

Reprinted 3/25/86

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MAR 11 1986

Place On Calendar

HOUSE FILE 2433
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House Study Bill 672)

Passed House, Date 3-20-86 (p. 93c) Passed Senate, Date 4-10-86 (p. 1168)

Vote: Ayes 95 Nays 1 Vote: Ayes 49 Nays 0

Approved May 5, 1986

A BILL FOR

1 An Act relating to domestic abuse, and providing penalties.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2433

1 Section 1. Section 236.5, subsection 2, paragraph d, Code
2 1985, is amended to read as follows:

3 d. The awarding of temporary custody of or establishing
4 temporary visitation rights with regard to children under
5 eighteen. In awarding temporary custody or temporary
6 visitation rights, the court shall give primary consideration
7 to the safety of the victim and the children. If the court
8 finds that the safety of the victim or the children will be
9 jeopardized by unsupervised or unrestricted visitation, the
10 court shall condition or restrict visitation as to time,
11 place, duration, or supervision, or deny visitation entirely,
12 as needed to guard the safety of the victim and the children.

13 Sec. 2. Section 236.11, Code 1985, is amended to read as
14 follows:

15 236.11 DUTY OF PEACE OFFICER.

16 A peace officer shall use every reasonable means to enforce
17 an order or approved consent agreement issued pursuant to this
18 chapter. If a peace officer has probable cause to believe
19 that a person has violated an order or approved consent
20 agreement, the peace officer shall take the person into
21 custody and take the person before the court which issued the
22 order or agreement, at which time the court shall determine
23 whether the person has committed contempt pursuant to section
24 236.8. A peace officer shall not be held civilly or
25 criminally liable for acting pursuant to this section provided
26 that the peace officer acts in good faith, on probable cause,
27 and without malice.

28 Sec. 3. Section 236.12, subsection 2, Code Supplement
29 1985, is amended by striking the subsection and inserting in
30 lieu thereof the following:

31 2. The peace officer shall make a reasonable inquiry of
32 the person upon whom the harm has been inflicted and of any
33 witnesses, to ascertain whether there is probable danger of
34 further domestic abuse being inflicted on the person. If,
35 after inquiry, the officer has reasonable cause to believe

1 that domestic abuse has been committed and that the abused
2 person is in danger of further abuse, the peace officer shall
3 arrest the abuser.

4 Sec. 4. Section 804.7, Code Supplement 1985, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 6. As required by section 236.12,
7 subsection 2.

8 EXPLANATION

9 Section 1 of this bill provides that when temporary custody
10 or visitation rights are ordered in a domestic abuse petition,
11 they shall be ordered with primary consideration for the
12 safety of the victim and children, and allows for supervised
13 or restricted visitation when the victim or children would
14 otherwise be in jeopardy.

15 Section 2 provides that when a peace officer has probable
16 cause to believe that a domestic abuse order or agreement has
17 been violated, the officer shall take the person into custody
18 and shall take the person before the judge issuing the order
19 or agreement for a determination of whether the person is
20 guilty of contempt.

21 Section 3 provides that when a peace officer has reasonable
22 cause to believe that a person has committed domestic abuse
23 and that the victim is in danger of further abuse, the officer
24 shall arrest the abuser.

25 Section 4 makes a corresponding reference to the peace
26 officer's power of arrest for domestic abuse in the section
27 setting out the allowable circumstances under which an arrest
28 can be made without a warrant.

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HOUSE FILE 2433

H-5342

1 Amend House File 2433 as follows:

2 1. Page 2, by inserting after line 3 the
3 following:

4 "Sec. ____ . Section 598.41, subsection 1, Code
5 Supplement 1985, is amended to read as follows:

6 1. The court, insofar as is reasonable and in the
7 best interest of the child, shall order the custody
8 award, including liberal visitation rights where
9 appropriate, which will assure the child the
10 opportunity for the maximum continuing physical and
11 emotional contact with both parents after the parents
12 have separated or dissolved the marriage, unless
13 direct physical harm or significant emotional harm to
14 the child is likely to result from such contact with
15 one parent, and which will encourage parents to share
16 the rights and responsibilities of raising the child.
17 The court shall also make a reasonable inquiry as to
18 whether the safety of the child, other children, or a
19 parent will be jeopardized by the awarding of joint
20 custody or by unsupervised or unrestricted visitation.
21 If the court determines that the child, other
22 children, or a parent will be so jeopardized, the
23 court shall deny joint custody and condition and
24 restrict visitation as to time, place, duration, or
25 supervision, or deny visitation entirely, as needed to
26 guard the safety of the child, other children, or
27 parent. The court shall consider the denial by one
28 parent of the child's opportunity for maximum
29 continuing contact with the other parent, without just
30 cause, a significant factor in determining the proper
31 custody arrangement. Unless otherwise ordered by the
32 court in the custody decree, both parents shall have
33 legal access to information concerning the child,
34 including but not limited to medical, educational and
35 law enforcement records.

