

CHAPTER 622

EVIDENCE

Referred to in §522B.16A, 622B.6

[P]

For Iowa court rules concerning depositions,
see R.C.P. 1.701 – 1.717[P] For Iowa court rules concerning perpetuation of testimony,
see R.C.P. 1.721 – 1.728

[P] Presumption of death of missing persons, §633.517 – 633.520

	GENERAL PRINCIPLES		
		622.41	United States and state patents.
622.1	Certification under penalty of perjury.	622.42	Field notes and plats.
622.2	Credibility.	622.43	Records and entries in public offices.
622.3	Interest.		
622.4	through 622.7 Repealed by 83 Acts, ch 37, §7.	622.44	Copies of books of original entries.
622.8	Witness for each other.	622.45	Additional entries.
622.9	Communications between husband and wife.	622.46	Officer to give copies of records.
622.10	Communications in professional confidence — exceptions — required consent to release of medical records after commencement of legal action — application to court.	622.47	Maps in office of surveyor general.
622.10A	Tax advice — confidential communications.	622.48	Certificate as to loss of paper.
622.11	Public officers.	622.49	Duplicate receipt of receiver of land office.
622.12	Repealed by 83 Acts, ch 37, §7.	622.50	Certificate of register or receiver.
622.13	Civil liability.	622.51	Official signature presumed genuine.
622.14	through 622.16 Repealed by 74 Acts, ch 1272, §4.	622.51A	Computer printouts.
622.17	through 622.20 Repealed by 83 Acts, ch 37, §7.	622.52	Effect on rules.
622.21	Writing and printing.	622.53	Judicial record — state or federal courts.
622.22	Understanding of parties to agreement.	622.54	Of a justice of the peace.
622.23	Historical and scientific works.	622.55	Of a foreign country.
622.24	Subscribing witness — substitute proof.	622.56	Presumption of regularity.
622.25	Handwriting.	622.57	Executive acts.
622.26	Private writing — acknowledgment.	622.58	Proceedings of legislature.
622.27	Entries and writings of deceased person.	622.59	Printed copies of statutes.
622.28	Writing or record — when admissible — absence of record — effect.	622.60	Written law or public writing.
622.29	Facsimiles of signatures. Repealed by 2006 Acts, ch 1174, §6.	622.61	Foreign unwritten law.
622.30	Photographic copies — originals destroyed.	622.62	Ordinances of city.
622.31	Evidence of regret or sorrow.	622.63	Subpoenas.
622.32	Statute of frauds.	622.64	Proof of service — costs.
622.33	Exception.	622.65	To whom directed — duces tecum.
622.34	Contract not denied in the pleadings.	622.66	How far compelled to attend.
622.35	Party made witness.	622.67	Deposit — effect.
622.36	Instruments affecting real estate — adoption of minors.	622.68	Repealed by 83 Acts, ch 186, §10201, 10203.
622.37	through 622.40 Repealed by 83 Acts, ch 37, §7.	622.69	Witness fees.
		622.70	Attorney, juror, or officer.
		622.71	Peace officer.
		622.71A	Volunteer fire fighters — witness compensation.
		622.72	Expert witnesses — fee.
		622.73	Repealed by 83 Acts, ch 186, §10201, 10203.
		622.74	Fees in advance.
		622.75	Reimbursement to party, county or city.
		622.76	Failure to attend or testify — liability.
		622.77	Proceedings for contempt.
		622.78	Serving subpoena.
		622.79	When party fails to obey subpoena.
		622.80	Pleading taken true.
		622.81	Authority to subpoena.

622.8 Witness for each other.

In all civil and criminal cases the husband and wife may be witnesses for each other.

[C51, §2391; R60, §3983; C73, §3641; C97, §4606; S13, §4606; C24, 27, 31, 35, 39, §11261; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.8]

622.9 Communications between husband and wife.

Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted.

[C51, §2392; R60, §3984; C73, §3642; C97, §4607; C24, 27, 31, 35, 39, §11262; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.9]

Referred to in §232.74

622.10 Communications in professional confidence — exceptions — required consent to release of medical records after commencement of legal action — application to court.

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

3. *a.* In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's attorney for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute a legally sufficient patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:

(1) Provide a complete copy of the patient's records including but not limited to any reports or diagnostic imaging relating to the condition alleged.

(2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraphs "c" and "e".

b. If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.

c. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph "a" shall be immune with respect to all civil or criminal penalties, claims, or actions of any kind with respect to this section.

d. Any physician or surgeon, physician assistant, advanced registered nurse practitioner,

or mental health professional who provides records or consults with the attorney for any party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fees for copies of any records shall be as specified in subsection 6.

e. Defendant's counsel shall provide a written notice to plaintiff's attorney in a manner consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's attorney has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and attorney for the defendant. Prior to scheduling any meeting or engaging in any communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional, attorney for the defendant shall confer with plaintiff's attorney to determine a mutually convenient date and time for such meeting or telephonic communication. Plaintiff's attorney may seek a protective order structuring all communication by making application to the court at any time.

f. The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.

4. a. Except as otherwise provided in this subsection, the confidentiality privilege under this section shall be absolute with regard to a criminal action and this section shall not be construed to authorize or require the disclosure of any privileged records to a defendant in a criminal action unless either of the following occur:

(1) The privilege holder voluntarily waives the confidentiality privilege.

(2) (a) The defendant seeking access to privileged records under this section files a motion demonstrating in good faith a reasonable probability that the information sought is likely to contain exculpatory information that is not available from any other source and for which there is a compelling need for the defendant to present a defense in the case. Such a motion shall be filed not later than forty days after arraignment under seal of the court. Failure of the defendant to timely file such a motion constitutes a waiver of the right to seek access to privileged records under this section, but the court, for good cause shown, may grant relief from such waiver.

