

priority for the purposes of subsection 5 with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Sec. 54. Section 554.1201, subsections 5, 14, and 20, Code 1989, are amended to read as follows:

5. "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

14. "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

20. "Holder" means a person who is in possession of a document of title or an instrument or an a certificated investment security drawn, issued, or endorsed to that person or to that person's order or to bearer or in blank.

Sec. 55. Section 554.5114, subsection 2, Code 1989, is amended to read as follows:

2. Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 554.7507) or of a certificated security (section 554.8306) or is forged or fraudulent or there is fraud in the transaction:

a. the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank ~~of~~ or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 554.3302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 554.7502) or a bona fide purchaser of a certificated security (section 554.8302); and

b. in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

Approved May 3, 1989

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## CHAPTER 114

### MAGISTRATES AND DISTRICT ASSOCIATE JUDGES

*S.F. 498*

**AN ACT** relating to the appointment, terms, retention, and qualifications of magistrates, district associate judges and providing an effective date.

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

Section 1. Section 602.6302, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

602.6302 APPOINTMENT OF DISTRICT ASSOCIATE JUDGE IN LIEU OF MAGISTRATES.

1. The chief judge of the judicial district may designate by order of substitution that a district associate judge be appointed pursuant to this section in lieu of magistrates appointed under section 602.6403, subject to the following limitations:

a. The county in which the district associate judge is to be appointed, or the counties in which the district associate judge is to be appointed in combination, must have an apportionment of three or more magistrates.

b. The substitution must not result in a lack of a resident district associate judge or magistrate in one or more of the counties.

c. The substitution must be approved by the supreme court.

d. A majority of district judges in that judicial election district, or in the case of an appointment involving more than one judicial election district in the same judicial district, a majority of the district judges in each judicial election district, must vote in favor of the substitution and find that the substitution will provide more timely and efficient performance of judicial business within that judicial election district.

2. An order of substitution shall not take effect unless a copy of the order is received by the chairperson of the county magistrate appointing commission or commissions no later than May 31 of the year in which the substitution is to take effect. A copy of the order shall also be sent to the state court administrator.

3. For a county in which a substitution order is in effect, the number of magistrates actually appointed pursuant to section 602.6403 shall be reduced by three for each district associate judge substituted under this section. However, if the substitution order is for a district associate judge appointed to more than one county, the reduction of three magistrates shall be as provided in the order of the chief judge of the judicial district. Upon a subsequent reduction in the apportionment of magistrates to the county or counties, the magistrate appointing commission shall further reduce the number of magistrates appointed.

4. a. Except as provided in subsections 1 through 3, a substitution shall not increase or decrease the number of magistrates authorized by this article.

b. A substitution shall not be made where the apportionment of magistrates to a county is insufficient to permit the full reduction in appointments of magistrates as required by subsection 3.

5. If an apportionment by the state court administrator pursuant to section 602.6401 reduces the number of magistrates in the county or counties to less than the number required to be apportioned to allow a substitution order pursuant to subsection 1, or if a majority of the district judges in the judicial election district or districts determines that a substitution is no longer desirable, then the substituted office shall be terminated. However, a reversion pursuant to this subsection, irrespective of cause, shall not take effect until the substitute district associate judge fails to be retained in office at a judicial election or otherwise leaves office, whether voluntarily or involuntarily. Upon the termination of office of that district associate judge, appointments shall be made pursuant to section 602.6403 as necessary to reestablish terms of office as provided in section 602.6403, subsection 4.

Sec. 2. Section 602.6305, subsection 2, Code 1989, is amended to read as follows:

2. A person does not qualify for appointment to the office of district associate judge unless the person is at the time of ~~application~~ appointment a resident of the county in which the vacancy exists, ~~and unless the person is licensed to practice law in Iowa, and unless the person will be able, measured by the person's age at the time of appointment, to complete the initial term of office plus a four-year term of office prior to reaching age seventy-two.~~

Sec. 3. Section 602.6403, subsection 1, Code 1989, is amended to read as follows:

1. In ~~April~~ June of each year in which magistrates' terms expire, the county magistrate appointing commission shall appoint, except as otherwise provided in section 602.6302, the number of magistrates apportioned to the county by the state court administrator under section 602.6401, and may appoint an additional magistrate when allowed by section 602.6402. The commission shall not appoint more magistrates than are authorized for the county by this article.

Sec. 4. Section 602.6403, subsection 4, Code 1989, is amended to read as follows:

4. The term of office of a magistrate is ~~two~~ four years, commencing ~~July~~ August 1 of each ~~odd numbered year, 1989.~~ However, the terms of all magistrates in a county are deemed to

expire if a substitution under section 602.6302 or the allocation under section 602.6401 results in a reduction in the number of magistrates in a county where the magistrates hold office.

Sec. 5. Section 602.6404, subsection 2, Code 1989, is amended to read as follows:

2. A person is not qualified for appointment as a magistrate unless the person can complete the entire term of office prior to reaching if at the time of appointment the person has reached age seventy-two.

Sec. 6. Upon enactment, except as provided in section 602.6403, subsection 4, a magistrate appointed pursuant to section 602.6403, subsection 1, prior to the effective date of this Act shall be deemed to have been appointed pursuant to this Act and the magistrates term shall commence August 1, 1989.

Except as provided in section 602.6403, subsection 4, the term of a magistrate whose term is to expire on June 30, 1989, shall be extended through July 31, 1989.

Sec. 7. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 3, 1989

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## CHAPTER 115

### RULES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

*S.F. 534*

**AN ACT** relating to the adoption of rules by the department of inspections and appeals for intermediate care facilities for the mentally retarded and providing an effective date.

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

Section 1. Section 135C.2, subsection 3, Code 1989, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. The rules adopted for intermediate care facilities for the mentally retarded shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for the mentally retarded established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, in effect on January 1, 1989. However, in order to be licensed the state fire marshal must certify to the department an intermediate care facility for the mentally retarded as meeting the applicable provisions of either the health care occupancies chapter or the residential board and care chapter of the life safety code of the national fire protection association, 1985 edition. The department shall adopt additional rules for intermediate care facilities for the mentally retarded pursuant to section 135C.14, subsection 8.

NEW UNNUMBERED PARAGRAPH. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for the mentally retarded, the department shall consider the federal interpretive guidelines issued by the federal health care financing administration when interpreting the department's rules for intermediate care facilities for the mentally retarded. This use of the guidelines is not subject to the rulemaking provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

Sec. 2. **EFFECTIVE DATE.** This Act, being deemed of immediate importance, takes effect upon enactment. Within sixty days of the effective date of this Act, the department shall adopt rules, which take effect immediately upon filing, to comply with the provisions of this Act.

Approved May 3, 1989