

# A BILL

FOR AN ACT CREATING AND ESTABLISHING APPELLATE COURTS, AND DEFINING THE POWERS AND JURISDICTION THEREOF.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SECTION 1. STYLE OF COURT DISTRICTS. There are hereby created and established two  
2 appellate courts in this state to be called the northern appellate court of Iowa and the  
3 southern appellate court of Iowa, each to have jurisdiction in and for their respective dis-  
4 tricts hereby created. The northern district to consist of the counties of Allamakee, Ben-  
5 ton, Black Hawk, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cerro Gordo,  
6 Cherokee, Chickasaw, Clay, Clayton, Crawford, Delaware, Dickinson, Dubuque, Emmet,  
7 Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hancock, Hardin, Howard, Hum-  
8 boldt, Ida, Jackson, Jones, Kossuth, Linn, Lyon, Mitchell, Monona, O'Brien, Osceola, Palo  
9 Alto, Plymouth, Pocahontas, Sac, Sioux, Tama, Webster, Winnebago, Winneshiek, Wood-  
10 bury, Worth and Wright.

11 The southern district to consist of the counties of Adair, Adams, Appanoose, Audubon,  
12 Boone, Cass, Cedar, Clarke, Clinton, Dallas, Davis, Decatur, Des Moines, Fremont, Guthrie,  
13 Harrison, Henry, Iowa, Jasper, Jefferson, Johnson, Keokuk, Lee, Louisa, Lucas, Madison,  
14 Mahaska, Marion, Marshall, Mills, Monroe, Montgomery, Muscatine, Page, Polk, Potta-  
15 wattamie, Poweshiek, Ringgold, Scott, Shelby, Story, Taylor, Union, Van Buren, Wapello,  
16 Warren, Washington and Wayne.

SEC. 2. SEAL—CLERKS. Said appellate courts hereby established shall be courts of  
2 record with seals and clerks for each respectively; and each shall be held by three of the  
3 judges of the district court of the state to be assigned thereto in the manner hereinafter  
4 provided.

SEC. 3. DIVISIONS. For the purpose of holding terms of court, said appellate court dis-  
2 tricts are hereby divided into three divisions each, to be known as the Eastern, Central and  
3 Western divisions of said appellate court districts, respectively.

4 The divisions of the northern appellate court district shall be of the following counties:  
5 EASTERN DIVISION—Allamakee, Benton, Bremer, Buchanan, Chickasaw, Clayton, Delaware,  
6 Dubuque, Fayette, Floyd, Howard, Jackson, Jones, Linn, Mitchell and Winneshiek.

7 CENTRAL DIVISION—Blackhawk, Butler, Calhoun, Cerro Gordo, Emmet, Franklin,

8 Grundy, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Palo Alto, Pocahontas, Tama,  
9 Webster, Winnebago, Worth and Wright.

10 WESTERN DIVISION—Buena Vista, Carroll, Cherokee, Clay, Crawford, Dickinson, Greene,  
11 Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux and Woodbury.

12 The divisions of the southern appellate court district shall be of the following counties:

13 EASTERN DIVISION—Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson,  
14 Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello and Washington.

15 CENTRAL DIVISION—Appanoose, Boone, Clarke, Dallas, Decatur, Guthrie, Jasper, Lucas,  
16 Madison, Mahaska, Marshall, Marion, Monroe, Polk, Poweshiek, Story, Warren and Wayne.

17 WESTERN DIVISION—Adair, Adams, Audubon, Cass, Fremont, Harrison, Mills, Montgom-  
18 ery, Page, Pottawattamie, Ringgold, Shelby, Taylor and Union.

SEC. 4. TERMS. Terms of the said appellate courts shall be held within the several  
2 divisions as follows: In the eastern division of the northern district, at the city of  
3 Dubuque, on the first Tuesday in January and the Third Tuesday in June in each year.

4 In the central division, at the city of Fort Dodge, on the first Tuesday in March and the  
5 second Tuesday in September in each year.

6 In the western division, at the city of Sioux City, on the first Tuesday in May and the  
7 first Tuesday in November in each year.

8 In the eastern division of the southern district, at the city of Burlington, on the first  
9 Tuesday in February and the second Tuesday in August in each year.

10 In the central division, at the city of Des Moines on the first Tuesday in April and the  
11 third Tuesday in September in each year.

12 In the western division, at the city of Council Bluffs on the first Tuesday in June and the  
13 second Tuesday in November in each year. *Provided*, that any party to an action pending  
14 in either of the divisions of said appellate courts may have the same transferred to and heard  
15 at any term in either of the divisions of said appellate courts, respectively, upon reasonable  
16 notice thereof to the attorney of the opposite party, the time of the notice above mentioned  
17 to be fixed by the court as a rule of court, and not to be less than ten days.

