

SENATE FILE 199

BY COMMITTEE ON JUDICIARY

FILED FEB 15 1973

Judiciary & Law Enforcement 2-28, Pass per amend. 4-25

Senate File 199
Hill, Chairman
Doyle
Edelen
" MM

Passed Senate, Date 2-26-73 (421) Passed House, Date 5-7-73 (1185)

Vote: Ayes 44 Nays 0 Vote: Ayes 96 Nays 0

Approved 5-24-73

as amended by House and Concurred in by Senate

5/10/73 (1185)

41-0

A BILL FOR

1 An Act to provide a Judicial Qualifications Act under the
2 authority of the constitutional amendment adopted at the
3 general election in November, 1972.

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

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1 Section 1. NEW SECTION. COMMISSION ON JUDICIAL QUALI-
2 FICATIONS. A "Commission on Judicial Qualifications" is
3 hereby created consisting of one district court judge and
4 two members who are practicing attorneys in Iowa licensed
5 under the provisions of chapter six hundred ten (610) of the
6 Code, appointed by the chief justice of the supreme court,
7 and four electors of the state who are not attorneys, no more
8 than two of whom shall belong to the same political party,
9 to be appointed by the governor and subject to confirmation
10 by a vote of two-thirds of the membership of the senate.

11 The commission members shall serve for six-year terms, shall
12 be ineligible for a second six-year term, shall hold no other
13 office of profit of the United States or of the state during
14 their terms except for the judicial member. The first
15 commission members shall take office January 1, 1974.

16 Initially, two members shall serve for two years, two for
17 four years, and three for six years, as shall be determined
18 by lot among the first commission members. Vacancies shall
19 be filled by appointment by the chief justice or governor
20 as the case may be, for the unexpired portion of the term
21 of the previous commission member.

22 If the judicial member or a judge who is a resident judge
23 of the same judicial district as the judicial member is the
24 subject of a charge before the commission, the chief justice
25 shall appoint a judge of another district court to act in
26 his place on the commission until he is exonerated of the
27 charge or for the unexpired portion of his term as member
28 of the commission if he is not exonerated of the charge.

29 The commission shall elect its own chairman and the supreme
30 court administrator of the judicial department or his designee
31 shall be executive secretary of the commission, without addi-
32 tional compensation. The members of the commission other
33 than the judicial member shall receive compensation of forty
34 dollars for each day spent in the performance of their duties.
35 The commission members and the executive secretary shall be

1 paid their actual and necessary expenses for transportation,
2 meals and lodging in the performance of their duties, and
3 all other actual and necessary expenses of the operation of
4 the commission.

5 Sec. 2. NEW SECTION. POWER OF SUPREME COURT. Upon
6 application by the commission on judicial qualifications,
7 the supreme court shall have power to do either of the
8 following:

9 1. Retire a district judge or district associate judge
10 of the district court or a judge of the supreme court for
11 permanent physical or mental disability which substantially
12 interferes with the performance of his judicial duties.

13 2. Discipline or remove any such judge for persistent
14 failure to perform his duties, habitual intemperance, willful
15 misconduct in office, conduct which brings judicial office
16 into disrepute, or substantial violation of the canons of
17 judicial ethics. Discipline may include suspension without
18 pay for a definite period of time not to exceed twelve months.

19 Sec. 3. NEW SECTION. OPERATION OF COMMISSION. A quorum
20 of the commission shall be four members. Only commission
21 members present at commission meetings or hearings may vote.
22 Any application by the commission to the supreme court to
23 retire, discipline, or remove a judge or any action by the
24 commission which affects the final disposition of a complaint
25 shall require the affirmative vote of at least four commission
26 members. Notwithstanding the provisions of chapter twenty-
27 eight A (28A) of the Code, all records, papers, proceedings,
28 meetings and hearings of the commission shall be confidential,
29 but if the commission applies to the supreme court to retire,
30 discipline or remove a judge, the application and all of the
31 records and papers in that proceeding shall become public
32 documents.

33 Sec. 4. NEW SECTION. PROCEDURE BEFORE COMMISSION.

34 1. Charges before the commission shall be in writing but
35 may be simple and informal. The commission shall investigate

1 each charge as indicated by its gravity. If the charge is
2 groundless, it shall be dismissed by the commission. If the
3 charge appears to be substantiated but does not warrant appli-
4 cation to the supreme court, the commission may dispose of
5 it informally by conference with or communication to the judge
6 involved, but if the charge appears to be substantiated and
7 if proved would warrant application to the supreme court,
8 notice to the judge shall be given and hearing shall be held
9 before the commission. The commission may employ such addi-
10 tional investigative personnel, including but not limited
11 to the executive secretary, as it deems necessary.

12 2. In case of hearing before the commission, notice in
13 writing of the charge and of the time and place of hearing
14 shall be mailed to the judge at his residence at least twenty
15 days prior to the time set for hearing. Hearing shall be
16 held in the county where the judge resides unless the
17 commission and the judge agree to a different location. The
18 judge shall continue his judicial duties during the pendency
19 of the charge unless otherwise ordered by the commission.
20 The commission shall have subpoena power on behalf of the
21 state and the judge, and disobedience of the commission's
22 subpoena shall be punishable as contempt in the district court
23 in and for the county in which the hearing is held. The
24 attorney general shall prosecute the charge before the commis-
25 sion on behalf of the state. The judge may defend and shall
26 have the right to participate in person and by counsel, to
27 cross-examine, to be confronted by the witnesses, and to
28 present evidence. A complete record shall be made of the
29 evidence. In accordance with its findings on the evidence,
30 the commission shall dismiss the charge or make application
31 to the supreme court to retire, discipline, or remove the
32 judge.