36 Sec. ____ . Section 598.41, subsection 3, Code
37 Supplement 1985, is amended by adding the following
38 new lettered paragraph:

39 NEW LETTERED PARAGRAPH. i. Whether the safety of
40 the child, other children, or the other parent will be
41 jeopardized by the awarding of joint custody or by
42 unsupervised or unrestricted visitation."

43 2. By numbering and renumbering as necessary.

H-5342 FILED MARCH 13, 1986 BY BRAMMER of Linn

Adopted 2/26 (p. 9/9)

HOUSE FILE 2433

H-5331

- 1 Amend House File 2433 as follows:
2 1. Page 2, by inserting after line 3 the
3 following:
4 "Sec. . NEW SECTION. 236.13 PROHIBITION
5 AGAINST REFERRAL.
6 In a criminal action arising from domestic abuse,
7 as defined in section 236.2, the prosecuting attorney
8 or court shall not refer or order the parties involved
9 to mediation or other nonjudicial procedures prior to
10 judicial resolution of the action."
11 2. By numbering and renumbering as necessary.

H-5331 FILED MARCH 13, 1986 BY BRAMMER of Linn
Adopted 3/20 (p. 918)

HOUSE FILE 2433

H-5332

- 1 Amend House File 2433 as follows:
2 1. Page 1, by striking lines 33 and 34, and
3 inserting the following: "witnesses. If,".
4 2. Page 2, by striking lines 1 and 2, and
5 inserting the following: "that domestic abuse has
6 been committed, the peace officer shall".

H-5332 FILED MARCH 13, 1986 BY BRAMMER of Linn
Adopted 3/20 (p. 918)

HOUSE FILE 2433

H-5333

- 1 Amend House File 2433 as follows:
2 1. Page 1, line 17, by striking the word "an" and
3 inserting the following: "an any civil or criminal".
4 2. Page 1, line 19, by striking the word "an" and
5 inserting the words "any civil or criminal".

H-5333 FILED MARCH 13, 1986 BY BRAMMER of Linn
Adopted 3/20 (p. 917)

HOUSE FILE 2433

H-5353

- 1 Amend amendment H-5331 to House File 2433 as
2 follows:
3 1. Page 1, by striking lines 9 and 10, and
4 inserting the following: "to mediation or other
5 nonjudicial procedures.""

H-5353 FILED MARCH 17, 1986 BY BRAMMER of Linn
4/10 3/20 (p. 918)

HOUSE FILE 2433
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(As Amended and Passed by the House March 20, 1986)

Passed House, Date 4-18-86 (j. 1553) Passed Senate, Date 4-10-86 (j. 1163)
Vote: Ayes 94 Nays 0 Vote: Ayes 49 Nays 0
Approved May 5, 1986

A BILL FOR

1 An Act relating to domestic abuse, and providing penalties.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE AMENDMENT TO HOUSE FILE 2433

H-5819

- 1 Amend House File 2433 as amended, passed and re-
- 2 printed by the House as follows:
- 3 1. Page 1, line 27, by striking the words
- 4 "without malice" and inserting the following:
- 5 "~~without malice~~ such acts do not constitute a willful
- 6 and wanton disregard for the rights or safety of
- 7 another".
- 8 2. Page 1, line 33, by striking the word
- 9 "reasonable" and inserting the word "probable".
- 10 3. Page 2, line 17, by inserting after the word
- 11 "child" the following: "other children, or a parent".
- 12 4. Page 2, by striking lines 19 through 28, and
- 13 inserting in lieu thereof the following: "and
- 14 responsibilities of raising the child. The court
- 15 shall consider the denial by".
- 16 5. By renumbering, relettering, or redesignating
- 17 and correcting internal references as necessary.

