of the judgment at plaintiff's request directing the
16 issuance of a warrant to a peace officer to abate the nuisance.
17 The expense of abating the nuisance is a part of the judgment and
18 may be enforced against the property of the defendant.

19 Sec. 21.03. ORDER STAYING ISSUE OF WARRANT. At any time be-
20 fore the order is made the defendant may apply to the court for an
21 order to stay the issuance of the warrant for a period not exceed-
22 ing six months to allow the defendant to abate the nuisance. The
23 court may grant the stay if the defendant gives an undertaking to
24 the plaintiff in a sufficient amount and with satisfactory sure-
25 ties that the nuisance will be abated within the time and in the
26 manner specified in the order. If the defendant fails to abate
27 the nuisance within the time specified, an order directing the
28 issuance of the warrant for the abatement of the nuisance may be
29 made.

1 Article XXII. Partition

2 Sec. 22.01. RIGHT OF ACTION FOR PARTITION OR SALE. When
3 several persons own real property as tenants in common, in which
4 one or more of them have an estate of inheritance, or for life or
5 years, or when real property is subject to a life estate with re-
6 mainder over, an action may be brought by one or more of those per-
7 sons or by the life tenant for a portion of it according to the
8 respective rights of the interested persons, and for a sale of the
9 property, or a part of it, if it appears that a partition cannot
10 be had without great prejudice to the parties.

11 Sec. 22.02. LIEN ON UNDIVIDED INTEREST. When a lien is on an
12 undivided interest or estate of any of the parties and a partition
13 is made, the lien is then only upon the share assigned to that
14 party, but the share shall first be charged with its just propor-
15 tion of the costs of the partition, in preference to the lien.

16 Sec. 22.03. DETERMINATION OF RIGHTS OF PARTIES. The rights
17 of the several parties may be determined in the action. If a
18 party having a share or interest in or lien upon the property is
19 unknown, or any of the known parties reside out of the state, or
20 cannot be found in the state, the summons may be served upon the
21 absent or unknown party by publication as in other actions. Where
22 a sale of the property is necessary, the title shall be ascertained
23 by proof to the satisfaction of the court before the sale may be
24 ordered.

25 Sec. 22.04. ORDER FOR PARTITION OR SALE. If it appears that
26 the property or a part of it is so situated that partition cannot
27 be made without great prejudice to the owners, the court may order
28 a sale of the property. Otherwise, upon the requisite proofs be-
29 ing made, the court shall order a partition according to the

1 respective rights of the parties as ascertained by it, may appoint
2 one or more masters or referees to partition the property, and
3 shall designate the portion to remain undivided for the owners
4 whose interests remain unknown or are not ascertained.

5 Sec. 22.05. REPORT OF REFEREES. In making the partition the
6 referees shall divide the property and allot its several portions
7 to the respective parties, quality and quantity relatively con-
8 sidered, according to the respective rights of the parties as
9 determined by the court, and designating the several portions by
10 proper landmarks. The referees may employ a surveyor with the
11 necessary assistants to aid them.

12 Sec. 22.06. EFFECT OF JUDGMENT. Upon hearing and confirma-
13 tion of the report, the court shall give judgment that the parti-
14 tion be effectual forever, which judgment is binding and con-
15 clusive:

16 (1) On all parties named as parties to the action, and
17 their legal representatives, who have at the time an interest in
18 the property divided or a part of it as owners in fee or as ten-
19 ants for life or for years or as entitled to the reversion, re-
20 mainder, or inheritance of the property, or a part of it, after
21 the termination of a particular estate, and who by any contin-
22 gency may be entitled to a beneficial interest in the property or
23 who have an interest in an undivided share of it as tenants for
24 years or for life;

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

28 (3) On other persons claiming from the parties or per-
29 sons or either of them

1 Sec. 22.07. TENANT NOT AFFECTED BY JUDGMENT. The judgment
2 and partition shall not affect tenants for years or for life of
3 the whole of the property which is the subject of partition, and
4 shall not preclude any person, except those specified in Sec. 22.06
5 from claiming title to the property in question or from contravert-
6 ing the title of the parties between whom the partition was made.

7 Sec. 22.08. ORDER OF SALE. If it appears by evidence to the
8 satisfaction of the court that a partition cannot be made without
9 great prejudice to the owners, it shall order a sale of the pro-
10 perty.

11 Sec. 22.09. ESTATE OF LIFE OR YEARS. When a part of the pro-
12 perty only is ordered to be sold, if there is an estate for life
13 or years in an undivided share of the property, the estate may be
14 set off in a part of the property not ordered to be sold.

15 Sec. 22.10. REFERENCE TO DETERMINE LIENS. It it appears
16 that there are outstanding liens upon the property or a part of it,
17 and the persons holding the liens were not made parties to the
18 action, the court may appoint a referee to ascertain whether those
19 liens have been paid, and if not paid, what amount remains due and
20 their order among the liens severally held by those persons and
21 the parties to the action.

22 Sec. 22.11. APPEARANCE OF LIENHOLDERS BEFORE REFEREE. Per-
23 sons having outstanding liens shall be notified to appear before
24 the referee at a specified time and place to prove the amount due
25 or to become due, contingently or absolutely.

