

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 6
USURPATION OF OFFICE OR FRANCHISE

6-601. WRIT OF SCIRE FACIAS ABOLISHED. The writ of scire facias is abolished.

[(6-601) C.C.P. 1881, sec. 534; R.S., R.C., & C.L., sec. 4611; C.S., sec. 7023; I.C.A., sec. 9-601.]

6-602. ACTIONS FOR USURPATION OF OFFICE. An action may be brought in the name of the people of the state against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this state, without authority of law. Such action shall be brought by the prosecuting attorney of the proper county, when the office or franchise relates to a county, precinct or city, and when such office or franchise relates to the state, by the attorney general; and it shall be the duty of the proper officer, upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised without authority of law. Any person rightfully entitled to an office or franchise may bring an action in his own name against the person who has usurped, intruded into, or who holds or exercises the same.

[(6-602) R.S., R.C., & C.L., sec. 4612; C.S., sec. 7024; I.C.A., sec. 9-602.]

6-603. STATEMENT OF PRIVATE RIGHT -- ARREST OF DEFENDANT. Whenever such action is brought in the name of the people of the state, the prosecuting attorney at the request of the person entitled to the office or franchise, in addition to the cause of action in behalf of the people of the state, may set forth the name of the person so entitled, with a statement of his right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of usurpation thereof, an order may be granted by the judge or court wherein the case is pending, for the arrest of such defendant, and holding him to bail, and thereupon he may be arrested and held to bail in the same manner and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

[(6-603) C.C.P. 1881, sec. 536; R.S., R.C., & C.L., sec. 4613; C.S., sec. 7025; I.C.A., sec. 9-603.]

6-604. FORM OF JUDGMENT. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as the form of the action and justice may require.

[(6-604) C.C.P. 1881, sec. 537; R.S., R.C., & C.L., sec. 4614; C.S., sec. 7026; I.C.A., sec. 9-604.]

6-605. JUDGMENT FOR PERSON ENTITLED TO OFFICE. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be

in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

[(6-605) C.C.P. 1881, sec. 538; R.S., R.C., & C.L., sec. 4615; C.S., sec. 7027; I.C.A., sec. 9-605.]

6-606. DAMAGES AGAINST USURPER. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action the damages which he may have sustained by reason of the usurpation of the office by the defendant.

[(6-606) C.C.P. 1881, sec. 539; R.S., R.C., & C.L., sec. 4616; C.S., sec. 7028; I.C.A., sec. 9-606.]

6-607. ACTIONS AGAINST SEVERAL CLAIMANTS. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons in order to try their respective rights to such office or franchise.

[(6-607) C.C.P. 1881, sec. 540; R.S., R.C., & C.L., sec. 4617; C.S., sec. 7029; I.C.A., sec. 9-607.]

6-608. JUDGMENT OF OUSTER -- FINE. When a defendant against whom such action has been brought is adjudged guilty of usurping or intruding into or unlawfully holding any office, franchise or privilege, judgment must be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay the costs of the action. The court may also, in its discretion, in actions to which the people of the state are a party, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the treasury of the state.

[(6-608) C.C.P. 1881, sec. 541; R.S., R.C., & C.L., sec. 4618; C.S., sec. 7030; I.C.A., sec. 9-608.]

6-609. UNDERTAKING REQUIRED OF INFORMER. When the action is brought upon the information or application of a private party, the prosecuting attorney may require such party to enter into an undertaking, with sureties to be approved by the said officer, conditioned that such party or the sureties will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

[(6-609) C.C.P. 1881, sec. 542; R.S., R.C., & C.L., sec. 4619; C.S., sec. 7031; I.C.A., sec. 9-609.]

