

January 16, 1961.

Conservation.

House File 23

By O'TOOLE and FUELLING.

Passed House, Date 3-24-61

Passed Senate, Date 5-3-61

Vote: Ayes 72 Nays 1

Vote: Ayes 44 Nays 0

Approved.....

A BILL FOR

An Act relating to the use, operation or maintenance of watercraft in the waters of this state by nonresidents.

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

1 Section 1. The use, operation or maintenance by any
2 nonresident of watercraft in the waters of this state, shall be
3 deemed an appointment by such nonresident of the secretary of
4 state as his true and lawful attorney upon whom may be served
5 all original notices of suit growing out of such use, operation
6 or maintenance or resulting in damage or loss to person or
7 property and said use, operation or maintenance shall be deemed
8 an agreement by such nonresident that any original notice of
9 suit so served shall be of the same legal force and validity as
10 if personally served on him in this state. Service of such
11 original notice shall be made by serving a copy upon the secretary
12 of state or by filing such copy in his office, together with a
13 fee of two (2) dollars, and such service shall be sufficient
14 service upon said nonresident; if notice of such service and a copy
15 of the original notice are, within ten (10) days thereof, sent by
16 registered mail by the plaintiff to the defendant, at his last
17 known address, the court in which the action is pending may order
18 such continuances as may be necessary to afford the defendant
19 reasonable opportunity to defend the action.

20 The fee of two (2) dollars paid by the plaintiff to the

21 secretary of state, at the time of the service, shall be taxed
 22 in his costs if he prevails in the suit. The secretary of state
 23 shall keep a record of all such original notices which shall show
 24 the day and hour of such service.

EXPLANATION OF HOUSE FILE 23

Under the present law it is very difficult to get service on a nonresident. In an accident resulting in property damage or personal injury, this results in an advantage to such nonresidents. This bill would provide for service on such nonresidents who use, operate or maintain watercraft in the waters of this state.

HOUSE FILE 23

*Adapted
B-24*

1 Amend House File 23 by striking everything after the word
 2 "state." in line ten (10) of section one (1).
 3 Further amend House File 23 by adding thereto the following
 4 new sections:
 5 Sec. 2. The term "person" as used in this Act means:
 6 1. The owner of watercraft whether it is being used and
 7 operated personally by said owner or his agent.
 8 2. An agent using and operating the watercraft for his
 9 principal.
 10 3. Any person who is in charge of the watercraft and of the
 11 use and operation thereof with the express or implied consent
 12 of the owner.
 13 Sec. 3. The original notice of suit filed with the secretary
 14 of state shall be in form and substance the same as now provided
 15 in suits against residents of this state, except that the part of
 16 said notice pertaining to the return day shall be in substantially
 17 the following form, to wit:
 18 "and unless you appear thereto and defend in the district court
 19 of Iowa in and for county at the courthouse in,
 20 Iowa before noon of the sixtieth day following the filing of this
 21 notice with the secretary of state, default will be entered and
 22 judgment rendered against you."
 23 Sec. 4. Plaintiff in any such action shall cause the original
 24 notice of suit to be served as follows:
 25 1. By filing a copy of said original notice of suit with said
 26 secretary of state, together with a fee of two dollars, and
 27 2. By mailing to the defendant, and to each of the defendants
 28 if more than one, within ten days after said filing with the
 29 secretary of state, by restricted certified mail addressed to the
 30 defendant at his last known residence or place of abode, a
 31 notification of the said filing with the secretary of state.
 32 Sec. 5. The notification, provided for by this Act, shall be
 33 substantially in the following form, to wit:
 34 "To (Here insert the name of each defendant and
 35 his residence or last known place of abode.)
 36 You will take notice that an original notice of suit against
 37 you, a copy of which is hereto attached, was duly served upon you
 38 at Des Moines, Iowa, by filing a copy of said notice on the
 39 day of, 19....., with the secretary of state.
 40 Date at, Iowa, this day of, 19.....
 41
 42 Plaintiff
 43 By.....
 44 Attorney for plaintiff"

23 Sec. 4. Plaintiff in any such action shall cause the original
24 notice of suit to be served as follows:

25 1. By filing a copy of said original notice of suit with said
26 secretary of state, together with a fee of two dollars, and
27 2. By mailing to the defendant, and to each of the defendants
28 if more than one, within ten days after said filing with the
29 secretary of state, by restricted certified mail addressed to the
30 defendant at his last known residence or place of abode, a
31 notification of the said filing with the secretary of state.