26 Sec. 22.12. EFFECT OF CONFIRMATION OF REPORT. If the report
27 of the referee is confirmed by the court, the order of confirma-
28 tion is binding and conclusive on the parties to the action and
29 upon the lien creditors who have been duly served with notice to

1 appear before the referee.

2 Sec. 22.13. APPLICATION OF PROCEEDS FROM SALE OF ENCUMBERED
3 PROPERTY. The proceeds of the sale of the encumbered property
4 shall be applied under the direction of the court as follows:

5 (1) To pay its just proportion of the general cost of
6 the action;

7 (2) To pay the costs of the reference;

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

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

12 Sec. 22.14. LIENHOLDER HAVING OTHER SECURITIES. Whenever a
13 party to an action or a person who holds a lien upon the property
14 or a part of it has other securities for the payment of the amount
15 of the lien, the court may order the securities to be exhausted be-
16 fore a distribution of the proceeds of sale or may order a just
17 deduction to be made from the amount of the lien on the property
18 on that account.

19 Sec. 22.15. DISTRIBUTION OF PROCEEDS OF SALE. The proceeds
20 of sale and the securities taken by the referees, or any part of
21 the proceeds, shall be distributed to the persons entitled to them
22 whenever the court directs. But if no direction is given, all the
23 proceeds and securities shall be paid into court.

24 Sec. 22.16. CONTINUATION OF ACTION TO DETERMINE CLAIMS TO
25 PROCEEDS. When the proceeds of the sale of a share or parcel be-
26 longing to persons who are parties to the action are paid into
27 court, the action may be continued as between the parties for the
28 determination of their respective claims to the proceeds, which
29 shall be ascertained and adjudged by the court. Further testimony

1 may be taken in court or by a referee at the discretion of the
2 court, and the court may, if necessary, require the parties to
3 present the facts or law in controversy by pleadings, as in an
4 original action.

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

12 Sec. 22.18. CREDIT TERMS. In the order of sale the court
13 shall direct the terms of credit which may be allowed for the pur-
14 chase money of a portion of the premises of which it may direct a
15 sale on credit, and for that portion of which the purchase money
16 is required, by the provisions contained in this article, to be
17 invested for the benefit of unknown owners, infants, and parties
18 out of the state.

19 Sec. 22.19. CREDIT SALES. Separate mortgages and other
20 securities may be taken for the whole or convenient portions of
21 the purchase money of those parts of the property directed by the
22 court to be sold on credit in the name of that owner or in the
23 name of the clerk of the court as the court directs.

24 Sec. 22.20. DISPOSAL OF ESTATE FOR LIFE OR YEARS. When the
25 estate of a tenant for life or years, in an undivided part of the
26 property in question, is admitted by the parties or ascertained
27 by the court to be existing at the time of the order of sale, and
28 the person entitled to that estate is a party to the action, the
29 estate may be first set off out of a part of the property and a

1 sale made of that part, subject to the unsold estate of that ten-
2 ant in that part. But, if in the judgment of the court a due re-
3 gard to the interest of all the parties requires the sale of that
4 estate also, the sale may be ordered.

5 Sec. 22.21. COMPENSATION FOR SALE OF ESTATE FOR LIFE OR
6 YEARS. A person entitled to an estate for life or years in an un-
7 divided part of the property, whose estate has been sold, is en-
8 titled to receive a sum as reasonable satisfaction for the estate,
9 the sum being based on principles of law applicable to annuities.
10 The person so entitled shall consent to accept the sum for their
11 estate by an instrument duly acknowledged or proved in the same
12 manner as deeds for the purpose of record and filed with the clerk
13 of court.

14 Sec. 22.22. DETERMINATION OF VALUE OF ESTATE FOR LIFE OR
15 YEARS SOLD WITHOUT CONSENT. If the consent is not given, as pro-
16 vided in Sec. 22.21, before the report of sale, the court shall
17 determine what proportion of the proceeds of the sale, after de-
18 ducting expenses, is a just and reasonable sum to be invested for
19 the benefit of the person entitled to the estate for life or years,
20 and shall order the sum to be deposited in court for investment.

21 Sec. 22.23. RULES FOR DETERMINING VALUE. a. The proportion
22 of the proceeds of the sale to be invested as provided in Sec.
23 22.22 shall be determined as follows:

24 (1) If an estate in dower is included in the order of
25 sale, its proportion shall be one-third of the proceeds of the sale
26 of the property, or of the sale of the undivided share in the pro-
27 perty on which the claim of dower existed.

28 (2) If an estate for life or years be included in the
29 order of sale, its proportion shall be the whole proceeds of the

1 sale of the property, or of the sale of the undivided share in
2 which that estate may be.

3 b. In all cases, the proportion of the expenses of the pro-
4 ceeding shall be deducted from the proceeds of the sale.

5 Sec. 22.24. PROTECTION OF UNKNOWN TENANTS. If the persons
6 entitled to the estate for life or years are unknown, the court
7 shall provide for the protection of their rights in a similar man-
8 ner, as far as possible, as if they were known and had appeared.

