

FILED MAR 7 1979

SENATE FILE 377  
BY JOHNSON

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the statute of limitations and burden of proof  
2 in petitions to correct, vacate, or modify a final judgment or  
3 order, or grant a new trial, based upon irregularity or fraud.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 377  
JUDICIARY

1 Section 1. Rule of civil procedure 253, paragraph a, Iowa  
2 court rules, third edition, is amended to read as follows:

3 a. PETITION. ~~A petition for relief under R.C.P. 252 must~~  
4 ~~be filed and served in the original action within one year~~  
5 ~~after the entry of the judgment or order involved;--It A~~  
6 petition for relief under R.C.P. 252 shall state the grounds  
7 for relief, and, if it seeks a new trial, show that they were  
8 not and could not have been, discovered in time to proceed  
9 under R.C.P. 236 or 244. If the pleadings in the original  
10 action did not allege a meritorious action or defense the  
11 petition shall do so. It shall be supported by affidavit as  
12 provided in R.C.P. 80(c).

13 (1) A petition for relief under R.C.P. 252, paragraph (a),  
14 (c), (d), (e), or (f), must be filed and served in the  
15 original action within one year after the entry of the  
16 judgment or order involved.

17 (2) In a petition for relief on the ground of irregularity  
18 or fraud under R.C.P. 252, paragraph (b), the cause of action  
19 shall not be deemed to have accrued until the irregularity or  
20 fraud complained of shall have been discovered by the party  
21 aggrieved. In such actions, the burden of proof shall be upon  
22 the petitioner to prove by a preponderance of the evidence the  
23 alleged irregularity or fraud.

24 EXPLANATION

25 This bill amends rule of civil procedure 253, relating to  
26 the statute of limitations and burden of proof in petitions to  
27 correct, vacate, or modify a final judgment or order, or grant  
28 a new trial, based upon irregularity or fraud. The bill  
29 provides that in a petition for relief to correct, vacate, or  
30 modify a final judgment or order, or grant a new trial, based  
31 upon irregularity or fraud, the cause of action shall not  
32 accrue until the irregularity or fraud complained of shall  
33 have been discovered by the party aggrieved. The bill further  
states that the petitioner has the burden to prove the  
irregularity or fraud complained of by a preponderance of the evidence.