

Dr. Pass 3/9/83 (p. 698)

Judiciary
Ritsem, Chair
Delahery
Welsh

See Conference 3/19/83

Senate File 24

-02

SENATE FILE

24

Judiciary and Law Enforcement: Hammond, Chair; Corey and Holveck.

DOYLE

Dr. Pass 4/23 (p. 1245)

Passed Senate, Date 3-15-83 (p. 164) Passed House, Date 3-29-84 (p. 1481)

Vote: Ayes 48 Nays 0 Vote: Ayes 100 Nays 0

Approved May 3, 1984

Motion to reconsider (p. 1508) 4/10 4/12 (1457)

A BILL FOR

- 1 An Act relating to procedures in small claims actions.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 24

H-5932

- 1 Amend Senate File 24, as passed by the Senate as
- 2 follows:
- 3 1. Page 1, by inserting before line 1 the
- 4 following:
- 5 "Section 1. Section 331.655, subsection 1,
- 6 paragraph a, Code Supplement 1983, is amended to read
- 7 as follows:
- 8 a. For serving a notice and returning it, for
- 9 the first person served, six twenty dollars, and each
- 10 additional person, six twenty dollars except the fee
- 11 for serving additional persons in the same household
- 12 shall be three ten dollars for each additional service,
- 13 or if the service of notice cannot be made or several
- 14 attempts are necessary, the repayment of all necessary
- 15 expenses actually incurred by the sheriff while
- 16 attempting in good faith to serve the notice."
- 17 2. By renumbering as necessary.

H-5932 FILED MARCH 28, 1984 BY WOODS of Polk

Revised and germane 3/29 (p. 1451)

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1 Section 1. Section 631.3, subsection 3, Code 1983, is
2 amended to read as follows:

3 3. The clerk shall cause to be entered upon each copy
4 of the original notice and in the docket the ~~day-for-appearance~~
5 time within which the defendant is required to appear, which
6 date time shall be determined in accordance with section
7 631.4. ~~Appearance-dates-shall-be-set-only-for-days-on-which~~
8 ~~the-office-of-the-clerk-is-scheduled-to-be-open-~~

9 Sec. 2. Section 631.4, subsection 1, Code 1983, is amended
10 by striking the subsection and inserting in lieu thereof the
11 following:

12 1. ACTIONS FOR MONEY JUDGMENT. In an action for money
13 judgment the clerk shall cause service to be obtained as
14 follows, and the defendant is required to appear within the
15 period of time specified:

16 a. If the defendant is a resident of this state, or if
17 the defendant is a nonresident of this state and is subject
18 to the jurisdiction of the court under rule of civil procedure
19 56.2, the plaintiff may elect service under this paragraph,
20 and upon receipt of the prescribed costs the clerk shall mail
21 to the defendant by certified mail, restricted delivery, re-
22 turn receipt to the clerk requested, a copy of the original
23 notice together with a conforming copy of an answer form.
24 The defendant is required to appear within twenty days fol-
25 lowing the date service is made.

26 b. If the defendant is a resident of this state, or if
27 the defendant is a nonresident of this state and is subject
28 to the jurisdiction of the court under rule of civil procedure
29 56.2, the plaintiff may elect service under this paragraph,
30 and upon receipt of the prescribed costs the clerk shall cause
31 a copy of the original notice and a conforming copy of an
32 answer form to be delivered to a peace officer or other person
33 for personal service as provided in rule of civil procedure
34 52, 56.1 or 56.2. The defendant is required to appear within
35 twenty days following the date service is made.

1 c. If the defendant is a nonresident of this state and
2 is subject to the jurisdiction of the court under rule of
3 civil procedure 56.2, the plaintiff may elect service in any
4 other manner that is approved by the court as provided in
5 that rule, and the defendant is required to appear within
6 sixty days after the date of service.

7 d. If the defendant is a nonresident of this state and
8 is subject to the jurisdiction of the court under section
9 617.3, the plaintiff may elect that service be made as provided
10 in that section. The clerk shall collect the prescribed fees
11 and costs, and shall cause duplicate copies of the original
12 notice to be filed with the secretary of state and shall cause
13 a copy of the original notice and a conforming copy of an
14 answer form to be mailed to the defendant in the manner
15 prescribed in section 617.3. The defendant is required to
16 appear within sixty days from the date of filing with the
17 secretary of state.

18 Sec. 3. Section 631.5, subsection 2, Code 1983, is amended
19 to read as follows:

20 2. HEARING SET. If all defendants either have entered
21 a timely appearance or have defaulted, the clerk shall assign
22 a contested claim to the small claims calendar for hearing
23 at a place and time certain. The time of hearing shall be
24 not less than five days nor more than twenty days after the
25 latest timely appearance, unless otherwise ordered by the
26 court. The clerk shall transmit the original notice and all
27 other papers relating to the case to the judicial officer
28 to whom the case is assigned, and copies of all papers so
29 transmitted shall be retained in the clerk's office.