9 Sec. 22.25. INCHOATE RIGHT OF DOWER AND VESTED OR CONTINGENT
10 FUTURE RIGHTS OR ESTATES. In cases of sales in partition, when it
11 appears that a married woman has an inchoate right of dower or
12 that any person has a vested or contingent future right or estate
13 in any of the property sold, the court shall determine the propor-
14 tional value of the inchoate, contingent, or vested right or estate
15 according to the principles of law applicable to annuities and
16 survivorship, and shall direct that proportion of the proceeds of
17 the sale to be invested, secured, or paid over, in a manner which
18 will protect the rights and interests of the parties.

19 Sec. 22.26. SEPARATE SALES OF FARMS OR LOTS. The terms of
20 sales of property shall be known at the time of sale, and if the
21 premises consist of distinct farms or lots, they shall be sold
22 separately unless the court directs otherwise.

23 Sec. 22.27. PERSONS INELIGIBLE TO PURCHASE. A referee or
24 any person for the benefit of a referee shall not be interested in
25 any purchase. A guardian of an infant party shall not be inter-
26 ested in the purchase of real property being the subject of the
27 action except for the benefit of the infant. All sales contrary
28 to the provisions of this section are void.

29 Sec. 22.28. REPORT OF SALE. After the sale of property

1 ordered to be sold, a report shall be made to the court, with a
2 description of the different parcels of lands sold to each pur-
3 chaser, the name of the purchaser, the price paid or secured, the
4 terms and conditions of the sale, and any securities taken.

5 Sec. 22.29. CONFIRMATION OR VACATION OF SALE. a. After the
6 filing of the report, a party entitled to a share of the proceeds
7 may move the court to confirm or set aside the sale or sales re-
8 ported. If the sale is set aside, the court may order a new sale.
9 If the sale is confirmed, the court shall enter an order directing
10 conveyances to be executed and securities to be taken under the
11 sale.

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

18 Sec. 22.30. INVESTMENT OF PROCEEDS BELONGING TO UNKNOWN OR
19 NONRESIDENT OWNER. When there are proceeds of a sale belonging to
20 an unknown owner or to a person outside the state who has no legal
21 representatives within it, or when there are proceeds arising from
22 the sale of an estate subject to the prior estate of a tenant for
23 life or years, which are paid into the court or otherwise de-
24 posited by order of the court, the court may order the proceeds to
25 be invested in securities bearing interest for the benefit of the
26 persons entitled to the proceeds.

27 Sec. 22.31. SECURITY TAKEN AND INVESTMENTS MADE IN NAME OF
28 COURT CLERK. When the security for the proceeds of sale is taken
29 or when an investment of any proceeds is made, it shall be done,

1 except as herein otherwise provided, in the name of the clerk of
2 the court, who shall hold the same for the use and benefit of the
3 parties interested, subject to the order of the court.

4 Sec. 22.32. SECURITY TAKEN IN NAMES OF PARTIES WHEN INTERESTS
5 ASCERTAINED. When security is taken on a sale, and the parties
6 interested in the security agree on the shares and proportions to
7 which they are respectively entitled or when shares and proportions
8 have been previously adjudged by the court, the securities shall be
9 taken in the names of and payable to the parties respectively
10 entitled to them, and shall be delivered to the parties.

11 Sec. 22.33. DUTIES OF CLERK IN SECURITIES AND INVESTMENTS.
12 The clerk in whose name a security is taken or by whom an invest-
13 ment is made shall receive the interest and principal as it be-
14 comes due, and apply and invest it as the court may direct. The
15 clerk shall deposit in his office all securities taken, and keep
16 an account in a book provided and kept for that purpose in the
17 clerk's office, free for inspection by all persons, of investments
18 and money received by him from the investments, and its disposi-
19 tion.

20 Sec. 22.34. COMPENSATION FOR UNEQUAL PARTITION. When it
21 appears that partition cannot be made equal between the parties,
22 according to their respective rights, without prejudice to the
23 rights and interests of some of them, and a partition is ordered,
24 the court may adjudge compensation to be made by one party to
25 another on account of the inequality. However, the compensation
26 shall not be required to be made to others by owners unknown, nor
27 by infants, unless it appears that the infant has personal property
28 sufficient for that purpose and that his interest will be promoted
29 by giving compensation.

1 Sec. 22.35. PAYMENT TO GUARDIAN OF SHARE OF INFANT. When
2 the share of an infant is sold, the proceeds of the sale may be
3 paid to his general guardian or the special guardian appointed for
4 him in the action, upon the guardian giving the security required
5 by law or directed by order of the court.

6 Sec. 22.36. PAYMENT TO GUARDIAN OF SHARE OF INSANE OR IN-
7 COMPETENT PERSON. The guardian who may be entitled to the custody
8 and management of the estate of an insane person or other person
9 adjudged incapable of conducting his own affairs, whose interest
10 in real property has been sold, may receive in behalf of that per-
11 son his share of the proceeds of the real property on executing
12 an undertaking, with sufficient sureties and approved by the judge
13 of the court, that he will faithfully discharge the trust reposed
14 in him and will render a true and just account to the person
15 entitled or to his legal representatives.

