

(P. 288) 2/14/94 Judiciary

FILED FEB 14 1994

SENATE FILE 2118

BY McKEAN

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

A BILL FOR

1 An Act providing for an expedited appeal and stay of proceedings
2 in certain matters involving real property.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 2118

1 Section 1. NEW SECTION. 625A.19 EXPEDITED APPEAL AND
2 STAY OF EXECUTION IN MATTERS INVOLVING REAL PROPERTY.

3 1. As used in this section, unless the context otherwise
4 requires:

5 a. "Appellant" means a party to civil litigation who is
6 filing a notice of appeal to contest a real property ruling by
7 the district court which was adverse to the appellant.

8 b. "Expedited appeal" means an appeal which follows the
9 expedited times for certain filings as specified in rule of
10 appellate procedure 17.

11 c. "Real property ruling" means that portion of a final
12 order, judgment, or decree by the district court which either
13 orders an appellant to transfer an interest in real property
14 specifically in the order, judgment, or decree, or would
15 require the appellant to transfer an interest in real property
16 in order to have sufficient funds to satisfy the order,
17 judgment, or decree.

18 2. An appellant may request an expedited appeal and a stay
19 of proceedings concerning a real property ruling by filing a
20 motion with the clerk of the supreme court, and sending a copy
21 of the motion to the clerk of the district court which issued
22 the real property ruling, and accompanying the motion with
23 proof of service in accordance with rule of civil procedure
24 82, at the time of filing the notice of appeal in accordance
25 with rule of appellate procedure 6. Notwithstanding any
26 provision of law which would otherwise require the appellant
27 to execute a bond or similar device, the filing of a motion
28 pursuant to this section shall automatically stay execution on
29 real property ruling until a ruling is made in accordance with
30 rule of appellate procedure 22.

31 3. The appropriate appellate court, a justice or judge
32 thereof, or the clerk of the supreme court, as provided in
33 rule of appellate procedure 22, shall grant a motion filed in
34 accordance with this section if the ruling which is being
35 appealed is a real property ruling. When a motion filed under

1 this section is ruled upon, the clerk of the supreme court
2 shall notify the clerk of the district court which entered the
3 real property ruling, as well as the parties, of the decision.
4 If the motion is granted, an order shall be issued which
5 provides for an expedited appeal and stays execution on the
6 real property ruling until a decision is made on the merits of
7 the appeal by the supreme court or the court of appeals. If
8 the motion is not granted, the automatic stay shall be lifted
9 and the case shall proceed as specified in the rules of
10 appellate procedure for cases which are not expedited.

11 4. In granting a motion pursuant to subsection 3, the
12 appropriate appellate court, a justice or judge thereof, or
13 the clerk of the supreme court may include in the order any
14 appropriate restrictions concerning the use of the real
15 property subject to the ruling considered necessary to protect
16 the interests of the parties, and may order the appellant to
17 pay for the costs of an inventory and appraisal of the real
18 property subject to the ruling. The order may also require
19 the appellant, if unsuccessful on appeal, to reimburse the
20 other party for any diminution in value of the real property
21 subject to the ruling.

22 5. If the case is transferred to the court of appeals and
23 the court of appeals upholds the real property ruling, the
24 stay shall remain in effect at least until the time for filing
25 an application for further review has expired, as specified in
26 section 602.4102. If the time for filing an application for
27 further review expires and the appellant does not seek further
28 review, the clerk of the supreme court shall notify the
29 parties, as well as the clerk of the district court which
30 issued the real property ruling, that the stay of execution
31 has been lifted. However, if the appellant does file an
32 application for further review, the clerk of the supreme court
33 shall notify the clerk of the district court that the stay
34 remains in effect until a decision on the merits of the appeal
35 is made by the supreme court.

1 6. An appeal to a federal court does not stay proceedings
2 in the manner provided in this section. The supreme court
3 shall prescribe rules of appellate procedure which further
4 govern proceedings in accordance with this section, and
5 provide guidelines as to when the actions authorized in
6 subsection 4 may be appropriate for inclusion in orders
7 granting motions under this section.

