



The Old North State

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HAPPY FREEDOM OF THE MAN, WHOM GRACE MAKES FREE

He is the freeman whom the birth makes free. And all are slaves beside. There's not a chain That holds his soul, nor binds his hand, Can wind around him, but he casts it off With as much ease, as Samson his green withes.

He looks abroad into the varied field Of Nature, and though poor perhaps, compared With those whose mansions glitter in his sight. Calls the delightful scenery all his own. His are the mountains, and the valleys his. And the resplendent rivers: his to enjoy With a propriety that none can feel, But who, with liberal confidence inspired, Can lift to heaven an unexpressed eye, And smiling say—"My Father made them all!"

AN ACT

To Provide for the Procedure in Special Proceedings generally, and in Application for Widow's Year's Support, and in Dower.

PROCEDURE IN SPECIAL PROCEEDINGS GENERALLY.

SEC. 1. When all the parties ask the same relief. If all the parties in interest join in the proceeding and ask the same relief, the commencement of the suit shall be by petition setting forth the facts entitling the petitioners to relief, and the nature of the relief demanded.

SEC. 2. In what cases Clerks may hear summary. In such cases, if all persons to be affected by the decree, or their Attorneys, shall have signed the petition, and they be of full age, the Clerk of the Superior Court shall have power to hear the petition summarily, and to decide the same if either, or any of the petitioners shall be residing out of the State. An authority from him or them, to the Attorney, in writing, must be filed with the Clerk, before he shall make any order or decree to prejudice their rights.

SEC. 3. If any petitioners are infants, Judge must revise order. If any of the petitioners be an infant, or the guardian of an infant acting for him, no order or judgment of the Clerk, affecting the merits of the case, and capable of being prejudicial to the infant shall be valid, unless submitted to, and approved by, the Judge of the Court in or out of term.

SEC. 4. When special proceedings are had against adverse parties, they shall be commenced as is prescribed for civil action.

SEC. 5. Every order, &c., by Judge, to be signed by him. Every order or judgment, whether in a civil action or a special proceeding, which is required to be made by a Judge of the Superior Court, either in or out of term, shall be authenticated by his signature.

SEC. 6. What part of Code of Civil Procedure applicable. Both in respect to the proceedings on petitions in which all the parties in interest join as petitioners and to special proceedings between adverse parties, the following portions of the Code of Civil Procedure, except as modified by special provisions in particular proceedings, shall be applicable as far as they can be, without prejudice to right and justice, and without inconvenience, to wit: Titles one, two, three, four, five, six, seven, Title eight, except sections one hundred and twenty-five, Titles nine, ten, Title eleven, except so much of section two hundred and fifty-eight as limits the kinds of execution to three. In special proceedings the judgment may be, that the parties, or any of them, shall do, or omit to do, any act according to the right and justice of the case; and upon such judgment the execution may issue, conformably thereto and be enforced as provided in section two hundred and fifty-seven of the Code of Civil Procedure. Titles twelve, thirteen, fourteen, fifteen, sixteen, seventeen, and twenty-one, sections four hundred and thirteen and four hundred and fourteen of Title eighteen.

SEC. 7. Reports set aside for trivial defects. No report or return made by any Commissioners shall be set aside, and sent back to them, or orders for a new report, by reason of any defect or omission not affecting the substantial rights of the parties, but such defect or omission may be amended by the Court, or by the Commissioners, by permission of the Court.

CHAPTER II. PROCEEDINGS BY A WIDOW TO RECOVER A YEAR'S SUPPORT.

SEC. 8. What widows entitled to a year's support. Every widow of a deceased intestate, or of a testator from whose will she has disented, shall be entitled, besides her distributive share in her husband's personal estate to an allowance therefrom, for the support of herself and her family for one year after his decease.

SEC. 9. From what assigned. Such allowance shall be assigned from the crop, stock and provisions of the deceased in his possession, at the time of his death, if there be a sufficiency, it shall be made up by the personal representative from the personal estate of the deceased.