16 Sec. 22.37. APPORTIONMENT OF COST OF PARTITION. The costs
17 of partition, including fees of referees and other disbursements,
18 shall be paid by the parties respectively entitled to share in the
19 lands divided, in proportion to their respective interests in the
20 property, and may be included and specified in the judgment. In
21 that case they are a lien on the several shares, and the judgment
22 may be enforced by execution against the parties separately. When,
23 however, a litigation arises between some of the parties only, the
24 court may require the expenses of the litigation to be paid by
25 any or all of the parties to the litigation.

26 Article XXIII. Receivers

27 Sec. 23.01. APPOINTMENT OF RECEIVERS. A receiver may be
28 appointed by the court in any action or proceeding except an action
29 for the recovery of specific personal property:

1 (1) Provisionally, before judgment, on the application
2 of either party, when his right to the property, which is the sub-
3 ject of the action or proceeding and which is in the possession of
4 an adverse party, is probable, and where it is shown that the pro-
5 perty or its rents or profits are in danger of being lost or
6 materially injured or impaired;

7 (2) After judgment to carry the judgment into effect;

8 (3) After judgment to dispose of the property according
9 to the judgment, or to preserve it during the pendency of an
10 appeal, or when an execution has been returned unsatisfied and the
11 debtor refuses to apply his property in satisfaction of the judg-
12 ment;

13 (4) In the cases when a corporation has been dissolved,
14 or is insolvent, or in imminent danger of insolvency, or has for-
15 feited its corporate rights;

16 (5) In the cases when a debtor has been declared in-
17 solvent.

18 Sec. 23.02. OATH AND UNDERTAKING OF RECEIVER. Before enter-
19 ing upon his duties, a receiver shall be sworn to perform them
20 faithfully, and shall file with the clerk of the court an under-
21 taking, with one or more sufficient sureties, in whatever sum the
22 court may direct, to the effect that he will faithfully discharge
23 the duties of receiver and obey the orders of the court.

24 Article XXIV. Recovery of Personal Property

25 Sec. 24.01. CLAIM FOR DELIVERY OF PERSONAL PROPERTY. In an
26 action to recover possession of personal property, the plaintiff
27 may, at any time after the action is commenced and before judgment,
28 claim the immediate delivery of the property to him.

29 Sec. 24.02. UNDERTAKING. A peace officer shall not take

1 personal property into custody until the plaintiff delivers to
2 him sufficient sureties to the effect that they are bound in
3 double the value of the property for the prosecution of the action
4 and the return of the property to the defendant, if return be
5 adjudged, and for the payment to the defendant of any sum which
6 may be recovered against the plaintiff for any cause.

7 Sec. 24.03. UNDERTAKING FOR RETURN OF PROPERTY TO DEFENDANT.

8 The defendant may, within the time set by the court, require the
9 return of the property upon delivering to the peace officer having
10 custody of his property, a written undertaking approved by the
11 clerk of court and executed by sufficient sureties to the effect
12 that they are bound in double the value of the property, for the
13 delivery of the property to the plaintiff, if such delivery be
14 adjudged, and for the payment to him of such sum as may, for any
15 cause, be recovered against the defendant.

16 Sec. 24.04. PROPERTY CONCEALED IN BUILDING OR ENCLOSURE;
17 DEMAND; ENTRY TO EFFECT SEIZURE. If the property, or any part of
18 it, is concealed in a building or enclosure, the peace officer
19 shall publicly demand its delivery. If it is not delivered, he
20 shall cause the building or enclosure to be broken open and take
21 the property into his possession.

22 Sec. 24.05. CUSTODY OF PROPERTY SEIZED. When the peace
23 officer has taken the property into custody, he is responsible for
24 it and shall keep it in a secure place and deliver it to the party
25 entitled to it.

26 Sec. 24.06. THIRD PARTY CLAIMS. If the property taken is
27 claimed by any person other than the defendant and that person
28 makes an affidavit of his title to the property or his right to
29 the possession of it, stating the grounds of the title or right,

1 and serves it upon the peace officer taking the property while the
2 property is still in his custody, the peace officer may release
3 the property unless the plaintiff, on demand of the officer, in-
4 demnifies him against the third party claim by a written under-
5 taking approved by the clerk of court and executed by sufficient
6 sureties.

7 Article XXV. Recovery of Real Property

8 Sec. 25.01. ACTIONS FOR RECOVERY OF REAL PROPERTY. Any per-
9 son who has a legal estate in real property and has a present
10 right to the possession of the property may bring an action to re-
11 cover the possession of the property with damages for withholding
12 it.

13 Sec. 25.02. DAMAGES FOR WITHHOLDING PROPERTY; VALUE OF IM-
14 PROVEMENTS AS SETOFF. When property is recovered from a defendant
15 who, in good faith, holds the property adversely to the claim of
16 the plaintiff, the value of any permanent improvements which the
17 defendant or those under whom he claims have made to the pro-
18 perty shall be allowed as a setoff against damages allowed for
19 the withholding of the property. The plaintiff may recover
20 damages for withholding the property for a term of six years be-
21 fore the commencement of the action and for the period from the
22 commencement to the verdict, both excluding the use of permanent
23 improvements made by the defendant.

24 Sec. 25.03. TERMINATION OF RIGHT TO RECOVER PROPERTY DURING
25 PENDENCY OF ACTION. Where the plaintiff shows a right to recover
26 at the time the action was commenced, but it appears that his
27 right has terminated during the pendency of the action, he may
28 recover damages for the withholding of the property.