SEC. 5. CLERKS. When said appellate courts shall have been established, the judges  
2 thereof, respectively, shall for each court appoint suitable persons to serve as clerks of  
3 said appellate courts respectively; said clerks shall hold and discharge the duties of said  
4 office until their successors shall have been elected and qualified as herein provided. At  
5 the time of the general election to be held in this state in November, 1896, and every four  
6 years thereafter one clerk for each of said appellate courts shall be elected in each district.  
7 Said clerks shall be commissioned by the governor and their term of office shall be four  
8 years. The clerks of said appellate courts shall perform the duties usually devolving upon  
9 the clerk of the supreme court of this state. Shall provide books, stationery and seals for

10 said appellate courts as may be ordered by said courts, and each shall be allowed as com-  
11 pensation a salary of two thousand (2,000) dollars per annum to be paid in like manner as  
12 now provided by law for the payment of the clerk of the supreme court of this state.

SEC. 6. BOND—OATH. Said clerks shall each before entering upon the duties of his  
2 office give a bond with one or more sureties to be approved by one of the justices of the  
3 supreme court of this state, which bond shall be in such penalty as may be fixed by such  
4 justice not less than five thousand (5,000) dollars, payable to the State of Iowa and con-  
5 ditioned for the faithful performance of the duties of his office and to pay over all moneys  
6 that may come to his hands by virtue of his office to the parties entitled thereto, and to  
7 deliver up all moneys, papers, books, records and other property and things pertaining to  
8 his office; whole, safe and undefaced, when lawfully required so to do, which bond shall be  
9 filed in the office of the secretary of state.

10 He shall also before entering upon the duties of his office, take and subscribe the fol-  
11 lowing oath or affirmation:

12 I do solemnly swear (or affirm as the case may be) that I will support the Constitution  
13 of the United States and the Constitution of the State of Iowa, and that I will faithfully  
14 discharge the duties of the office of the clerk of the appellate court according to the best  
15 of my ability.

16 Which oath shall be filed in the office of the secretary of state.

SEC. 7. ASSIGNMENT OF JUDGES. Immediately upon the approval of this act, the  
2 supreme court of this state shall assign six judges of the district court of this state to duty  
3 in said appellate court as follows: Three of said district judges from the northern appellate  
4 court district to the southern appellate court, and three from the southern appellate court  
5 district to the northern appellate court, which said assignment shall be until the 31st day of  
6 December, 1898, at which time said supreme court shall again assign judges to said appel-  
7 late courts as above provided for a period of four years, and thereafter said assignment  
8 shall be made every four years; *provided*, the supreme court may for good cause shown  
9 remove any of said judges from duty in either of said appellate courts and in all cases of  
10 vacancy in either of said appellate courts the supreme court shall fill such vacancy by  
11 assigning another judge of the district court to duty therein, and in addition to the com-  
12 pensation or salary, that is now or may hereafter be allowed to the judges of the district  
13 court of this state, said district judges assigned to duty in said appellate courts shall be  
14 allowed and paid the sum of three hundred (300) dollars per annum.

SEC. 8. PRESIDING JUSTICE. At the first term of said appellate courts, respectively,  
2 the judges thereof in each of said districts shall chose one of their number who shall be  
3 presiding justice of the appellate court in the districts to which he shall have been assigned,  
4 for such time as the judges of said courts may determine among themselves, and at the

5 expiration of such term his successors shall be chosen in like manner. Two of the judges  
6 so assigned in each district shall constitute a quorum, and the concurrence of two shall be  
7 necessary to every decision.

SEC. 9. TEMPORARY ASSIGNMENT. Whenever one or more of the judges of either of  
2 the appellate courts shall notify the chief justice of the supreme court of this state that one  
3 or more of the judges of such appellate court is absent, or temporarily incapacitated, from  
4 sickness or otherwise, to sit as a judge of such appellate court, such chief justice of the  
5 supreme court of this state shall designate some other judge, or judges, of any district  
6 court of the state to sit in such appellate court and act as one of its judges until the dis-  
7 ability of such absent judge shall cease, and the acts of such judge so designated, and of the  
8 appellate court in which he shall sit, shall be as valid and binding as if he had been regu-  
9 larly and permanently appointed as judge of such appellate court.

