

January 12/1985

FILED JAN 17 1985

SENATE FILE 71
BY HOLDEN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the service of process in civil actions
2 and proceedings by persons other than law enforcement
3 officers.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 71

1 Section 1. Chapter 617, Code 1985, is amended by adding
2 the following new section:

3 NEW SECTION. PERSONS BY WHOM PROCESS MAY BE SERVED.

4 The original notice or any pleading, notice, motion,
5 subpoena, or other process that is required by law or rule to
6 be personally served upon a party or an agent of a party to a
7 civil action or proceeding, may be served by a sheriff, deputy
8 sheriff, or other peace officer, and may be served by any
9 other person who is at least eighteen years of age and who is
10 not a party to the action or proceeding. The attorney of a
11 party may serve any process except an original notice, unless
12 prohibited by the rules of civil procedure.

13 Sec. 2. Section 622.64, Code 1985, is amended to read as
14 follows:

15 622.64 PROOF OF SERVICE--COSTS.

16 When a subpoena is served by any person other than the
17 sheriff or constable, proof thereof of service shall be shown
18 by affidavit; ~~but no costs for serving the same shall be~~
19 allowed.

20 Sec. 3. Section 625.14, Code 1985, is amended by adding
21 the following new unnumbered paragraph:

22 NEW UNNUMBERED PARAGRAPH. The clerk also shall tax in
23 favor of the party who recovers costs the fee and mileage
24 expense that is paid by the party to a person other than a
25 peace officer for personal service of the original notice or
26 any pleading, notice, motion, subpoena, or other process. The
27 rate to be recovered for mileage shall not exceed the rate
28 specified in section 79.9. The supreme court may prescribe
29 acceptable fees or ranges of fees by rules adopted under
30 sections 602.4201 and 602.4202. The district judges within a
31 judicial district may by majority vote prescribe acceptable
32 fees or ranges of fees if not prescribed by the supreme court.
33 In the absence of applicable rules, and upon motion of the
34 party against whom costs are taxed, the court may disallow a
35 portion of the fee paid for service of process if the court

1 finds the fee to be excessive based upon the nature of the
2 process and the circumstances surrounding service.

3 Sec. 4. Section 631.6, subsection 3, Code 1985, is amended
4 to read as follows:

5 3. Fees for personal service by ~~peace-officers-or-other~~
6 ~~officials-of-the-state~~ shall be the amounts specified
7 authorized by law.

8 Sec. 5. Rule of Civil Procedure, 59(a), Iowa Court Rules,
9 Second Edition, is amended to read as follows:

10 (a) SIGNATURE--PEES. Iowa officers may make unsworn
11 returns of original notices served by them, as follows: Any A
12 sheriff or deputy sheriff, as to service in his the sheriff's
13 or deputy's own or a contiguous county; any other peace
14 officer, or bailiff or marshal, as to service in his that
15 person's own territorial jurisdiction. The court shall take
16 judicial notice of such the signatures. All other returns,
17 except those specified in R.C.P. 56.1 "d" and 56.1 "e", shall
18 be proved by the affidavit executed certification under
19 penalty of perjury, as provided in section 622.1, of the
20 person making the service. if-served-in-the-state-of-iowa-by
21 a-person-other-than-such-peace-officer-acting-within-the
22 territories-above-defined-or-in-another-state-by-a-person
23 other-than-a-sheriff-or-other-peace-officer,-no-fees-or
24 mileage-shall-be-allowed-therefor.

25 EXPLANATION

26 This bill amends the laws relating to the service of
27 original notices and other process in civil actions to permit
28 recovery by the successful party of the fee and expenses paid
29 to a person other than a peace officer for the service of
30 process. Existing laws and rules of civil procedure permit
31 service of process by a person other than a peace officer, but
32 prohibit the recovery of a fee or mileage expense paid to the
33 person.

34 As amended, mileage expense would be recoverable provided
35 that the maximum mileage rate would be that specified in

1 section 79.9 for local government officers and employees. A
2 fee also could be recovered, subject to rules adopted by the
3 supreme court, or local court rules, or in the absence of
4 court rules, the trial judge could disallow a portion of a fee
5 that is deemed excessive.

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

1 finds the fee to be excessive based upon the nature of the
2 process and the circumstances surrounding service.

3 Sec. 4. Section 631.6, subsection 3, Code 1985, is amended
4 to read as follows:

5 3. Fees for personal service by ~~peace-officers-or-other~~
6 ~~officials-of-the-state~~ shall be the amounts specified
7 authorized by law.

8 Sec. 5. Rule of Civil Procedure, 59(a), Iowa Court Rules,
9 Second Edition, is amended to read as follows:

10 (a) SIGNATURE--~~FEES~~. Iowa officers may make unsworn
11 returns of original notices served by them, as follows: Any A
12 sheriff or deputy sheriff, as to service in his the sheriff's
13 or deputy's own or a contiguous county; any other peace
14 officer, or bailiff or marshal, as to service in his that
15 person's own territorial jurisdiction. The court shall take
16 judicial notice of such the signatures. All other returns,
17 except those specified in R.C.P. 56.1 "d" and 56.1 "e", shall
18 be proved by the affidavit executed certification under
19 penalty of perjury, as provided in section 622.1, of the
20 person making the service. if-served-in-the-state-of-Iowa-by
21 a-person-other-than-such-peace-officer-acting-within-the
22 territories-above-defined-or-in-another-state-by-a-person
23 other-than-a-sheriff-or-other-peace-officer, no-fees-or
24 mileage-shall-be-allowed-therefor.

25 EXPLANATION

26 This bill amends the laws relating to the service of
27 original notices and other process in civil actions to permit
28 recovery by the successful party of the fee and expenses paid
29 to a person other than a peace officer for the service of
30 process. Existing laws and rules of civil procedure permit
31 service of process by a person other than a peace officer, but
32 prohibit the recovery of a fee or mileage expense paid to the
33 person.

34 As amended, mileage expense would be recoverable provided
35 that the maximum mileage rate would be that specified in

1 section 79.9 for local government officers and employees. A
2 fee also could be recovered, subject to rules adopted by the
3 supreme court, or local court rules, or in the absence of
4 court rules, the trial judge could disallow a portion of a fee
5 that is deemed excessive.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35