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Senate File 1092 *Enf. 2/24, Pass per 5547 3/5*
Judiciary and Law
Enforcement
Jesse, Chair
Poncy
Bittle

FILED FEB 6 1976

Built up
SENATE FILE 1092

By COMMITTEE ON JUDICIARY

Passed Senate, Date 2-16-76 (p 452) Passed House, Date 5-4-76 (2398)

Vote: Ayes 26 Nays 20 Vote: Ayes 83 Nays 8

Approved May 24, 1976

Motion to reconsider filed 2-16 (p 452) and 2/18
Passed per House amendment
5-11-76 (p 1852)
37-10

A BILL FOR

1 An Act creating a court of appeals and providing for the
2 jurisdiction of the court, the personnel and administration
3 of the court, and the procedures to be followed for appeal
4 and review.

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

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1 Division I

2 GENERAL PROVISIONS

3 Section 1. NEW SECTION. COURT OF APPEALS CREATED. There
4 is established an intermediate court of appeals which is a
5 court of record and which shall be known as the Iowa Court
6 of Appeals.

7 Sec. 2. NEW SECTION. TERM OF COURT. The court of appeals
8 shall hold annual terms commencing on the second Tuesday in
9 January of each year, and the court always shall be in session.
10 The expiration of a term shall not affect the power of the
11 court to do any act or assume jurisdiction of any proceeding,
12 and pending matters shall be continued from term to term.

13 Sec. 3. NEW SECTION. SESSIONS--LOCATION. The court of
14 appeals shall hold sessions at the seat of state government
15 at the times specified by order of the supreme court. Ses-
16 sions shall be held in the courtroom of the supreme court
17 at the statehouse.

18 Sec. 4. NEW SECTION. NUMBER OF JUDGES--QUORUM--CHIEF
19 JUDGE.

20 1. The court of appeals shall consist of a chief judge
21 and four associate judges, any three of whom shall constitute
22 a quorum.

23 2. a. At the first meeting after initial appointment
24 of judges to the court of appeals, and at the first meeting
25 in each odd-numbered year the judges by majority vote shall
26 designate one of their members to serve as chief judge for
27 a two-year term. A vacancy in the office of chief judge shall
28 be filled by majority vote of the judges of the court of
29 appeals, after any actual vacancy has been filled, and for
30 the remainder of the unexpired term.

31 b. In the absence of the chief judge the duties of the
32 chief judge shall be exercised by the judge next in precedence.

33 c. The chief judge shall supervise the affairs of the
34 court and shall preside at any session of the court at which
35 the chief judge is in attendance.

1 d. If the chief judge desires to be relieved of the duties
2 of chief judge while retaining the status of judge of the
3 court of appeals, the chief judge shall notify the chief
4 justice of the supreme court and the other judges of the court
5 of appeals. The office of chief judge shall be deemed vacant,
6 and shall be filled as provided in this subsection.

7 3. Judges of the court of appeals other than the chief
8 judge shall have precedence according to the length of time
9 served on that court. Of several judges having equal periods
10 of time served, the eldest shall have precedence.

11 Sec. 5. NEW SECTION. APPELLATE JURISDICTION. The juris-
12 diction of the court of appeals is coextensive with the state.
13 The court of appeals shall have appellate jurisdiction only
14 in cases in chancery, and shall constitute a court for the
15 correction of errors at law.

16 The court of appeals shall have subject matter jurisdiction
17 to review the following matters:

18 1. All civil actions and special civil proceedings, whether
19 at law or in equity.

20 2. All criminal actions.

21 3. All post-conviction remedy proceedings.

22 4. A judgment of a district judge in a small claims ac-
23 tion.

24 The jurisdiction of the court of appeals with respect to
25 actions and parties shall be limited to those matters for
26 which an appeal or review proceeding properly has been brought
27 before the supreme court, and for which the supreme court
28 pursuant to section seventy-seven (77) of this Act has entered
29 an order transferring the matter to the court of appeals.

30 The court of appeals and judges of the court are empowered
31 to issue writs and other process necessary for the exercise
32 and enforcement of its jurisdiction, but a writ, order or
33 other process issued in any matter not before the court
34 pursuant to an order of transfer issued by the supreme court
35 shall be void.

1 Sec. 6. NEW SECTION. DECISIONS OF THE COURT--FINALITY.

2 1. The court of appeals may affirm, modify, vacate, set
3 aside or reverse any judgment, order or decree of the district
4 court or other tribunal which is under the jurisdiction of
5 the court, and may remand the cause and direct the entry of
6 an appropriate judgment, order or decree, or require further
7 proceedings to be had as may be just. If the judges are
8 equally divided on the ultimate decision, the judgment, order
9 or decree being reviewed shall be affirmed.

10 2. A decision of the court of appeals is final and shall
11 not be reviewed by any other court except upon the filing
12 of an application for a writ of certiorari with the supreme
13 court. Upon the filing of the application, the judgment
14 and mandate of the court of appeals shall be stayed pending
15 action of the supreme court or until the expiration of the
16 time specified in subsection four (4) of section seventy-seven
17 (77) of this Act.

18 Sec. 7. NEW SECTION. RULES. The supreme court, and the
19 court of appeals subject to the approval of the supreme court,
20 may from time to time prescribe rules of appellate procedure
21 and other rules for the conduct of business of the court of
22 appeals. Rules prescribed shall not abridge, enlarge, or
23 modify a substantive right, and shall be subject to section
24 six hundred eighty-four point eighteen (684.18) of the Code.

25 The rules of civil procedure and supreme court rules which
26 are in effect on the effective date of this Act, or which
27 become effective subsequent to the effective date of this
28 Act, shall apply to and govern, until July 1, 1977, all matters
29 transferred to the court of appeals pursuant to section
30 seventy-seven (77) of this Act, to the extent that those rules
31 are not inconsistent with the provisions of this Act. Rules
32 promulgated by the supreme court on or after the effective
33 date of this Act which relate to the methods and procedures
34 to be used in determining whether or not a matter shall be
35 transferred to the court of appeals, or which relate to the

1 methods and procedures to be used in determining whether or
2 not the supreme court will review pursuant to writ of
3 certiorari a decision of the court of appeals, shall be
4 effective, anything in section six hundred eighty-four point
5 nineteen (684.19) of the Code to the contrary notwithstanding,
6 from the time of their adoption until July 1, 1977.

7 Sec. 8. NEW SECTION. WHEN DECISIONS EFFECTIVE. A deci-
8 sion of the court of appeals shall be in writing, and shall
9 be effective, except as provided in subsection two (2) of
10 section six (6) of this Act, when the decision of the court
11 has been filed with the clerk of the supreme court.

12 Sec. 9. NEW SECTION. PROCESS--STYLE--SEAL.

13 1. Process of the court of appeals shall be styled: "In
14 the Court of Appeals of Iowa".

15 2. The supreme court may adopt a seal for the court of
16 appeals. Upon adoption, the clerk of the supreme court shall
17 file a facsimile and description of the design in the office
18 of the secretary of state. Judicial notice shall be taken
19 of the official seal of the court of appeals.

20 Sec. 10. NEW SECTION. RECORDS. The records of the court
21 of appeals shall be kept by the clerk of the supreme court,
22 and at the same place as, but segregated from the records
23 of the supreme court. Records of the court of appeals shall
24 be maintained in the same manner as records of the supreme
25 court are required by law to be maintained.

26 Sec. 11. NEW SECTION. PUBLICATION OF OPINIONS. The court
27 administrator shall cause the publication of opinions of the
28 judges of the court of appeals in accordance with rules issued
29 by the supreme court. Sections six hundred eighty-four point
30 thirteen (684.13), six hundred eighty-four point fourteen
31 (684.14), and six hundred eighty-four point fifteen (684.15)
32 of the Code shall apply to decisions of the court of appeals.
33 The court administrator shall cause the publication of
34 abstracts of all decisions for which written opinions are
35 not published.

1 Sec. 12. NEW SECTION. FEES--COSTS. Costs to be collected
2 and awarded in the court of appeals shall be as prescribed
3 from time to time by the supreme court. Fees and costs may
4 be awarded to a party to the appeal in the discretion of the
5 court of appeals. A fee shall not be charged for the docketing
6 of any matter in the court of appeals upon transfer from the
7 supreme court.

8 Division II

9 JUDGES

10 Sec. 13. NEW SECTION. APPOINTMENT--TERM. Judges of the
11 court of appeals shall be nominated and appointed and shall
12 stand for retention in office as provided in chapter forty-
13 six (46) of the Code. The term of office of a judge of the
14 court of appeals shall be as provided in section forty-six
15 point sixteen (46.16) of the Code.

16 Sec. 14. NEW SECTION. QUALIFICATION FOR OFFICE. A person
17 appointed as judge of the court of appeals must satisfy all
18 requirements for a judge of the supreme court, and shall
19 qualify for and take office in the same manner as a judge
20 of the supreme court.

21 Sec. 15. NEW SECTION. SALARY--EXPENSES--RETIREMENT.
22 A judge of the court of appeals shall receive a salary as
23 provided by law, and shall be reimbursed for expenses
24 reasonably incurred in the performance of official duties.
25 A judge of the court of appeals may elect to participate in
26 the judicial retirement system as provided in chapter six
27 hundred five A (605A) of the Code.

28 Each judge of the court of appeals shall be provided
29 personal office space and equipment, and facilities for a
30 secretary and law clerk at the seat of state government only.
31 Each judge may choose to reside at the seat of government
32 as he or she may elect, but a judge of the court of appeals
33 shall not be entitled to receive reimbursement for any expenses
34 incurred as a result of residing or maintaining a residence
35 elsewhere than at the seat of government.

1 Sec. 20. NEW SECTION. SECRETARY TO JUDGE. Each judge
2 of the court of appeals may employ one personal secretary
3 at a salary as prescribed by the court administrator. A judge
4 shall not employ as a secretary any person who resides
5 elsewhere than at the seat of state government.

6 Sec. 21. NEW SECTION. LAW CLERKS. The court of appeals
7 may employ not more than five attorneys or graduates of a
8 reputable law school as defined in section six hundred ten
9 point two (610.2) of the Code, to act as legal assistants
10 to the court. Salaries shall be as prescribed by the court
11 administrator. The court of appeals shall not employ as a
12 legal assistant any person who resides elsewhere than at the
13 seat of state government.

14 Sec. 22. NEW SECTION. PRACTICE OF LAW PROHIBITED. The
15 deputy clerk and other persons employed by the court of appeals
16 shall not practice as an attorney or counselor of law.

17 Sec. 23. NEW SECTION. PAYMENT OF SALARIES AND EXPENSES.
18 The salaries and expenses of the court of appeals and its
19 judges and other employees shall be paid from funds
20 appropriated for such purposes, and shall be accounted for
21 by the court administrator. Salaries and other expenditures
22 shall not be incurred, except upon approval of the court
23 administrator. The court administrator shall not approve
24 for reimbursement any expenditure incurred as a result of
25 an officer's or employee's residing or maintaining a residence
26 elsewhere than at the seat of state government.

27 Sec. 24. NEW SECTION. PHYSICAL FACILITIES. The court
28 administrator shall obtain for the court of appeals suitable
29 facilities for the conduct of court business at the seat of
30 state government. To the extent practicable, the court
31 administrator shall utilize existing supreme court facilities.
32 State funds shall not be utilized for securing or maintaining
33 facilities for any court personnel elsewhere than at the seat
34 of state government.

35 Sec. 25. NEW SECTION. SUPERVISION BY THE SUPREME COURT.

1 The court of appeals and all of its officers and employees
2 shall be subject to the supervisory and administrative control
3 of the supreme court.

4 Division IV

5 CORRELATING AMENDMENTS

6 Sec. 26. Section four point one (4.1), Code 1975, is
7 amended by adding the following new subsection:

8 NEW SUBSECTION. APPELLATE COURT. The term "appellate
9 court" means and includes both the supreme court and the court
10 of appeals. Where an act, omission, right, or liability
11 is by statute conditioned upon the filing of a decision by
12 an appellate court, the term means any final decision of
13 either the supreme court or the court of appeals.

14 Sec. 27. Section seven point six (7.6), unnumbered
15 paragraph two (2), Code 1975, is amended to read as follows:

16 Such The reward shall be paid only upon the conviction
17 of said the person and affirmance thereof by the supreme
18 court, if appealed thereto, and if appealed, only after a
19 final decision of an appellate court has been rendered which
20 affirms that conviction.

21 Sec. 28. Section thirteen point two (13.2), subsection
22 one (1), Code 1975, is amended to read as follows:

23 1. Prosecute and defend all causes in the ~~supreme court~~
24 appellate courts in which the state is a party or interested.

25 Sec. 29. Section fourteen point six (14.6), subsection
26 four (4), Code 1975, is amended to read as follows:

27 4. Prepare and cause to be published, at such times as
28 the supreme court shall by order direct, the rules of civil
29 procedure, the rules of appellate procedure, and supreme court
30 rules.

31 Sec. 30. Section fourteen point twelve (14.12), subsection
32 six (6), paragraphs j and k, Code 1975, are amended to read
33 as follows:

34 j. The rules of the supreme court, rules of civil procedure
35 and rules of appellate procedure.

1 k. An index covering the Constitution and statutes of
2 the state of Iowa and the rules of the supreme court, rules
3 of civil procedure and rules of appellate procedure.

4 Sec. 31. Section seventeen point twenty-one (17.21), Code
5 1975, is amended to read as follows:

6 17.21 LEGAL PUBLICATIONS. The Code or supplements thereto,
7 Iowa administrative code, rules of civil procedure, rules
8 of appellate procedure, and supreme court rules, session laws,
9 annotations, tables of corresponding sections and reports
10 of the supreme court, unless otherwise specifically provided
11 by law, shall be printed, and paid for in the same manner
12 as other public printing.

13 Sec. 32. Section seventeen point twenty-two (17.22), sub-
14 sections seven (7) and eight (8), Code 1975, are amended to
15 read as follows:

16 7. Reports of the supreme court, and reports of the court
17 of appeals.

18 8. Rules of civil procedure, rules of appellate procedure,
19 and supreme court rules.

20 Sec. 33. Section seventeen point twenty-five (17.25),
21 Code 1975, is amended to read as follows:

22 17.25 NEW EDITIONS. New editions of the Code or
23 supplements thereto, book of annotations, ~~and~~ reports of the
24 supreme court, and reports of the court of appeals may be
25 published by the superintendent of printing when the supply
26 on hand of the last edition becomes exhausted and when a new
27 edition is necessary in order to meet the demand.

28 Sec. 34. Section eighteen point ninety-seven (18.97),
29 unnumbered paragraph one (1), and subsection five (5), Code
30 1975, are amended to read as follows:

31 The superintendent of printing shall make free distribution
32 of the Code, the Iowa administrative code, rules of civil
33 procedure, rules of appellate procedure and supreme court
34 rules, and of the Acts of each general assembly, as follows:

35 5. To each judge of the supreme court ~~and to each judge~~

1 ef, the court of appeals and the district court, two copies;
2 and to each district associate judge and each judicial magis-
3 trate 1 copy

4 Sec. 35. Section eighteen point ninety-eight (18.98),
5 subsection five (5), Code 1975, is amended to read as follows:

6 5. To the office of each judge of the supreme court, court
7 of appeals, and district ~~courts~~ court, including district
8 associate judges and judicial magistrates, and to each judge
9 of the federal courts in Iowa 1 copy

10 Sec. 36. Section eighteen point ninety-nine (18.99), Code
11 1975, is amended to read as follows:

12 18.99 SUPREME APPELLATE COURT REPORTS. The supreme court
13 shall cause to be furnished without charge copies of any
14 publication containing ~~its~~ official reports of the supreme
15 court and the court of appeals to the chambers of each judge
16 of the district court in each county and to such other
17 governmental agencies as the supreme court shall direct.

18 Sec. 37. Section forty-six point twelve (46.12), Code
19 1975, is amended to read as follows:

20 46.12 NOTIFICATON OF VACANCY AND RESIGNATION. When a
21 vacancy occurs or will occur within sixty days in the supreme
22 court, the court of appeals, or district court, the state
23 commissioner of elections shall forthwith so notify the
24 chairman of the proper judicial nominating commission. The
25 chairman shall call a meeting of the commission within ten
26 days after such notice; if he fails to do so, the chief justice
27 shall call such meeting.

28 When a judge of the supreme court, court of appeals, or
29 district court resigns, he shall submit a copy of his
30 resignation to the state commissioner of elections at the
31 time he submits his resignation to the governor; and when
32 a judge of the supreme court, court of appeals, or district
33 court dies, the clerk of district court of the county of his
34 residence shall in writing forthwith notify the state
35 commissioner of elections of such fact.

1 For the purpose of this chapter, vacancies in the court
2 of appeals shall be deemed to exist from the effective date
3 of this Act until the initial number of court of appeals
4 judges provided by this Act have qualified for office.