32 Sec. 5. The notification, provided for by this Act, shall be
33 substantially in the following form, to wit:

34 "To (Here insert the name of each defendant and
35 his residence or last known place of abode.)

36 You will take notice that an original notice of suit against
37 you, a copy of which is hereto attached, was duly served upon you
38 at Des Moines, Iowa, by filing a copy of said notice on the.....
39 day of, 19....., with the secretary of state.

40 Dated at, Iowa, this day of, 19.....

41
42 Plaintiff
43 By.....

44 Attorney for plaintiff"

45 Sec. 6. In lieu of mailing said notification to the defendant
46 in a foreign state, plaintiff may cause said notification to be
47 personally served in the foreign state on the defendant by any
48 adult person not a party to the suit, by delivering said
49 notification to the defendant or by offering to make such delivery
50 in case defendant refuses to accept delivery.

51 Sec. 7. Proof of the filing of a copy of said original notice
52 of suit with the secretary of state, and proof of the mailing or
53 personal delivery of said notification to said nonresident shall
54 be made by affidavit of the party doing said acts. All affidavits
55 of service shall be indorsed upon or attached to the originals of
56 the papers to which they relate. All proofs of service, including
57 the restricted certified mail return receipt, shall be forthwith
58 filed with the clerk of the district court.

59 Sec. 8. The foregoing provisions relative to service of
60 original notice of suit on nonresidents shall not be deemed
61 to prevent actual personal service in this state upon the
62 nonresident in the time, manner, form and under the conditions
63 provided for for service on residents.

64 Sec. 9. Actions against nonresidents as contemplated by this
65 Act may be brought in the county of which plaintiff is a resident,
66 or in the county in which the injury was received or damage done.

67 Sec. 10. The court in which such action is pending shall grant
68 such continuances to a nonresident defendant as may be necessary
69 to afford him reasonable opportunity to defend said action.

70 Sec. 11. The secretary of state shall keep a record of all
71 notices of suit filed with him, shall not permit said filed
72 notices to be taken from his office except on an order of court
73 and shall, on request, and without fee, furnish any defendant
74 with a certified copy of the notice in which he is defendant.

75 Sec. 12. If judgment is rendered against the plaintiff upon
76 the trial of said action, said judgment shall include the
77 reasonable expenses incurred by the defendant and his attorney
78 in appearing to and defending against said action, provided that
79 in the judgment of the trial court said action was commenced
80 maliciously or without probable cause.

81 Sec. 13. The dismissal of an action after the nonresident has
82 entered a general appearance under the substituted service herein
83 authorized, shall bar the recommencement of the same action
84 against the same defendant unless said recommenced action is
85 accompanied by actual personal service of the original notice of
86 suit on said defendant in this state.

87 Sec. 14. Any contract insuring the liability of a nonresident
88 operator of a motor boat in Iowa shall, in case of the death of
89 said nonresident, be considered an asset of his estate having a
90 situs in Iowa in any civil action arising out of an accident in
91 which said nonresident may be liable.

45 Sec. 6. In lieu of mailing said notification to the defendant
46 in a foreign state, plaintiff may cause said notification to be
47 personally served in the foreign state on the defendant by any
48 adult person not a party to the suit, by delivering said
49 notification to the defendant or by offering to make such delivery
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59 Sec. 8. The foregoing provisions relative to service of
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61 to prevent actual personal service in this state upon the
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64 Sec. 9. Actions against nonresidents as contemplated by this
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Filed
February 20, 1961.

COMMITTEE ON CONSERVATION,
ROBERT W. NADEN, *Chairman.*

Auth. from
3-2

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