SEC. 10. JURISDICTION. The said appellate courts created and established by this act  
2 shall exercise appellate jurisdiction only, and have jurisdiction of all matters of appeal or  
3 writs of error from the final judgments, orders, or decrees of any of the district courts and  
4 all other courts of record of inferior jurisdiction now, or that may hereafter be established  
5 in this state, in any suit or proceeding at law, or in equity, where the amount involved does  
6 not exceed the sum of one thousand (1,000) dollars, exclusive of costs, and not involving a  
7 franchise or freehold, or the validity of a statute, and in all cases of misdemeanor. In all  
8 cases determined in said appellate courts in actions *ex-contractu* wherein the amount  
9 involved does not exceed the sum of one thousand (1,000) dollars, exclusive of costs, and in  
10 all cases sounding in damages wherein the judgment of the court below does not exceed the  
11 sum of one thousand (1,000) dollars, exclusive of costs, and in all cases of misdemeanors,  
12 the judgment, order or decree of the appellate court shall be final, and no appeal shall lie,  
13 or writ of error be prosecuted therefrom; *provided*, that the term *ex-contractu* as used in  
14 this act shall not be construed to include actions involving a penalty imposed by statute or  
15 by the conditions of official bonds, and *provided also*, that in case a majority of the judges  
16 of the appellate court shall be of the opinion that a case decided by them also involves  
17 questions of law of such importance, either on account of principal or collateral interests,  
18 as that it should be passed upon by the supreme court of the state, they may in such cases  
19 grant appeals and writs of error to the supreme court on petition of parties to the cause, in  
20 which case the said appellate court shall certify to the supreme court the grounds of grant-  
21 ing such appeal, and shall enter an order upon its record directing the clerk of said appel-  
22 late court to certify such certificate, together with the judgment of said appellate court in  
23 such cause, with all the papers and files of the same, to the clerk of the supreme court, who  
24 shall docket the same in said supreme court as in cases of original appeal from the district  
25 courts.

26 In all cases finally determined in the district or other inferior courts of record in this  
27 state, and not included within the provisions of this act, as exclusively within the jurisdic-  
28 tion of said appellate courts, appeal shall lie directly to the supreme court as now or here-  
29 after may be provided by law.

SEC. 11. POWER OF COURT—PRACTICE—PLEADINGS—PROCESS. The said appellate  
2 courts shall be vested with all the power and authority now vested in the supreme court of  
3 this state and necessary to carry into complete execution all their judgments, decrees and  
4 determinations in all matters within their jurisdiction. The practice and pleadings in said  
5 courts shall be uniform and shall be the same as the practice and pleadings as now pre-  
6 scribed or which may hereafter be prescribed in and for the supreme court of this state so  
7 far as applicable, and in all things pertaining to process, practice, pleadings, the keeping  
8 of dockets, records and proceedings, the rules adopted, prescribed and established, or that  
9 may hereafter be adopted, prescribed and established in and for the supreme court of the  
10 state, shall be the rules of said appellate courts, and said appellate courts shall have all the  
11 power and authority to issue summons, writs of mandamus, certiorari, error, supersedeas  
12 and all other writs not prohibited by law, which may be necessary to enforce the due admin-  
13 istration of justice in all matters within their jurisdiction as now pertains to, or may here-  
14 after be conferred by law upon the supreme court of this state and all such summons, pro-  
15 cesses and writs shall bear tests in the name of the presiding justice of said appellate court,  
16 shall run in the name of the state of Iowa, be signed by the clerk, dated when issued,  
17 sealed with the seal of said court and made returnable as provided by law.

18 *Provided*, That nothing herein shall be construed to prevent the judges of said appel-  
19 late courts from adopting and prescribing such other rules for the conduct of business in  
20 said courts and necessary to the practice therein and government thereof not inconsistent  
21 with the provisions of this act.

SEC. 12. ORDERS IN VACATION—OPINIONS. The judges of said appellate courts  
2 respectively, or a majority of them, may enter orders and judgments in vacation in all  
3 cases which have been argued or submitted to the courts during any term thereof, and  
4 which shall have been taken under advisement. All opinions or decisions of said courts shall  
5 be reduced to writing by the court, giving briefly therein the reason for such opinion or  
6 decision, and be filed in the case in which rendered; *provided*, that such opinions shall not  
7 be of binding authority in any case or proceeding, other than in that in which they may be  
8 filed.

SEC. 13. EXECUTION OF PROCESS—SHERIFFS. Any process which may be issued from  
2 an appellate court, or any judge thereof, or the clerk as provided by law shall be executed  
3 by the officer to whom it is directed in any county or place in this state in the usual man-  
4 ner that process is, or may be required to be executed and returned. The sheriffs of the

5 counties in which the appellate courts may be held shall attend upon its sittings and per-  
6 form such duties under the order and direction of said appellate courts as are usually per-  
7 formed by such officer. And such as said courts shall from time to time require.