(b) Upon a showing of a reasonable probability that the privileged records sought may likely contain exculpatory information that is not available from any other source, the court shall conduct an in camera review of such records to determine whether exculpatory information is contained in such records.

(c) If exculpatory information is contained in such records, the court shall balance the need to disclose such information against the privacy interest of the privilege holder.

(d) Upon the court's determination, in writing, that the privileged information sought is exculpatory and that there is a compelling need for such information that outweighs the privacy interests of the privilege holder, the court shall issue an order allowing the disclosure of only those portions of the records that contain the exculpatory information. The court's order shall also prohibit any further dissemination of the information to any person, other than the defendant, the defendant's attorney, and the prosecutor, unless otherwise authorized by the court.

b. Privileged information obtained by any means other than as provided in paragraph "a" shall not be admissible in any criminal action.

5. If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not

be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged. At the request of any party or at the request of the deponent, the court shall fix a reasonable fee to be paid to a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

6. At any time, upon a written request from a patient, a patient's legal representative or attorney, or an adverse party pursuant to subsection 3, any provider shall provide copies of the requested records or images to the requester within thirty days of receipt of the written request. The written request shall be accompanied by a legally sufficient patient's waiver unless the request is made by the patient or the patient's legal representative or attorney.

a. The fee charged for the cost of producing the requested records or images shall be based upon the actual cost of production. If the written request and accompanying patient's waiver, if required, authorizes the release of all of the patient's records for the requested time period, including records relating to the patient's mental health, substance abuse, and acquired immune deficiency syndrome-related conditions, the amount charged shall not exceed the rates established by the workers' compensation commissioner for copies of records in workers' compensation cases. If requested, the provider shall include an affidavit certifying that the records or images produced are true and accurate copies of the originals for an additional fee not to exceed ten dollars.

b. A patient or a patient's legal representative or a patient's attorney is entitled to one copy free of charge of the patient's complete billing statement, subject only to a charge for the actual costs of postage or delivery charges incurred in providing the statement. If requested, the provider or custodian of the record shall include an affidavit certifying the billing statements produced to be true and accurate copies of the originals for an additional fee not to exceed ten dollars.

c. Fees charged pursuant to this subsection are exempt from the sales tax pursuant to section 423.3, subsection 96. A provider providing the records or images may require payment in advance if an itemized statement demanding such is provided to the requesting party within fifteen days of the request. Upon a timely request for payment in advance, the time for providing the records or images shall be extended until the greater of thirty days from the date of the original request or ten days from the receipt of payment.

d. If a provider does not provide to the requester all records or images encompassed by the request or does not allow a patient access to all of the patient's medical records encompassed by the patient's request to examine the patient's records, the provider shall give written notice to the requester or the patient that providing the requested records or images would be a violation of the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

e. As used in this subsection:

(1) "*Records*" and "*images*" include electronic media and data containing a patient's health or billing information and "*copies*" includes patient records or images provided in electronic form, regardless of the form of the originals. If consented to by the requesting party, records and images produced pursuant to this subsection may be produced on electronic media.

(2) "*Provider*" means any physician or surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, hospital, nursing home, or other person, entity, facility, or organization that furnishes, bills, or is paid for health care in the normal course of business.

7. For the purposes of this section, "*mental health professional*" means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science.

8. A qualified school guidance counselor, who is licensed by the board of educational examiners under chapter 272 and who obtains information by reason of the counselor's employment as a qualified school guidance counselor, shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor

by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

[C51, §2393, 2394; R60, §3985, 3986; C73, §3643; C97, §4608; S13, §4608; C24, 27, 31, 35, 39, §11263; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.10; 82 Acts, ch 1242, §1]

88 Acts, ch 1134, §107; 88 Acts, ch 1262, §10; 91 Acts, ch 229, §11; 97 Acts, ch 197, §8, 16; 2007 Acts, ch 10, §179; 2008 Acts, ch 1031, §67; 2008 Acts, ch 1191, §81 – 83; 2011 Acts, ch 8, §2, 3; 2012 Acts, ch 1110, §22

Referred to in §2C.9, 228.6, 232.68, 232.74, 235A.15, 272C.6, 423.3, 514B.30

[P] Wounds and burn injuries connected to criminal offenses; §147.112 and 147.113A

[P] Disclosures of mental health and psychological information, see chapter 228

[T] Subsection 6, paragraph c amended

622.10A Tax advice — confidential communications.

1. With respect to communications involving tax advice between a taxpayer and a federally authorized tax practitioner, the same protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to that communication to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

2. The confidentiality privilege under this section applies to either of the following:

a. A noncriminal tax matter before the Iowa department of revenue.

b. A noncriminal tax proceeding in federal or state court brought by or against the state of Iowa.

3. As used in this section:

a. “*Federally authorized tax practitioner*” means an individual who is authorized under federal law to practice before the internal revenue service if such practice is subject to federal regulation under 31 U.S.C. § 330.

b. “*Tax advice*” means advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice described in paragraph “a”.

4. The confidentiality privilege under this section shall not apply to a written communication between a federally authorized tax practitioner and a director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of that corporation in a tax shelter as defined in section 6662(d)(2)(C)(iii) of the Internal Revenue Code.

99 Acts, ch 25, §1; 2003 Acts, ch 145, §286

622.11 Public officers.

A public officer cannot be examined as to communications made to the public officer in official confidence, when the public interests would suffer by the disclosure.

[C51, §2395; R60, §3987; C73, §3644; C97, §4609; C24, 27, 31, 35, 39, §11264; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.11]

Referred to in §462A.7

622.12 Repealed by 83 Acts, ch 37, § 7.

622.13 Civil liability.

No witness is excused from answering a question upon the mere ground that the witness would be thereby subjected to a civil liability.