5 Sec. 33. Section forty-six point fifteen (46.15), Code
6 1975, is amended to read as follows:

7 46.15 APPOINTMENTS TO BE FROM NOMINEES. All appointments
8 to the supreme court and ~~district court shall be made from~~
9 ~~the nominees of the respective judicial nominating commissions~~
10 court of appeals shall be made from the nominees of the state
11 judicial nominating commission, and all appointments to the
12 district court shall be made from the nominees of the district
13 judicial nominating commission. Nominees to the court of
14 appeals shall have the qualifications prescribed for nominees
15 to the supreme court.

16 Vacancies in the court of appeals shall be filled by
17 appointment by the governor from a list of nominees submitted
18 by the state judicial nominating commission. Three nominees
19 shall be submitted for each vacancy. If the governor fails
20 to make an appointment within thirty days after a list of
21 nominees has been submitted, the appointment shall be made
22 from the list of nominees by the chief justice of the supreme
23 court.

24 Sec. 39. Section forty-six point sixteen (46.16), Code
25 1975, is amended to read as follows:

26 46.16 TERMS OF JUDGES. Subject to the provisions of
27 sections 605.24 and 605.25 and to removal for cause:

28 1. The initial term of office of judges of the supreme
29 court, court of appeals, and district court shall be for one
30 year after appointment and until January 4 first following
31 the next judicial election after expiration of such year;
32 and

33 2. The regular term of office of judges of the supreme
34 court retained at a judicial election shall be eight years,
35 and of judges of the court of appeals and district court so

1 retained shall be six years, from the expiration of their
2 initial or previous regular term as the case may be.

3 For the purpose of initial appointments to the court of
4 appeals, two of the judges appointed shall serve an irregular
5 term ending December thirtieth of the fourth year after
6 expiration of the initial term prescribed in subsection one
7 (1) of this section and two of the judges appointed shall
8 serve an irregular term ending December thirtieth of the fifth
9 year after expiration of the initial term prescribed in
10 subsection one (1) of this section. Expiration of irregular
11 terms shall be deemed expiration of regular terms for all
12 purposes.

13 Sec. 40. Section forty-six point twenty (46.20), Code
14 1975, is amended to read as follows:

15 46.20 DECLARATION OF CANDIDACY. At least ninety days
16 prior to the judicial election preceding expiration of his
17 or her initial or regular term of office, a judge of the
18 supreme court, court of appeals, or district court including
19 district associate judges may file a declaration of candidacy
20 with the state commissioner of elections, whereupon such judge
21 shall stand for retention or rejection at that election.
22 If a judge fails to file such declaration, his or her office
23 shall be vacant at the end of his or her term. District
24 associate judges filing such a declaration shall stand for
25 retention in the county of their residence.

26 Sec. 41. Section forty-six point twenty-one (46.21), Code
27 1975, is amended to read as follows:

28 46.21 CONDUCT OF ELECTIONS. At least fifty-five days
29 prior to each judicial election, the state commissioner of
30 elections shall certify to the county commissioner of elections
31 of each county a list of the judges of the supreme court,
32 court of appeals and district court including district
33 associate judges to be voted on in such county at that
34 election. The county commissioner of elections shall place
35 the names upon the ballot in the order in which they appear

1 in the certificate, unless only one county is voting thereon.
2 The state commissioner of elections shall rotate the names
3 in the certificate by county, or the county commissioner of
4 elections shall rotate them upon the ballot by precinct if
5 only one county is voting thereon. The names of all judges
6 to be voted on shall be placed upon one ballot, which shall
7 be in substantially the following form:

8 STATE OF IOWA
9 JUDICIAL BALLOT
10 (Date)

11 VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX
12 AFTER EACH NAME.

13 SUPREME COURT

14 Shall the following judges of the Supreme Court be retained
15 in office?

16 JOHN DOE YES _____ NO _____
17 RICHARD ROE YES _____ NO _____

18 COURT OF APPEALS

19 Shall the following judges of the Court of Appeals be re-
20 tained in office?

21 JOHN DOE YES _____ NO _____
22 RICHARD ROE YES _____ NO _____

23 DISTRICT COURT

24 Shall the following judge or associate judge of the District
25 Court be retained in office?

26 JOHN SMITH YES _____ NO _____

27 Sec. 42. Section forty-six point twenty-four (46.24),
28 Code 1975, is amended to read as follows:

29 46.24 RESULTS OF ELECTION. A judge of the supreme court,
30 court of appeals, or district court including a district
31 associate judge must receive more affirmative than negative
32 votes to be retained in office. When the poll is closed,
33 the election judges shall publicly canvass the vote forthwith.
34 The board of supervisors shall canvass the returns at its
35 meeting on Monday after the election, and shall promptly

1 certify the number of affirmative and negative votes on each
2 judge to the state commissioner of elections.

3 The state board of canvassers shall, at the time of
4 canvassing the vote cast at a general election, open and
5 canvass all of the returns for the judicial election. Each
6 judge of the supreme court, court of appeals, or district
7 court including a district associate judge who has received
8 more affirmative than negative votes shall receive from the
9 state board of canvassers an appropriate certificate so
10 stating.

11 Sec. 43. Section eighty-six point thirty-nine (86.39),
12 Code 1975, is amended to read as follows:

13 86.39 FEES--APPROVAL--LIEN. All fees or claims for legal,
14 medical, hospital, and burial services rendered under this
15 chapter and chapters 85 and 87 shall be subject to the approval
16 of the industrial commissioner, and no lien for such service
17 shall be enforceable without the approval of the amount thereof
18 by the industrial commissioner. For services rendered in
19 the district court and ~~supreme-court~~ appellate courts, the
20 attorney's fee shall be subject to the approval of a judge
21 of the district court.

22 Sec. 44. Section one hundred forty-five point nineteen
23 (145.19), Code 1975, is amended to read as follows:

24 145.19 APPEAL. Either party to said proceedings may take
25 an appeal from the district court to the supreme court ~~of~~
26 ~~this-state~~ in the same manner and within the same time and
27 with like effect ~~as-appeals-in-other-civil-actions-are-taken,~~
28 ~~and-such-case-shall-be-tried-in-the-supreme-court-in-the-same~~
29 ~~manner~~ as other appeals-in ordinary civil actions ~~at-law~~.
30 If the defendant be represented by an attorney appointed by
31 the court, and, in the opinion of the court, is financially
32 unable to meet ~~his-part-of~~ the expense of an appeal, the
33 defendant's actual and necessary expense of ~~such~~ appeal and
34 ~~prosecution-thereof-to-final-decree-by-the-supreme-court~~ shall
35 be paid by the state upon order of ~~said~~ the district court,

1 ~~same-to-be-paid~~ out of the general funds of the state not
2 otherwise appropriated.

3 Sec. 45. Section one hundred forty-seven point seventy
4 (147.70), Code 1975, is amended to read as follows:

5 147.70 HEARING ON APPEAL. Both parties shall have the
6 right of appeal, ~~and in such event, the supreme court shall~~
7 ~~fix the time of hearing, and for filing abstracts and~~
8 ~~arguments.~~ Said The cause shall be advanced and take
9 precedence over all other causes upon the court calendar,
10 and shall be heard at the next term after the appeal is taken,
11 ~~provided the abstracts and arguments are filed in said court~~
12 ~~in time for said action to be heard.~~

13 Sec. 46. Section two hundred four point three hundred
14 five (204.305), subsection two (2), Code 1975, is amended
15 to read as follows:

16 2. The board, without an order to show cause, may suspend
17 any registration simultaneously with the institution of
18 proceedings under section 204.304, or where renewal of
19 registration is refused, if it finds that there is an imminent
20 danger to the public health or safety which warrants this
21 action. The suspension shall continue in effect until the
22 conclusion of the proceedings, including judicial review
23 thereof, under the provisions of the Iowa administrative
24 procedure Act, unless sooner withdrawn by the board or
25 dissolved by the order of the district court or supreme an
26 appellate court.

27 Sec. 47. Section two hundred thirty-two point fifty-eight
28 (232.58), Code 1975, is amended to read as follows:

29 232.58 APPEAL. An interested party aggrieved by any order
30 or decree of the court may appeal to the supreme court for
31 review of questions of law and fact. The procedure for such
32 appeals shall be governed by the same provisions applicable
33 to appeals from the district court except when the decree
34 or order affects the custody of a minor the appeal shall be
35 heard at the earliest practicable time. The pendency of an

1 appeal or application therefor shall not suspend the order
2 of the juvenile court regarding a minor and shall not discharge
3 the minor from the custody of the juvenile court or of the
4 person, institution, or agency to whose care the minor has
5 been committed or placed unless otherwise ordered by the
6 supreme appellate court on application of an appellant.

7 If the supreme appellate court does not dismiss the pro-
8 ceedings and discharge the minor, ~~said~~ the court shall affirm
9 or modify the order of the juvenile court and remand the minor
10 to the jurisdiction of the juvenile court for disposition
11 not inconsistent with the ~~supreme-court's~~ finding on the
12 appeal.

13 Sec. 48. Section three hundred thirty-six point two
14 (336.2), subsection two (2), Code 1975, is amended to read
15 as follows:

16 2. Appear for the state and county in all cases and
17 proceedings in the courts of his county to which the state
18 or county is a party, except cases brought on change of venue
19 from another county, and to appear in the ~~supreme-court~~
20 appellate courts in all cases in which the county is a party,
21 and also in all cases transferred on change of venue to another
22 county, in which his county or the state is a party.

23 Sec. 49. Section five hundred fifty-eight point sixty-
24 six (558.66), Code 1975, is amended to read as follows:

25 558.66 TITLE DECREE--ENTRY ON TRANSFER BOOKS. Upon receipt
26 of a certificate from the clerk of the district ~~or-supreme~~
27 court, or an appellate court that the title to real estate
28 has been finally established in any named person by judgment
29 or decree ~~of-said-court,~~ or by will, the auditor shall enter
30 the same upon the transfer books, upon payment of a fee of
31 one dollar, which fee shall be taxed as costs in the cause,
32 collected by the clerk, and paid to the auditor at the time
33 of filing such certificate.

34 Sec. 50. Section six hundred five point two (605.2), Code
35 1975, is amended to read as follows:

1 605.2 EXPENSES. Where a judge of the district court,
2 court of appeals, or supreme court is required, in the
3 discharge of his official duties, to leave the county of his
4 residence or leave the city of his residence to perform such
5 duties, he shall be paid such actual and necessary expenses
6 for living quarters and living expenses not to exceed the
7 sum of twenty dollars per day and transportation expenses
8 as shall be incurred. Expenses for judges of the court of
9 appeals are limited as provided in section fifteen (15) of
10 this Act.

11 Sec. 51. Section six hundred five point fourteen (605.14),
12 Code 1975, is amended to read as follows:

13 605.14 JUDGE TO BE ATTORNEY--EXCEPTION. No person shall
14 be eligible for, or hold the office of supreme court judge,
15 court of appeals judge, or district judge or district associate
16 judge who is not an attorney at law, duly admitted to the
17 practice under the laws of of law in this state.

18 Sec. 52. Section six hundred five point fifteen (605.15),
19 Code 1975, is amended to read as follows:

20 605.15 PRACTICE PROHIBITED. During the time that a supreme
21 court ~~justice~~ judge, court of appeals judge, district judge,
22 district associate judge, or judicial magistrate appointed
23 pursuant to section 602.51 is holding such office he shall
24 not practice as an attorney or counselor or give advice in
25 relation to any action pending or about to be brought in any
26 of the courts of the state.

27 Sec. 53. Section six hundred five point twenty-four
28 (605.24), Code 1975, is amended to read as follows:

29 605.24 MANDATORY RETIREMENT. All judges of the supreme
30 court, court of appeals, or district court who shall have
31 reached the mandatory retirement age, shall cease to hold
32 office. The mandatory retirement age shall be seventy-five
33 years for all judges of the supreme court or district court
34 holding office on July 1, 1965. The mandatory retirement
35 age shall be seventy-two years for all judges of the supreme

1 court, court of appeals, or district court appointed to office
2 after July 1, 1965.

3 Sec. 54. Section six hundred five point twenty-five
4 (605.25), Code 1975, is amended to read as follows:

5 605.25 TEMPORARY SERVICE BY RETIRED JUDGES. Judges of
6 the supreme court, court of appeals and district court who
7 are hereafter retired by reason of age, or who are drawing
8 benefits under section 605A.6, may with their consent be
9 assigned by the supreme court to temporary judicial duties
10 on any a court in the this state, ~~however-only-retired-supreme~~
11 ~~court-judges-may-be-assigned-to-the-supreme-court-and-only~~
12 ~~in-the-case-of-temporary-absence-of-a-member-of-the-supreme~~
13 ~~court:~~ However, a retired judge shall not be assigned to
14 temporary judicial duties on any court superior to the highest
15 court to which that judge had been appointed prior to
16 retirement, and a judge may not be assigned for temporary
17 duties with the supreme court or the court of appeals ex-
18 cept in the case of a temporary absence of a member of one
19 of those courts. ~~no-such~~ A retired judge shall not engage
20 in the practice of law unless he shall file with the clerk
21 of the supreme court an election to practice law, in which
22 event he shall thereafter be ineligible for assignment to
23 temporary judicial duties at any time. While serving under
24 temporary assignment as herein provided, a retired judge shall
25 receive the compensation and actual expense provided by law
26 for judges on the court to which he is assigned, but shall
27 not receive any annuity payments to which he may be entitled
28 under the judicial retirement system. He may be authorized
29 in the order of assignment to appoint a temporary reporter,
30 who shall receive the compensation and actual expense provided
31 by law for a regular reporter in the court to which the judge
32 is assigned. The order of assignment shall be filed in the
33 offices of the clerks of court at the places where the judge
34 is to serve.

35 Sec. 55. Section six hundred five point twenty-seven

1 (605.27), Code 1975, is amended to read as follows:

2 605.27 POWER OF SUPREME COURT. Upon application by the
3 commission on judicial qualifications, the supreme court shall
4 have power to do either of the following:

5 1. Retire a district associate judge ~~or, a district~~
6 ~~asseeiate judge ef-the-district-court-or,~~ a judge of the court
7 of appeals, or a judge of the supreme court for permanent
8 physical or mental disability which substantially interferences
9 with the performance of his judicial duties.

10 2. Discipline or remove any ~~such~~ judge referred to in
11 subsection one (1) of this section for persistent failure
12 to perform his duties, habitual intemperance, willful
13 misconduct in office, conduct which brings judicial office
14 into disrepute, or substantial violation of the canons of
15 judicial ethics. Discipline may include suspension without
16 pay for a definite period of time not to exceed twelve months.

17 Sec. 56. Section six hundred five A point three (605A.3),
18 Code 1975, is amended to read as follows:

19 605A.3 NOTICE BY JUDGE IN WRITING. This chapter shall
20 not apply to any judge of the municipal, superior, or district
21 court including a district associate judge, or a judge of
22 the court of appeals or of the supreme court, ~~including-a~~
23 ~~district-associate-judge,~~ until he gives notice in writing,
24 while serving as a judge, to the state comptroller and
25 treasurer of state, of his purpose to come within its purview.
26 Judges of the municipal and superior courts shall at the same
27 time give a copy of such notice to the city treasurer and
28 county auditor within the district of such court. Such notice
29 shall be given within one year after the effective date hereof
30 or within one year after any date on which he takes oath of
31 office as such judge.

