

Judiciary No. 2.
January 24, 1925.

House File No. 18.^A
BY JUDICIARY COMMITTEE NO. 2.

[The Code Editor is compelled to assume that an enrolled bill, duly signed by the presiding officers of the Senate and the House, and by the Governor, is a verity as far as he is concerned in compiling the statutes, even though he should privately discover that said bill or a part thereof was rejected by the general assembly. It does, however, seem proper for him, when he discovers that a bill or a part thereof never passed the assembly, to present a bill for the purpose of removing the nonapproved matter. The matters which this bill proposes to remove from the Code existed at one time as proposed amendments but were clearly rejected by the assembly, yet said matters were inadvertently allowed to remain attached to the bill and were, as a result, copied into the enrolled bill and said bill was duly signed by the presiding officers and by the governor. The matter aforesaid was involved in House File 270. For the legislative history of this matter see H. J. 277; S. J. 390, 391, 393; H. J. 453; S. J. 460; H. J. 558; S. J. 504; H. J. 564; S. J. 520; H. J. 588.

When the foregoing proposed amendatory matters were before the assembly and rejected, an additional amendment to insert the words, "before publication" in section three (3) of the bill was offered but the legislative journals show that this amendment was also rejected, but it, too, was copied into the enrollment. From the nature of this last rejected amendment it is assumed that it would have been agreed to had the matter been clearly called to the attention of the assembly. This bill proposes to re-enact section 12391 in its present form in order that the words "before publication" may be clearly legalized.]

A BILL FOR

An Act to modify the enrollment of House File Number 270, of the acts of the extra session of the Fortieth General Assembly as it now appears in the office of the Secretary of State, and in chapter 527, Code, 1924, and to amend section twelve thousand three hundred ninety-one (12391), Code, 1924, relating to the forfeiture of real estate contracts.

WHEREAS, In the enrollment of House File Number 270, in the extra session of the Fortieth General Assembly, the following words were copied into section two (2) of said enrolled bill, to wit:

"If the property affected by the contract, if within a city or town, does not exceed one-half acre in extent, and otherwise does not contain in the aggregate more than forty acres, and has assumed a homestead character, then the vendor or his successor in interest shall notify said vendee or his successor in interest, that said contract will stand forfeited and cancelled, unless said party, within ninety days after the completed service of said notice, performs the terms and conditions in default, and, in addition, pays the reasonable cost of serving the notice," and

WHEREAS, In the enrollment of said bill the following words were copied into section five (5) of said enrolled bill, to wit: "or ninety days as the case may be," and

WHEREAS, No part of said quoted words was adopted or in any manner agreed to by the General Assembly but was wholly rejected by the General Assembly, as shown by the official journals thereof, and

WHEREAS, Said enrolled bill was signed by the presiding officers of the General Assembly and by the Governor without knowledge of said error, and

WHEREAS, The first quoted words hereof now appear in the Code, 1924, as the last thirteen (13) lines of section twelve thousand three hundred ninety (12390), and

WHEREAS, The said words "or ninety days as the case may be," now appear in section twelve thousand three hundred ninety-three (12393), Code, 1924:

NOW THEREFORE

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. Section two (2) of the enrollment of House File
2 Number 270 of the acts of the extra session of the Fortieth General
3 Assembly as it now appears in the office of the Secretary of State
4 and in section twelve thousand three hundred ninety (12390), Code,
5 1924, is hereby modified by expunging therefrom the following
6 words, to wit:

7 "If the property affected by the contract, if within a city or
8 town, does not exceed one-half acre in extent, and otherwise does
9 not contain in the aggregate more than forty acres, and has
10 assumed a homestead character, then the vendor or his successor in
11 interest shall notify said vendee or his successor in interest,
12 that said contract will stand forfeited and canceled, unless said
13 party, within ninety days after the completed service of said
14 notice, performs the terms and conditions in default, and, in
15 addition, pays the reasonable cost of serving the notice."

1 Sec. 2. Section five (5) of the enrollment of House File
2 Number 270 of the acts of the extra session of the Fortieth General
3 Assembly as it now appears in the office of the Secretary of State
4 and in section twelve thousand three hundred ninety-three (12393),
5 Code, 1924, is hereby modified by expunging therefrom the following
6 words, to wit:

7 “or ninety days, as the case may be.”

1 Sec. 3. The aforesaid modifications shall not apply to
2 pending litigation, nor shall anything contained in the two
3 preceding sections be constructed as a recognition by the General
4 Assembly of the former validity of said stricken words.

1 Sec. 4. Section twelve thousand three hundred ninety-one
2 (12391), Code, 1924, is repealed and the following is enacted in
3 lieu thereof:

4 “12391. Service. Said notice may be served personally or by
5 publication, on the same conditions, and in the same manner as is
6 provided for the service of original notices, except that when the
7 notice is served by publication no affidavit therefor shall be
8 required before publication. Service by publication shall be
9 deemed complete on the day of the last publication.”

1 Sec. 5. Publication. This act, being deemed of immediate
2 importance, shall be in full force and effect from and after its
3 publication in the Des Moines Register and the Des Moines Capital,
4 newspapers published at Des Moines, Iowa.