[C51, §2396; R60, §3988; C73, §3646; C97, §4611; C24, 27, 31, 35, 39, §11266; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.13]

622.14 through 622.16 Repealed by 74 Acts, ch 1272, § 4.

622.17 through 622.20 Repealed by 83 Acts, ch 37, § 7.

622.21 Writing and printing.

When an instrument consists partly of written and partly of printed form, the former controls the latter, if the two are inconsistent.

[C51, §2400; R60, §3993; C73, §3651; C97, §4616; C24, 27, 31, 35, 39, §11274; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.21]

622.22 Understanding of parties to agreement.

When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which a party had reason to suppose the other understood it.

[C51, §2401; R60, §3994; C73, §3652; C97, §4617; C24, 27, 31, 35, 39, §11275; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.22]

622.23 Historical and scientific works.

Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest therein stated.

[C51, §2402; R60, §3995; C73, §3653; C97, §4618; C24, 27, 31, 35, 39, §11276; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.23]

622.24 Subscribing witness — substitute proof.

When a subscribing witness denies or does not recollect the execution of the instrument to which the witness' name is subscribed as such witness, its execution may be proved by other evidence.

[C51, §2403; R60, §3996; C73, §3654; C97, §4619; C24, 27, 31, 35, 39, §11277; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.24]

622.25 Handwriting.

Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine.

[C51, §2404; R60, §3997; C73, §3655; C97, §4620; C24, 27, 31, 35, 39, §11278; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.25]

622.26 Private writing — acknowledgment.

Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof.

[C51, §2407; R60, §4000; C73, §3656; C97, §4621; C24, 27, 31, 35, 39, §11279; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.26]

622.27 Entries and writings of deceased person.

The entries and other writings of a person deceased, who was in a position to know the facts therein stated, made at or near the time of the transaction, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it, or when made in a professional capacity or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

[C51, §2405; R60, §3998; C73, §3657; C97, §4622; C24, 27, 31, 35, 39, §11280; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.27]

622.28 Writing or record — when admissible — absence of record — effect.

Any writing or record, whether in the form of an entry in a book, or otherwise, including electronic means and interpretations thereof, offered as memoranda or records of acts, conditions or events to prove the facts stated therein, shall be admissible as evidence if the judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their

trustworthiness, and if the judge finds that they are not excludable as evidence because of any rule of admissibility of evidence other than the hearsay rule.

Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, shall be admissible as evidence to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if the judge finds that it was in the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time thereafter, and to preserve them.

The term business, as used in this section, includes business, profession, occupation, and calling of every kind.

[C51, §2406; R60, §3999; C73, §3658; C97, §4623; S13, §4623; C24, 27, 31, 35, 39, §11281, 11282; C46, 50, 54, 58, §622.28, 622.29; C62, 66, 71, 73, 75, 77, 79, 81, §622.28]

Referred to in §622.30

622.29 Facsimiles of signatures. Repealed by 2006 Acts, ch 1174, § 6. See § 602.1614.

622.30 Photographic copies — originals destroyed.

1. In all cases where depositions are taken by either method provided by law, outside of the county in which the case is for trial where books of account are competent evidence in the case, the party desiring to offer the entries of said books as evidence may cause the same to be photographed by or under the direction of the officer taking the deposition and such photographic copy when certified by such officer with the officer's seal attached shall be attached to the deposition, and if the record shows affirmatively the preliminary proof required by section 622.28, such copy shall be admitted in evidence with the same force and effect as the original.

2. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry print, representation or combination thereof, of any act, transaction, occurrence or event and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law, except if the originals are records, reports, or other papers of a county officer they shall not be destroyed until they have been preserved for ten years. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original recording, copy, or reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

[S13, §4623; C24, 27, 31, 35, 39, §11283; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.30]

91 Acts, ch 83, §1

Referred to in §452A.80

622.31 Evidence of regret or sorrow.

In any civil action for professional negligence, personal injury, or wrongful death or in any arbitration proceeding for professional negligence, personal injury, or wrongful death against a person in a profession regulated by one of the boards listed in section 272C.1 or in any other licensed profession recognized in this state, a hospital licensed pursuant to chapter 135B, or a health care facility licensed pursuant to chapter 135C, based upon the alleged negligence in the practice of that profession or occupation, that portion of a statement, affirmation, gesture, or conduct expressing sorrow, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that was made by the person to the plaintiff, relative of the plaintiff, or decision maker for the plaintiff that relates to the discomfort, pain, suffering, injury, or death of the plaintiff as a result of an alleged breach of the applicable standard

of care is inadmissible as evidence. Any response by the plaintiff, relative of the plaintiff, or decision maker for the plaintiff to such statement, affirmation, gesture, or conduct is similarly inadmissible as evidence.

2006 Acts, ch 1128, §4; 2007 Acts, ch 10, §180; 2007 Acts, ch 126, §102

622.32 Statute of frauds.

Except when otherwise specially provided, no evidence of the following enumerated contracts is competent, unless it be in writing and signed by the party charged or by the party's authorized agent:

1. Those made in consideration of marriage.
2. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debt of the decedent from their own estate.
3. Those for the creation or transfer of any interest in lands, except leases for a term not exceeding one year.
4. Those that are not to be performed within one year from the making thereof.

[C51, §2409, 2410; R60, §4006, 4007; C73, §3663, 3664; C97, §4625; C24, 27, 31, 35, 39, §11285; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.32]

Referred to in §622.33

[P] Declarations of trust, §557.10

[P] Party walls, §563.12

622.33 Exception.

The provisions of subsection 3 of section 622.32 do not apply where the purchase money, or any portion thereof, has been received by the vendor, or when the vendee, with the actual or implied consent of the vendor, has taken and held possession of the premises under and by virtue of the contract, or when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds.