SEC. 10. Value of the allowance. Except in cases in which a larger allowance is hereinafter provided for, the value of a year's allowance shall be three hundred dollars and one hundred dollars in addition thereto for every member of the family besides the widow.

SEC. 11. Family defined. The family of the deceased, for the purposes of this act, shall be deemed to be, besides the widow, every child, either of the deceased or of the widow, and every other person to whom the deceased or widow stood in place of a parent, who was residing with the deceased at his death, and whose age did not then exceed fifteen years.

SEC. 12. Duty of the administrator, &c., to assign. It shall be the duty of every administrator, collector, or executor of a will in which the widow of the testator has disented on application in writing, signed by the widow of such intestate or testator, at any time within one year after the decease of the husband, to assign to her in the manner prescribed in this act, to the value herein prescribed, deducting therefrom the value of any articles consumed by the widow and her family since the death of her husband to the time of assignment.

SEC. 13. How value of articles assigned to be ascertained. The value of stock, crop and provisions assigned to the widow, as well as that of the articles consumed, shall be ascertained by a Justice of the Peace and two persons qualified to act as jurors of the county in which administration was granted or the will was proved.

SEC. 14. Personal representative to apply to Justice, &c. Upon the application of the widow, the personal representative of the deceased shall apply to a Justice of the Peace of the township in which the deceased resided in, or of some adjoining Township, to summon two persons qualified to act as jurors, who having been sworn by the Justice to act impartially, shall with him ascertain the number of the family of the deceased according to the foregoing definition, and examine his stock, crop and provisions on hand and assign to the widow so much thereof as will not exceed the value limited in section ten of this act, subject to the deduction prescribed in section twelve of this act. The commissioners shall put the widow in possession severally of the articles assigned to her.

SEC. 15. Duty of the Commissioners. The commissioners shall make and sign three lists of the articles assigned to the widow, stating the quantity and value of each, the number of the family, and the deficiency to be paid by the personal representative. One of these lists shall be delivered to the widow, one to the personal representative, and one returned by the Justice, within twenty days after the assignment, to the Superior Court of the county, and the Clerk shall file and record the same and enter judgment against the personal representative, to be paid, when the assets shall come into his hands, for any residue found in favor of the widow.

SEC. 16. Appeal may be taken to Superior Court. The personal representative, or the widow, or any creditor, or legatee, or distributee of the deceased, may appeal from the finding of the Commissioners to the Superior Court of the County, and cite the adverse party to appear before

such Court on a certain day, within ten days from the assignment.

SEC. 17. Duty of appellant. At or before the day named, the appellant shall file with the Clerk, a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided by the Court as other issues are directed to be; when the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without reciting the proceedings to the Commissioners.

SEC. 18. Sum allowed to widow, to be credited to the executor, widow, &c., unless insufficient for frank. Upon the settlement of the accounts of the personal representative, he shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

SEC. 19. When above allowance shall be in full. If the estate of a deceased be insolvent, or if his personal estate does not exceed two thousand dollars, the allowance for the year's support of his widow and her family, shall not, in any case, exceed the value prescribed above; and the allowance made to her as above prescribed, shall preclude her from any further allowance.

SEC. 20. When not in full. It shall not, however, be obligatory on a widow to have her support assigned as above prescribed, without applying to the personal representative of her deceased husband; or after an allowance shall have been made to her application in manner aforesaid, she may, at any time, within one year after the death of her husband, apply to the Superior Court of the County in which the will was proved, of administration granted, to have a year's support for herself and her family assigned to her.

SEC. 21. Application to be made by summons, &c. The application shall be by summons, as is prescribed in section four of this act, in which the personal representative of the deceased, if there be one other than the plaintiff, the largest known creditor, or legatee, or some distributee of the deceased, living in the county, shall be made a defendant, and the proceedings shall be as prescribed in this act for special proceedings between parties.