32 Sec. 57. Section six hundred five A point four (605A.4),
33 Code 1975, is amended to read as follows:

34 605A.4 DEPOSIT BY JUDGE--DEDUCTIONS--CONTRIBUTIONS BY
35 GOVERNING BODY. Each judge coming within the purview of this

1 chapter shall, on or before retirement, pay to the court
2 administrator for deposit with the treasurer of state to the
3 credit of a fund to be known as the "judicial retirement
4 fund", hereinafter called the "fund", a sum equal to four
5 percent of his basic salary for services as such judge for
6 the total period of service as a judge of a municipal,
7 superior, district or supreme court, or the court of appeals,
8 including district associate judges, before the date of said
9 notice, and after the date of the notice there shall be
10 deducted and withheld from the basic salary of each judge
11 coming within the purview of this chapter a sum equal to four
12 percent of such basic salary. Provided that the maximum
13 amount which any judge shall be required to contribute for
14 past service shall not exceed for municipal or superior or
15 district associate judges thirty-five hundred dollars, for
16 district judges four thousand dollars, for court of appeals
17 judges four thousand five hundred dollars, and for supreme
18 court judges five thousand dollars. The amounts so deducted
19 and withheld from the basic salary of each said judge shall
20 be paid to the court administrator for deposit with the
21 treasurer of state to the credit of the judicial retirement
22 fund, and said fund is hereby appropriated for the payment
23 of annuities, refunds, and allowances herein provided, except
24 that the amount of such appropriations affecting payment of
25 annuities, refunds, and allowances to judges of the municipal
26 and superior court shall be limited to that part of said fund
27 accumulated for their benefit as hereinafter provided. The
28 judges of the municipal, superior, district and supreme court,
29 and the court of appeals, including district associate judges,
30 coming within the provisions of this chapter shall be deemed
31 to consent and agree to the deductions from basic salary as
32 provided herein and payment less such deductions shall be
33 a full and complete discharge and acquittance of all claims
34 and demands whatsoever for all regular services rendered by
35 such judges during the period covered by such payment, except

1 the right to the benefits to which they shall be entitled
2 under the provisions of this chapter. The state shall
3 contribute a sum not exceeding three percent of the basic
4 salary of all judges of the district and supreme court for
5 the years 1949 and 1950 and thereafter such sums as may be
6 necessary over the amount contributed by the district and
7 supreme court judges to finance the system, but only to the
8 extent that the system applies to them. After June 30, 1973,
9 the state shall contribute such sums as may be necessary over
10 the amount contributed by district associate judges to finance
11 the system as to them for the portion of their tenure after
12 July 1, 1973, and thereafter such sums as may be necessary
13 over the amount contributed by the district associate judges
14 to finance the system, but only to the extent the system
15 applies to them; and the respective cities and counties within
16 each municipal and superior court district shall contribute
17 the additional amount necessary pursuant to the next paragraph
18 of this section, for the portion of the tenure of such district
19 associate judges prior to July 1, 1973. After the effective
20 date of this Act, the state shall contribute such sums as
21 may be necessary over the amount contributed by judges of
22 the court of appeals to finance the system, but only to the
23 extent the system applies to them.

24 Sec. 58. Section six hundred five A point eight (605A.8),
25 Code 1975, is amended to read as follows:

26 605A.8 INDIVIDUAL ACCOUNTS--REFUNDING. The amounts
27 deducted and withheld from the basic salary of each judge
28 of the municipal, superior, district or supreme court, or
29 court of appeals, including district associate judges, for
30 the credit of the judicial retirement fund and all amounts
31 paid into such fund by each judge shall be credited to the
32 individual account of such judge. In the event a judge of
33 the municipal, superior, district or supreme court, court
34 of appeals, including district associate judges, becomes
35 separated from service as such judge before he completes an

1 aggregate of six years of service as a judge of one or more
2 of such courts, the total amount of his contribution to the
3 fund shall be returned to said judge or his legal
4 representatives, and in the event a judge who has completed
5 an aggregate of six years or more of service as a judge of
6 one or more of such courts, dies before retirement, without
7 a survivor, the total amount of his contribution to the fund
8 shall be paid in one sum to his legal representatives, and
9 in the event an annuitant under this section dies without
10 a survivor, without having received in annuities an amount
11 equal to the total amount remaining to his credit at the time
12 of his separation from service, the amount remaining to his
13 credit shall be paid in one sum to his legal representatives.

14 Sec. 59. Section six hundred five A point twelve (605A.12),
15 Code 1975, is amended to read as follows:

16 605A.12 VOLUNTARY RETIREMENT FOR DISABILITY. Any judge
17 of the supreme, district or municipal court, including a
18 district associate judge, or a judge of the court of appeals,
19 who shall have served as a judge of one or ~~both~~ more of such
20 courts for a period of six years in the aggregate and who
21 believes he has become permanently incapacitated, physically
22 or mentally, to perform the duties of his office may personally
23 or by his next friend or guardian file with the court
24 administrator a written application for retirement. The
25 application shall be filed in duplicate and accompanied by
26 an affidavit as to the duration and particulars of his service
27 and the nature of his incapacity. The court administrator
28 shall forthwith transmit one copy of the application and
29 affidavit to the chief justice who shall request the attorney
30 general in writing to cause an investigation to be made
31 relative to the claimed incapacity and report back the results
32 thereof in writing. If the chief justice finds from the
33 report of the attorney general that the applicant is
34 permanently incapacitated, physically or mentally, to perform
35 the duties of his office he shall by his endorsement thereon

1 declare the applicant retired, and the office vacant, and
2 shall file the report in the office of the court administrator,
3 and a copy in the office of the secretary of state. From
4 the date of such filing the applicant shall be deemed retired
5 from his office and entitled to the benefits of this chapter
6 to the same extent as if he had retired under the provisions
7 of section 605A.6.

8 Sec. 60. Section six hundred five A point fourteen
9 (605A.14), Code 1975, is amended to read as follows:

10 605A.14 FORFEITURE OF BENEFITS--REFUND. In the event
11 a judge of the supreme, district or municipal court including
12 a district associate judge, or a judge of the court of appeals,
13 is removed for cause other than permanent disability he and
14 his survivor shall forfeit the right to any retirement benefits
15 under the system but the total amount of his contribution
16 to the fund shall be returned to him or his legal
17 representative.

18 Sec. 61. Section six hundred six point fourteen (606.14),
19 Code 1975, is amended to read as follows:

20 606.14 CHANGE IN TITLE--CERTIFICATION. Where the title
21 of any real estate is finally established in any person or
22 persons by a judgment or decree of said the district court
23 or of-the-supreme by a decision of an appellate court, or
24 where title to real estate is changed by judgment, decree,
25 will, proceeding, or order in probate, the clerk of the
26 district court shall certify the same, under the seal of said
27 court, to the county auditor of the county in which said land
28 is located.

29 Sec. 62. Section six hundred twenty-four point two (624.2),
30 Code 1975, is amended to read as follows:

31 624.2 ORDINARY ACTIONS--EVIDENCE ON APPEAL. Upon appeal,
32 in ordinary actions no evidence shall go to the ~~supreme~~
33 appellate court except such as may be necessary to explain
34 any exception taken in the cause, and such court shall hear
35 and try the case only on the legal errors so presented.

1 Sec. 63. Section six hundred twenty-four point four
2 (624.4), Code 1975, is amended to read as follows:

3 624.4 EQUITABLE ACTIONS--EVIDENCE ON APPEAL. The evidence
4 in actions cognizable in equity shall be presented on appeal
5 to the supreme appellate court, which shall try such causes
6 anew. However, upon certiorari to the supreme court of equity
7 actions heard by the court of appeals the review may be limited
8 in scope as provide in the rules of appellate procedure.

9 Sec. 64. Section six hundred twenty-four point five
10 (624.5), Code 1975, is amended to read as follows:

11 624.5 ABSTRACTS IN EQUITY CAUSES. In equitable causes,
12 where the evidence is taken in the form of depositions, the
13 district court may require to be submitted with the arguments
14 an abstract of the pleadings and evidence, substantially as
15 required by the rules of ~~the-supreme-court~~ appellate procedure
16 for abstracts in appeals in equitable causes, except that
17 the same need not be printed.

18 Sec. 65. Section six hundred twenty-four point fifteen
19 (624.15), Code 1975, is amended to read as follows:

20 624.15 MUST BE ON MATERIAL POINT. No exception shall
21 be regarded in ~~the-supreme~~ an appellate court unless the
22 ruling has been on a material point, and the effect thereof
23 prejudicial to the rights of the party excepting.

24 Sec. 66. Section six hundred twenty-four point twenty-
25 three (624.23), Code 1975, is amended to read as follows:

26 624.23 LIENS OF JUDGMENTS. Judgments in the ~~supreme~~
27 appellate or ~~district court~~ courts of this state, or in the
28 circuit or district court of the United States within the
29 state, are liens upon the real estate owned by the defendant
30 at the time of such rendition, and also upon all he may
31 subsequently acquire, for the period of ten years from the
32 date of the judgment.

33 Sec. 67. Section six hundred twenty-four point twenty-
34 five (624.25), Code 1975, is amended to read as follows:

35 624.25 SUPREME APPELLATE COURT JUDGMENTS. The lien of

1 judgments of the ~~supreme-court~~ appellate courts of Iowa shall
2 not attach to any real estate until an attested copy of the
3 judgment is filed in the office of the clerk of the district
4 court of the county in which the real estate lies.

5 Sec. 68. Section six hundred twenty-four point twenty-
6 six (624.26), Code 1975, is amended to read as follows:

7 624.26 DOCKETING TRANSCRIPT. Such clerk shall, on the
8 filing of such transcript of the judgment of the ~~supreme~~
9 appellate or district court of this state or of the circuit
10 or district court of the United States in his office,
11 immediately proceed to docket and index the same, in the same
12 manner as though rendered in the court of his own county.

13 Sec. 69. Section six hundred twenty-five point nine
14 (625.9), Code 1975, is amended to read as follows:

15 625.9 TRANSCRIPTS--RETAXATION. The fees of shorthand
16 reporters for making transcripts of the notes in any case
17 or any portion thereof, as directed by any party thereto,
18 shall be taxed as costs, as shall also the fees of the clerk
19 for making any transcripts of the record required on appeal,
20 but such taxation may be revised by ~~the-supreme~~ an appellate
21 court on motion on the appeal, without any motion in the lower
22 court for the retaxation of costs.

23 Sec. 70. Section six hundred twenty-five point eighteen
24 (625.18), Code 1975, is amended to read as follows:

25 625.18 BILL OF COSTS ON APPEAL. In cases of appeals from
26 a trial court, the supreme court clerk, if ~~final~~ judgment
27 is rendered in the supreme court or court of appeals or both,
28 shall make a complete bill of costs in that court which shall
29 be filed in the office of the clerk of the trial court and
30 taxed with the costs in the action therein.

31 Sec. 71. Section six hundred twenty-five point nineteen
32 (625.19), Code 1975, is amended to read as follows:

33 625.19 COSTS IN ~~SUPREME-COURT~~ APPELLATE COURTS. When
34 the costs accrued in the ~~supreme-court~~ appellate courts and
35 the trial court are paid to the clerk of the trial court,

1 he the clerk shall pay so much of them as accrued in the
2 supreme-court appellate courts to the clerk of said-court
3 the supreme court, and take his receipt therefor.

4 Sec. 72. Section six hundred twenty-six point two (626.2),
5 Code 1975, is amended to read as follows:

6 626.2 WITHIN WHAT TIME--TO WHAT COUNTIES. Executions
7 may issue at any time before the judgment is barred by the
8 statute of limitations; and upon those in the district and
9 supreme appellate courts, into any county which the party
10 ordering may direct.

11 Sec. 73. Section six hundred thirty point one (630.1),
12 Code 1975, is amended to read as follows:

13 630.1 DEBTOR EXAMINED. When execution against the property
14 of a judgment debtor, or one of several debtors in the same
15 judgment, has been issued from the district court or supreme
16 an appellate court to the sheriff of the county where such
17 debtor resides, or if he ~~do~~ or she does not reside in the
18 state, to the sheriff of the county where the judgment was
19 rendered, and execution issued thereon is returned unsatisfied
20 in whole or in part, the owner of the judgment is entitled
21 to an order for the appearance and examination of such the
22 debtor.

23 Sec. 74. Section six hundred thirty-one point sixteen
24 (631.16), subsections six (6), seven (7), eight (8) and nine
25 (9), Code 1975, are amended to read as follows:

26 6. The record and case shall be presented to the supreme
27 court as provided by ~~its~~ the rules of appellate procedure;
28 and the provisions of law in civil procedure relating to the
29 filing of decisions and opinions of the supreme court shall
30 apply in such cases. The case may be transferred to the court
31 of appeals by the supreme court.

32 7. An application shall not be dismissed for an informality
33 or defect in taking it if corrected as directed by the supreme
34 appellate court. The supreme appellate court, after an
35 examination of the entire record, may dispose of the case

1 by affirmation, reversal or modification of the lower court
2 judgment, and may order a new trial. It also may dismiss
3 the application if both of the following are true:

4 a. The court determines that there has been no substantial
5 miscarriage of justice.

6 b. The arguments do not present definite grounds for a
7 hearing.

8 8. The decision of the supreme appellate court with any
9 opinion filed or judgment rendered must be recorded by ~~its~~
10 the supreme court clerk. After the expiration of the period
11 allowed for a rehearing, or as ordered by the court or provided
12 by its rules, a certified copy of the decision and opinion
13 shall be transmitted to the clerk of the trial court, and
14 filed and entered of record in the district court.

15 9. The jurisdiction of the supreme appellate court shall
16 cease after the certified copy of the decision and opinion
17 is transmitted to the clerk of the trial court. All
18 proceedings for executing the judgment shall be had in the
19 trial court or by its clerk.

20 Sec. 75. Section six hundred sixty-one point four (661.4),
21 Code 1975, is amended to read as follows:

22 661.4 ORDER ISSUED. The order may be issued by the
23 district court to any inferior tribunal, or to any corporation,
24 officer, or person; and by the supreme court or the court
25 of appeals to any ~~district~~ inferior court, if necessary, and
26 in any other case where it is found necessary for ~~that-court~~
27 either of those courts to exercise its legitimate power.

28 Sec. 76. Section six hundred sixty-five point four (665.4),
29 subsection one (1), Code 1975, is amended to read as follows:

30 1. In the supreme court or the court of appeals, by a
31 fine not exceeding one thousand dollars or by imprisonment
32 in a county jail not exceeding six months, or by both such
33 fine and imprisonment.

34 Sec. 77. Section six hundred eighty-four point one (684.1),
35 Code 1975, is amended by striking the section and inserting

1 in lieu thereof the following:

2 684.1 JURISDICTION.

3 1. The supreme court shall have appellate jurisdiction
4 only in cases in chancery, and shall constitute a court for
5 the correction of errors at law. The jurisdiction of the
6 supreme court shall be coextensive with the state.

7 2. Any civil or criminal action or special proceeding
8 filed with the supreme court for appeal or review, may be
9 transferred by the supreme court to the court of appeals by
10 issuing an order of transfer. The jurisdiction of the supreme
11 court in such a matter shall cease upon the filing of that
12 order by the clerk of the supreme court. Any matter which
13 has been transferred to the court of appeals pursuant to order
14 of the supreme court shall not thereafter be subject to the
15 jurisdiction of the supreme court except upon the filing with
16 the supreme court of a petition for review by certiorari
17 pursuant to subsection four (4) of this section.

18 3. The supreme court shall promulgate rules for the
19 transfer of matters to the court of appeals. Those rules
20 may provide for the selective transfer of individual cases
21 and may provide for the transfer of cases according to subject
22 matter or other general criteria. Rules relating to the
23 transfer of cases shall be subject to the provisions of section
24 six hundred eighty-four point nineteen (684.19) of the Code.
25 A rule shall not provide for the transfer of a matter other
26 than by an order of transfer as provided in subsection two
27 (2) of this section.

28 4. Any party to an appeal decided by the court of appeals
29 may, as a matter of right, file an application with the supreme
30 court for a writ of certiorari to the court of appeals. A
31 writ shall not issue from the supreme court unless the
32 application was filed within twenty days following the filing
33 of the decision of the court of appeals. The court of appeals
34 may extend the time for filing of an application if the court
35 of appeals determines that a failure to timely file an

1 application was due to the failure of the clerk of the court
2 of appeals to notify the prospective applicant of the filing
3 of the decision. If an application for a writ of certiorari
4 is not acted upon by the supreme court within thirty days
5 after the application was filed, the application shall be
6 deemed denied, the supreme court shall lose jurisdiction,
7 and the decision of the court of appeals shall be conclusive.

8 Sec. 78. Section six hundred eighty-four point two (684.2),
9 Code 1975, is amended to read as follows:

10 684.2 JUDGES--QUORUM--DIVISIONS.

11 1. The supreme court shall consist of nine judges. A
12 majority of the judges sitting shall constitute a quorum but
13 in no case shall a quorum consist of less than three judges.

14 2. The supreme court may be divided into divisions of
15 three or more judges in such manner as it may by rule
16 prescribe. Said divisions may hold open court separately
17 and cases may be submitted to each division separately, in
18 accordance with such rules as the court may adopt.

19 Sec. 79. Section six hundred eighty-four point eighteen
20 (684.18), Code 1975, is amended to read as follows:

21 684.18 RULES ~~IN-CIVIL~~ FOR ACTIONS AND PROCEEDINGS.

22 1. The supreme court shall have the power to prescribe
23 all rules of pleading, practice and procedure, and the forms
24 of process, writs and notices, for all proceedings of a civil
25 nature in all courts of this state, for the purpose of
26 simplifying the same, and of promoting the speedy determination
27 of litigation upon its merits. Said rules shall neither
28 abridge, enlarge, nor modify the substantive rights of any
29 litigant.

30 2. The supreme court shall have the power to prescribe
31 rules of appellate procedure relating to appeals to and review
32 by the supreme court, discretionary review by the courts of
33 small claims actions, review by the supreme court by writ
34 of certiorari to inferior courts, and appeal or review by
35 the court of appeals of a matter transferred to that court

1 by the supreme court. Rules prescribed pursuant to this
2 subsection shall be known as "Rules of Appellate Procedure",
3 and shall be codified apart from rules of civil procedure
4 applicable in the district court and other rules prescribed
5 by the supreme court.