[C51, §2411; R60, §4008; C73, §3665; C97, §4626; C24, 27, 31, 35, 39, §11286; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.33]

622.34 Contract not denied in the pleadings.

The above regulations, relating merely to the proof of contracts, shall not prevent the enforcement of those not denied in the pleadings, except in cases when the contract is sought to be enforced, or damages recovered for the breach thereof, against some person other than the person who made it.

[C51, §2412; R60, §4009; C73, §3666; C97, §4627; C24, 27, 31, 35, 39, §11287; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.34]

622.35 Party made witness.

The oral evidence of the maker against whom the unwritten contract is sought to be enforced shall be competent to establish the same.

[C51, §2413; R60, §4010; C73, §3667; C97, §4628; C24, 27, 31, 35, 39, §11288; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.35]

622.36 Instruments affecting real estate — adoption of minors.

Every instrument in writing affecting real estate, or the adoption of minors, which is acknowledged or proved and certified as required, may be read in evidence without further proof.

[C51, §1227; R60, §2235, 4001; C73, §3659; C97, §4629; C24, 27, 31, 35, 39, §11289; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.36]

622.37 through 622.40 Repealed by 83 Acts, ch 37, § 7.

622.41 United States and state patents.

United States and state patents for land in the state, and duly certified copies thereof from the general land office of the United States, or the state land office, that have been or may be

recorded in the recorder's office of the county in which the land is situated, shall be matters of record and such record, and copies thereof, certified to by the recorder, may be received and read in evidence in all courts, with like effect as the record of other instruments, and other certified copies of original papers recorded in the recorder's office; and such patents and certified copies may be recorded without an acknowledgment.

[C97, §4633; S13, §4633; C24, 27, 31, 35, 39, §11294; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.41]

Referred to in §622.51

622.42 Field notes and plats.

A copy of the field notes of any licensed professional land surveyor, or a plat made by the surveyor and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact the ascertainment of which requires the exercise of scientific skill or calculation only.

[C51, §2431; R60, §4046; C73, §3701; C97, §4634; C24, 27, 31, 35, 39, §11295; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.42]

2012 Acts, ch 1009, §32

Referred to in §622.51

[T] Section amended

622.43 Records and entries in public offices.

Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original record or papers so filed.

[C51, §2432; R60, §4047; C73, §3702; C97, §4635; C24, 27, 31, 35, 39, §11296; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.43]

Referred to in §321.556, 622.51

[P] See Authentication of Records, preceding United States Constitution in Vol I

[P] Notarial acts, chapter 9B

[P] Similar provision, §446.36

622.44 Copies of books of original entries.

Copies of entries made in the book of "copies of original entries", kept as a record in the office of the county recorder, when such book has been compared with the originals and certified as true copies by the register of the United States land office at which such original entries were made, may, when certified by the recorder to be true copies, be received and read in evidence in all of the courts, with like effect as certified copies of original papers recorded in the recorder's office.

[R60, §4049; C73, §3704; C97, §4636; C24, 27, 31, 35, 39, §11297; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.44]

Referred to in §331.607, 622.45, 622.51

622.45 Additional entries.

Copies of additional entries shall, from time to time, be procured as made, certified as required in section 622.44, and entered in the book of "copies of original entries", until all the lands in the county have been entered and so certified.

[R60, §4050; C73, §3705; C97, §4637; C24, 27, 31, 35, 39, §11298; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.45]

Referred to in §622.51

622.46 Officer to give copies of records.

Every officer having the custody of a public record or writing shall furnish any person, upon demand and payment of the legal fees therefor, a certified copy thereof.

[C51, §2433; R60, §4051; C73, §3706; C97, §4638; C24, 27, 31, 35, 39, §11299; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.46]

Referred to in §22.2, 321.11, 622.51

622.47 Maps in office of surveyor general.

Copies of all maps, official letters, and other documents in the office of the surveyor general of the United States, when certified by that officer according to law, shall be received by the courts of this state as presumptive evidence of the existence and contents of the originals, and that they are copies of the originals, notwithstanding such maps, official letters, or other papers, may themselves be copied.

[R60, §4052; C73, §3707; C97, §4639; C24, 27, 31, 35, 39, §11300; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.47]

Referred to in §622.51

622.48 Certificate as to loss of paper.

The certificate of a public officer, that the public officer has made diligent and ineffectual search for a paper in the officer's office, is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts.

[C51, §2434; R60, §4053; C73, §3708; C97, §4640; C24, 27, 31, 35, 39, §11301; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.48]

Referred to in §622.51

622.49 Duplicate receipt of receiver of land office.

The usual duplicate receipt of the receiver of any land office, or the certificate of such receiver that the books of the receiver's office show the sale of a tract of land to a certain individual, is proof of title, equivalent to a patent, against all but the holder of an actual patent.

[C51, §2435; R60, §4054; C73, §3709; C97, §4641; C24, 27, 31, 35, 39, §11302; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.49]

Referred to in §622.51

622.50 Certificate of register or receiver.

The certificate of the register or receiver of any land office of the United States, as to the entry of land within the register's or receiver's district, shall be presumptive evidence of title, in the person entering, to the real estate therein named.

[R60, §4055; C73, §3710; C97, §4642; C24, 27, 31, 35, 39, §11303; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.50]

Referred to in §622.51

622.51 Official signature presumed genuine.

In the cases contemplated in sections 622.41 to 622.50, the signature of the officer shall be presumed to be genuine until the contrary is shown.

[C51, §2436; R60, §4056; C73, §3711; C97, §4643; C24, 27, 31, 35, 39, §11304; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.51]

622.51A Computer printouts.