SEC. 22. What to be set forth in complaint. In her complaint the widow shall set forth, besides the facts entitling her to a year's support and the value thereof, as claimed by her, the further facts, that the estate of the deceased is not insolvent, and that the personal estate of which he died possessed, exceeded two thousand dollars, and also whether or not she had an allowance made her, and the nature and value thereof; and if no allowance has been made, the quantities and values of the articles consumed by her and her family since the death of her husband.

SEC. 23. What judgment shall be given. If the material allegations be found true, the judgment shall be that she is entitled to the relief sought; and the Court shall thereupon issue an order to the Sheriff or other proper officer of the County, commanding him to summon a Justice of the Peace and two indifferent persons qualified to act as jurors of the county to assign to the plaintiff from the crop, stock, and provisions of the deceased, a sufficiency, for one year from the death of her husband; and if there be a deficiency, thereof to assess such deficiency, to be paid by the personal representative from the personal assets of the deceased; he doing, in a writ less, in all cases, from such allowance, or the value thereof consumed by the widow and her family before such assignment, and also any sum previously assigned to her.

SEC. 24. Duty of Commissioners, how report returned. The said commissioners shall be sworn by the Justice and shall proceed as prescribed in sections thirteen and fourteen of this act; except that they may assign to the widow to the value sufficient for the support of herself and her family according to the estate and condition of her husband and without regard to the limitation in section ten of this act; but the value allowed shall not in any case exceed the one-half of the annual net income of the deceased for the three years next preceding his death.

SEC. 25. Party interested may accept. The personal representative or any creditor or legatee of the deceased, within twenty days after the return of the report, may file exceptions thereto; the Plaintiff shall be notified thereof and cited to appear before the Court on a certain day, within twenty, and not less than ten days after service of the notice and answer the same; the case shall thereafter be proceeded in, heard, and decided as herein provided for in special proceedings between parties.

SEC. 26. If the report confirmed, what judgment and execution. If the report shall be confirmed, the Court shall so declare, and execution shall issue to enforce the judgment as in like cases.

SEC. 27. Costs, how to be paid. If the widow shall recover final judgment for the value greater than that mentioned in section ten of this act, or for an additional value after having received the

value therein mentioned, it shall be in the discretion of the Court, to adjudge the whole or any part of the costs against the widow, the personal representative of the party excepting, as may seem just; but if the widow shall fail to recover more than the value allowed by said section ten, computing as part of her recovery, any value which may have been assigned to her on her application to her personal representative, she shall pay the whole cost of the proceeding. If the personal representative shall have failed to file for thirty days after the widow's application, to have her year's support assigned to her, he shall pay the whole cost of her proceeding personally.

SEC. 28. Fees of commissioners and sheriffs. The fees of the Justices, the Commissioners, and Sheriff, each, shall be one dollar for the assignment; the other fees and cost shall be as prescribed in other cases.

SEC. 29. What acts repealed. Sections eighteen, nineteen, twenty and twenty-one of chapter one hundred and eighteen of the Revised Code are hereby repealed.

SEC. 30. Years provisions heretofore laid off, calculated. All the widow's provisions heretofore laid off by any Court or proceeding, since the present Constitution of the State was ratified shall be and the same are hereby validated: Provided, The same are satisfactory to the parties.

SEC. 31. Writs unprovided for, allowed to proceed under this act. Every widow, whose year's support has not been allowed and assigned to her by some Court or proceeding since the present Constitution was ratified, may proceed to have the same allotted to her under the provisions of this chapter, deducting from the time which has elapsed up to the date of such allotment.

CHAPTER III. PROCEDURE IN SPECIAL PROCEEDINGS TO OBTAIN DOWER.

SEC. 32. To what dower a widow is entitled. Widows shall be endowed as at common law, as in this chapter defined.

SEC. 33. Common Law Dower defined. Every married woman shall be entitled to one-third interest in value of all the lands, tenements and hereditaments whereof her husband is or may be seized and possessed at any time during coverture; in which third part shall be included the dwelling-house in which her husband and family, usually resided, together with the offices, outhouses, buildings and other improvements thereunto, belonging or appertaining.