6 3. Rules prescribed pursuant to this section shall be
7 subject to section six hundred eighty-four point nineteen
8 (684.19) of the Code.

9 Sec. 80. Section six hundred eighty-five point five
10 (685.5), Code 1975, is amended to read as follows:

11 685.5 DEPUTY CLERK OF SUPREME COURT--QUALIFICATION--DUTIES.
12 ~~The clerk of the supreme court~~ court administrator may appoint,
13 in writing, any person, except one holding a state office,
14 as deputy clerk of the supreme court, which appointment must
15 be approved by the officer having the approval of the
16 principal's bond, and such appointment may be revoked in the
17 same manner, ~~both the.~~ The appointment and the revocation
18 ~~to~~ shall be filed and kept in the office of the secretary
19 of state. The deputy shall qualify by taking the oath of
20 the principal, to be endorsed upon and filed with the
21 certificate of appointment, and, when so qualified, ~~he the~~
22 deputy shall, in the absence or disability of the clerk,
23 perform all of the duties of ~~such the~~ clerk pertaining to
24 ~~his office.~~ The deputy clerk also shall perform such duties
25 with respect to the court of appeals as are prescribed by
26 the court administrator.

27 Sec. 81. Section six hundred eighty-six point two (686.2),
28 Code 1975, is amended to read as follows:

29 686.2 MOTION FOR NEW TRIAL. ~~The supreme~~ An appellate
30 court on appeal may review and reverse any judgment or order
31 of the district court, although no motion for a new trial
32 was made in such court.

33 Sec. 82. Section six hundred eighty-six point seven
34 (686.7), Code 1975, is amended to read as follows:

35 686.7 TRANSMISSION. The transcript of any paper or exhibit

1 required for use in ~~the-supreme~~ an appellate court may be
2 transmitted thereto by the clerk of the trial court by express
3 or other safe and speedy method, but not by a party or any
4 attorney of a party.

5 Sec. 83. Section six hundred eighty-six point eight
6 (686.8), Code 1975, is amended to read as follows:

7 686.8 RETURN OF ORIGINAL PAPERS. If a new trial is granted
8 by ~~the-supreme~~ an appellate court, the clerk, as soon as the
9 cause is at an end therein, shall transmit to the clerk of
10 the court below all original papers or exhibits certified
11 up from said court, and may at any time return any such papers
12 when no new trial is awarded.

13 Sec. 84. Section six hundred eighty-six point thirteen
14 (686.13), Code 1975, is amended to read as follows:

15 686.13 ARGUMENTS IN RE CONSTITUTIONAL TEST. If the action
16 challenges the legality, validity or constitutionality of
17 a proposed constitutional amendment, the appellant shall file
18 a written argument with the supreme court within ten days
19 after the filing of the abstract and appellee shall file his
20 argument within ten days thereafter, and appellant shall then
21 file his reply within three days. The cause shall then be
22 submitted to the supreme court in regular or special ~~full~~
23 bench en banc session as soon thereafter as the chief justice
24 may order.

25 Sec. 85. Section six hundred eighty-six point fourteen
26 (686.14), Code 1975, is amended to read as follows:

27 686.14 REMAND--PROCESS. If ~~the-supreme~~ an appellate court
28 affirms the judgment or order of an inferior court, it may
29 send the cause to the appropriate court below to have the
30 same carried into effect, or may issue the necessary process
31 for this purpose, directed to the sheriff of the proper county,
32 as the party may require.

33 Sec. 86. Section six hundred eighty-six point fifteen
34 (686.15), Code 1975, is amended to read as follows:

35 686.15 RESTITUTION OF PROPERTY. If, by the decision of

1 ~~the-supreme~~ an appellate court, the appellant becomes entitled
2 to a restoration of any part of the money or property that
3 was taken from him by means of such a judgment or order,
4 either the ~~supreme~~ appellate court or the court below may
5 direct execution or writ of restitution to issue for the
6 purpose of restoring to him such property or its value.

7 Sec. 87. Section six hundred eighty-six point eighteen
8 (686.18), Code 1975, is amended to read as follows:

9 686.18 EXECUTIONS. Executions issued from the ~~supreme~~
10 ~~court~~ appellate courts shall be like those from the district
11 court, attended with the same consequences, and returnable
12 in the same time.

13 Sec. 88. Section seven hundred forty-eight point one
14 (748.1), Code 1975, is amended to read as follows:

15 748.1 "MAGISTRATE" DEFINED. The term "magistrate" in-
16 cludes all judges of the supreme court, court of appeals and
17 district courts and all district associate judges and judicial
18 magistrates.

19 Sec. 89. Section seven hundred fifty-one point one (751.1),
20 Code 1975, is amended to read as follows:

21 751.1 DEFINITIONS. A search warrant is an order in
22 writing, in the name of the state, signed by a magistrate,
23 other than a judge of the supreme court or the court of
24 appeals, directed to a peace officer, commanding him to search
25 for personal property, and bring it before the magistrate.

26 Sec. 90. Section seven hundred fifty-one point four
27 (751.4), unnumbered paragraph one (1), Code 1975, is amended
28 to read as follows:

29 Any credible resident of this state may make application
30 for the issuance of a search warrant by filing before any
31 magistrate, except a judge of the supreme court or the court
32 of appeals, a written information, supported by his oath or
33 affirmation, and alleging therein the existence of any ground
34 or grounds specified in this chapter as ground for the issuance
35 of a search warrant and that he believes and has substantial

1 reason to believe that said ground or grounds exist in fact.
2 Said information shall describe with reasonable certainty
3 the person or premises, or both, to be searched, the property
4 to be seized, and the person, if known, in possession of said
5 premises and property.

6 Sec. 91. Section seven hundred sixty point one (760.1),
7 Code 1975, is amended to read as follows:

8 760.1 PUBLIC OFFENSE THREATENED--COMPLAINT--ARREST. When
9 complaint is made before a magistrate, other than a judge
10 of the supreme court or court of appeals, that any person
11 has threatened to commit any public offense punishable by
12 law, and such magistrate is satisfied that there is reason
13 to fear the commission thereof, he may issue a warrant for
14 the arrest of the person complained of; and the officer to
15 whom the same shall be delivered for service shall forthwith
16 arrest and bring the accused before such magistrate, or, in
17 case of his absence or inability to act, before the nearest
18 and most accessible magistrate of the same county. When the
19 name of the person complained of is unknown, he may be
20 designated in the warrant by any name, and the warrant issued
21 in pursuance hereof may be executed by any peace officer in
22 any county of the state.

23 Sec. 92. Section seven hundred sixty-two point forty-four
24 (762.44), Code 1975, is amended to read as follows:

25 762.44 APPEAL ~~TO~~ FROM THE DISTRICT COURT. After
26 appeal to a district judge in a nonindictable case, either
27 party may appeal from the judgment of the district judge to
28 the supreme court in the same manner as from a judgment in
29 a prosecution by indictment, and the defendant may be admitted
30 to bail in like manner, and similar proceedings shall be had
31 on the appeal in all respects, as far as applicable. The
32 same proceedings shall be had to carry into effect the judgment
33 of ~~the-supreme~~ an appellate court upon the appeal as if it
34 had been taken from a judgment prosecuted by indictment.

35 Sec. 93. Section seven hundred sixty-three point nine

1 (763.9), Code 1975, is amended to read as follows:

2 763.9 BAIL ON APPEAL--CONDITIONS. After conviction, and
3 upon an appeal ~~to the supreme court~~, the defendant must be
4 admitted to bail, if it be from a judgment imposing a fine,
5 upon the undertaking of bail that he will, in all respects,
6 abide the orders and the judgment of ~~the supreme~~ an appellate
7 court upon the appeal; if from a judgment of imprisonment,
8 upon the undertaking of bail that the defendant will surrender
9 himself in execution of the judgment and direction of the
10 ~~supreme~~ appellate court, and in all respects abide the orders
11 and judgment of the ~~supreme~~ appellate court upon the appeal.

12 Sec. 94. Section seven hundred sixty-three point ten
13 (763.10), Code 1975, is amended to read as follows:

14 763.10 BY WHOM TAKEN. The bail may be taken, either by
15 the court where the judgment was rendered, or the district
16 court of the county in which he is imprisoned, or by the
17 ~~supreme~~ appellate court, or a judge or clerk of any of such
18 courts.

19 Sec. 95. Section seven hundred sixty-three point eighteen
20 (763.18), subsection two (2), Code 1975, is amended to read
21 as follows:

22 2. In any case in which a court denied a motion under
23 subsection 1 to amend an order imposing conditions of release,
24 or a defendant is detained after conditions of release have
25 been imposed or amended upon such a motion, an appeal may
26 be taken to the supreme court. The appeal shall be determined
27 summarily without briefs on the record made in the district
28 court. However, the defendant may elect to file briefs and
29 may be heard in oral argument, in which case the prosecution
30 shall have a right to respond as in an ordinary appeal from
31 a criminal conviction. The ~~supreme~~ appellate court may, on
32 its own motion, order the parties to submit briefs and set
33 the time in which such briefs shall be filed. Any order so
34 appealed shall be affirmed if it is supported by the
35 proceedings in the district court. If the order is not so

1 supported the court may remand the case for a further hearing,
2 or may, with or without additional evidence, order the
3 defendant released pursuant to section 763.17, subsection
4 1.

5 Sec. 96. Section seven hundred sixty-nine point one
6 (769.1), Code 1975, is amended to read as follows:

7 769.1 OFFENSES PROSECUTED ON INFORMATION--JURISDICTION.
8 Criminal offenses in which the punishment exceeds a fine of
9 one hundred dollars or exceeds imprisonment for thirty days
10 may be prosecuted to final judgment, either on indictment,
11 as is now or may be hereafter provided, or on information
12 as herein provided, and the district and supreme appellate
13 courts shall possess and exercise the same power and
14 jurisdiction to hear, try, and determine prosecutions on
15 information, as herein provided, for all such criminal
16 offenses, to issue writs and process, and do all other acts
17 therein, as they possess and may exercise in cases of like
18 prosecutions upon indictment.

19 Sec. 97. Section seven hundred seventy-five point five
20 (775.5), Code 1975, is amended to read as follows:

21 775.5 FEE FOR ATTORNEY DEFENDING. An attorney appointed
22 by the court to defend any person charged with a crime in
23 this state shall be entitled to a reasonable compensation
24 to be decided in each case by the court, including such sum
25 or sums as the court may determine are necessary for
26 investigation in the interests of justice and in the event
27 of appeal the cost of obtaining the transcript of the trial
28 and the printing of the trial record and necessary briefs
29 in behalf of the defendant. Such attorney need not follow
30 the case into another county or into the supreme appellate
31 court unless so directed by the court at the request of the
32 defendant, where grounds for further litigation are not
33 capricious or unreasonable, but if he does so his fee shall
34 be determined accordingly. Only one attorney fee shall be
35 so awarded in any one case.

1 Sec. 98. Section seven hundred ninety-three point one
2 (793.1), Code 1975, is amended to read as follows:

3 793.1 OFFICE OF APPEAL--WHO MAY APPEAL. The mode of
4 reviewing in the ~~supreme-court~~ appellate courts any judgment,
5 action, or decision of the district court in a criminal case
6 which is an indictable offense is by appeal. Either the
7 defendant or state may appeal.

8 Sec. 99. Section seven hundred ninety-three point seven
9 (793.7), final unnumbered paragraph, Code 1975, is amended
10 to read as follows:

11 Such manuscripts shall be prepared in ample time so that
12 the same may be printed and filed within the time and in the
13 manner prescribed by law and the rules of ~~the-supreme-court~~
14 appellate procedure.

15 Sec. 100. Section seven hundred ninety-three point thirteen
16 (793.13), Code 1975, is amended to read as follows:

17 793.13 PERSONAL APPEARANCE OF DEFENDANT. The personal
18 appearance of the defendant in the ~~supreme-court~~ appellate
19 courts on the trial of an appeal is ~~in-no-case-necessary~~ not
20 required.

21 Sec. 101. Section seven hundred ninety-three point fourteen
22 (793.14), Code 1975, is amended to read as follows:

23 793.14 INFORMALITY OR DEFECT. An appeal shall not be
24 dismissed for any informality or defect in taking it, if
25 corrected in a reasonable time; and the ~~supreme~~ appellate
26 court must direct how it shall be corrected.

27 Sec. 102. Section seven hundred ninety-three point
28 seventeen (793.17), Code 1975, is amended to read as follows:

29 793.17 RULES OF PROCEDURE. The record and case may be
30 presented in the ~~supreme~~ appellate court by printed abstracts,
31 arguments, motions, and petitions for rehearing as provided
32 by ~~its~~ the rules of appellate procedure; and the provisions
33 of law in civil procedure relating to certification of the
34 record and the filing of decisions and opinions of the ~~supreme~~
35 ~~court~~ appellate courts shall apply in such cases.

1 Sec. 103. Section seven hundred ninety-three point eighteen
2 (793.18), Code 1975, is amended to read as follows:

3 793.18 DECISION OF SUPREME APPELLATE COURT. If the ap-
4 peal is taken by the defendant, the supreme appellate court
5 must examine the record, without regard to technical errors
6 or defects which do not affect the substantial rights of the
7 parties, and render such judgment on the record as the law
8 demands; it may affirm, reverse, or modify the judgment, or
9 render such judgment as the district court should have done,
10 or order a new trial, or reduce the punishment, but cannot
11 increase it.

12 Sec. 104. Section seven hundred ninety-three point twenty
13 (793.20), Code 1975, is amended to read as follows:

14 793.20 DECISIONS IN APPEALS BY STATE. If the state
15 appeals, the supreme appellate court cannot reverse or modify
16 the judgment so as to increase the punishment, but may affirm
17 it, and shall point out any error in the proceedings or in
18 the measure of punishment, and its decision shall be obligatory
19 as law.

20 Sec. 105. Section seven hundred ninety-three point twenty-
21 one (793.21), Code 1975, is amended to read as follows:

22 793.21 REVERSAL--EFFECT. If a judgment against the
23 defendant is reversed, such reversal shall be deemed an order
24 for a new trial, unless the supreme appellate court shall
25 direct that the defendant be discharged and his bail
26 exonerated, or if money be deposited instead, that it be
27 refunded to him.

28 Sec. 106. Section seven hundred ninety-three point twenty-
29 two (793.22), Code 1975, is amended to read as follows:

30 793.22 AFFIRMANCE--EFFECT. On a judgment of affirmance
31 against the defendant, the original judgment shall be carried
32 into execution as the supreme appellate court shall direct,
33 except as otherwise provided.

34 Sec. 107. Section seven hundred ninety-three point twenty-
35 three (793.23), Code 1975, is amended to read as follows:

1 793.23 OPINION OF SUPREME APPELLATE COURT. The opinion
2 of the supreme appellate court must be in writing, filed with
3 its clerk, and recorded.

4 Sec. 108. Section seven hundred ninety-three point twenty-
5 four (793.24), Code 1975, is amended to read as follows:

6 793.24 DECISION RECORDED AND TRANSMITTED. The decision
7 of the supreme appellate court, with any opinion filed or
8 judgment rendered, must be recorded by its clerk, and, after
9 the expiration of the period allowed for a rehearing, or as
10 ordered by the court or provided by ~~its~~ the rules of appellate
11 procedure, a certified copy of the decision and opinion shall
12 be transmitted to the clerk of the trial court, filed and
13 entered of record by him, and thereafter the jurisdiction
14 of the supreme appellate court shall cease, and all proceedings
15 necessary for executing the judgment shall be had in the trial
16 court, or by its clerk.

17 Sec. 109. Section seven hundred ninety-three point twenty-
18 six (793.26), Code 1975, is amended to read as follows:

19 793.26 TIME OF IMPRISONMENT DEDUCTED. If a defendant,
20 imprisoned during the pendency of an appeal, upon a new trial
21 ordered by the supreme appellate court is again convicted,
22 the period of his former imprisonment shall be deducted from
23 the period of imprisonment to be fixed on the last verdict
24 of conviction.

25 Sec. 110. The Code editor is directed to codify sections
26 one (1) through twenty-five (25) of this Act as a new chapter
27 of the Code.

28 EXPLANATION

29 This bill creates an intermediate court of appeals for
30 the state. The court has statutory jurisdiction to hear and
31 determine appeals in any case which presently may be heard
32 by the supreme court. However, a matter can be brought under
33 the jurisdiction of the court of appeals only after the case
34 has been filed with the supreme court and transferred to the
35 court of appeals by an order of the supreme court. The supreme

1 court is empowered thus to "deflect" cases, either individually
2 or by category, but for purposes of jurisdiction each transfer
3 is effected by the entry of an order by the supreme court.
4 In other words, the court of appeals does not have any original
5 appellate jurisdiction.