33 Sec. 5. NEW SECTION. PROCEDURE BEFORE SUPREME COURT.

34 1. If the commission makes application to the supreme
35 court to retire, discipline, or remove a judge, it shall

1 promptly file in the supreme court a transcript of its pro-
2 ceedings at the hearing. The statutes and rules relative
3 to proceedings following the filing of records in appeals
4 of equity suits shall apply.

5 2. The attorney general shall prosecute the proceedings
6 in the supreme court on behalf of the state, and the judge
7 may defend in person and by counsel. If the supreme court
8 finds the application should be granted in whole or in part,
9 it shall render such decree as it deems appropriate and may
10 retire the judge from office, discipline him or remove him
11 from office.

12 Its decree retiring him from office for permanent physical
13 or mental disability shall constitute an adjudication within
14 the provisions of section six hundred five A point thirteen
15 (605A.13) of the Code.

16 Sec. 6. NEW SECTION. DEFAMATION. The making of charges
17 before the commission, the giving of evidence or information
18 before the commission or to an investigator employed by the
19 commission and the presentation of transcripts, extensions
20 of evidence, briefs and arguments in the supreme court shall
21 be privileged in actions for defamation.

22 Sec. 7. NEW SECTION. RULES. The commission may adopt
23 rules for its operation and procedure.

24 Sec. 8. Section six hundred five A point thirteen
25 (605A.13), Code 1973, is amended to read as follows:

26 605A.13 RETIREMENT BENEFITS FOR DISABILITY. An adjudica-
27 tion as to permanent physical or mental disability under the
28 provisions of ~~chapter-605~~ this Act shall entitle the judge
29 to the same retirement benefits as provided for voluntary
30 retirement for such cause.

31 Sec. 9. Section six hundred five A point fourteen
32 (605A.14), Code 1973, is amended to read as follows:

33 605A.14 FORFEITURE OF BENEFITS--REFUND. In the event
34 a judge of the supreme, district or municipal court is removed
35 for cause other than permanent disability he and his sur-

1 vivor shall forfeit the right to any retirement benefits
2 under the system but the total amount of his contribution
3 to the fund shall be returned to him or his legal representa-
4 tive.

5 Sec. 10. Sections six hundred five point twenty-six
6 (605.26), six hundred five point twenty-seven (605.27), six
7 hundred five point twenty-eight (605.28), six hundred five
8 point twenty-nine (605.29), six hundred five point thirty
9 (605.30), six hundred five point thirty-one (605.31), and
10 six hundred five point thirty-two (605.32), Code 1973, are
11 repealed.

12 EXPLANATION

13 This bill provides for a commission on judicial qualifica-
14 tions to be composed of seven members. The commission would
15 review charges brought against district court judges or dis-
16 trict court associate judges. The commission would hold
17 hearings on the charges and could apply to the Supreme Court
18 for the discipline, involuntary retirement, or removal of
19 the judge concerned. The Supreme Court would hear the case
20 anew and take appropriate action in accordance with its
21 decision.

S-119

1 Amend Senate File 199, as follows:

2 1. Page 3, Line 15, by inserting after the words
3 "in office," the following: "unlawful, unethical, or
4 irresponsible".

5 2. Page 3, by inserting after line 18 the following
6 new section and renumbering the remaining sections:

7 Sec. ____ . NEW SECTION. Order a rehearing before
8 the commission with directions, dismiss the charge with
9 recommendations, or dismiss the charge.

10 3. Page 5, Line 21, add after the word "defamation"
11 ", except that the privilege will not apply, where a
12 gives untrue information or evidence, and knew or should
13 have known, that it was untrue, and does so maliciously".

Filed - *Withdrawn 2/26*
February 21, 1973

By RAMSEY

HOUSE AMENDMENT TO SENATE FILE 199

1 Amend Senate File 199 as passed by the Senate
2 as follows:
3 1. Page 2, by striking lines 11 through 14
4 and inserting in lieu thereof the following:
5 "The commission members shall serve for
6 six-year terms, shall be ineligible for a second
7 term, shall hold no other office of and shall
8 not be employed by the United States or the state
9 of Iowa or of its political subdivisions, except
10 for the judicial member. The first".
11 2. Page 4, line 28, by striking the period
12 and inserting the following: "in accordance with
13 the rules of civil procedure."
14 3. Page 4, line 29, by striking the period
15 and inserting: "by a certified shorthand
16 reporter."

*Senate
concurrent
5/10/73*

Received from the House
May 9, 1973

H--372

1 Amend Senate File 199 as passed by the Senate
2 as follows:
3 1. Page 2, by striking lines 11 through 14
4 and inserting in lieu thereof the following:
5 "The commission members shall serve for
6 six-year terms, shall be ineligible for a second
7 term, shall hold no other office of and shall
8 not be employed by the United States or the state
9 of Iowa or of its political subdivisions, except
10 for the judicial member. The first".
11 2. Page 4, line 28, by striking the period
12 and inserting the following: "in accordance with
13 the rules of civil procedure."
14 3. Page 4, line 29, by striking the period
15 and inserting: "by a certified shorthand
16 reporter."

H--372 Filed
April 25, 1973

*adopted
5/7*

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT
HILL of Polk, Chairman