SEC. 34. Dower not liable to be sold under execution. Dower, or right of dower, shall, in no case, be subject to seizure on execution for the payment of any debt of the husband during the term of the life of the wife.

SEC. 35. Alienation by husband pass only two-thirds. No alienation of the husband alone, with or without covenant of warranty, shall have any other or further effect than to pass his one-third interest in such estate: Provided, That a mortgage or purchase money, or any part thereof, of land bought by him, shall, without the wife executing the deed, be effectual to pass the whole interest according to the provisions of the said deed.

SEC. 36. When widow barred. The right to dower under this act shall pass and be effectual against any widow, or person claiming under upon the wife joining with her husband in the deed of conveyance and being privately examined as to her consent thereto in the manner prescribed by law.

SEC. 37. Widow may dissent. Every widow may dissent from her husband's will before the Court of Probate of the county in which such will is proved, at any time within six months after the probate. This dissent may be in person, or by Attorney authorized in writing, executed by the widow and attested by at least one witness and duly proved and registered. The dissent, whether in person or by attorney, shall be filed as a record of Court. If the widow be an infant or insane, she may dissent by her guardian.

SEC. 38. Effect of dissent. Upon such dissent, the widow shall have the same rights and estates in the real and personal property of her husband as if he had died intestate.

SEC. 39. When dower assigned by heir or devisee with widow. If the personal property of a decedent be sufficient to pay his debts and charges of administration, the heir or devisee with the widow may, by deed, agree to an assignment of her dower.

SEC. 40. How dower may be applied for. If no such agreement be made, a widow may apply for assignment of dower by the petition in the Superior Court as in other cases of special proceedings.

SEC. 41. Who must be parties. The heirs, devisees and other persons in possession of or claiming estates in the lands, shall be parties to such proceeding.

SEC. 42. How dower assigned. If dower be adjudged, it shall be assigned by a jury of five persons qualified to act as jurors, unless one of the parties

demands a great number, not exceeding twelve, who shall be summoned by the Sheriff to meet on the premises or some part thereof, and being duly sworn by the widow her dower in said premises according to law and make a report of their proceedings under their hands to Court, which the Sheriff shall return within five days to the Clerk of said Court.

SEC. 43. Notice to such parties. The parties, or their attorneys to such proceeding, shall be notified of the time and place of meeting of the jury appointed to assign dower, at least five days before the meeting.

SEC. 44. Proceedings on application for divorce. Section two hundred and twenty-four of the Code of Civil Procedure shall be amended by striking out the words "or for a divorce from the marriage contract on the ground of adultery."

SEC. 45. Superior Courts to have jurisdiction. The Superior Courts shall have all the jurisdiction on complaints for alimony, or other, given by chapter thirty-nine of the Revised Code, and the procedure on such complaints shall be as herein provided for special proceedings except as hereinafter otherwise prescribed.

SEC. 46. Affidavit to be filed with complaint. The plaintiff in complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts, set forth in the complaint, are true to the best of the affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and, if for divorce, not for the mere purpose of being freed and separate from each other, but in sincerity and truth for the causes mentioned in the complaint; and the plaintiff shall also set forth in such affidavit, either (1.) that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint; or, if the wife be the plaintiff, (2.) that the husband is removing or about to remove his property and effects from the State, where she may be disappointed of her alimony.

SEC. 47. Material facts to be tried by a jury. The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, or upon reference as is provided in chapter five, Title X, of the Code of Civil Procedure, and on such trial neither the husband or wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact.

SEC. 48. Sections five, six, seven, and eight of chapter thirty-nine, Revised Code, repealed. Sections five, six, seven and eight, of chapter thirty-nine, of the Revised Code, are hereby repealed.

SEC. 49. Existing suits. The regulations respecting the procedure in complaints for divorce and alimony, or for either of them, prescribed in this act, shall be applicable to existing suits as near as may be.

SEC. 50. When act to go into effect. This act shall go into effect from its ratification; but no rights which have vested, or proceedings begun under any acts of the General Assembly hereby repealed shall be affected by such ratification or such repeal.