6 The decisions of the court of appeals are final, and fur-
7 ther review by the supreme court is by way of writ of
8 certiorari. Thus, further review by the supreme court is
9 limited to those cases in which the high court believes review
10 is necessary.

11 The court of appeals is composed of five judges who serve
12 six year terms and stand for retention in office as do other
13 judges. The judges are not required to live at the seat of
14 government, but facilities and personal assistants are provided
15 only in Des Moines, and expenses cannot be reimbursed for
16 residency elsewhere than at the seat of government.

17 The bill provides that the court shall hold hearings in
18 the present courtroom at the statehouse, and that supreme
19 court facilities be utilized to the extent possible. Each
20 judge of the court of appeals may employ one personal
21 secretary. The court is authorized to employ five legal
22 assistants (law clerks). Personnel of the court are not
23 entitled to reimbursement for expenses arising as a result
24 of residency away from the seat of government.

25 The court of appeals is subjected to the administrative
26 and supervisory control of the supreme court, and the supreme
27 court is empowered to prescribe rules relating to procedures
28 for appeals. These rules have been redesignated in this bill
29 as rules of appellate procedure, and the term refers to all
30 procedures of review and appeal from the district court,
31 including certiorari to the supreme court from the court of
32 appeals.

33 The substantive portions of the bill which create the court
34 of appeals are contained in the first 25 sections. The
35 remainder of the bill contains correlating amendments.

1 The bill takes effect on July 1, 1976, but the
 2 jurisdictional powers are not effective until January 1, 1977.
 3 Thus, cases may not be heard by the intermediate court until
 4 the January date, although the court can be set up prior to
 5 that time.

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SENATE FILE 1092
 FISCAL NOTE

Date prepared: March 11, 1976
 Requested by: Senate Judiciary Committee
 Prepared in regard to: Senate File 1092, An Act creating a
 court of appeals and providing for the jurisdiction of the court,
 the personnel and administration of the court, and the procedures
 to be followed for appeal and review.

Following is the fiscal effect in dollars of the legislative pro-
 posal as required by Joint Rule 16.

Salaries	
Justices	
Law Clerks	\$171,000
Secretaries	65,625
Deputy Supreme Court Clerk	48,320
Employee Benefits	18,000
	<u>27,881</u>
Total Salaries and Benefits	\$330,826
Office Space	20,000
Equipment, libraries, supplies	UNKNOWN
Approximately	<u>\$350,826</u>

Source: Supreme Court Administrator
 Dept. of General Services

FILED
 MAY 11, 1976

BY GERRY D. RANKIN
 LEGISLATIVE FISCAL DIRECTOR

LSB 3382
 lb/jw/5

S-5135

1 Amend Senate File 1092 as follows:

2 1. Page 3, lines 11 through 13, by striking the
3 words "filing of an application for a writ of
4 certiorari with the supreme court." and inserting
5 in lieu thereof the words "granting by the supreme
6 court of an application for further review as provided
7 in section seventy-seven (77) of this Act."

8 2. Page 3, lines 31 and 32, by striking the words
9 "Rules promulgated by the supreme court" and inserting
10 in lieu thereof the words "The supreme court shall
11 have the power to prescribe temporary rules of
12 appellate procedure".

13 3. Page 4, by striking lines 1 through 3, and
14 inserting in lieu thereof the words "conditions and
15 procedures for further review by the supreme court
16 of a decision of the court of appeals, and each of
17 those temporary rules shall be".

18 4. Page 4, line 6, by striking the words "time
19 of their adoption" and inserting in lieu thereof the
20 words "date specified by the supreme court in the
21 respective temporary rules".

22 5. Page 28, by striking lines 15 through 17 and
23 inserting in lieu thereof the following: "jurisdic-
24 tion of the supreme court, except as provided in sub-
25 section four (4) of this section."

26 6. Page 28, by striking lines 30 and 31, and in-
27 serting in lieu thereof the following: "court for
28 further review. An application for further review
29 shall not be granted by the supreme court unless the".

30 7. Page 29, line 3, by striking the words "a writ
31 of certiorari" and inserting in lieu thereof the words
32 "further review".

33 8. Page 29, by inserting after line 7 the follow-
34 ing new subsection:

35 "5. The supreme court shall promulgate rules of
36 appellate procedure which shall govern further review
37 by the supreme court of decisions of the court of
38 appeals. Such rules shall contain, but need not be
39 limited to, a specification of the grounds upon which
40 further review may, in the discretion of the supreme
41 court, be granted. Rules promulgated pursuant to
42 this subsection shall be subject to section six hundred
43 eighty-four point nineteen (684.19) of the Code."

S-5135 FILED - *Adopted 2/16 (p. 456)*
FEBRUARY 12, 1976

BY PHILIP HILL

S-5153

1 Amend Senate File 1092 as follows:

2 1. Page 7, lines 3 through 5, by striking the
3 words "A judge shall not employ as a secretary any
4 person who resides elsewhere than at the seat of state
5 government."

6 2. Page 7, lines 11 through 13, by striking the
7 words "The court of appeals shall not employ as a
8 legal assistant any person who resides elsewhere than
9 at the seat of state government."

S-5153 FILED & ADOPTED (p.150)
FEBRUARY 16, 1976

BY RICHARD RAMSEY

H-5547

1 Amend Senate File 1092, as amended and passed by
2 the Senate, as follows:

3 1. Page 1, by striking line 21 and inserting in
4 lieu thereof the words "and four associate judges,
5 any three of whom shall constitute".

6 2. Page 7, line 7, by striking the word "three"
7 and inserting in lieu thereof the word "five".

8 3. Page 12, line 4, by striking the word "one"
9 and inserting in lieu thereof the word "two".

10 4. Page 12, line 7, by striking the word "one"
11 and inserting in lieu thereof the word "two".

H-5547 FILED BY COMMITTEE ON JUDICIARY AND
MARCH 5, 1976 ENFORCEMENT, JESSE of Polk, Chair

adopted 5/4 (2398)

HOUSE AMENDMENT TO SENATE FILE 1092

S-5690

1 Amend Senate File 1092, as amended and passed by
2 the Senate, as follows:

3 1. Page 1, by striking line 21 and inserting in
4 lieu thereof the words "and four associate judges,
5 any three of whom shall constitute".

6 2. Page 7, line 7, by striking the word "three"
7 and inserting in lieu thereof the word "five".

8 3. Page 12, line 4, by striking the word "one"
9 and inserting in lieu thereof the word "two".

10 4. Page 12, line 7, by striking the word "one"
11 and inserting in lieu thereof the word "two".

S-5690 FILED
MAY 6, 1976

RECEIVED FROM THE HOUSE
Senate concurred 5/11 (p.1851)

S-5109

1 Amend Senate File 1092 as follows:

2 1. Page 9, by striking lines 13 through 19 and
3 inserting in lieu thereof the following:

4 "Sec. 32. Section seventeen point twenty-two
5 (17.22), Code 1975, as amended by Acts of the Sixty-
6 sixth General Assembly, 1975 Session, chapter twenty-
7 nine (29), section two (2), is amended by striking
8 the section and inserting in lieu thereof the
9 following:

10 17.22 PRICE. Said publications shall be sold
11 at a price to be established by dividing the total
12 cost only, of printing, binding, distribution and
13 paper stock by the total number printed of each
14 edition.

15 1. Code or supplements thereto and Iowa admin-
16 istrative code.

17 2. Session laws.

18 3. Daily journals and bills.

19 4. Book of annotations to the Code.

20 5. Supplements to the book of annotations.

21 6. Tables of corresponding sections to the Code.

22 7. Reports of the supreme court, and reports of
23 the court of appeals.

24 8. Rules of civil procedure, rules of appellate
25 procedure and supreme court rules.

26 The Iowa administrative code shall be distributed
27 with each order for purchase of the Code and the price
28 set for the Code and administrative code as provided
29 above shall include the cost of both the Code and
30 administrative code. However, the Iowa administrative
31 code or its supplements may be distributed separately.
32 There shall be established a price for the Iowa
33 administrative code and a separate price for its
34 supplements. The price charged for the Iowa
35 administrative code or its supplements shall represent
36 the cost of compiling and indexing plus the amount
37 charged for the printing and distributing of the Iowa
38 administrative code or its supplements.

39 When the Code is published in more than one volume
40 the superintendent of printing may distribute each
41 volume on order, after payment of the estimated
42 purchase price for the set, when said volume becomes
43 available."

S-5109 FILED - *Adopted 2/16 (p. 451)*
FEBRUARY 11, 1976

BY GENE W. GLENN

S-5108

1 Amend Senate File 1092 as follows:

2 1. Page 25, by striking lines 31 through 35, and
3 page 26, by striking lines 1 through 3, and inserting
4 in lieu thereof the following:

5 "Sec. 71. Section six hundred twenty-five point
6 nineteen (625.19), Code 1975, as amended by Acts of
7 the Sixty-sixth General Assembly, 1975 Session, chapter
8 two hundred forty-nine (249), section one (1), is
9 amended to read as follows:

10 625.19 COSTS IN SUPREME-COURT APPELLATE COURTS.
11 When the costs accrued in the ~~supreme-court~~ appellate
12 courts and the trial court are paid to the clerk of
13 the trial court, he the clerk shall pay them to the
14 persons entitled thereto."

S-5108 FILED - *Adopted 2/16 (p. 451)*
FEBRUARY 11, 1976

BY GENE W. GLENN

SENATE FILE 1092

S-5152

1 Amend Senate File 1092 as follows:

2 1. Page 1, line 21, by striking the words "four
3 associate judges, any three" and inserting in lieu
4 thereof the words "two associate judges, any two".

5 2. Page 7, line 7, by striking the word "five"
6 and inserting in lieu thereof the word "three".

7 3. Page 12, line 4, by striking the word "two"
8 and inserting in lieu thereof the word "one".

9 4. Page 12, line 7, by striking the word "two"
10 and inserting in lieu thereof the word "one".

S-5152 FILED & ADOPTED *28-18 (p. 448)*
FEBRUARY 16, 1976

BY RICHARD RAMSEY

SENATE FILE 1092

AN ACT

CREATING A COURT OF APPEALS AND PROVIDING FOR THE JURISDICTION OF THE COURT, THE PERSONNEL AND ADMINISTRATION OF THE COURT, AND THE PROCEDURES TO BE FOLLOWED FOR APPEAL AND REVIEW.

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

Division I
GENERAL PROVISIONS

Section 1. NEW SECTION. COURT OF APPEALS CREATED. There is established an intermediate court of appeals which is a court of record and which shall be known as the Iowa Court of Appeals.

Sec. 2. NEW SECTION. TERM OF COURT. The court of appeals shall hold annual terms commencing on the second Tuesday in January of each year, and the court always shall be in session. The expiration of a term shall not affect the power of the court to do any act or assume jurisdiction of any proceeding, and pending matters shall be continued from term to term.

Sec. 3. NEW SECTION. SESSIONS--LOCATION. The court of appeals shall hold sessions at the seat of state government at the times specified by order of the supreme court. Sessions shall be held in the courtroom of the supreme court at the statehouse.

Sec. 4. NEW SECTION. NUMBER OF JUDGES--QUORUM--CHIEF JUDGE.

1. The court of appeals shall consist of a chief judge and four associate judges, any three of whom shall constitute a quorum.

2. a. At the first meeting after initial appointment of judges to the court of appeals, and at the first meeting in each odd-numbered year the judges by majority vote shall

designate one of their members to serve as chief judge for a two-year term. A vacancy in the office of chief judge shall be filled by majority vote of the judges of the court of appeals, after any actual vacancy has been filled, and for the remainder of the unexpired term.

b. In the absence of the chief judge the duties of the chief judge shall be exercised by the judge next in precedence.

c. The chief judge shall supervise the affairs of the court and shall preside at any session of the court at which the chief judge is in attendance.

d. If the chief judge desires to be relieved of the duties of chief judge while retaining the status of judge of the court of appeals, the chief judge shall notify the chief justice of the supreme court and the other judges of the court of appeals. The office of chief judge shall be deemed vacant, and shall be filled as provided in this subsection.

3. Judges of the court of appeals other than the chief judge shall have precedence according to the length of time served on that court. Of several judges having equal periods of time served, the eldest shall have precedence.

Sec. 5. NEW SECTION. APPELLATE JURISDICTION. The jurisdiction of the court of appeals is coextensive with the state. The court of appeals shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law.

The court of appeals shall have subject matter jurisdiction to review the following matters:

1. All civil actions and special civil proceedings, whether at law or in equity.
2. All criminal actions.
3. All post-conviction remedy proceedings.
4. A judgment of a district judge in a small claims action.

The jurisdiction of the court of appeals with respect to actions and parties shall be limited to those matters for

which an appeal or review proceeding properly has been brought before the supreme court, and for which the supreme court pursuant to section seventy-seven (77) of this Act has entered an order transferring the matter to the court of appeals.

The court of appeals and judges of the court are empowered to issue writs and other process necessary for the exercise and enforcement of its jurisdiction, but a writ, order or other process issued in any matter not before the court pursuant to an order of transfer issued by the supreme court shall be void.

Sec. 6. NEW SECTION. DECISIONS OF THE COURT--FINALITY.

1. The court of appeals may affirm, modify, vacate, set aside or reverse any judgment, order or decree of the district court or other tribunal which is under the jurisdiction of the court, and may remand the cause and direct the entry of an appropriate judgment, order or decree, or require further proceedings to be had as may be just. If the judges are equally divided on the ultimate decision, the judgment, order or decree being reviewed shall be affirmed.

2. A decision of the court of appeals is final and shall not be reviewed by any other court except upon the granting by the supreme court of an application for further review as provided in section seventy-seven (77) of this Act. Upon the filing of the application, the judgment and mandate of the court of appeals shall be stayed pending action of the supreme court or until the expiration of the time specified in subsection four (4) of section seventy-seven (77) of this Act.

Sec. 7. NEW SECTION. RULES. The supreme court, and the court of appeals subject to the approval of the supreme court, may from time to time prescribe rules of appellate procedure and other rules for the conduct of business of the court of appeals. Rules prescribed shall not abridge, enlarge, or modify a substantive right, and shall be subject to section six hundred eighty-four point eighteen (684.18) of the Code.

The rules of civil procedure and supreme court rules which are in effect on the effective date of this Act, or which become effective subsequent to the effective date of this Act, shall apply to and govern, until July 1, 1977, all matters transferred to the court of appeals pursuant to section seventy-seven (77) of this Act, to the extent that those rules are not inconsistent with the provisions of this Act. The supreme court shall have the power to prescribe temporary rules of appellate procedure on or after the effective date of this Act which relate to the methods and procedures to be used in determining whether or not a matter shall be transferred to the court of appeals, or which relate to the conditions and procedures for further review by the supreme court of a decision of a court of appeals, and each of those temporary rules shall be effective, anything in section six hundred eighty-four point nineteen (684.19) of the Code to the contrary notwithstanding, from the date specified by the supreme court in the respective temporary rules until July 1, 1977.

Sec. 8. NEW SECTION. WHEN DECISIONS EFFECTIVE. A decision of the court of appeals shall be in writing, and shall be effective, except as provided in subsection two (2) of section six (6) of this Act, when the decision of the court has been filed with the clerk of the supreme court.

Sec. 9. NEW SECTION. PROCESS--STYLE--SEAL.

1. Process of the court of appeals shall be styled: "In the Court of Appeals of Iowa".

2. The supreme court may adopt a seal for the court of appeals. Upon adoption, the clerk of the supreme court shall file a facsimile and description of the design in the office of the secretary of state. Judicial notice shall be taken of the official seal of the court of appeals.

Sec. 10. NEW SECTION. RECORDS. The records of the court of appeals shall be kept by the clerk of the supreme court, and at the same place as, but segregated from the records

of the supreme court. Records of the court of appeals shall be maintained in the same manner as records of the supreme court are required by law to be maintained.

Sec. 11. NEW SECTION. PUBLICATION OF OPINIONS. The court administrator shall cause the publication of opinions of the judges of the court of appeals in accordance with rules issued by the supreme court. Sections six hundred eighty-four point thirteen (684.13), six hundred eighty-four point fourteen (684.14), and six hundred eighty-four point fifteen (684.15) of the Code shall apply to decisions of the court of appeals. The court administrator shall cause the publication of abstracts of all decisions for which written opinions are not published.

Sec. 12. NEW SECTION. FEES--COSTS. Costs to be collected and awarded in the court of appeals shall be as prescribed from time to time by the supreme court. Fees and costs may be awarded to a party to the appeal in the discretion of the court of appeals. A fee shall not be charged for the docketing of any matter in the court of appeals upon transfer from the supreme court.

Division II
JUDGES

Sec. 13. NEW SECTION. APPOINTMENT--TERM. Judges of the court of appeals shall be nominated and appointed and shall stand for retention in office as provided in chapter forty-six (46) of the Code. The term of office of a judge of the court of appeals shall be as provided in section forty-six point sixteen (46.16) of the Code.