29 Sec. 25.04. ORDER FOR SURVEY AND MEASUREMENT OF PROPERTY.

1 The court in which the action is pending may allow a party and his
2 surveyors to go on the property to make a survey for the purposes
3 of the action. If any unnecessary injury is done to the premises,
4 he is liable.

5 Sec. 25.05. EFFECT OF ALIENATION BY PERSON IN POSSESSION.

6 An action for the recovery of the possession of real property
7 against a person in possession cannot be prejudiced by an aliena-
8 tion made by that person either before or after the commencement of
9 the action. If the alienation is made after the commencement of
10 the action and the defendant does not satisfy the judgment re-
11 covered for damages for withholding the possession, the damages may
12 be recovered by action against the purchaser.

13 Sec. 25.06. MORTGAGE NOT A CONVEYANCE. A mortgage of real
14 property is not a conveyance which will enable the owner of the
15 mortgage to recover possession of the real property without a
16 foreclosure and sale.

17 Sec. 25.07. FAILURE TO PAY RENT. A landlord has a subsist-
18 ing right to re-enter the premises when a tenant fails to pay
19 rent, and may bring action to recover the possession of the
20 premises. If at any time before judgment the lessee or his suc-
21 cessor in interest pays the amount of rent in arrears with in-
22 terest and costs of the action, and performs the other covenants
23 or agreements, he is entitled to continue in possession according
24 to the terms of the lease.

25 Sec. 25.08. JUDGMENT IN ACTIONS TO RECOVER POSSESSION. The
26 judgment in an action to recover the possession of real property
27 is conclusive as to the estate in the property and the right to
28 the possession so far as it is determined, upon the party against
29 whom it is given and against all persons claiming from, through,

1 or under that party after the commencement of the action. How-
2 ever, when service of the summons is by publication, and judgment
3 is given for failure of a party to answer, that party or his suc-
4 cessor in interest is at any time within two years from the entry
5 of the judgment, upon application to the court, entitled to an
6 order vacating the judgment and granting him a new trial upon the
7 payment of the costs of the action.

8 Sec. 25.09. POSSESSION WHEN NEW TRIAL GRANTED. If the judg-
9 ment is set aside and a new trial granted, as provided in Sec.
10 25.08, after the plaintiff has taken possession of the property,
11 he shall remain in possession. But if judgment is given for the
12 defendant in the new trial, the defendant shall be entitled to
13 restitution by execution as if he were plaintiff.

14 Sec. 25.10. ACTIONS TO RECOVER POSSESSION BY TENANT IN DOWER.
15 In an action to recover the possession of real property by a tenant
16 in dower or his successor in interest, execution on the judgment
17 may not issue until admeasurement of dower. If the dower has not
18 been admeasured prior to the commencement of the action, the dower
19 may be admeasured after entry of the judgment, as follows:

20 (1) Upon motion of either party, the court shall con-
21 duct proceedings to admeasure the dower out of the real property
22 recovered in the action in the manner provided in actions for
23 partition, unless it appears probable that a partition of the pro-
24 perty would prejudice the interests of the other owners. If the
25 court finds that a partition would prejudice the interests of the
26 other owners, it shall deny the motion. The plaintiff shall then
27 proceed for partition or sale of the real property by independent
28 action in the manner provided in actions for partition.

29 (2) At any time after the confirmation of the report of

1 the referees the plaintiff may have execution for the delivery of
2 the possession of the property according to the admeasurement and
3 for the damages recovered.

4 Article XXVI. Tort Claims

5 Sec. 26.01. ACTIONABLE CLAIMS AGAINST THE ESTATE. Any person
6 or corporation having a claim against the state may bring an action
7 against the state in the superior court. However, no action may be
8 brought under this section if the claim:

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

16 (2) is for damages caused by the imposition or estab-
17 lishment of a quarantine by the state;

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

22 Sec. 26.02. UNDERTAKING. At the time of filing the complaint
23 in an action against the state, the plaintiff shall file an under-
24 taking in a sum fixed by the court. The undertaking shall be con-
25 ditioned upon payment by the plaintiff of costs incurred by the
26 state in the action if the plaintiff fails to prosecute the action
27 or fails to recover judgment.

28 Sec. 26.03. PAYMENT OF JUDGMENT AGAINST THE STATE. No
29 attachment or execution shall issue against the state. Whenever

1 a final judgment is rendered against the state in an action, the
2 clerk of the court shall immediately transmit a certified copy of
3 the judgment to the Department of Administration which shall either
4 approve payment of the judgment against the state, if a sufficient
5 appropriation exists for payment, or audit the amount and transmit
6 a copy to the legislature with the recommendation that an approp-
7 riation be made for its payment.

8 Sec. 26.04. JUDGMENT FOR PLAINTIFF. If judgment is rendered
9 for the plaintiff, it shall be for the legal amount found due from
10 the state, with legal interest only from the date of judgment,
11 without punitive damages.

12 Sec. 26.05. TRIAL BY COURT. Actions against the state under
13 this article shall be tried by the court without a jury.

14 Sec. 26.06. COMPROMISE BY ATTORNEY GENERAL. The attorney
15 general may, with the approval of the court, arbitrate, compromise,
16 or settle any action filed under this article.