H-5819 FILED APRIL 14, 1986 RECEIVED FROM THE SENATE
House concurred 4/18 (j. 1553)

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1 Section 1. Section 236.5, subsection 2, paragraph d, Code
2 1985, is amended to read as follows:

3 d. The awarding of temporary custody of or establishing
4 temporary visitation rights with regard to children under
5 eighteen. In awarding temporary custody or temporary
6 visitation rights, the court shall give primary consideration
7 to the safety of the victim and the children. If the court
8 finds that the safety of the victim or the children will be
9 jeopardized by unsupervised or unrestricted visitation, the
10 court shall condition or restrict visitation as to time,
11 place, duration, or supervision, or deny visitation entirely,
12 as needed to guard the safety of the victim and the children.

13 Sec. 2. Section 236.11, Code 1985, is amended to read as
14 follows:

15 236.11 DUTY OF PEACE OFFICER.

16 A peace officer shall use every reasonable means to enforce
17 an any civil or criminal order or approved consent agreement
18 issued pursuant to this chapter. If a peace officer has
19 probable cause to believe that a person has violated any civil
20 or criminal order or approved consent agreement, the peace
21 officer shall take the person into custody and take the person
22 before the court which issued the order or agreement, at which
23 time the court shall determine whether the person has
24 committed contempt pursuant to section 236.8. A peace officer
25 shall not be held civilly or criminally liable for acting
26 pursuant to this section provided that the peace officer acts
27 in good faith, on probable cause, and without malice.

28 Sec. 3. Section 236.12, subsection 2, Code Supplement
29 1985, is amended by striking the subsection and inserting in
30 lieu thereof the following:

31 2. The peace officer shall make a reasonable inquiry of
32 the person upon whom the harm has been inflicted and of any
33 witnesses. If, after inquiry, the officer has reasonable
34 cause to believe that domestic abuse has been committed, the
35 peace officer shall arrest the abuser.

1 Sec. 4. NEW SECTION. 236.13 PROHIBITION AGAINST
2 REFERRAL.

3 In a criminal action arising from domestic abuse, as
4 defined in section 236.2, the prosecuting attorney or court
5 shall not refer or order the parties involved to mediation or
6 other nonjudicial procedures prior to judicial resolution of
7 the action.

8 Sec. 5. Section 598.41, subsection 1, Code Supplement
9 1985, is amended to read as follows:

10 1. The court, insofar as is reasonable and in the best
11 interest of the child, shall order the custody award,
12 including liberal visitation rights where appropriate, which
13 will assure the child the opportunity for the maximum
14 continuing physical and emotional contact with both parents
15 after the parents have separated or dissolved the marriage,
16 unless direct physical harm or significant emotional harm to
17 the child is likely to result from such contact with one
18 parent, and which will encourage parents to share the rights
19 and responsibilities of raising the child. The court shall
20 also make a reasonable inquiry as to whether the safety of the
21 child, other children, or a parent will be jeopardized by the
22 awarding of joint custody or by unsupervised or unrestricted
23 visitation. If the court determines that the child, other
24 children, or a parent will be so jeopardized, the court shall
25 deny joint custody and condition and restrict visitation as to
26 time, place, duration, or supervision, or deny visitation
27 entirely, as needed to guard the safety of the child, other
28 children, or parent. The court shall consider the denial by
29 one parent of the child's opportunity for maximum continuing
30 contact with the other parent, without just cause, a
31 significant factor in determining the proper custody
32 arrangement. Unless otherwise ordered by the court in the
33 custody decree, both parents shall have legal access to
34 information concerning the child, including but not limited to
35 medical, educational and law enforcement records.

1 Sec. 6. Section 598.41, subsection 3, Code Supplement
2 1985, is amended by adding the following new lettered
3 paragraph:

4 NEW LETTERED PARAGRAPH. i. Whether the safety of the
5 child, other children, or the other parent will be jeopardized
6 by the awarding of joint custody or by unsupervised or
7 unrestricted visitation.

8 Sec. 7. Section 804.7, Code Supplement 1985, is amended by
9 adding the following new subsection:

10 NEW SUBSECTION. 6. As required by section 236.12,
11 subsection 2.

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HOUSE FILE 2433

S-5554

1 Amend House File 2433 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, line 27, by striking the words
4 "without malice" and inserting the following:
5 "~~without-malice~~ such acts do not constitute a willful
6 and wanton disregard for the rights or safety of
7 another".

S-5554 Filed April 2, 1986

BY MANN

*Vote 4/3 (p. 1639) Motion to reconsider (p. 1645) prevailed 4/10
Reconsidered & adopted 4/10 (p. 1648)*

HOUSE FILE 2433

S-5624

1 Amend House File 2433 as amended, passed and re-
2 printed by the House as follows:
3 1. Page 2, line 17, by inserting after the word
4 "child" the following: "other children, or a parent".
5 2. Page 2, by striking lines 19 through 28, and
6 inserting in lieu thereof the following: "and responsi-
7 bilities of raising the child. The court shall con-
8 sider the denial by".