Sec. 14. NEW SECTION. QUALIFICATION FOR OFFICE. A person appointed as judge of the court of appeals must satisfy all requirements for a judge of the supreme court, and shall qualify for and take office in the same manner as a judge of the supreme court.

Sec. 15. NEW SECTION. SALARY--EXPENSES--RETIREMENT. A judge of the court of appeals shall receive a salary as

provided by law, and shall be reimbursed for expenses reasonably incurred in the performance of official duties. A judge of the court of appeals may elect to participate in the judicial retirement system as provided in chapter six hundred five A (605A) of the Code.

Each judge of the court of appeals shall be provided personal office space and equipment, and facilities for a secretary and law clerk at the seat of state government only. Each judge may choose to reside at the seat of government as he or she may elect, but a judge of the court of appeals shall not be entitled to receive reimbursement for any expenses incurred as a result of residing or maintaining a residence elsewhere than at the seat of government.

Sec. 16. NEW SECTION. PROHIBITED ACTS. A judge of the court of appeals shall not do any of the following:

1. Hear or participate in an appeal from the decision of a case or issue tried before him or her.
2. Participate in an appeal in which he or she has a substantial interest, has been of counsel, has been a material witness, or is so related to or connected with any party or attorney so as to render it improper for him or her to participate.

Sec. 17. NEW SECTION. JUDICIAL QUALIFICATIONS--IMPEACHMENT. A judge of the court of appeals shall be subject to the jurisdiction and procedures of the commission on judicial qualifications as provided in chapter six hundred five (605) of the Code, and may be impeached as provided in chapter sixty-eight (68) of the Code.

Division III
ADMINISTRATION

Sec. 18. NEW SECTION. CLERK OF COURT. The clerk of the supreme court also shall act as clerk of the court of appeals. The clerk of the court of appeals shall keep a complete record of the proceedings of that court, shall collect the fees and costs prescribed by the supreme court, and shall account for

and report to the court administrator all receipts and disbursements of the court of appeals. The clerk of the supreme court shall not receive any additional compensation for acting as clerk of the court of appeals.

Sec. 19. NEW SECTION. DEPUTY CLERK--PERSONNEL. The clerk of the supreme court, subject to the approval of the supreme court, may employ a deputy clerk for the performance of duties relating to the court of appeals. The deputy clerk shall receive a salary as prescribed by the court administrator, and shall be reimbursed for expenses reasonably incurred in the performance of official duties. The deputy clerk shall give bond to the state as provided in chapter sixty-four (64) of the Code for the clerk of the supreme court.

Sec. 20. NEW SECTION. SECRETARY TO JUDGE. Each judge of the court of appeals may employ one personal secretary at a salary as prescribed by the court administrator.

Sec. 21. NEW SECTION. LAW CLERKS. The court of appeals may employ not more than five attorneys or graduates of a reputable law school as defined in section six hundred ten point two (610.2) of the Code, to act as legal assistants to the court. Salaries shall be as prescribed by the court administrator.

Sec. 22. NEW SECTION. PRACTICE OF LAW PROHIBITED. The deputy clerk and other persons employed by the court of appeals shall not practice as an attorney or counselor of law.

Sec. 23. NEW SECTION. PAYMENT OF SALARIES AND EXPENSES. The salaries and expenses of the court of appeals and its judges and other employees shall be paid from funds appropriated for such purposes, and shall be accounted for by the court administrator. Salaries and other expenditures shall not be incurred, except upon approval of the court administrator. The court administrator shall not approve for reimbursement any expenditure incurred as a result of an officer's or employee's residing or maintaining a residence elsewhere than at the seat of state government.

Sec. 24. NEW SECTION. PHYSICAL FACILITIES. The court administrator shall obtain for the court of appeals suitable facilities for the conduct of court business at the seat of state government. To the extent practicable, the court administrator shall utilize existing supreme court facilities. State funds shall not be utilized for securing or maintaining facilities for any court personnel elsewhere than at the seat of state government.

Sec. 25. NEW SECTION. SUPERVISION BY THE SUPREME COURT. The court of appeals and all of its officers and employees shall be subject to the supervisory and administrative control of the supreme court.

Division IV

CORRELATING AMENDMENTS

Sec. 26. Section four point one (4.1), Code 1975, is amended by adding the following new subsection:

NEW SUBSECTION. APPELLATE COURT. The term "appellate court" means and includes both the supreme court and the court of appeals. Where an act, omission, right, or liability is by statute conditioned upon the filing of a decision by an appellate court, the term means any final decision of either the supreme court or the court of appeals.

Sec. 27. Section seven point six (7.6), unnumbered paragraph two (2), Code 1975, is amended to read as follows:

Such The reward shall be paid only upon the conviction of said the person and-affirmance-thereof-by-the-supreme court,-if-appealed-thereto, and if appealed, only after a final decision of an appellate court has been rendered which affirms that conviction.

Sec. 28. Section thirteen point two (13.2), subsection one (1), Code 1975, is amended to read as follows:

1. Prosecute and defend all causes in the supreme-court appellate courts in which the state is a party or interested.

Sec. 29. Section fourteen point six (14.6), subsection four (4), Code 1975, is amended to read as follows:

4. Prepare and cause to be published, at such times as the supreme court shall by order direct, the rules of civil procedure, the rules of appellate procedure, and supreme court rules.

Sec. 30. Section fourteen point twelve (14.12), subsection six (6), paragraphs j and k, Code 1975, are amended to read as follows:

j. The rules of the supreme court, rules of civil procedure and rules of appellate procedure.

k. An index covering the Constitution and statutes of the state of Iowa and the rules of the supreme court, rules of civil procedure and rules of appellate procedure.

Sec. 31. Section seventeen point twenty-one (17.21), Code 1975, is amended to read as follows:

17.21 LEGAL PUBLICATIONS. The Code or supplements thereto, Iowa administrative code, rules of civil procedure, rules of appellate procedure, and supreme court rules, session laws, annotations, tables of corresponding sections and reports of the supreme court, unless otherwise specifically provided by law, shall be printed, and paid for in the same manner as other public printing.

Sec. 32. Section seventeen point twenty-two (17.22), Code 1975, as amended by Acts of the Sixty-sixth General Assembly, 1975 Session, chapter twenty-nine (29), section two (2), is amended by striking the section and inserting in lieu thereof the following:

17.22 PRICE. Said publications shall be sold at a price to be established by dividing the total cost only, of printing, binding, distribution and paper stock by the total number printed of each edition.

1. Code or supplements thereto and Iowa administrative code.
2. Session laws.
3. Daily journals and bills.
4. Book of annotations to the Code.

5. Supplements to the book of annotations.

6. Tables of corresponding sections to the Code.

7. Reports of the supreme court, and reports of the court of appeals.

8. Rules of civil procedure, rules of appellate procedure and supreme court rules.

The Iowa administrative code shall be distributed with each order for purchase of the Code and the price set for the Code and administrative code as provided above shall include the cost of both the Code and administrative code. However, the Iowa administrative code or its supplements may be distributed separately. There shall be established a price for the Iowa administrative code and a separate price for its supplements. The price charged for the Iowa administrative code or its supplements shall represent the cost of compiling and indexing plus the amount charged for the printing and distribution of the Iowa administrative code or its supplements.

When the Code is published in more than one volume the superintendent of printing may distribute each volume on order, after payment of the estimated purchase price for the set, when said volume becomes available.

Sec. 33. Section seventeen point twenty-five (17.25), Code 1975, is amended to read as follows:

17.25 NEW EDITIONS. New editions of the Code or supplements thereto, book of annotations, and reports of the supreme court, and reports of the court of appeals may be published by the superintendent of printing when the supply on hand of the last edition becomes exhausted and when a new edition is necessary in order to meet the demand.

Sec. 34. Section eighteen point ninety-seven (18.97), unnumbered paragraph one (1), and subsection five (5), Code 1975, are amended to read as follows:

The superintendent of printing shall make free distribution of the Code, the Iowa administrative code, rules of civil

procedure, rules of appellate procedure and supreme court rules, and of the Acts of each general assembly, as follows:

5. To each judge of the supreme court ~~and to each judge of~~, the court of appeals and the district court, two copies; and to each district associate judge and each judicial magistrate 1 copy

Sec. 35. Section eighteen point ninety-eight (18.98), subsection five (5), Code 1975, is amended to read as follows:

5. To the office of each judge of the supreme court, court of appeals, and district ~~courts~~ court, including district associate judges and judicial magistrates, and to each judge of the federal courts in Iowa 1 copy

Sec. 36. Section eighteen point ninety-nine (18.99), Code 1975, is amended to read as follows:

18.99 SUPREME APPELLATE COURT REPORTS. The supreme court shall cause to be furnished without charge copies of any publication containing ~~its~~ official reports of the supreme court and the court of appeals to the chambers of each judge of the district court in each county and to such other governmental agencies as the supreme court shall direct.

Sec. 37. Section forty-six point twelve (46.12), Code 1975, is amended to read as follows:

46.12 NOTIFICATION OF VACANCY AND RESIGNATION. When a vacancy occurs or will occur within sixty days in the supreme court, the court of appeals, or district court, the state commissioner of elections shall forthwith so notify the chairman of the proper judicial nominating commission. The chairman shall call a meeting of the commission within ten days after such notice; if he fails to do so, the chief justice shall call such meeting.

When a judge of the supreme court, court of appeals, or district court resigns, he shall submit a copy of his resignation to the state commissioner of elections at the time he submits his resignation to the governor; and when a judge of the supreme court, court of appeals, or district

court dies, the clerk of district court of the county of his residence shall in writing forthwith notify the state commissioner of elections of such fact.

For the purpose of this chapter, vacancies in the court of appeals shall be deemed to exist from the effective date of this Act until the initial number of court of appeals judges provided by this Act have qualified for office.

Sec. 38. Section forty-six point fifteen (46.15), Code 1975, is amended to read as follows:

46.15 APPOINTMENTS TO BE FROM NOMINEES. All appointments to the supreme court and ~~district court shall be made from the nominees of the respective judicial nominating commissions~~ court of appeals shall be made from the nominees of the state judicial nominating commission, and all appointments to the district court shall be made from the nominees of the district judicial nominating commission. Nominees to the court of appeals shall have the qualifications prescribed for nominees to the supreme court.

Vacancies in the court of appeals shall be filled by appointment by the governor from a list of nominees submitted by the state judicial nominating commission. Three nominees shall be submitted for each vacancy. If the governor fails to make an appointment within thirty days after a list of nominees has been submitted, the appointment shall be made from the list of nominees by the chief justice of the supreme court.

Sec. 39. Section forty-six point sixteen (46.16), Code 1975, is amended to read as follows:

46.16 TERMS OF JUDGES. Subject to the provisions of sections 605.24 and 605.25 and to removal for cause:

1. The initial term of office of judges of the supreme court, court of appeals, and district court shall be for one year after appointment and until January 4 first following the next judicial election after expiration of such year; and

2. The regular term of office of judges of the supreme court retained at a judicial election shall be eight years, and of judges of the court of appeals and district court so retained shall be six years, from the expiration of their initial or previous regular term as the case may be.

For the purpose of initial appointments to the court of appeals, two of the judges appointed shall serve an irregular term ending December thirtieth of the fourth year after expiration of the initial term prescribed in subsection one (1) of this section and two of the judges appointed shall serve an irregular term ending December thirtieth of the fifth year after expiration of the initial term prescribed in subsection one (1) of this section. Expiration of irregular terms shall be deemed expiration of regular terms for all purposes.

Sec. 40. Section forty-six point twenty (46.20), Code 1975, is amended to read as follows:

46.20 DECLARATION OF CANDIDACY. At least ninety days prior to the judicial election preceding expiration of his or her initial or regular term of office, a judge of the supreme court, court of appeals, or district court including district associate judges may file a declaration of candidacy with the state commissioner of elections, whereupon such judge shall stand for retention or rejection at that election. If a judge fails to file such declaration, his or her office shall be vacant at the end of his or her term. District associate judges filing such a declaration shall stand for retention in the county of their residence.

Sec. 41. Section forty-six point twenty-one (46.21), Code 1975, is amended to read as follows:

46.21 CONDUCT OF ELECTIONS. At least fifty-five days prior to each judicial election, the state commissioner of elections shall certify to the county commissioner of elections of each county a list of the judges of the supreme court, court of appeals and district court including district

associate judges to be voted on in such county at that election. The county commissioner of elections shall place the names upon the ballot in the order in which they appear in the certificate, unless only one county is voting thereon. The state commissioner of elections shall rotate the names in the certificate by county, or the county commissioner of elections shall rotate them upon the ballot by precinct if only one county is voting thereon. The names of all judges to be voted on shall be placed upon one ballot, which shall be in substantially the following form:

STATE OF IOWA
JUDICIAL BALLOT
(Date)

VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER EACH NAME.

SUPREME COURT

Shall the following judges of the Supreme Court be retained in office?

JOHN DOE	YES _____	NO _____
RICHARD ROE	YES _____	NO _____

COURT OF APPEALS

Shall the following judges of the Court of Appeals be retained in office?

<u>JOHN DOE</u>	<u>YES</u> _____	<u>NO</u> _____
<u>RICHARD ROE</u>	<u>YES</u> _____	<u>NO</u> _____

DISTRICT COURT

Shall the following judge or associate judge of the District Court be retained in office?

JOHN SMITH	YES _____	NO _____
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Sec. 42. Section forty-six point twenty-four (46.24), Code 1975, is amended to read as follows:

46.24 RESULTS OF ELECTION. A judge of the supreme court, court of appeals, or district court including a district associate judge must receive more affirmative than negative votes to be retained in office. When the poll is closed,

the election judges shall publicly canvass the vote forthwith. The board of supervisors shall canvass the returns at its meeting on Monday after the election, and shall promptly certify the number of affirmative and negative votes on each judge to the state commissioner of elections.

The state board of canvassers shall, at the time of canvassing the vote cast at a general election, open and canvass all of the returns for the judicial election. Each judge of the supreme court, court of appeals, or district court including a district associate judge who has received more affirmative than negative votes shall receive from the state board of canvassers an appropriate certificate so stating.

Sec. 43. Section eighty-six point thirty-nine (86.39), Code 1975, is amended to read as follows:

86.39 FEES--APPROVAL--LIEN. All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85 and 87 shall be subject to the approval of the industrial commissioner, and no lien for such service shall be enforceable without the approval of the amount thereof by the industrial commissioner. For services rendered in the district court and ~~supreme court~~ appellate courts, the attorney's fee shall be subject to the approval of a judge of the district court.

Sec. 44. Section one hundred forty-five point nineteen (145.19), Code 1975, is amended to read as follows:

145.19 APPEAL. Either party to said proceedings may take an appeal from the district court to the supreme court ~~of this state~~ in the same manner and within the same time and with like effect ~~as appeals in other civil actions are taken, and such case shall be tried in the supreme court in the same manner~~ as other appeals in ordinary civil actions at law. If the defendant be represented by an attorney appointed by the court, and, in the opinion of the court, is financially unable to meet ~~his part of~~ the expense of an appeal, the

defendant's actual and necessary expense of such appeal ~~and prosecution thereof to final decree by the supreme court~~ shall be paid by the state upon order of said the district court, ~~same to be paid~~ out of the general funds of the state not otherwise appropriated.

Sec. 45. Section one hundred forty-seven point seventy (147.70), Code 1975, is amended to read as follows:

147.70 HEARING ON APPEAL. Both parties shall have the right of appeal, ~~and in such event, the supreme court shall fix the time of hearing, and for filing abstracts and arguments.~~ Said ~~The~~ cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, ~~provided the abstracts and arguments are filed in said court in time for said action to be heard.~~

Sec. 46. Section two hundred four point three hundred five (204.305), subsection two (2), Code 1975, is amended to read as follows:

2. The board, without an order to show cause, may suspend any registration simultaneously with the institution of proceedings under section 204.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or supreme an appellate court.

Sec. 47. Section two hundred thirty-two point fifty-eight (232.58), Code 1975, is amended to read as follows:

232.58 APPEAL. An interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact. The procedure for such appeals shall be governed by the same provisions applicable

to appeals from the district court except when the decree or order affects the custody of a minor the appeal shall be heard at the earliest practicable time. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a minor and shall not discharge the minor from the custody of the juvenile court or of the person, institution, or agency to whose care the minor has been committed or placed unless otherwise ordered by the supreme appellate court on application of an appellant.

If the supreme appellate court does not dismiss the proceedings and discharge the minor, said the court shall affirm or modify the order of the juvenile court and remand the minor to the jurisdiction of the juvenile court for disposition not inconsistent with the supreme-court's finding on the appeal.