17 Article XXVII. Trespass

18 Sec. 27.01. TRESPASS BY CUTTING OR INJURING TREES OR SHRUBS.
19 Any person who cuts down, girdles, or otherwise injures, or carries
20 off a tree, timber, or shrub on the land of another person, or on
21 the street or highway in front of a person's house, village, town,
22 or city lot, or cultivated grounds, or on the commons or public
23 grounds of a village, town, or city, or on the street or highway
24 in front of them, without lawful authority, is liable to the owner
25 of that land, or to the village, town or city, for treble the
26 amount of damages which may be assessed in a civil action. How-
27 ever, if the trespass was casual or involuntary, or the defendant
28 had probable cause to believe that the land on which the trespass
29 was committed was his own or that of the person in whose service

1 or by whose direction the act was done, or where the timber was
2 taken from unenclosed woodland for the purpose of repairing any
3 public highway or bridge upon the land or adjoining it, only
4 actual damages may be recovered.

5 Article XXVIII. Usurpation

6 Sec. 28.01. ACTION FOR USURPATION OF OFFICE OR FRANCHISE.

7 An action may be brought by the attorney general upon his own in-
8 formation or upon complaint of a private party against (1) any
9 person who usurps, intrudes into, or unlawfully holds or exercises
10 any public office, civil or military, or any franchise, or any
11 office in a corporation, either public or private, (2) any public
12 officer who has acted to forfeit his office, or (3) any number of
13 persons acting as a corporation without being incorporated.

14 Sec. 28.02. ACTION ON INFORMATION OR APPLICATION OF PRIVATE
15 PARTY. When the action is brought upon the information or appli-
16 cation of a private party, the attorney general may require that
17 party to enter into an undertaking with sureties to be approve by
18 the attorney general conditioned on that party paying a judgment
19 for costs or damages recovered against the plaintiff and costs and
20 expenses incurred in the prosecution of the action.

21 Sec. 28.03. DETERMINATION OF RIGHTS OF DEFENDANT AND CLAIM-
22 ANT. Whenever the action is brought and the claim is made that
23 another person is rightfully entitled to the office, judgment may
24 be given upon the right of the defendant, and also upon the right
25 of the person so claimed to be entitled, or only upon the right of
26 the defendant as justice may require.

27 Sec. 28.04. JUDGMENT FOR CLAIMANT. If judgment is for the
28 person claiming the franchise or office, he is entitled to the
29 possession and enjoyment of the franchise, or to take upon himself

1 the execution of the office, after qualifying himself as required
2 by law.

3 Sec. 28.05. RECOVERY OF DAMAGES BY CLAIMANT. If judgment is
4 for the person claiming the franchise or office he may recover the
5 damages which he may have sustained by reason of the usurpation of
6 the office by the defendant. In the action the defendant may be
7 provisionally arrested and held to bail in the manner as in actions
8 where the defendant is subject to arrest.

9 Sec. 28.06. MULTIPLE CLAIMANTS. When several persons claim
10 to be entitled to the same office or franchise, one action may be
11 brought against all those persons in order to try their respective
12 rights to that office or franchise.

13 Sec. 28.07. JUDGMENT AGAINST DEFENDANT. If a defendant is
14 adjudged guilty of usurping, or intruding into, or unlawfully
15 holding or exercising an office or franchise, judgment shall be
16 given that the defendant be excluded from holding or exercising the
17 office or franchise. The court may also, in its discretion, impose
18 a fine upon the defendant not exceeding \$2,000.00. If a corpora-
19 tion is defendant and a judgment is given which causes the corpora-
20 tion to cease to exist, the corporation shall dissolve.

21 Sec. 28.08. ENFORCEMENT OF JUDGMENT FOR COSTS. A judgment
22 given in any action provided for in this article in respect to
23 costs and disbursements may be enforced by execution as a judgment
24 which requires the payment of money.

25 Article XXIX. Waste

26 Sec. 29.01. RIGHT OF ACTION FOR WASTE. If a guardian, tenant
27 for life or years, or tenant in common of real property, commits
28 waste on the property, any person injured by the waste may bring
29 an action for damages for the injury. In an action for waste there

1 may be judgment for treble damages. Where the plaintiff has a
2 reversionary interest and the injury due to waste equals or exceeds
3 the value of the interest held by the one committing the waste, or
4 the waste is committed with malice, judgment may be for forfeiture
5 of the estate and eviction.

6 Article XXX. Miscellaneous

7 Sec. 30.01. MARRIED WOMEN MAY SUE AND BE SUED. A wife may
8 receive the wages of her personal labor, hold them in her own
9 right, and maintain an action for them. A wife may prosecute and
10 defend all actions for the preservation and protection of her
11 rights and property as if unmarried.

12 Sec. 30.02. PARENT OR GUARDIAN MAY SUE FOR INJURIES OR DEATH
13 TO CHILD. A father, or in case of his death or desertion of his
14 family, the mother, may maintain an action as plaintiff for the
15 injury or death of a child below the age of majority. A guardian
16 may maintain an action as plaintiff for the injury or death of his
17 ward.

