

## MANDAMUS

### **661.1 Definition.**

The action of mandamus is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station.

[R60, § 3761; C73, § 3373; C97, § 4341; S13, § 4341; C24, 27, 31, 35, 39, § **12440**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.1]

### **661.2 Discretion exercise of.**

Where discretion is left to the inferior tribunal or person, the mandamus can only compel it to act, but cannot control such discretion.

[C51, § 2180; R60, § 3763; C73, § 3373; C97, § 4341; S13, § 4341; C24, 27, 31, 35, 39, § **12441**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.2]

### **661.3 Nature of action.**

All such actions shall be tried as equitable actions.

[S13, § 4341; C24, 27, 31, 35, 39, § **12442**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.3]

### **661.4 Order issued.**

The order may be issued by the district court to any inferior tribunal, or to any corporation, officer, or person; and by the supreme court or the court of appeals to any inferior court, if necessary, and in any other case where it is found necessary for either of those courts to exercise its legitimate power.

[C51, § 2179, 2181; R60, § 3761, 3764; C73, § 3374; C97, § 4342; C24, 27, 31, 35, 39, § **12443**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.4]

### **661.5 Auxiliary remedy.**

The plaintiff in any action, except those brought for the recovery of specific real or personal property, may also, as an auxiliary relief, have an order of mandamus to compel the performance of a duty established in such action.

[R60, § 3767; C73, § 3375; C97, § 4343; C24, 27, 31, 35, 39, § **12444**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.5]

### **661.6 "Enforceable duty" defined.**

If such duty, the performance of which is sought to be compelled, is not one resulting from an office, trust, or station, it must be one for the breach of which a legal right to damages is already complete at the commencement of the action, and must also be a duty of which a court of equity would enforce the performance.

[R60, § 3767; C73, § 3375; C97, § 4343; C24, 27, 31, 35, 39, § **12445**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.6]

### **661.7 Other plain, speedy and adequate remedy.**

An order of mandamus shall not be issued in any case where there is a plain, speedy and adequate remedy in the ordinary course of the law, save as herein provided.

[C51, § 2182; R60, § 3765; C73, § 3376; C97, § 4344; C24, 27, 31, 35, 39, § **12446**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.7]

### **661.8 When order granted.**

The order of mandamus is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the state, or on the petition of the state by the county attorney, when the public interest is concerned, and is in the name of such private party or of the state, as the case may be in fact brought.

[R60, § 3761; C73, § 3377; C97, § 4345; C24, 27, 31, 35, 39, § **12447**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.8]

### **661.9 Petition.**

The plaintiff in such action shall state the plaintiff's claim, and shall also state facts sufficient to constitute a cause for such claim, and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and that the plaintiff sustains and may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by the plaintiff, and refused or neglected, and shall pray an order of mandamus commanding the defendant to fulfill such duty.

[R60, § 3762; C73, § 3378; C97, § 4346; C24, 27, 31, 35, 39, § **12448**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.9]

### **661.10 Other pleadings.**

The pleadings and other proceedings in any action in which a mandamus is claimed shall be the same, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages.

[R60, § 3766; C73, § 3379; C97, § 4347; C24, 27, 31, 35, 39, § **12449**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.10]

**661.11** Repealed by 67 Acts, ch 400, § 197.

### **661.12 Injunction may issue joinder.**

When the action is brought by a private person, it may be joined with a cause of action for such an injunction as may be obtained by ordinary proceedings, or with the causes of actions specified in this chapter, but no other joinder and no counterclaim shall be allowed.

[R60, § 4181; C73, § 3380; C97, § 4348; C24, 27, 31, 35, 39, § **12450**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.12]

### **661.13 Peremptory order.**

When the plaintiff recovers judgment, the court may include therein a peremptory order of mandamus directed to the defendant, commanding the defendant forthwith to perform the duty to be enforced, together with a money judgment for damages and costs, upon which an ordinary execution may issue.

[R60, § 3768; C73, § 3381; C97, § 4349; C24, 27, 31, 35, 39, § **12451**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.13]

#### **661.14 Form of order return.**

The order commanding the performance of the duty shall be directed to the party and shall be returnable forthwith. No return except that of compliance shall be allowed; however, the court may upon sufficient grounds allow reasonable time for making the return.

[R60, § 3769; C73, § 3382; C97, § 4350; C24, 27, 31, 35, 39, § **12452**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.14]

#### **661.15 Performance by another costs.**

The court may, upon application of the plaintiff, besides or instead of proceeding against the defendant by attachment, direct that the act required to be done may be done by the plaintiff or some other person appointed by the court, at the expense of the defendant, and, upon the act being done, the amount of such expense may be ascertained by the court, or by a referee appointed by the court, and the court may render judgment for the amount of the expense and cost, and enforce payment thereof by execution.

[R60, § 3770; C73, § 3383; C97, § 4351; C24, 27, 31, 35, 39, § **12453**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.15]

#### **661.16 Temporary orders.**

During the pendency of the action, the court may make temporary orders for preventing damage or injury to the plaintiff until the action is decided.

[R60, § 3771; C73, § 3384; C97, § 4352; C24, 27, 31, 35, 39, § **12454**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.16]

#### **661.17 Appeal by state.**

When the state is a party, it may appeal without security.

[R60, § 3772; C73, § 3385; C97, § 4353; C24, 27, 31, 35, 39, § **12455**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 661.17]