SEC. 51. What laws repealed. The following acts are repealed: 1. An act entitled an act restoring to married women their common law right of dower, ratified March 2d, 1867. 2. Sections one, two and four, of chapter one hundred and eighteen, of Revised Code.

Ratified this 27th day of March, A. D. 1869. (Signed) JO. W. HOLDEN, Speaker of the House. (Signed) TOD R. CALDWELL, President of the Senate.

STATE OF NORTH CAROLINA, OFFICE SECRETARY OF STATE, Raleigh, March 26, 1869. I, Henry J. Menninger, Secretary of State, hereby certify that the foregoing is a true copy of the original act on file in this office.

HENRY J. MENNINGER, Secretary of State.

AN ACT TO PROHIBIT HUNTING ON THE SABBATH.

SEC. 1. The General Assembly do enact, That if any person or persons whomsoever shall be known to hunt in this State on the Sabbath with a dog or dogs, or shall be found off their premises on the Sabbath, having with them a shot gun, rifle or pistol, he or they shall be subject to indictment; and, upon conviction, shall pay a fine not to exceed fifty dollars at the discretion of the Court, two-thirds of such fine to be used for the benefit of the free public schools in the county of which such convict is a resident, the remainder to the informant.

SEC. 2. That upon failure of

such convict to pay the required fine, he shall be imprisoned at hard labor for not more than three months as the Court, in its judgment, shall direct; Provided, That this act shall not apply to any person who may violate its provisions in defence of his own property.

SEC. 3. This act shall take effect from and after March first, eighteen hundred and sixty-nine.

Ratified this 27th day of January, A. D., 1869.

AN ACT TO AMEND AN ENACTED ACT ENTITLED AN ACT TO MAKE BANK BILLS A SET-OFF.

Section 1. The General Assembly of North Carolina do enact, That an act entitled the twenty-second day of August, Anno Domini, eighteen hundred and sixty-eight, be so amended as to apply to judgments and executions which may have been obtained on any debts due any of the Banks mentioned in the aforesaid acts.

SEC. 2. That when any person shall have given his or her note or bond, since the first of May, eighteen hundred and sixty-five, to any of said Banks, the consideration of which was specie, they shall not be entitled to the benefit of this act, or the one to which this is amendatory.

SEC. 3. The provisions of section first in this act shall apply to all cases where such notes or bonds are given to any President, cashier, or other person, for the benefit or interest of such Banks, and also, in all cases given in lieu of any note or notes, bond or bonds, to any banking association, or for the benefit of the same.

SEC. 4. The Remedy under this act may be plea of set-off, or by injunction, as the case may require.

Ratified this 17th day of March, A. D. 1869.

AN ACT TO ALLOW CAUSES TO BE REHEARD IN CERTAIN CASES.

Section 1. The General Assembly of North Carolina do enact, That in all cases whereon judgment has been rendered in any Court of Pleas and Quarter Sessions, and such party would be entitled to have proceedings in said Court reviewed and reheard, either in that Court or by certiorari in a Superior Court, if said Court of Pleas and Quarter Sessions had continued to exist, and did now exist such party may now have his case reviewed, and reheard in the Superior Court of such county, upon affidavit exhibited before the Judge of the Superior Court of said county, showing sufficient cause for such rehearing the same shall be allowed upon such terms as to security for costs and supersedeas of proceeding as shall be prescribed by said Judge, and upon due notice to the adverse party, the Judge shall order the same to be reheard, unless sufficient cause shall be shown to the contrary.

SEC. 2. This act shall be in force from and after its ratification.

AN IMPORTANT ACT.

Below we publish an important act relative to civil procedure, which it would be well for all parties interested to preserve:

An act to Cure certain Irregularities in the Code of Commencing certain Actions and to Amend certain Sections of the Code of Civil Procedure.