18 Sec. 30.03. PARENTS OR GUARDIAN MAY SUE FOR SEDUCTION OF
19 DAUGHTER. A father, or in case of his death or desertion of his
20 family, the mother, may maintain an action as plaintiff for the
21 seduction of a daughter below the age of majority. The guardian
22 may maintain an action as plaintiff for the seduction of a ward.
23 The action may be maintained even though the daughter or ward is
24 not living with or in the service of the plaintiff at the time of
25 the seduction or afterwards, and there is no loss of service.

26 Sec. 30.04. UNMARRIED FEMALES MAY SUE FOR SEDUCTION. An
27 unmarried female over the age of majority may maintain an action
28 as plaintiff for her own seduction, and may recover any damages
29 assessed in her favor.

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TITLE III. FORMAL PROVISIONS

Sec. 31.01. SHORT TITLE. This Act may be cited as the Code of Civil Actions and Proceedings.

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; 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. 83, 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 March 1, 1962. 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 take effect would not be feasible, or would work injustice, in which

1 event, the laws repealed by this Act apply.

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AMENDMENTS TO SENATE BILL NO. 105 --- Adopted by the Senate
March 30, 1961

Page 3, line 11: Delete "specifically" and insert "otherwise"

Page 3, line 20: Insert a period after word "account" and delete
balance of lines 20 and 21

Page 3, lines 23-26: After the period delete all material and in-
sert the following:

"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."

Page 4, lines 18 and 23: Before "representatives" insert "personal"

Page 7, line 19: After "and" insert "may"

Page 7, line 20: Delete "on request if" and insert "if it be shown
that"

Page 8, line 20: Delete "may" and insert "shall"

Page 8, line 21: Delete words "in part"

Page 8, line 22: Insert a period after "election"; delete "and on";
and change small "a" to a capital "A"

Page 8, line 23: After "jurors" insert "may be"; after "adopted"
insert "and submitted to them"

Page 9, line 11: Delete the second "pieces" and insert "names or
numbers"

Page 10, line 23: Before "Sec. 3.04" insert the following new Secs.
3.04, 3.05, 3.06, and 3.07:

"Sec. 3.04. CONFIDENTIAL COMMUNICATIONS BETWEEN HUSBAND
AND WIFE. A husband shall not be examined for or against his
wife, without her consent, nor a wife for or against her
husband, without his consent. Neither the husband nor wife,
during the marriage or afterwards, without the consent of the
other, can be examined as to any communications made by one to
the other during marriage, but the exception does not apply to
a civil action or proceeding by one against the other, nor to
a criminal action or proceeding for a crime committed by one
against the other.

"Sec. 3.05. CONFIDENTIAL COMMUNICATIONS BETWEEN ATTORNEY
AND CLIENT. An attorney shall not, without the consent of his
client, be examined as to any communication made by his client
to him, or his advice given thereon, in the course of his
professional employment.

Sec. 3.06. CONFIDENTIAL COMMUNICATIONS BETWEEN CONFESSOR
AND CONFESSANT. A priest or clergyman shall not, without the
consent of the person making the confession, be examined as to

any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs.

"Sec. 3.07. CONFIDENTIAL COMMUNICATIONS BETWEEN PHYSICIAN AND PATIENT. A physician or surgeon shall not, against the objection of his patient, be examined in a civil action or proceeding as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient."

Page 10, line 23: Delete "Sec. 3.04" and insert "Sec. 3.08"

Page 10, line 25: Delete "person" and insert "official"

Page 11, lines 6-22: Delete all material and insert the following:

"Sec. 3.09. AFFIDAVIT AS PREREQUISITE TO OFFICER'S LIABILITY. a. The officer making the arrest is not liable in any way therefor, unless the person making the exception make, if required, 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."

Page 11, lines 23 and 27: Renumber Secs. 3.06 and 3.07 to "Sec. 3.10" and "Sec. 3.11" respectively

Page 12, lines 1, 5, 9, & 13: Renumber Secs. 3.08, 3.09, 3.10 and 3.11 to "Sec. 3.12", "Sec. 3.13", "Sec. 3.14", and "Sec. 3.15" respectively

Page 12, line 7: Before "and" insert "United States Postmaster,"

Page 14, lines 12 and 19: Renumber Secs. 3.12 and 3.13 to "Sec. 3.16" and "Sec. 3.17" respectively

Page 15, lines 9, 15, & 28: Renumber Secs. 3.14, 3.15, and 3.16 to "Sec. 3.18", "Sec. 3.19", and "Sec. 3.20" respectively

Page 16, line 26: Renumber Sec. 3.17 to "Sec. 3.21"

Page 16, line 28: After "more" insert "or for 10 years or more without color and claim of title"

Page 17, lines 2, 10, 19, 22, & 27: Renumber Secs. 3.18, 3.19, 3.20, 3.21 and 3.22 to "Sec. 3.22", "Sec. 3.23", "Sec. 3.24", "Sec. 3.25" and "Sec. 3.26" respectively

Page 18, lines 5, 17 & 24: Renumber Secs. 3.23, 3.24 and 3.25 to "Sec. 3.27", "Sec. 3.28", and "Sec. 3.29" respectively