30 Sec. 4. Section 631.5, subsection 5, Code 1983, is amended
31 by striking the subsection.

32 Sec. 5. Section 631.12, Code 1983, is amended by adding
33 the following new unnumbered paragraph:

34 NEW UNNUMBERED PARAGRAPH. A defendant may move to set
35 aside a default judgment in the manner provided for doing

1 so in district court by rule of civil procedure 236.

2 Sec. 6. Section 631.13, subsection 1, Code 1983, is amended
3 to read as follows:

4 1. NOTICE. An appeal from a judgment in small claims
5 may be taken by any party by giving oral notice to the court
6 at the conclusion of the hearing, or by filing a written
7 notice of appeal with the clerk within ~~ten~~ twenty days after
8 judgment is rendered. In either case, the appealing party
9 shall pay to the clerk within that ~~ten~~ twenty days the usual
10 district court docket fee to perfect the appeal. No appeal
11 shall be taken after ~~ten~~ twenty days.

12 Sec. 7. Section 631.13, subsection 4, paragraph a, Code
13 1983, is amended to read as follows:

14 a. ~~A-district-judge-shall-promptly-hear-the~~ The appeal
15 shall be promptly heard upon the record thus filed without
16 further evidence. If the original action was tried by a
17 district judge, the appeal shall be decided by a different
18 district judge. If the original action was tried by a district
19 associate judge, the appeal shall be decided by a district
20 judge. If the original action was tried by a judicial
21 magistrate, the appeal shall be decided by a district judge
22 or a district associate judge. The judge shall decide the
23 appeal without regard to technicalities or defects which have
24 not prejudiced the substantial rights of the parties, and
25 may affirm, reverse, or modify the judgment, or render judgment
26 as the judge or magistrate should have rendered.

27 If the record, in the opinion of the ~~district~~ deciding
28 judge, is inadequate for the purpose of rendering a judgment
29 on appeal, the ~~district~~ judge may order that additional
30 evidence be presented ~~before-him~~ relative to one or more
31 issues, and may enter any other order which ~~may-be~~ is necessary
32 to protect the rights of the parties. The ~~district~~ judge
33 shall take minutes of any additional evidence, but the hearing
34 shall not be reported by a certified court reporter.

35 Sec. 8. Rule of civil procedure 181.2, paragraph (b),

1 Iowa court rules, is amended to read as follows:
 2 (b) SMALL CLAIMS APPEALS. ~~On each motion day~~ At least
 3 twice each month, the clerk of court shall present to ~~the~~
 4 ~~presiding judge~~ a district judge or district associate judge
 5 authorized by statute to hear the appeal the file and any
 6 transcript or exhibits in each small claims case in which
 7 appeal was taken more than ~~twenty~~ ten days previously. The
 8 judge ~~will~~ shall decide the appeal upon the record without
 9 oral argument unless, within ~~twenty~~ ten days after the appeal
 10 was taken, a party filed with the clerk of court a written
 11 request for oral argument specifying the issues to be argued,
 12 in which event the judge shall schedule oral argument.
 13 Additional evidence shall not be received except as authorized
 14 by statute.

15 EXPLANATION

16 This bill amends several of the procedures that apply to
17 small claims actions.

18 Sections 1 through 4 relate to the manner of obtaining
 19 service on defendants and scheduling cases in small claims
 20 actions for money judgments. The amendments would incorporate
 21 rule of civil procedure 56.2 into the small claims procedures,
 22 relating to the service of process on nonresidents. As amended
 23 a resident or nonresident that is served by personal service
 24 or by certified mail would have to enter an appearance within
 25 twenty days after the date of service. If service is made
 26 through the secretary of state under section 617.3 or if the
 27 court authorizes any other manner of service under rule 56.2,
 28 the defendant would have to enter an appearance within 60
 29 days. The sections also modify the trial scheduling procedures
 30 to permit the court to vary from the fixed statutory scheduling
 31 rules.

32 Section 5 would allow a defendant to move to set aside
 33 a default judgment in small claims court within sixty days
 34 of entry of judgment, as is presently permitted in regular
 35 civil actions.

1 Section 6 would change the latest date for filing a notice
2 of appeal of the original judgment from 10 to 20 days after
3 the judgment is rendered.

4 Sections 7 and 8 would modify the procedures applicable
5 to the hearing of small claims appeals. Section 7 would
6 authorize district associate judges to decide appeals of
7 actions originally tried by judicial magistrates. Section
8 8 modifies the applicable rule of civil procedure to
9 accommodate the change contained in section 1, and to change
10 the frequency at which pending small claims appeals are
11 assigned to judicial officers for decision.

12 The bill would take effect July 1 following enactment.

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SENATE FILE 24

AN ACT

RELATING TO PROCEDURES IN SMALL CLAIMS ACTIONS.