WHEREAS, Some doubts having existed respecting actions which have been commenced before a Judge of the Court at a term, some by summons returnable in like manner, both of which forms were irregular, and some by summons returnable before the Clerk at a term of the Court, as provided by the Code of Civil Procedure. Now, for the purpose of preventing the inconveniences which may arise by reason of the irregularities above mentioned:

Section 1. The General Assembly of North Carolina do enact, That in all civil actions which have been heretofore commenced, in which the process has been or shall be made returnable in either of the modes above mentioned, no advantage shall be had or taken by reason thereof, but the same shall be held regular, and may be amended as to the process and pleadings at any time, of course, without costs, but upon such other terms as to the Judge of the Court shall seem just, and in those of such actions in which pleadings have not yet been filed, they shall be filed, at the term of the Court.

Section 2. This act shall go into effect upon its ratification.

Ratified this 1st day of April, A. D. 1869.

JO. W. HOLDEN, Speaker House of Representatives. TOD R. CALDWELL, President of the Senate.

STATE OF NORTH CAROLINA, OFFICE SECRETARY OF STATE, Raleigh, April 7, 1869.

I, Henry J. Menninger, Secretary of State, do hereby certify that the foregoing is a true copy of the original act on file in this office.

H. J. MENNINGER, Secretary of State. F. MENNINGER, Clerk.

SEC. 43. Notice to such parties. The parties, or their attorneys to such proceeding, shall be notified of the time and place of meeting of the jury appointed to assign dower, at least five days before the meeting.

SEC. 44. Proceedings on application for divorce. Section two hundred and twenty-four of the Code of Civil Procedure shall be amended by striking out the words "or for a divorce from the marriage contract on the ground of adultery."

SEC. 45. Superior Courts to have jurisdiction. The Superior Courts shall have all the jurisdiction on complaints for alimony, or other, given by chapter thirty-nine of the Revised Code, and the procedure on such complaints shall be as herein provided for special proceedings except as hereinafter otherwise prescribed.

SEC. 46. Affidavit to be filed with complaint. The plaintiff in complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts, set forth in the complaint, are true to the best of the affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and, if for divorce, not for the mere purpose of being freed and separate from each other, but in sincerity and truth for the causes mentioned in the complaint; and the plaintiff shall also set forth in such affidavit, either (1.) that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint; or, if the wife be the plaintiff, (2.) that the husband is removing or about to remove his property and effects from the State, where she may be disappointed of her alimony.

SEC. 47. Material facts to be tried by a jury. The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, or upon reference as is provided in chapter five, Title X, of the Code of Civil Procedure, and on such trial neither the husband or wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact.

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SEC. 50. When act to go into effect. This act shall go into effect from its ratification; but no rights which have vested, or proceedings begun under any acts of the General Assembly hereby repealed shall be affected by such ratification or such repeal.

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AN ACT TO ALLOW CAUSES TO BE REHEARD IN CERTAIN CASES.

Section 1. The General Assembly of North Carolina do enact, That in all cases whereon judgment has been rendered in any Court of Pleas and Quarter Sessions, and such party would be entitled to have proceedings in said Court reviewed and reheard, either in that Court or by certiorari in a Superior Court, if said Court of Pleas and Quarter Sessions had continued to exist, and did now exist such party may now have his case reviewed, and reheard in the Superior Court of such county, upon affidavit exhibited before the Judge of the Superior Court of said county, showing sufficient cause for such rehearing the same shall be allowed upon such terms as to security for costs and supersedeas of proceeding as shall be prescribed by said Judge, and upon due notice to the adverse party, the Judge shall order the same to be reheard, unless sufficient cause shall be shown to the contrary.

SEC. 2. This act shall be in force from and after its ratification.

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SEC. 2. This act shall be in force from and after its ratification.

Ratified this 17th day of March, A. D. 1869.

JO. W. HOLDEN, Speaker House of Representatives. TOD R. CALDWELL, President of the Senate.

STATE OF NORTH CAROLINA, OFFICE SECRETARY OF STATE, Raleigh, April 7, 1869.

I, Henry J. Menninger, Secretary of State, do hereby certify that the foregoing is a true copy of the original act on file in this office.

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Section 1. The General