SEC. 14. FEES—COSTS. All costs and charges for filing cases in said appellate courts,  
2 printing abstracts and briefs for transcripts and for the service of any and all processes  
3 or writs and for any and all other matters for and on account of proceedings in said appel-  
4 late courts shall be the same as are now or may hereafter be provided for like service in  
5 and for the supreme court of this state, and in all cases where the offices rendering the  
6 services for which the charges are made, are paid a salary from the treasury of the state,  
7 such costs and charges when paid shall be covered into the state treasury, and when such  
8 services are rendered by any officer who is paid from the treasury of any county the fees  
9 or costs for such services when collected shall be paid into the treasury of such county and  
10 in other cases to be paid to the officer or person entitled thereto.

SEC. 15. ROOMS FOR COURTS. The supreme court room in the central division of the  
2 southern appellate court district, when not in use by the supreme court, may be used for  
3 holding appellate courts therein, and shall be so used if the judges of the supreme court  
4 and the said appellate court can so arrange as not to interfere with the work of either of  
5 said courts. In all other counties or places provided in this act for holding terms of said  
6 appellate courts in the several divisions thereof, respectively, the clerk of each court,  
7 may rent suitable rooms in the said cities of Dubuque, Fort Dodge, Sioux City, Burlington  
8 and Council Bluffs for the holding of said courts and for the use of the officers thereof at  
9 a rental of not exceeding one thousand (1,000) dollars per annum, to be paid quarterly by  
10 the state treasurer upon warrants to issue upon the certificate of the clerk of the said appel-  
11 late courts in the district where such rooms are located, and said clerks shall also procure  
12 all necessary furniture for use in said rooms at a cost of not to exceed five hundred (500)  
13 dollars for each suite of rooms so furnished to be paid for by the state treasurer upon war-  
14 rants drawn upon the certificate of said clerks, respectively, that the articles of furniture  
15 therein to be mentioned and described has been procured, and that the prices therefor are  
16 reasonable and just; said rental of rooms and cost of furnishing the same to be paid out of  
17 any moneys in the state treasury not otherwise appropriated, or out of the appropriation  
18 that shall be made therefor.

SEC. 16. CLERK'S OFFICE. The principal office of the clerk of the northern appellate  
2 court shall be at the city of Fort Dodge, in the county of Webster, and of the clerk of the  
3 southern appellate court, at the city of Des Moines, in the county of Polk, and all cases of  
4 appeal, or other proceedings in said appellate courts respectively, with all papers pertain-  
5 ing to the same shall be filed with the said clerks of said courts at the above mentioned  
6 places respectively, and said clerk shall enter the same upon one docket or calendar appro-

7 priately numbered without reference to the division in which said cases may be assigned  
8 for hearing, and shall take with him to the place of holding court in the other divisions of  
9 his district such cases only as are to be heard at such place.

SEC. 17. TRANSFER OF CASES. All cases now pending in the supreme court of this  
2 state and not submitted at the time this act shall go into effect and said appellate courts  
3 are organized as provided herein, that may be within the jurisdiction of the said appellate  
4 courts shall be transferred with all papers pertaining thereto, to the appellate courts  
5 respectively, to each court the cases that belong within its respective district and the clerks  
6 of said appellate courts shall docket said cases so transferred thereto in the same manner  
7 as in cases of original appeal and the appellate courts shall take and have jurisdiction  
8 thereof. And the decisions, orders and decrees of said appellate court in all such cases  
9 shall be of the same force and binding as fully and to the same extent and effect as in cases  
10 of appeal directly thereto as provided by this act, and in all cases where parties may by  
11 mistake of the proper court, prosecute appeals or writs of error to the supreme court which  
12 properly belongs in the appellate court or to the appellate court cases that should go to the  
13 supreme court under the provisions of this act, the same shall be transferred by the respec-  
14 tive courts to the court where the same properly belongs with the same effect as herein  
15 above stated. *Provided*, that in all such cases of transfer of causes from one of said courts  
16 to the other, where the filing fee has been paid, the appellant shall not be required to pay  
17 the same a second time but the case shall be docketed and proceed as in case of original  
18 entry in said court.

SEC. 18. This act being considered of immediate importance it shall take effect and be  
2 in force after its publication in the Iowa State Register and the Des Moines Leader, papers  
3 published in Des Moines, Iowa.