For purposes of chapters 714 and 716, computer printouts shall be admitted as evidence of any computer software, program, or data contained in or taken from a computer, notwithstanding an applicable rule of evidence to the contrary.

2000 Acts, ch 1201, §5

622.52 Effect on rules.

Sections 622.53 through 622.63, are not a limitation of the Iowa rules of evidence.

[C51, §2437; R60, §4057; C73, §3712; C97, §4644; C24, 27, 31, 35, 39, §11305; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.52]

83 Acts, ch 37, §3

622.53 Judicial record — state or federal courts.

A judicial record of this state, including the filed certified shorthand notes of the official court reporter as transcribed or a court of the United States may be proved by the production of the original, or a copy of it certified by the clerk or person having the legal custody of it, authenticated by the custodian's seal of office, if there is a seal. That of another state may be proved by the attestation of the clerk and the seal of the court annexed, if there is a seal,

together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law.

[C51, §2438; R60, §4058; C73, §3713; C97, §4645; C24, 27, 31, 35, 39, §11306; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.53]

83 Acts, ch 37, §4

Referred to in §252D.20, 622.52

622.54 Of a justice of the peace.

The official certificate of a justice of the peace of any of the United States to any judgment and the preliminary proceedings before the justice of the peace, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that the justice is an acting justice of the peace of that county, and that the signature to the justice's certificate is genuine, is sufficient evidence of such proceedings and judgment.

[C51, §2439; R60, §4059; C73, §3714; C97, §4646; C24, 27, 31, 35, 39, §11307; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.54]

Referred to in §622.52

622.55 Of a foreign country.

Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows:

1. By the official attestation of the clerk or officer in whose custody such records are legally kept.

2. By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally entrusted with the custody of such records, and that the signature to the clerk's or officer's attestation is genuine.

3. By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court.

[C51, §2440; R60, §4060; C73, §3715; C97, §4647; C24, 27, 31, 35, 39, §11308; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.55]

Referred to in §622.52

622.56 Presumption of regularity.

The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular, except in regard to matters required to be entered of record, and except where otherwise expressly declared.

[C51, §2512; R60, §4120; C73, §3669; C97, §4648; C24, 27, 31, 35, 39, §11309; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.56]

Referred to in §622.52

622.57 Executive acts.

Acts of the executive of the United States, or of this or any other state of the Union, or of a foreign government, are proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislatures of those governments, respectively, or by either branch thereof.

[C51, §2441; R60, §4061; C73, §3716; C97, §4649; C24, 27, 31, 35, 39, §11310; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.57]

Referred to in §622.52

622.58 Proceedings of legislature.

The proceedings of the legislature of this or any other state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceeding was had, or by a copy purporting to have been printed by its order.

[C51, §2442; R60, §4062; C73, §3717; C97, §4650; C24, 27, 31, 35, 39, §11311; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.58]

Referred to in §622.52

622.59 Printed copies of statutes.

Printed copies of the statute laws of this or any other of the United States, or of Congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such laws.

[C51, §2443; R60, §4063; C73, §3718; C97, §4651; C24, 27, 31, 35, 39, §11312; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.59]

Referred to in §622.52

622.60 Written law or public writing.

The public seal of the state or county, affixed to a copy of the written law or other public writing, is admissible as evidence of such law or writing, respectively.

[C51, §2444; R60, §4064; C73, §3719; C97, §4652; C24, 27, 31, 35, 39, §11313; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.60]

Referred to in §622.52

622.61 Foreign unwritten law.

The unwritten laws of any other state or government may be proved as facts by parol evidence, or by the books of reports of cases adjudged in their courts.

[C51, §2444; R60, §4064; C73, §3719; C97, §4652; C24, 27, 31, 35, 39, §11314; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.61]

Referred to in §622.52

622.62 Ordinances of city.

1. The printed copies of a city code and of supplements to it which are purported or proved to have been compiled pursuant to section 380.8 shall be admitted in the courts of this state as presumptive evidence of the ordinances contained therein. When properly pleaded, the courts of this state shall take judicial notice of ordinances contained in a city code or city code supplement.

2. The printed copies of an ordinance of any city which has not been compiled in a city code or a supplement pursuant to section 380.8 but which has been published by authority of the city, or transcripts of any ordinance, act, or proceeding thereof recorded in any book, or entries on any minutes or journals kept under direction of the city, and certified by the city clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received, and with the same effect. The clerk shall furnish such transcripts, and be entitled to charge therefor at the rate that the clerk of the district court is entitled to charge for transcripts of records from that court.

3. The actions of any court of this state in taking judicial notice of the existence and content of a city ordinance in any proceeding which was commenced between the first day of July, 1973, and April 17, 1976, shall be conclusively presumed to be lawful, and to the extent required by this section, this section is retroactive.

[R60, §1076; C73, §3720; C97, §4653; C24, 27, 31, 35, 39, §11315; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.62]

2011 Acts, ch 25, §71

Referred to in §622.52

622.63 Subpoenas.

The clerks of the several courts shall, on application of any person having a cause or matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, if practicable, which may be served by the sheriff of the county, or by the party or any other person.

[R60, §4012; C73, §3671; C97, §4658; C24, 27, 31, 35, 39, §11320; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.63]

Referred to in §602.8102(97), 622.52, 631.3

622.64 Proof of service — costs.

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

[R60, §4012; C73, §3671; C97, §4658; C24, 27, 31, 35, 39, §11321; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.64]

Referred to in §631.3

622.65 To whom directed — duces tecum.

The subpoena shall be directed to the person therein named, requiring the person to attend at a particular time or place to testify as a witness, and it may contain a clause directing the witness to bring with the witness any book, writing, or other thing under the witness' control, which the witness is bound by law to produce as evidence.