8 Sec. 2. Rule of appellate procedure 7, subrule a, Iowa
9 court rules, third edition, is amended to read as follows:

10 a. Except as otherwise provided in Iowa Code section
11 625A.19 or upon order entered by the supreme court, pursuant
12 to a procedural, appellate, or court rule, no appeal shall
13 stay proceedings under a judgment or order unless appellant
14 executes a bond with sureties, to be filed with and approved
15 by the clerk of the court where the judgment or order was
16 entered. The condition of such bond shall be that appellant
17 will satisfy and perform the judgment if affirmed, or any
18 judgment or order, not exceeding in amount or value the
19 obligation of the judgment or order appealed from, which an
20 appellate court may render or order to be rendered by the
21 trial court; and also all costs and damages adjudged against
22 appellant on the appeal, and all rents of or damages to
23 property during the pendency of the appeal of which appellee
24 is deprived by reason of the appeal.

25 Sec. 3. Rule of appellate procedure 17, Iowa court rules,
26 third edition, is amended to read as follows:

27 RULE 17. CASES INVOLVING EXPENDITED TIMES FOR FILINGS.
28 The times prescribed in Iowa Rule of Appellate Procedure 13
29 for serving and filing briefs, other than reply briefs, the
30 times prescribed in Iowa Rule of Appellate Procedure 15"b" for
31 determining the contents of the appendix, and the times
32 prescribed in Iowa Rule of Appellate Procedure 15"f" for
33 filing an agreed statement of the case shall be reduced by
34 one-half in appeals involving the following: (1) a contest as
35 to custody of children; (2) adoption; (3) termination of the

1 parent-child relationship; (4) juvenile proceedings affecting
2 child placement; ~~or~~ (5) lawyer disciplinary matters; or (6)
3 matters involving real property rulings in which orders are
4 granted in accordance with Iowa Code section 625A.19. The
5 appendix and reply briefs, except an appellee's (cross-
6 appellant's) reply brief, shall be served and filed not more
7 than fifteen days after service or expiration of the time for
8 service of appellee's proof brief, and printed or duplicated
9 copies of all the briefs in final form shall be served and
10 filed within seven days after service of the appendix. An
11 appellee's (cross-appellant's) reply brief, if filed, shall be
12 served and filed not more than seven days after service of ap-
13 pellant's (cross-appellee's) reply brief. Court reporters
14 shall give priority to transcription of proceedings in these
15 cases over other civil transcripts. These appeals shall be
16 accorded submission precedence over other civil cases.

17

EXPLANATION

18 This bill provides that an appellant may obtain an order
19 providing for an expedited appeal and stay of execution upon a
20 ruling by the district court which either orders an appellant
21 to transfer an interest in real property specifically in the
22 order, judgment, or decree, or would require the appellant to
23 transfer an interest in real property in order to have
24 sufficient funds to satisfy the order, judgment, or decree.
25 The bill requires the appellant to file the motion when filing
26 a notice of appeal, and provides that the motion shall be
27 heard in the manner provided in rule of appellate procedure
28 22. Under the bill, execution on the real property is
29 automatically stayed pending a decision. The bill provides
30 that the motion shall be granted if the lower court's ruling
31 falls within the definition of a "real property ruling"
32 provided in the bill.

33 The bill provides that if the motion is granted, the appeal
34 shall be expedited in the manner provided in rule of appellate
35 procedure 17, and an order staying execution shall be issued.

1 The bill provides that the order may include restrictions upon
2 the use of the real property, or may require the appellant to
3 pay the costs of an inventory and appraisal. The bill further
4 provides that the order may also require the appellant, if
5 unsuccessful on appeal, to reimburse the other party for any
6 diminution in value of the real property subject to the
7 ruling.

8 The bill also provides for the stay to continue if an
9 application for further review is filed in a case which is
10 transferred to the court of appeals. The bill applies only to
11 state, as opposed to federal, appeals. The bill requires the
12 supreme court to prescribe rules to govern the proceedings.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35