Sec. 48. Section three hundred thirty-six point two (336.2), subsection two (2), Code 1975, is amended to read as follows:

2. Appear for the state and county in all cases and proceedings in the courts of his county to which the state or county is a party, except cases brought on change of venue from another county, and to appear in the supreme-court appellate courts in all cases in which the county is a party, and also in all cases transferred on change of venue to another county, in which his county or the state is a party.

Sec. 49. Section five hundred fifty-eight point sixty-six (558.66), Code 1975, is amended to read as follows:

558.66 TITLE DECREE--ENTRY ON TRANSFER BOOKS. Upon receipt of a certificate from the clerk of the district ~~or-supreme~~ court, or an appellate court that the title to real estate has been finally established in any named person by judgment or decree ~~of-said-court~~, or by will, the auditor shall enter the same upon the transfer books, upon payment of a fee of one dollar, which fee shall be taxed as costs in the cause, collected by the clerk, and paid to the auditor at the time

of filing such certificate.

Sec. 50. Section six hundred five point two (605.2), Code 1975, is amended to read as follows:

605.2 EXPENSES. Where a judge of the district court, court of appeals, or supreme court is required, in the discharge of his official duties, to leave the county of his residence or leave the city of his residence to perform such duties, he shall be paid such actual and necessary expenses for living quarters and living expenses not to exceed the sum of twenty dollars per day and transportation expenses as shall be incurred. Expenses for judges of the court of appeals are limited as provided in section fifteen (15) of this Act.

Sec. 51. Section six hundred five point fourteen (605.14), Code 1975, is amended to read as follows:

605.14 JUDGE TO BE ATTORNEY--EXCEPTION. No person shall be eligible for, or hold the office of supreme court judge, court of appeals judge, or district judge or district associate judge who is not an attorney at law, ~~duy~~ admitted to the practice under-the-laws-of of law in this state.

Sec. 52. Section six hundred five point fifteen (605.15), Code 1975, is amended to read as follows:

605.15 PRACTICE PROHIBITED. During the time that a supreme court justice judge, court of appeals judge, district judge, district associate judge, or judicial magistrate appointed pursuant to section 602.51 is holding such office he shall not practice as an attorney or counselor or give advice in relation to any action pending or about to be brought in any of the courts of the state.

Sec. 53. Section six hundred five point twenty-four (605.24), Code 1975, is amended to read as follows:

605.24 MANDATORY RETIREMENT. All judges of the supreme court, court of appeals, or district court who shall have reached the mandatory retirement age, shall cease to hold office. The mandatory retirement age shall be seventy-five

years for all judges of the supreme court or district court holding office on July 1, 1965. The mandatory retirement age shall be seventy-two years for all judges of the supreme court, court of appeals, or district court appointed to office after July 1, 1965.

Sec. 54. Section six hundred five point twenty-five (605.25), Code 1975, is amended to read as follows:

605.25 TEMPORARY SERVICE BY RETIRED JUDGES. Judges of the supreme court, court of appeals and district court who are hereafter retired by reason of age, or who are drawing benefits under section 605A.6, may with their consent be assigned by the supreme court to temporary judicial duties on any a court in the this state,--however-only-retired-supreme court-judges-may-be-assigned-to-the-supreme-court-and-only in-the-case-of-temporary-absence-of-a-member-of-the-supreme court: However, a retired judge shall not be assigned to temporary judicial duties on any court superior to the highest court to which that judge had been appointed prior to retirement, and a judge may not be assigned for temporary duties with the supreme court or the court of appeals except in the case of a temporary absence of a member of one of those courts. ~~No-such A~~ retired judge shall not engage in the practice of law unless he shall file with the clerk of the supreme court an election to practice law, in which event he shall thereafter be ineligible for assignment to temporary judicial duties at any time. While serving under temporary assignment as herein provided, a retired judge shall receive the compensation and actual expense provided by law for judges on the court to which he is assigned, but shall not receive any annuity payments to which he may be entitled under the judicial retirement system. He may be authorized in the order of assignment to appoint a temporary reporter, who shall receive the compensation and actual expense provided by law for a regular reporter in the court to which the judge is assigned. The order of assignment shall be filed in the

offices of the clerks of court at the places where the judge is to serve.

Sec. 55. Section six hundred five point twenty-seven (605.27), Code 1975, is amended to read as follows:

605.27 POWER OF SUPREME COURT. Upon application by the commission on judicial qualifications, the supreme court shall have power to do either of the following:

1. Retire a district associate judge or, a district associate judge of-the-district-court-or, a judge of the court of appeals, or a judge of the supreme court for permanent physical or mental disability which substantially interferes with the performance of his judicial duties.

2. Discipline or remove any ~~such~~ judge referred to in subsection one (1) of this section for persistent failure to perform his duties, habitual intemperance, willful misconduct in office, conduct which brings judicial office into disrepute, or substantial violation of the canons of judicial ethics. Discipline may include suspension without pay for a definite period of time not to exceed twelve months.

Sec. 56. Section six hundred five A point three (605A.3), Code 1975, is amended to read as follows:

605A.3 NOTICE BY JUDGE IN WRITING. This chapter shall not apply to any judge of the municipal, superior, or district court including a district associate judge, or a judge of the court of appeals or of the supreme court, including-a district-associate-judge, until he gives notice in writing, while serving as a judge, to the state comptroller and treasurer of state, of his purpose to come within its purview. Judges of the municipal and superior courts shall at the same time give a copy of such notice to the city treasurer and county auditor within the district of such court. Such notice shall be given within one year after the effective date hereof or within one year after any date on which he takes oath of office as such judge.

Sec. 57. Section six hundred five A point four (605A.4),

Code 1975, is amended to read as follows:

605A.4 DEPOSIT BY JUDGE--DEDUCTIONS--CONTRIBUTIONS BY GOVERNING BODY. Each judge coming within the purview of this chapter shall, on or before retirement, pay to the court administrator for deposit with the treasurer of state to the credit of a fund to be known as the "judicial retirement fund", hereinafter called the "fund", a sum equal to four percent of his basic salary for services as such judge for the total period of service as a judge of a municipal, superior, district or supreme court, or the court of appeals, including district associate judges, before the date of said notice, and after the date of the notice there shall be deducted and withheld from the basic salary of each judge coming within the purview of this chapter a sum equal to four percent of such basic salary. Provided that the maximum amount which any judge shall be required to contribute for past service shall not exceed for municipal or superior or district associate judges thirty-five hundred dollars, for district judges four thousand dollars, for court of appeals judges four thousand five hundred dollars, and for supreme court judges five thousand dollars. The amounts so deducted and withheld from the basic salary of each said judge shall be paid to the court administrator for deposit with the treasurer of state to the credit of the judicial retirement fund, and said fund is hereby appropriated for the payment of annuities, refunds, and allowances herein provided, except that the amount of such appropriations affecting payment of annuities, refunds, and allowances to judges of the municipal and superior court shall be limited to that part of said fund accumulated for their benefit as hereinafter provided. The judges of the municipal, superior, district and supreme court, and the court of appeals, including district associate judges, coming within the provisions of this chapter shall be deemed to consent and agree to the deductions from basic salary as provided herein and payment less such deductions shall be

a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services rendered by such judges during the period covered by such payment, except the right to the benefits to which they shall be entitled under the provisions of this chapter. The state shall contribute a sum not exceeding three percent of the basic salary of all judges of the district and supreme court for the years 1949 and 1950 and thereafter such sums as may be necessary over the amount contributed by the district and supreme court judges to finance the system, but only to the extent that the system applies to them. After June 30, 1973, the state shall contribute such sums as may be necessary over the amount contributed by district associate judges to finance the system as to them for the portion of their tenure after July 1, 1973, and thereafter such sums as may be necessary over the amount contributed by the district associate judges to finance the system, but only to the extent the system applies to them; and the respective cities and counties within each municipal and superior court district shall contribute the additional amount necessary pursuant to the next paragraph of this section, for the portion of the tenure of such district associate judges prior to July 1, 1973. After the effective date of this Act, the state shall contribute such sums as may be necessary over the amount contributed by judges of the court of appeals to finance the system, but only to the extent the system applies to them.

Sec. 58. Section six hundred five A point eight (605A.8), Code 1975, is amended to read as follows:

605A.8 INDIVIDUAL ACCOUNTS--REFUNDING. The amounts deducted and withheld from the basic salary of each judge of the municipal, superior, district or supreme court, or court of appeals, including district associate judges, for the credit of the judicial retirement fund and all amounts paid into such fund by each judge shall be credited to the individual account of such judge. In the event a judge of

the municipal, superior, district or supreme court, court of appeals, including district associate judges, becomes separated from service as such judge before he completes an aggregate of six years of service as a judge of one or more of such courts, the total amount of his contribution to the fund shall be returned to said judge or his legal representatives, and in the event a judge who has completed an aggregate of six years or more of service as a judge of one or more of such courts, dies before retirement, without a survivor, the total amount of his contribution to the fund shall be paid in one sum to his legal representatives, and in the event an annuitant under this section dies without a survivor, without having received in annuities an amount equal to the total amount remaining to his credit at the time of his separation from service, the amount remaining to his credit shall be paid in one sum to his legal representatives.

Sec. 59. Section six hundred five A point twelve (605A.12), Code 1975, is amended to read as follows:

605A.12 VOLUNTARY RETIREMENT FOR DISABILITY. Any judge of the supreme, district or municipal court, including a district associate judge, or a judge of the court of appeals, who shall have served as a judge of one or both more of such courts for a period of six years in the aggregate and who believes he has become permanently incapacitated, physically or mentally, to perform the duties of his office may personally or by his next friend or guardian file with the court administrator a written application for retirement. The application shall be filed in duplicate and accompanied by an affidavit as to the duration and particulars of his service and the nature of his incapacity. The court administrator shall forthwith transmit one copy of the application and affidavit to the chief justice who shall request the attorney general in writing to cause an investigation to be made relative to the claimed incapacity and report back the results thereof in writing. If the chief justice finds from the

report of the attorney general that the applicant is permanently incapacitated, physically or mentally, to perform the duties of his office he shall by his endorsement thereon declare the applicant retired, and the office vacant, and shall file the report in the office of the court administrator, and a copy in the office of the secretary of state. From the date of such filing the applicant shall be deemed retired from his office and entitled to the benefits of this chapter to the same extent as if he had retired under the provisions of section 605A.6.

Sec. 60. Section six hundred five A point fourteen (605A.14), Code 1975, is amended to read as follows:

605A.14 FORFEITURE OF BENEFITS--REFUND. In the event a judge of the supreme, district or municipal court including a district associate judge, or a judge of the court of appeals, is removed for cause other than permanent disability he and his survivor shall forfeit the right to any retirement benefits under the system but the total amount of his contribution to the fund shall be returned to him or his legal representative.

Sec. 61. Section six hundred six point fourteen (606.14), Code 1975, is amended to read as follows:

606.14 CHANGE IN TITLE--CERTIFICATION. Where the title of any real estate is finally established in any person or persons by a judgment or decree of said the district court or of-the-supreme by a decision of an appellate court, or where title to real estate is changed by judgment, decree, will, proceeding, or order in probate, the clerk of the district court shall certify the same, under the seal of said court, to the county auditor of the county in which said land is located.

Sec. 62. Section six hundred twenty-four point two (624.2), Code 1975, is amended to read as follows:

624.2 ORDINARY ACTIONS--EVIDENCE ON APPEAL. Upon appeal, in ordinary actions no evidence shall go to the supreme

appellate court except such as may be necessary to explain any exception taken in the cause, and such court shall hear and try the case only on the legal errors so presented.

Sec. 63. Section six hundred twenty-four point four (624.4), Code 1975, is amended to read as follows:

624.4 EQUITABLE ACTIONS--EVIDENCE ON APPEAL. The evidence in actions cognizable in equity shall be presented on appeal to the supreme appellate court, which shall try such causes anew. However, upon certiorari to the supreme court of equity actions heard by the court of appeals the review may be limited in scope as provided in the rules of appellate procedure.

Sec. 64. Section six hundred twenty-four point five (624.5), Code 1975, is amended to read as follows:

624.5 ABSTRACTS IN EQUITY CAUSES. In equitable causes, where the evidence is taken in the form of depositions, the district court may require to be submitted with the arguments an abstract of the pleadings and evidence, substantially as required by the rules of the-supreme-court appellate procedure for abstracts in appeals in equitable causes, except that the same need not be printed.

Sec. 65. Section six hundred twenty-four point fifteen (624.15), Code 1975, is amended to read as follows:

624.15 MUST BE ON MATERIAL POINT. No exception shall be regarded in the-supreme an appellate court unless the ruling has been on a material point, and the effect thereof prejudicial to the rights of the party excepting.

Sec. 66. Section six hundred twenty-four point twenty-three (624.23), Code 1975, is amended to read as follows:

624.23 LIENS OF JUDGMENTS. Judgments in the supreme appellate or district court courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all he may subsequently acquire, for the period of ten years from the date of the judgment.

Sec. 67. Section six hundred twenty-four point twenty-five (624.25), Code 1975, is amended to read as follows:

624.25 SUPREME APPELLATE COURT JUDGMENTS. The lien of judgments of the supreme-court appellate courts of Iowa shall not attach to any real estate until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies.

Sec. 68. Section six hundred twenty-four point twenty-six (624.26), Code 1975, is amended to read as follows:

624.26 DOCKETING TRANSCRIPT. Such clerk shall, on the filing of such transcript of the judgment of the supreme appellate or district court of this state or of the circuit or district court of the United States in his office, immediately proceed to docket and index the same, in the same manner as though rendered in the court of his own county.

Sec. 69. Section six hundred twenty-five point nine (625.9), Code 1975, is amended to read as follows:

625.9 TRANSCRIPTS--RETAXATION. The fees of shorthand reporters for making transcripts of the notes in any case or any portion thereof, as directed by any party thereto, shall be taxed as costs, as shall also the fees of the clerk for making any transcripts of the record required on appeal, but such taxation may be revised by the-supreme an appellate court on motion on the appeal, without any motion in the lower court for the retaxation of costs.

Sec. 70. Section six hundred twenty-five point eighteen (625.18), Code 1975, is amended to read as follows:

625.18 BILL OF COSTS ON APPEAL. In cases of appeals from a trial court, the supreme court clerk, if ~~final~~ judgment is rendered in the supreme court or court of appeals or both, shall make a complete bill of costs in that court which shall be filed in the office of the clerk of the trial court and taxed with the costs in the action therein.

Sec. 71. Section six hundred twenty-five point nineteen (625.19), Code 1975, as amended by Acts of the Sixty-sixth

General Assembly, 1975 Session, chapter two hundred forty-nine (249), section one (1), is amended to read as follows:

625.19 COSTS IN ~~SUPREME-COURT~~ APPELLATE COURTS. When the costs accrued in the ~~supreme-court~~ appellate courts and the trial court are paid to the clerk of the trial court, ~~he~~ the clerk shall pay them to the persons entitled thereto.

Sec. 72. Section six hundred twenty-six point two (626.2), Code 1975, is amended to read as follows:

626.2 WITHIN WHAT TIME--TO WHAT COUNTIES. Executions may issue at any time before the judgment is barred by the statute of limitations; and upon those in the district and supreme appellate courts, into any county which the party ordering may direct.

Sec. 73. Section six hundred thirty point one (630.1), Code 1975, is amended to read as follows:

630.1 DEBTOR EXAMINED. When execution against the property of a judgment debtor, or one of several debtors in the same judgment, has been issued from the district court or supreme an appellate court to the sheriff of the county where such debtor resides, or if he ~~do~~ or she does not reside in the state, to the sheriff of the county where the judgment was rendered, and execution issued thereon is returned unsatisfied in whole or in part, the owner of the judgment is entitled to an order for the appearance and examination of such the debtor.

Sec. 74. Section six hundred thirty-one point sixteen (631.16), subsections six (6), seven (7), eight (8) and nine (9), Code 1975, are amended to read as follows:

6. The record and case shall be presented to the supreme court as provided by ~~its~~ the rules of appellate procedure; and the provisions of law in civil procedure relating to the filing of decisions and opinions of the supreme court shall apply in such cases. The case may be transferred to the court of appeals by the supreme court.

7. An application shall not be dismissed for an informality

or defect in taking it if corrected as directed by the supreme appellate court. The supreme appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the lower court judgment, and may order a new trial. It also may dismiss the application if both of the following are true:

a. The court determines that there has been no substantial miscarriage of justice.

b. The arguments do not present definite grounds for a hearing.

8. The decision of the supreme appellate court with any opinion filed or judgment rendered must be recorded by ~~its~~ the supreme court clerk. After the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its rules, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, and filed and entered of record in the district court.

9. The jurisdiction of the supreme appellate court shall cease after the certified copy of the decision and opinion is transmitted to the clerk of the trial court. All proceedings for executing the judgment shall be had in the trial court or by its clerk.