[C51, §2415; R60, §4013; C73, §3672; C97, §4659; C24, 27, 31, 35, 39, §11322; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.65]

Referred to in §124.502, 631.3

622.66 How far compelled to attend.

Witnesses in civil cases cannot be compelled to attend the district or appellate court out of the state where they are served.

[C51, §2416; R60, §4014; C73, §3673; C97, §4660; C24, 27, 31, 35, 39, §11323; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.66]

87 Acts, ch 137, §1

Referred to in §631.3

[P] Limit on taxation of costs, §625.2

622.67 Deposit — effect.

The court, for good cause shown, upon deposit with the clerk of the court of sufficient money to pay the fee and mileage of a witness, may order the clerk to issue a subpoena requiring the attendance of the witness from a greater distance within the state. The subpoena shall show that it is issued under this section. If the party requesting the subpoena is a county or the state, the court may order the issuance of the subpoena without the deposit of the fee and mileage.

[C24, 27, 31, 35, 39, §11324; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.67]

83 Acts, ch 186, §10113, 10201

Referred to in §631.3

622.68 Repealed by 83 Acts, ch 186, § 10201, 10203.

622.69 Witness fees.

Witnesses shall receive ten dollars for each full day's attendance, and five dollars for each attendance less than a full day, and mileage expenses pursuant to section 602.1509 for each mile actually traveled.

Witness fees to be received by an inmate, while in the custody of the department of corrections, shall be applied either toward payment of any restitution owed by the inmate or to the crime victim compensation program established in sections 915.80 through 915.94.

[C51, §2544; R60, §4153; C73, §3814; C97, §4661; C24, 27, 31, 35, 39, §11326; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.69; 81 Acts, ch 191, §2]

93 Acts, ch 46, §3; 96 Acts, ch 1163, §3; 98 Acts, ch 1090, §74, 84

Referred to in §91.10, 602.11101, 631.3

622.70 Attorney, juror, or officer.

An attorney, juror, or officer, who is in habitual attendance on the court for the court session at which the attorney, juror, or officer is examined as a witness, shall be entitled to but one day's attendance.

[C51, §2544; R60, §4153; C73, §3814; C97, §4661; C24, 27, 31, 35, 39, §11327; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.70]

622.71 Peace officer.

No peace officer who receives a regular salary, or any other public official shall, in any case, receive fees as a witness for testifying in regard to any matter coming to the officer's or official's knowledge in the discharge of the officer's or official's official duties in such case in a court in the county of the officer's or official's residence, except police officers who are called as witnesses when not on duty.

[C97, §4661; C24, 27, 31, 35, 39, §11328; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.71]

622.71A Volunteer fire fighters — witness compensation.

A volunteer fire fighter, as defined in section 85.61, who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which the fire fighter perceived or investigated in the course of duty as a volunteer fire fighter, shall receive reasonable compensation as determined by the court from the party who subpoenaed the volunteer fire fighter. The daily compensation shall be equal to the average daily wage paid to full-time fire fighters of the same rank within the judicial district. However, the requirements of this section are not applicable if a volunteer fire fighter will receive the volunteer fire fighter's regular salary or other compensation pursuant to the policy of the volunteer fire fighter's regular employer, for the period of time required for travel to and from where the court or other tribunal is located and while the volunteer fire fighter is required to remain at that place pursuant to the subpoena.

95 Acts, ch 19, §1

622.72 Expert witnesses — fee.

Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed one hundred fifty dollars per day while so employed.

[C73, §3814; C97, §4661; C24, 27, 31, 35, 39, §11329; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.72]

Referred to in §602.11101, 815.5

[P] Superintendent of state hospital, §226.5

622.73 Repealed by 83 Acts, ch 186, § 10201, 10203.

622.74 Fees in advance.

Witnesses, except parties to the action, are entitled to receive in advance, if demanded when subpoenaed, their traveling fees to and from the court, with their fees for one day's attendance. At the commencement of each day after the first, they are further entitled, on demand, to receive the legal fees for that day in advance. If not thus paid, they are not compelled to attend or remain as witnesses.

[C51, §2417; R60, §4015; C73, §3674; C97, §4662; C24, 27, 31, 35, 39, §11331; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.74]

622.75 Reimbursement to party, county or city.

When a county or city or any party has paid the fees of any witness, and the same is afterward collected from the defendant or adverse party, the county, city or person so paying the same shall, upon the production of the receipt of such witness or other satisfactory evidence, be entitled to such fee.

[C73, §3817; C97, §4663; C24, 27, 31, 35, 39, §11332; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.75]

622.76 Failure to attend or testify — liability.

For a failure to obey a valid subpoena without a sufficient cause or excuse, or for a refusal to testify after appearance, the delinquent is guilty of a contempt of court and subject to be proceeded against by attachment. The delinquent is also liable to the party by whom

the delinquent was subpoenaed for all consequences of such delinquency, with fifty dollars additional damages.

[C51, §2418; R60, §4016; C73, §3675; C97, §4664; C24, 27, 31, 35, 39, §11333; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.76]

Referred to in §631.3

[P] Contempts, chapter 665

622.77 Proceedings for contempt.

Before a witness is so liable for a contempt for not appearing, the witness must be served personally with the process, by reading it to the witness, and leaving a copy thereof with the witness, if demanded, and it must be shown that the fees and traveling expenses allowed by law were tendered to the witness, if required; or it must appear that a copy of the subpoena, if left at the witness' usual place of residence, came into the witness' hands, with the fees and traveling expenses above mentioned.

[C51, §2419; R60, §4017; C73, §3676; C97, §4665; C24, 27, 31, 35, 39, §11334; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.77]

Referred to in §631.3

622.78 Serving subpoena.

If a witness hides, or in any manner attempts to avoid being personally served with a subpoena, any sheriff having the subpoena may use all necessary and proper means to serve the same, and may for that purpose break into any building or other place where the witness is to be found, having first made known the sheriff's business and demanded admission.