- Page 19, line 2: Before the period insert "or reasonable regulation"
- Page 20, line 4: Delete the first "recorded" and insert "docketed"
- Page 20, line 23: Before the first comma insert "or by his attorney in fact under a power of attorney so authorizing"
- Page 21, lines 23-24: Delete "a state officer, in his official capacity or on behalf of the state, is a party," and insert "the state is interested,"
- Page 21, lines 25-28: Delete all of sentence beginning "But the..."
- Page 22, line 16: Delete "of the parties"
- Page 22, line 27: Delete "LIABILITY OF GUARDIAN FOR COSTS." and insert "GUARDIAN AD LITEM."
- Page 22, line 29 and)
Page 23, lines 1-4): Delete all of sentence beginning "When costs or..."
- Page 23, line 5: Before "Sec. 5.08" insert a new Sec. 5.08 as follows; and renumber the present Sec. 5.08 to read "Sec. 5.09":

"Sec. 5.08. 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."

- Page 23, lines 13 and 23: Renumber Secs. 5.09 and 5.10 to read "Sec. 5.10" and "Sec. 5.11" respectively
- Page 23, line 17: After "other" insert "natural person or"
- Page 24, line 2: Delete "\$200.00" and insert "\$500.00"
- Page 24, line 4: After "insufficient" insert "in amount or"
- Page 24, line 5: Renumber Sec. 5.11 to read "Sec. 5.12"
- Page 24, line 11: Before "TITLE II" insert a new Sec. 5.13 as follows:

"Sec. 5.13. 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."

- Page 28, line 9: Before "or" insert "including money"
- Page 29, line 5: Before "money" insert "personal property,"; before "or" insert a comma
- Page 29, lines 7-28: After the comma insert "or is absconding." and delete the remaining material through line 28

- Page 30, line 2: Delete "may" and insert "shall"; After "made" insert "immediately"
- Page 33, line 19: After the comma insert "or in an action before a deputy magistrate,"
- Page 33, line 24: After "court" insert "not committed in the presence of the court and"
- Page 37, line 16: Delete "are residents" and insert "shall"
- Page 37, line 17: Before the period insert "be deemed residents in good faith of the state"
- Page 39, lines 25-28: Delete all material and renumber the remaining sections in Article XII accordingly
- Page 53, line 13: Before "personal" insert "bank deposits, cash or"
- Page 53, line 22: Delete "probate" and insert "superior"
- Page 53, line 27: Before "personal" insert "money or"
- Page 54, lines 21-27: Delete all material after the title and insert the following:

"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 \$50.00, 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 at least one newspaper 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."

- Page 55, lines 14, 16, 17, 18, 20, 22, 23, 25, & 26: Before the word "property" insert "money or"
- Page 57, line 3: Delete the second "the" and insert "an absconding"
- Page 57, line 6: After the period insert a new sentence to read:
"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."
- Page 58, line 20: Delete "\$300.00" and insert "\$350.00"
- Page 58, line 22: Before the semicolon insert "or earnings of a single person in a like period not to exceed \$200.00"

Page 59, line 27: Before "properly" insert "or deed of trust"

Page 60, lines 20-29: Change the comma after the word "satisfied" to a period and delete all remaining material through line 29

Page 62, line 11: After "paper" insert "of general circulation"

Page 63, line 3: Delete "signed by the debtor and" and insert "is made by the judgment"

Page 63, line 4: Delete "an agreed" and insert "a later"

Page 63, lines 7-10: Delete all material and insert the following:

"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."

Page 63, lines 11-19: Delete all material after the title and insert the following:

"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."

Page 64, line 14: After "interest" insert ", costs and disbursements"

Page 66, line 17: After "may" insert "only"

Page 68, lines 12-14: After "or" add "absconding." and delete the remainder of the sentence through "judgment." on line 14

Page 69, line 4: Before "An" insert "a."

Page 69, line 14: Before "Sec. 16.02" insert a subsec b. as follows:

"b. A judgment for one delinquency shall not be a bar to an action for another delinquency."

Page 69, line 21: After "name of" insert "the state or"

Page 69, line 23: After "of the" insert "state,"

Page 71, line 16: Before the period insert ", 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"

Page 71, line 28: Delete "before" and insert "until"

Page 71, line 29: Delete "the rent of those" and insert "rent for the"

Page 72, line 1: After the period insert a new sentence as follows:

"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."

Page 73, line 3: Before the period insert ", and be entered accordingly"

Page 73, lines 20-27: Delete all material and insert the following:

"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."

Page 73, lines 28-29 and)

Page 74, lines 1-4): Delete all material after the title and insert the following:

"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. The provisions of this article as to liens upon personal property are not to be construed so as to exclude a person having such a lien from any other remedy or right in regard to such property."

Page 77, line 18: After "enforced" insert "by execution"

Page 80, line 15: After the period in the title delete "It" and insert "If"

Page 82, line 19: Delete "SALES" in the title and insert "SECURITY"

Page 82, line 22: Delete "that owner" and insert "any known owner of full age, otherwise competent,"

Page 89, line 6: Delete "for any cause"

Page 91, lines 3-4: Delete "If any unnecessary injury is done to the premises, he is liable."

(Amendments to SB 105 - continued)

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Page 91, line 20: Before the period insert ", and the action is equivalent to a demand of the rent"

Page 98, line 25: Delete "March 1, 1962" and insert "January 1, 1963"