S-5624 Filed April 7, 1986

BY GRATIAS

Adopted 4/3 (p. 1099)

HOUSE FILE 2433

S-5633

1 Amend amendment S-5622 to House File 2433 as
2 amended, passed and reprinted by the House as follows:
3 1. Page 1, by inserting after line 33 the following:
4 " ". Page 3, by inserting after line 7 the
5 following:".

S-5633 Filed April 8, 1986

BY COLEMAN

Placed o/c 4/10/86 (p. 1168)

HOUSE FILE 2433

S-5493

1 Amend House File 2433 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, line 33, by striking the word
4 "reasonable" and inserting the words "reasonable
5 probable".

S-5493 Filed March 28, 1986 BY COMM. ON JUDICIARY, DOYLE, CHAIR
Adopted 4/10/86 (p. 1039)

HOUSE FILE 2433

S-5622

1 Amend House File 2433 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 3, by inserting after line 7 the
4 following:
5 "Sec. ____ . Section 709.4, Code 1985, is amended by
6 striking the section and inserting in lieu thereof the
7 following:
8 709.4 SEXUAL ABUSE IN THE THIRD DEGREE.
9 A person commits sexual abuse in the third degree
10 when the person performs a sex act under any of the
11 following circumstances:
12 1. By force or against the will of another.
13 2. Between persons who are not at the time
14 cohabiting as husband and wife and if any of the
15 following are true:
16 a. The other participant is suffering from a
17 mental defect or incapacity which precludes giving
18 consent.
19 b. The other participant is twelve or thirteen
20 years of age.
21 c. The other participant is fourteen or fifteen
22 years of age and any of the following are true:
23 (1) The person is a member of the same household
24 as the other participant.
25 (2) The person is related to the other participant
26 by blood or affinity to the fourth degree.
27 (3) The person is in a position of authority over
28 the other participant and used this authority to
29 coerce the other participant to submit.
30 (4) The person is six or more years older than the
31 other participant.
32 Sexual abuse in the third degree is a class "C"
33 felony.
34 Sec. ____ . A person shall not be presumed to be
35 incapable of committing an offense under chapter 709
36 solely because of cohabitation as husband or wife with
37 the other participant."
38 2. Title page, line 1, by striking the word
39 "abuse" and inserting the word "violence".

S-5622 Filed April 7, 1986

BY HANNON

4/10 4/10/86 (p. 1169)

NSB 672

Study Bill 672

Judiciary and Law Enforcement: Brammer, Chair; Carl and Clark.

Judiciary & Law Enforcement

Now
NS 2433

HOUSE FILE 2433

BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW ENFORCEMENT
BILL)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the assault and domestic abuse of persons, and
2 providing penalties.

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

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1 Section 1. Section 236.5, subsection 2, paragraph d, Code
2 1985, is amended to read as follows:

3 d. The awarding of temporary custody of or establishing
4 temporary visitation rights with regard to children under
5 eighteen. In awarding temporary custody or temporary
6 visitation rights, the court shall give primary consideration
7 to the safety of the victim and the children. If the court
8 finds that the safety of the victim or the children will be
9 jeopardized by unsupervised or unrestricted visitation, the
10 court shall condition or restrict visitation as to time,
11 place, duration, or supervision, or deny visitation entirely,
12 as needed to guard the safety of the victim and the children.

13 Sec. 2. Section 236.11, Code 1985, is amended to read as
14 follows:

15 236.11 DUTY OF PEACE OFFICER.

16 A peace officer shall use every reasonable means to enforce
17 an order or approved consent agreement issued pursuant to this
18 chapter. If a peace officer has probable cause to believe
19 that a person has violated an order or approved consent
20 agreement, the peace officer shall take the person into
21 custody and take the person before the court which issued the
22 order or agreement, at which time the court shall determine
23 whether the person has committed contempt pursuant to section
24 236.8. A peace officer shall not be held civilly or
25 criminally liable for acting pursuant to this section provided
26 that the peace officer acts in good faith, on probable cause,
27 and without malice.

28 Sec. 3. Section 236.12, subsection 2, Code Supplement
29 1985, is amended by striking the subsection and inserting in
30 lieu thereof the following:

31 3. The peace officer shall make a reasonable inquiry of
32 the person upon whom the harm has been inflicted and of any
33 witnesses, to ascertain whether there is probable danger of
34 further domestic abuse being inflicted on the person. If,
35 after inquiry, the officer has reasonable cause to believe

1 that domestic abuse has been committed and that the abused
2 person is in danger of further abuse, the peace officer shall
3 arrest the abuser.