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

Section 1. Section 631.3, subsection 3, Code 1983, is amended to read as follows:

3. The clerk shall cause to be entered upon each copy of the original notice and in the docket the ~~day-for-appearance time within which the defendant is required to appear, which date time shall be determined in accordance with section 631.4. Appearance dates shall be set only for days on which the office of the clerk is scheduled to be open.~~

Sec. 2. Section 631.4, subsection 1, Code 1983, is amended by striking the subsection and inserting in lieu thereof the following:

1. ACTIONS FOR MONEY JUDGMENT. In an action for money judgment the clerk shall cause service to be obtained as follows, and the defendant is required to appear within the period of time specified:

a. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall mail to the defendant by certified mail, restricted delivery, return receipt to the clerk requested, a copy of the original notice together with a conforming copy of an answer form. The defendant is required to appear within twenty days following the date service is made.

b. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall cause a copy of the original notice and a conforming copy of an answer form to be delivered to a peace officer or other person for personal service as provided in rule of civil procedure 52, 56.1 or 56.2. The defendant is required to appear within twenty days following the date service is made.

c. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service in any other manner that is approved by the court as provided in that rule, and the defendant is required to appear within sixty days after the date of service.

d. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under section 617.3, the plaintiff may elect that service be made as provided in that section. The clerk shall collect the prescribed fees and costs, and shall cause duplicate copies of the original

notice to be filed with the secretary of state and shall cause a copy of the original notice and a conforming copy of an answer form to be mailed to the defendant in the manner prescribed in section 617.3. The defendant is required to appear within sixty days from the date of filing with the secretary of state.

Sec. 3. Section 631.5, subsection 2, Code 1983, is amended to read as follows:

2. HEARING SET. If all defendants either have entered a timely appearance or have defaulted, the clerk shall assign a contested claim to the small claims calendar for hearing at a place and time certain. The time of hearing shall be not less than five days nor more than twenty days after the latest timely appearance, unless otherwise ordered by the court. The clerk shall transmit the original notice and all other papers relating to the case to the judicial officer to whom the case is assigned, and copies of all papers so transmitted shall be retained in the clerk's office.

Sec. 4. Section 631.5, subsection 5, Code 1983, is amended by striking the subsection.

Sec. 5. Section 631.12, Code 1983, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A defendant may move to set aside a default judgment in the manner provided for doing so in district court by rule of civil procedure 236.

Sec. 6. Section 631.13, subsection 1, Code 1983, is amended to read as follows:

1. NOTICE. An appeal from a judgment in small claims may be taken by any party by giving oral notice to the court at the conclusion of the hearing, or by filing a written notice of appeal with the clerk within ~~ten~~ twenty days after judgment is rendered. In either case, the appealing party shall pay to the clerk within that ~~ten~~ twenty days the usual district court docket fee to perfect the appeal. No appeal shall be taken after ~~ten~~ twenty days.

Sec. 7. Section 631.13, subsection 4, paragraph a, Code 1983, is amended to read as follows:

a. ~~A district judge shall promptly hear the~~ The appeal shall be promptly heard upon the record thus filed without further evidence. If the original action was tried by a district judge, the appeal shall be decided by a different district judge. If the original action was tried by a district associate judge, the appeal shall be decided by a district judge. If the original action was tried by a judicial magistrate, the appeal shall be decided by a district judge or a district associate judge. The judge shall decide the appeal without regard to technicalities or defects which have not prejudiced the substantial rights of the parties, and may affirm, reverse, or modify the judgment, or render judgment as the judge or magistrate should have rendered.

If the record, in the opinion of the ~~district~~ deciding judge, is inadequate for the purpose of rendering a judgment on appeal, the ~~district~~ judge may order that additional evidence be presented ~~before him~~ relative to one or more issues, and may enter any other order which ~~may be~~ is necessary to protect the rights of the parties. The ~~district~~ judge shall take minutes of any additional evidence, but the hearing shall not be reported by a certified court reporter.

Sec. 8. Rule of civil procedure 181.2, paragraph (b), Iowa court rules, is amended to read as follows:

(b) SMALL CLAIMS APPEALS. ~~On each motion-day~~ At least twice each month, the clerk of court shall present to the ~~presiding-judge~~ a district judge or district associate judge authorized by statute to hear the appeal the file and any transcript or exhibits in each small claims case in which appeal was taken more than ~~twenty ten~~ ten days previously. The judge ~~will~~ shall decide the appeal upon the record without oral argument unless, within ~~twenty ten~~ ten days after the appeal was taken, a party filed with the clerk of court a written request for oral argument specifying the issues to be argued,

in which event the judge shall schedule oral argument.
Additional evidence shall not be received except as authorized
by statute.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 24, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 3, 1984

TERRY E. BRANSTAD
Governor