[C51, §2420; R60, §4018; C73, §3677; C97, §4666; C24, 27, 31, 35, 39, §11335; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.78]

622.79 When party fails to obey subpoena.

In addition to the above remedies, if a party to an action in the party's own right, on being duly subpoenaed, fails to appear and give testimony, the other party may, at the other party's election, have a continuance of the cause at the cost of the delinquent.

[C51, §2421; R60, §4024; C73, §3683; C97, §4667; C24, 27, 31, 35, 39, §11336; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.79]

622.80 Pleading taken true.

Or if the delinquent party shows by the party's own testimony, or otherwise, that the party could not have a full personal knowledge of the transaction, the court may order the party's pleading to be taken as true; subject to be reconsidered by the court within a reasonable time thereafter, upon satisfactory reasons being shown for the delinquency.

[C51, §2422; R60, §4025; C73, §3684; C97, §4668; C24, 27, 31, 35, 39, §11337; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.80]

622.81 Authority to subpoena.

Any officer or board authorized to hear evidence shall have authority to subpoena witnesses and compel them to attend and testify, in the same manner as officers authorized to take depositions.

[C97, §4669; C24, 27, 31, 35, 39, §11338; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.81]

[P] Enforcing attendance, §622.84, 622.102

622.82 Prisoner produced.

A person confined in a penitentiary or jail in the state may, by order of any court of record, be required to be produced for oral examination in the county where the person is imprisoned, and in a criminal case in any county in the state; but in all other cases the person's examination must be by a deposition.

[R60, §4019; C73, §3678; C97, §4670; C24, 27, 31, 35, 39, §11339; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.82]

622.83 Deposition of.

While a prisoner's deposition is being taken, the prisoner shall remain in the custody of the officer having the prisoner in charge, who shall afford reasonable facilities for the taking thereof.

[R60, §4020; C73, §3679; C97, §4671; C24, 27, 31, 35, 39, §11340; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.83]

622.84 Subpoenas — enforcing obedience.

1. When, by the laws of this or any other state or country, testimony may be taken in the form of depositions to be used in any of the courts thereof, the person authorized to take the depositions may issue subpoenas for witnesses, which must be served by the same officers and returned in the same manner as is required in district court, and obedience to the subpoenas may be enforced in the same way and to the same extent, or the person may report the matter to the district court who may enforce obedience as though the action was pending in the district court.

2. If a witness is located in any other state or country and refuses to voluntarily submit to the deposition, the court of jurisdiction in this state may, upon the application of any party, petition the court of competent jurisdiction in the foreign jurisdiction where the witness is located to issue subpoenas or make other appropriate orders to compel the witness' attendance at the deposition.

[C51, §2477 – 2479; R60, §4021 – 4023; C73, §3680 – 3682; C97, §4672; C24, 27, 31, 35, 39, §11341; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.84]

89 Acts, ch 230, §22; 90 Acts, ch 1041, §1

[P] Similar provision, §622.102

622.85 Affidavits — before whom made.

An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state.

[R60, §4030, 4035; C73, §3689, 3690; C97, §4673; C24, 27, 31, 35, 39, §11342; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.85]

Referred to in §435.26

[P] Perpetuating testimony, R.C.P. 1.721 et seq.

622.86 Foreign affidavits.

Those taken out of the state before any judge or clerk of a court of record, or before a notary public as provided in chapter 9B, or a commissioner appointed by the governor of this state to take acknowledgment of deeds in the state where such affidavit is taken, are of the same credibility as if taken within the state.

[C51, §2475; R60, §4036; C73, §3691; C97, §4674; C24, 27, 31, 35, 39, §11343; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.86]

2012 Acts, ch 1050, §55, 60

[T] 2012 amendment takes effect January 1, 2013; 2012 Acts, ch 1050, §60

[T] Section amended

622.87 How affidavits compelled.

When a person is desirous of obtaining the affidavit of another who is unwilling to make the same fully, the person may apply by petition to any officer competent to take depositions, stating the object for which the person desires the affidavit.

[C51, §2480; R60, §4038; C73, §3692; C97, §4675; C24, 27, 31, 35, 39, §11344; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.87]

622.88 Subpoena issued.

If the officer is satisfied that the object is legal and proper, the officer shall issue a subpoena to bring the witness before the officer, and, if the witness fails then to make a full affidavit of the facts within the witness' knowledge to the extent required of the witness by the officer,

the latter may proceed to take the witness' deposition by question and answer in the usual way, which may be used instead of an ordinary affidavit.

[C51, §2481; R60, §4039; C73, §3693; C97, §4676; C24, 27, 31, 35, 39, §11345; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.88]

622.89 Notice.

The officer may, in the officer's discretion, require notice of the taking of such affidavit or deposition to be given to any person interested in the subject matter, and allow the person to be present and cross-examine such witness.

[C51, §2482; R60, §4040; C73, §3694; C97, §4677; C24, 27, 31, 35, 39, §11346; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.89]

622.90 Cross-examination.

The court or officer to whom any affidavit is presented as a basis for some action, in relation to which any discretion is lodged with such court or officer, may require the witness to be brought before it or the officer and submit to a cross-examination by the opposite party.

[C51, §2483; R60, §4041; C73, §3695; C97, §4678; C24, 27, 31, 35, 39, §11347; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.90]

622.91 Signature and seal — presumption.

The signature and seal of such officers as are authorized to take depositions or affidavits, having a seal, and the simple signature of such as have no seal, are presumptive evidence of the genuineness thereof, as well as of the official character of the officer, except as otherwise declared.