6-610. ACTIONS AGAINST LAW ENFORCEMENT OFFICERS. (1) For purposes of this section, a "law enforcement officer" shall be defined as any court personnel, sheriff, constable, peace officer, state police officer, correctional, probation or parole official, prosecuting attorney, city attorney, attorney general, or their employees or agents, or any other person charged with the duty of enforcement of the criminal, traffic or penal laws of this state or any other law enforcement personnel or peace officer as defined in [chapter 51, title 19](#), Idaho Code.

(2) Before any civil action may be filed against any law enforcement officer or service of civil process on any law enforcement officer, when such action arises out of, or in the course of the performance of his duty, or in any action upon the bond of any such law enforcement officer, the proposed plaintiff or petitioner, as a condition precedent thereto, shall prepare and file with, and at the time of filing the complaint or petition in any such action, a written undertaking with at least two (2) sufficient sureties in an amount to be fixed by the court. The purpose of this requirement is to ensure diligent prosecution of a civil action brought against a law enforcement officer, and in the event judgment is entered against the plaintiff or petitioner, for the payment to the defendant or respondent of all costs and expenses that may be awarded against the plaintiff or petitioner, including an award of reasonable attorney's fees as determined by the court.

(3) In any such civil action the prevailing party shall be entitled to an award of costs as otherwise provided by law. The official bond of any law enforcement officer under this section shall be liable for any such costs.

(4) At any time during the course of a civil action against a law enforcement officer, the defendant or respondent may except to either the plaintiff's or petitioner's failure to file a bond or to the sufficiency of the sureties or to the amount of the bond.

(5) When the defendant or respondent excepts to the plaintiff's or petitioner's failure to post a bond under this section, the judge shall dismiss the case.

(6) When the defendant or respondent excepts to the sufficiency of the sureties[,], the sureties must be justified by the plaintiff or petitioner. Upon failure to justify the judge must dismiss the case.

(7) When the amount of the bond is excepted to, a hearing may be held upon notice to the plaintiff or petitioner by the defendant or respondent of not less than two (2) nor more than ten (10) working days after the date the exception is filed, before the judge of the court in which the action is brought. If it appears that the bond is insufficient in amount, the judge shall order a new bond sufficient in amount to be filed within five (5) days of the date such order is received by the plaintiff or petitioner. If no such bond is filed as required by the order of the court, the judge shall dismiss the action.

[6-610, as added by 1953, ch. 234, sec. 1, p. 351; am. 1955, ch. 78, sec. 1, p. 150; am. 1997, ch. 131, sec. 1, p. 398.]

6-610A. EMPLOYER FURNISHING DEFENSE FOR PUBLIC OFFICER IN CRIMINAL ACTIONS -- REQUIREMENTS. (1) If a criminal action or proceeding is brought against an employee who is a sheriff, constable, peace officer, commissioned officer of the Idaho state police, or any other person charged with the duty of enforcement of the criminal laws of this state, the employer of the employee charged in the criminal action shall reimburse the employee for reasonable expenses the employee incurred in providing his defense in the criminal action if:

(a) The criminal action or proceeding is brought on account of an act or omission which occurred in the course and scope of the employee's duties as an employee of the employer; and

(b) The employee provides his own defense in the criminal action and the employee is found not guilty of the criminal charges or the charges are dropped.

(2) For the purposes of this section, employer shall mean the state of Idaho or any office, department, agency, authority, commission, board or other instrumentality thereof, and political subdivisions of the state of Idaho including any city, county or municipal corporation.

[6-610A, added 1987, ch. 175, sec. 1, p. 348; am. 1995, ch. 116, sec. 21, p. 398; am. 2000, ch. 469, sec. 16, p. 1466.]

6-611. IMMUNITY FROM LIABILITY. No public officer may be held either criminally or civilly liable for actions performed under any statute if such statute is subsequently declared by judicial determination to be unconstitutional or otherwise non-existent or void, if such actions would have been legal had such statute not been held by judicial determination to be unconstitutional or otherwise non-existent or void.

[I.C., sec. 6-611, as added by 1959, ch. 5, sec. 1, p. 12.]