Sec. 75. Section six hundred sixty-one point four (661.4), Code 1975, is amended to read as follows:

661.4 ORDER ISSUED. The order may be issued by the district court to any inferior tribunal, or to any corporation, officer, or person; and by the supreme court or the court of appeals to any district inferior court, if necessary, and in any other case where it is found necessary for ~~that-court~~ either of those courts to exercise its legitimate power.

Sec. 76. Section six hundred sixty-five point four (665.4), subsection one (1), Code 1975, is amended to read as follows:

1. In the supreme court or the court of appeals, by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding six months, or by both such

fine and imprisonment.

Sec. 77. Section six hundred eighty-four point one (684.1), Code 1975, is amended by striking the section and inserting in lieu thereof the following:

684.1 JURISDICTION.

1. The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law. The jurisdiction of the supreme court shall be coextensive with the state.

2. Any civil or criminal action or special proceeding filed with the supreme court for appeal or review, may be transferred by the supreme court to the court of appeals by issuing an order of transfer. The jurisdiction of the supreme court in such a matter shall cease upon the filing of that order by the clerk of the supreme court. Any matter which has been transferred to the court of appeals pursuant to order of the supreme court shall not thereafter be subject to the jurisdiction of the supreme court, except as provided in subsection four (4) of this section.

3. The supreme court shall promulgate rules for the transfer of matters to the court of appeals. Those rules may provide for the selective transfer of individual cases and may provide for the transfer of cases according to subject matter or other general criteria. Rules relating to the transfer of cases shall be subject to the provisions of section six hundred eighty-four point nineteen (684.19) of the Code. A rule shall not provide for the transfer of a matter other than by an order of transfer as provided in subsection two (2) of this section.

4. Any party to an appeal decided by the court of appeals may, as a matter of right, file an application with the supreme court for further review. An application for further review shall not be granted by the supreme court unless the application was filed within twenty days following the filing of the decision of the court of appeals. The court of appeals

may extend the time for filing of an application if the court of appeals determines that a failure to timely file an application was due to the failure of the clerk of the court of appeals to notify the prospective applicant of the filing of the decision. If an application for further review is not acted upon by the supreme court within thirty days after the application was filed, the application shall be deemed denied, the supreme court shall lose jurisdiction, and the decision of the court of appeals shall be conclusive.

5. The supreme court shall promulgate rules of appellate procedure which shall govern further review by the supreme court of decisions of the court of appeals. Such rules shall contain, but need not be limited to, a specification of the grounds upon which further review may, in the discretion of the supreme court, be granted. Rules promulgated pursuant to this subsection shall be subject to section six hundred eighty-four point nineteen (684.19) of the Code.

Sec. 78. Section six hundred eighty-four point two (684.2), Code 1975, is amended to read as follows:

684.2 JUDGES--QUORUM--DIVISIONS.

1. The supreme court shall consist of nine judges. A majority of the judges sitting shall constitute a quorum but in no case shall a quorum consist of less than three judges.

2. The supreme court may be divided into divisions of three or more judges in such manner as it may by rule prescribe. Said divisions may hold open court separately and cases may be submitted to each division separately, in accordance with such rules as the court may adopt.

Sec. 79. Section six hundred eighty-four point eighteen (684.18), Code 1975, is amended to read as follows:

684.18 RULES ~~IN CIVIL~~ FOR ACTIONS AND PROCEEDINGS.

1. The supreme court shall have the power to prescribe all rules of pleading, practice and procedure, and the forms of process, writs and notices, for all proceedings of a civil nature in all courts of this state, for the purpose of

simplifying the same, and of promoting the speedy determination of litigation upon its merits. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.

2. The supreme court shall have the power to prescribe rules of appellate procedure relating to appeals to and review by the supreme court, discretionary review by the courts of small claims actions, review by the supreme court by writ of certiorari to inferior courts, and appeal or review by the court of appeals of a matter transferred to that court by the supreme court. Rules prescribed pursuant to this subsection shall be known as "Rules of Appellate Procedure", and shall be codified apart from rules of civil procedure applicable in the district court and other rules prescribed by the supreme court.

3. Rules prescribed pursuant to this section shall be subject to section six hundred eighty-four point nineteen (684.19) of the Code.

Sec. 80. Section six hundred eighty-five point five (685.5), Code 1975, is amended to read as follows:

685.5 DEPUTY CLERK OF SUPREME COURT--QUALIFICATION--DUTIES. ~~The clerk-of-the-supreme-court~~ court administrator may appoint, in writing, any person, except one holding a state office, as deputy clerk of the supreme court, which appointment must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner, ~~both-the.~~ The appointment and the revocation to shall be filed and kept in the office of the secretary of state. The deputy shall qualify by taking the oath of the principal, to be endorsed upon and filed with the certificate of appointment, and, when so qualified, he the deputy shall, in the absence or disability of the clerk, perform all of the duties of such the clerk pertaining to his-office. The deputy clerk also shall perform such duties with respect to the court of appeals as are prescribed by

the court administrator.

Sec. 81. Section six hundred eighty-six point two (686.2), Code 1975, is amended to read as follows:

686.2 MOTION FOR NEW TRIAL. ~~The-supreme~~ An appellate court on appeal may review and reverse any judgment or order of the district court, although no motion for a new trial was made in such court.

Sec. 82. Section six hundred eighty-six point seven (686.7), Code 1975, is amended to read as follows:

686.7 TRANSMISSION. The transcript of any paper or exhibit required for use in ~~the-supreme~~ an appellate court may be transmitted thereto by the clerk of the trial court by express or other safe and speedy method, but not by a party or any attorney of a party.

Sec. 83. Section six hundred eighty-six point eight (686.8), Code 1975, is amended to read as follows:

686.8 RETURN OF ORIGINAL PAPERS. If a new trial is granted by ~~the-supreme~~ an appellate court, the clerk, as soon as the cause is at an end therein, shall transmit to the clerk of the court below all original papers or exhibits certified up from said court, and may at any time return any such papers when no new trial is awarded.

Sec. 84. Section six hundred eighty-six point thirteen (686.13), Code 1975, is amended to read as follows:

686.13 ARGUMENTS IN RE CONSTITUTIONAL TEST. If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the appellant shall file a written argument with the supreme court within ten days after the filing of the abstract and appellee shall file his argument within ten days thereafter, and appellant shall then file his reply within three days. The cause shall then be submitted to the supreme court in regular or special ~~full~~ bench en banc session as soon thereafter as the chief justice may order.

Sec. 85. Section six hundred eighty-six point fourteen

(686.14), Code 1975, is amended to read as follows:

686.14 REMAND--PROCESS. If ~~the-supreme~~ an appellate court affirms the judgment or order of an inferior court, it may send the cause to the appropriate court below to have the same carried into effect, or may issue the necessary process for this purpose, directed to the sheriff of the proper county, as the party may require.

Sec. 86. Section six hundred eighty-six point fifteen (686.15), Code 1975, is amended to read as follows:

686.15 RESTITUTION OF PROPERTY. If, by the decision of ~~the-supreme~~ an appellate court, the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of such a judgment or order, either the supreme appellate court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to him such property or its value.

Sec. 87. Section six hundred eighty-six point eighteen (686.18), Code 1975, is amended to read as follows:

686.18 EXECUTIONS. Executions issued from the supreme court appellate courts shall be like those from the district court, attended with the same consequences, and returnable in the same time.

Sec. 88. Section seven hundred forty-eight point one (748.1), Code 1975, is amended to read as follows:

748.1 "MAGISTRATE" DEFINED. The term "magistrate" includes all judges of the supreme court, court of appeals and district courts and all district associate judges and judicial magistrates.

Sec. 89. Section seven hundred fifty-one point one (751.1), Code 1975, is amended to read as follows:

751.1 DEFINITIONS. A search warrant is an order in writing, in the name of the state, signed by a magistrate, other than a judge of the supreme court or the court of appeals, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

Sec. 90. Section seven hundred fifty-one point four (751.4), unnumbered paragraph one (1), Code 1975, is amended to read as follows:

Any credible resident of this state may make application for the issuance of a search warrant by filing before any magistrate, except a judge of the supreme court or the court of appeals, a written information, supported by his oath or affirmation, and alleging therein the existence of any ground or grounds specified in this chapter as ground for the issuance of a search warrant and that he believes and has substantial reason to believe that said ground or grounds exist in fact. Said information shall describe with reasonable certainty the person or premises, or both, to be searched, the property to be seized, and the person, if known, in possession of said premises and property.

Sec. 91. Section seven hundred sixty point one (760.1), Code 1975, is amended to read as follows:

760.1 PUBLIC OFFENSE THREATENED--COMPLAINT--ARREST. When complaint is made before a magistrate, other than a judge of the supreme court or court of appeals, that any person has threatened to commit any public offense punishable by law, and such magistrate is satisfied that there is reason to fear the commission thereof, he may issue a warrant for the arrest of the person complained of; and the officer to whom the same shall be delivered for service shall forthwith arrest and bring the accused before such magistrate, or, in case of his absence or inability to act, before the nearest and most accessible magistrate of the same county. When the name of the person complained of is unknown, he may be designated in the warrant by any name, and the warrant issued in pursuance hereof may be executed by any peace officer in any county of the state.

Sec. 92. Section seven hundred sixty-two point four (762.44), Code 1975, is amended to read as follows:

762.44 APPEAL ~~TO~~-SUPREME FROM THE DISTRICT COURT. After

appeal to a district judge in a nonindictable case, either party may appeal from the judgment of the district judge to the supreme court in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects, as far as applicable. The same proceedings shall be had to carry into effect the judgment of ~~the supreme~~ an appellate court upon the appeal as if it had been taken from a judgment prosecuted by indictment.

Sec. 93. Section seven hundred sixty-three point nine (763.9), Code 1975, is amended to read as follows:

763.9 BAIL ON APPEAL--CONDITIONS. After conviction, ~~and upon an appeal to the supreme court,~~ the defendant must be admitted to bail, if it be from a judgment imposing a fine, upon the undertaking of bail that he will, in all respects, abide the orders and the judgment of ~~the supreme~~ an appellate court upon the appeal; if from a judgment of imprisonment, upon the undertaking of bail that the defendant will surrender himself in execution of the judgment and direction of the supreme appellate court, and in all respects abide the orders and judgment of the supreme appellate court upon the appeal.

Sec. 94. Section seven hundred sixty-three point ten (763.10), Code 1975, is amended to read as follows:

763.10 BY WHOM TAKEN. The bail may be taken, either by the court where the judgment was rendered, or the district court of the county in which he is imprisoned, or by the supreme appellate court, or a judge or clerk of any of such courts.

Sec. 95. Section seven hundred sixty-three point eighteen (763.18), subsection two (2), Code 1975, is amended to read as follows:

2. In any case in which a court denied a motion under subsection 1 to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may

be taken to the supreme court. The appeal shall be determined summarily without briefs on the record made in the district court. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The supreme appellate court may, on its own motion, order the parties to submit briefs and set the time in which such briefs shall be filed. Any order so appealed shall be affirmed if it is supported by the proceedings in the district court. If the order is not so supported the court may remand the case for a further hearing, or may, with or without additional evidence, order the defendant released pursuant to section 763.17, subsection 1.

Sec. 96. Section seven hundred sixty-nine point one (769.1), Code 1975, is amended to read as follows:

769.1 OFFENSES PROSECUTED ON INFORMATION--JURISDICTION. Criminal offenses in which the punishment exceeds a fine of one hundred dollars or exceeds imprisonment for thirty days may be prosecuted to final judgment, either on indictment, as is now or may be hereafter provided, or on information as herein provided, and the district and supreme appellate courts shall possess and exercise the same power and jurisdiction to hear, try, and determine prosecutions on information, as herein provided, for all such criminal offenses, to issue writs and process, and do all other acts therein, as they possess and may exercise in cases of like prosecutions upon indictment.

Sec. 97. Section seven hundred seventy-five point five (775.5), Code 1975, is amended to read as follows:

775.5 FEE FOR ATTORNEY DEFENDING. An attorney appointed by the court to defend any person charged with a crime in this state shall be entitled to a reasonable compensation to be decided in each case by the court, including such sum or sums as the court may determine are necessary for

investigation in the interests of justice and in the event of appeal the cost of obtaining the transcript of the trial and the printing of the trial record and necessary briefs in behalf of the defendant. Such attorney need not follow the case into another county or into the supreme appellate court unless so directed by the court at the request of the defendant, where grounds for further litigation are not capricious or unreasonable, but if he does so his fee shall be determined accordingly. Only one attorney fee shall be so awarded in any one case.

Sec. 98. Section seven hundred ninety-three point one (793.1), Code 1975, is amended to read as follows:

793.1 OFFICE OF APPEAL--WHO MAY APPEAL. The mode of reviewing in the supreme-court appellate courts any judgment, action, or decision of the district court in a criminal case which is an indictable offense is by appeal. Either the defendant or state may appeal.

Sec. 99. Section seven hundred ninety-three point seven (793.7), final unnumbered paragraph, Code 1975, is amended to read as follows:

Such manuscripts shall be prepared in ample time so that the same may be printed and filed within the time and in the manner prescribed by law and the rules of ~~the-supreme-court~~ appellate procedure.

Sec. 100. Section seven hundred ninety-three point thirteen (793.13), Code 1975, is amended to read as follows:

793.13 PERSONAL APPEARANCE OF DEFENDANT. The personal appearance of the defendant in the supreme-court appellate courts on the trial of an appeal is ~~in-no-case-necessary~~ not required.

Sec. 101. Section seven hundred ninety-three point fourteen (793.14), Code 1975, is amended to read as follows:

793.14 INFORMALITY OR DEFECT. An appeal shall not be dismissed for any informality or defect in taking it, if corrected in a reasonable time; and the supreme appellate

court must direct how it shall be corrected.

Sec. 102. Section seven hundred ninety-three point seventeen (793.17), Code 1975, is amended to read as follows:

793.17 RULES OF PROCEDURE. The record and case may be presented in the supreme appellate court by printed abstracts, arguments, motions, and petitions for rehearing as provided by ~~its~~ the rules of appellate procedure; and the provisions of law in civil procedure relating to certification of the record and the filing of decisions and opinions of the supreme court appellate courts shall apply in such cases.

Sec. 103. Section seven hundred ninety-three point eighteen (793.18), Code 1975, is amended to read as follows:

793.18 DECISION OF SUPREME APPELLATE COURT. If the appeal is taken by the defendant, the supreme appellate court must examine the record, without regard to technical errors or defects which do not affect the substantial rights of the parties, and render such judgment on the record as the law demands; it may affirm, reverse, or modify the judgment, or render such judgment as the district court should have done, or order a new trial, or reduce the punishment, but cannot increase it.

Sec. 104. Section seven hundred ninety-three point twenty (793.20), Code 1975, is amended to read as follows:

793.20 DECISIONS IN APPEALS BY STATE. If the state appeals, the supreme appellate court cannot reverse or modify the judgment so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings or in the measure of punishment, and its decision shall be obligatory as law.

Sec. 105. Section seven hundred ninety-three point twenty-one (793.21), Code 1975, is amended to read as follows:

793.21 REVERSAL--EFFECT. If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the supreme appellate court shall direct that the defendant be discharged and his bail

exonerated, or if money be deposited instead, that it be refunded to him.

Sec. 106. Section seven hundred ninety-three point twenty-two (793.22), Code 1975, is amended to read as follows:

793.22 AFFIRMANCE--EFFECT. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the supreme appellate court shall direct, except as otherwise provided.

Sec. 107. Section seven hundred ninety-three point twenty-three (793.23), Code 1975, is amended to read as follows:

793.23 OPINION OF SUPREME APPELLATE COURT. The opinion of the supreme appellate court must be in writing, filed with its clerk, and recorded.

Sec. 108. Section seven hundred ninety-three point twenty-four (793.24), Code 1975, is amended to read as follows:

793.24 DECISION RECORDED AND TRANSMITTED. The decision of the supreme appellate court, with any opinion filed or judgment rendered, must be recorded by its clerk, and, after the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its the rules of appellate procedure, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, filed and entered of record by him, and thereafter the jurisdiction of the supreme appellate court shall cease, and all proceedings necessary for executing the judgment shall be had in the trial court, or by its clerk.

Sec. 109. Section seven hundred ninety-three point twenty-six (793.26), Code 1975, is amended to read as follows:

793.26 TIME OF IMPRISONMENT DEDUCTED. If a defendant, imprisoned during the pendency of an appeal, upon a new trial ordered by the supreme appellate court is again convicted, the period of his former imprisonment shall be deducted from the period of imprisonment to be fixed on the last verdict of conviction.

Sec. 110. The Code editor is directed to codify sections

one (1) through twenty-five (25) of this Act as a new chapter of the Code.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 1092, Sixty-sixth General Assembly.

STEVEN C. CROSS
Secretary of the Senate

Approved May 24, 1976

ROBERT D. RAY
Governor