[C51, §2476; R60, §4037; C73, §3696; C97, §4679; C24, 27, 31, 35, 39, §11348; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.91]

622.92 Newspaper publications — how proved.

Publications required to be made in a newspaper may be proved by the affidavit of any person having knowledge of the fact, specifying the times when and the paper in which the publication was made, but such affidavit must be made within six months after the last day of publication.

[C51, §2427; R60, §4042; C73, §3697; C97, §4680; C24, 27, 31, 35, 39, §11349; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.92]

[P] Proof of publication, R.C.P. 1.314

622.93 Applicability in certain counties.

Proof of the publication of the filing in the district court of the petitions as provided for in section 618.13 and a charge on the basis of one dollar for each petition shall be made once each month by the publisher, presented to the clerk of the district court for verification and approval, and filed with the county auditor to be presented to the board of supervisors, which shall order the claim for the publications paid.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §622.93; 81 Acts, ch 117, §1096]

83 Acts, ch 123, §198, 209

Referred to in §331.424

622.94 Proof of serving or posting notices.

The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness attached to a copy of said notice or paper, and made within six months of the time of such posting up.

[C51, §2428; R60, §4043; C73, §3698; C97, §4681; C24, 27, 31, 35, 39, §11350; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.94]

622.95 Other facts.

Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit.

[C51, §2429; R60, §4044; C73, §3699; C97, §4682; C24, 27, 31, 35, 39, §11351; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.95]

622.96 How perpetuated — presumption of fact.

Proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the clerk of the district court of the county where the act is done. The original affidavit appended to the notice or paper, if there is one, and, if not, the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient.

[C51, §2430; R60, §4045; C73, §3700; C97, §4683; C24, 27, 31, 35, 39, §11352; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.96]

REPORTER'S NOTES AS EVIDENCE

622.97 Authorized use.

The original shorthand notes of the evidence or any part thereof heretofore or hereafter taken upon the trial of any cause or proceeding, in any court of record of this state, by the shorthand reporter of such court, or any transcript thereof, duly certified by such reporter, when material and competent, shall be admissible in evidence on any retrial of the case or proceeding in which the same were taken, and for purposes of impeachment in any case, and shall have the same force and effect as a deposition, subject to the same objections so far as applicable.

[S13, §245-a; C24, 27, 31, 35, 39, §11353; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.97]

622.98 Transcript must be complete.

No portion of the transcript of the shorthand notes of the evidence of any witness shall be admissible as such deposition, unless it shall appear from the certificate or verification thereof that the whole of the shorthand notes of the evidence of such witness, upon the trial or hearing in which the same was given, is contained in such transcript, but the party offering the same shall not be compelled to offer the whole of such transcript.

[S13, §245-a; C24, 27, 31, 35, 39, §11354; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.98]

622.99 Certification.

It shall be the duty of any such reporter, upon demand by any party to any cause or proceeding, or by the attorney of such party, when such shorthand notes are offered in evidence, to read the same before the court, judge, referee, or jury, or to furnish to any person when demanded a certified transcript of the shorthand notes of the evidence of any one or more witnesses, upon payment of the reporter's fees therefor.

[S13, §245-a; C24, 27, 31, 35, 39, §11355; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.99]

622.100 Sworn verification.

When the reporter taking such notes in any case or proceeding in court has ceased to be the reporter of such court, any transcript by the reporter made therefrom and sworn to by the reporter before any person authorized to administer an oath as a full, true, and complete transcript of the notes of the testimony of the witness, a transcript of whose testimony is

demanded, shall have the same force and effect as though duly certified by the reporter of said court.

[S13, §245-a; C24, 27, 31, 35, 39, §11356; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.100]

622.101 Identification of exhibits.

When any exhibit, record, or document is referred to in such shorthand notes or transcript thereof, the identity of such exhibit, record, or document, as the one referred to by the witness, may be proven either by the reporter or any other person who heard the evidence of the witness given on the stand.

[S13, §245-a; C24, 27, 31, 35, 39, §11357; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.101]

DEPOSITIONS

622.102 Refusal to appear or testify.

Any witness who refuses to obey such subpoena or after appearance refuses to testify shall be reported by the officer or commissioner to the district court of the county where the subpoena was issued.

[C24, 27, 31, 35, 39, §11367; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.102]

[P] Similar provision, §622.84

622.103 Repealed by 70 Acts, ch 1268, § 4.

622.104 Witness fees.

A witness appearing before an officer directed to take the witness' deposition is entitled to the same fees and mileage as a witness in the court in which the deposition is to be used. If subpoenaed, such a witness is entitled to fees and mileage in advance, as in other cases.

[C97, §4716; C24, 27, 31, 35, 39, §11398; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.104]

[P] Fees and mileage, §622.69 – 622.75

DOCUMENTS FILED WITH STATE OR DIVISIONS

622.105 Evidence of date mailed.

Any report, claim, tax return, statement, or any payment required or authorized to be filed or made to the state, or any political subdivision which is transmitted through the United States mail or mailed but not received by the state or political subdivision or received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, or payment was deposited in the United States mail on or before the date for filing or paying. In the event of nonreceipt of any such report, tax return, statement, or payment, the sender shall file a duplicate within thirty days of receiving written notification of nonreceipt of such report, tax return, statement, or payment. Filing of a duplicate within thirty days of receiving written notification shall be considered to be a filing made on the date of the original filing.

For the purposes of this section "*competent evidence*" means evidence, in addition to the testimony of the sender, sufficient or adequate to prove that the document was mailed on a specified date which evidence is credible and of such a nature to reasonably support the determination that the letter was mailed on a specified date.

[C77, 79, 81, §622.105]

622.106 Certified or registered mail.

If any report, claim, tax return, statement, or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office shall be considered competent evidence that the report, claim, tax return, statement, or payment was delivered to the state or political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

[C77, 79, 81, §622.106]