4 Sec. 4. Section 708.2, Code 1985, is amended to read as
5 follows:

6 708.2 PENALTIES FOR ASSAULT.

7 1. A person who commits an assault, as defined in section
8 708.1, with the intent to inflict a serious injury upon
9 another, is guilty of an aggravated misdemeanor, unless the
10 assault has been committed within five years of a previous
11 conviction for assault against the same victim, in which case
12 the person commits a class "D" felony.

13 2. A person who commits an assault, as defined in section
14 708.1, without the intent to inflict a serious injury upon
15 another, and who causes bodily injury or disabling mental
16 illness, is guilty of a serious misdemeanor, unless the
17 assault has been committed within five years of a previous
18 conviction for assault against the same victim, in which case
19 the person commits an aggravated misdemeanor.

20 3. Any other assault, except as otherwise provided, is a
21 simple misdemeanor, unless the assault has been committed
22 within five years of a previous conviction for assault against
23 the same victim, in which case the person commits a serious
24 misdemeanor.

25 Sec. 5. Section 804.7, Code Supplement 1985, is amended by
26 adding the following new subsection:

27 NEW SUBSECTION. 6. As required by section 236.12,
28 subsection 2.

29 EXPLANATION

30 Section 1 of this bill provides that when temporary custody
31 or visitation rights are ordered in a domestic abuse petition,
32 they shall be ordered with primary consideration for the
33 safety of the victim and children, and allows for supervised
34 or restricted visitation when the victim or children would
35 otherwise be in jeopardy.

1 Section 2 provides that when a peace officer has probable
2 cause to believe that a domestic abuse order or agreement has
3 been violated, the officer shall take the person into custody
4 and shall take the person before the judge issuing the order
5 or agreement for a determination of whether the person is
6 guilty of contempt.

7 Section 3 provides that when a peace officer has reasonable
8 cause to believe that a person has committed domestic abuse
9 and that the victim is in danger of further abuse, the officer
10 shall arrest the abuser.

11 Section 4 increases the various criminal penalties for
12 assault one degree in severity when the assault is committed
13 within five years of a previous conviction for assault on the
14 same victim.

15 Section 5 makes a corresponding reference to the peace
16 officer's power of arrest for domestic abuse in the section
17 setting out the allowable circumstances under which an arrest
18 can be made without a warrant.

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HOUSE FILE 2433

AN ACT

RELATING TO DOMESTIC ABUSE, AND PROVIDING PENALTIES.

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

Section 1. Section 236.5, subsection 2, paragraph d, Code 1985, is amended to read as follows:

d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children.

Sec. 2. Section 236.11, Code 1985, is amended to read as follows:

236.11 DUTY OF PEACE OFFICER.

A peace officer shall use every reasonable means to enforce an any civil or criminal order or approved consent agreement issued pursuant to this chapter. If a peace officer has probable cause to believe that a person has violated any civil or criminal order or approved consent agreement, the peace officer shall take the person into custody and take the person before the court which issued the order or agreement, at which time the court shall determine whether the person has committed contempt pursuant to section 236.8. A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that the peace officer acts in good faith, on probable cause, and without-malice such acts do not constitute a willful and wanton disregard for the rights or safety of another.

Sec. 3. Section 236.12, subsection 2, Code Supplement 1985, is amended by striking the subsection and inserting in lieu thereof the following:

2. The peace officer shall make a reasonable inquiry of the person upon whom the harm has been inflicted and of any witnesses. If, after inquiry, the officer has probable cause to believe that domestic abuse has been committed, the peace officer shall arrest the abuser.

Sec. 4. NEW SECTION. 236.13 PROHIBITION AGAINST REFERRAL.

In a criminal action arising from domestic abuse, as defined in section 236.2, the prosecuting attorney or court shall not refer or order the parties involved to mediation or other nonjudicial procedures prior to judicial resolution of the action.

Sec. 5. Section 598.41, subsection 1, Code Supplement 1985, is amended to read as follows:

1. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent, and which will encourage parents to share the rights and responsibilities of raising the child. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

Sec. 6. Section 598.41, subsection 3, Code Supplement 1985, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

Sec. 7. Section 804.7, Code Supplement 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 6. As required by section 236.12, subsection 2.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2433, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 5, 1986

TERRY E. BRANSTAD
Governor