

Sen. Ways & Means, Co. Jan. 4/14 (p. 1951)

FILED APR 07 1988

SENATE FILE 2331
BY COMMITTEE ON WAYS AND MEANS
(formerly SSB 2272)

Passed Senate, Date 4/11/88 (p. 1951) Passed House, Date 4/14/88 (p. 1951)
Vote: Ayes 28 Nays 0 Vote: Ayes 93 Nays 0
Approved April 28, 1988

A BILL FOR

1 An Act relating to the collection of fees for and the rights and
2 duties of the sheriff regarding service of legal process and
3 levy of execution.

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

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1 Section 1. Section 79.5, subsection 3, Code 1987, is
2 amended to read as follows:

3 3. When the orders, judgments, or decrees of a court are
4 to be entered, or performed, ~~or its writs executed~~ in divorce-
5 related matters including child support, temporary custody,
6 restraining orders, and writs of habeas corpus.

7 Sec. 2. Section 331.655, subsection 1, paragraph j, Code
8 1987, is amended to read as follows:

9 j. Mileage at the rate specified in section 79.9 in all
10 cases required by law, going and returning. Mileage fees do
11 not apply where provision is made for expenses, and both
12 mileage and expenses shall not be allowed for the same
13 services and for the same trip. If the sheriff transports one
14 or more persons by auto to a state institution or any other
15 destination required by law or if one or more legal papers are
16 served on the same trip, the sheriff is entitled to one
17 mileage, the mileage cost of which shall be prorated to the
18 persons transported or papers served. However, in serving
19 original notices in civil cases and in serving and returning a
20 subpoena, the sheriff shall be allowed mileage in each action
21 where the original notice or subpoena is served, with a
22 minimum mileage of one dollar for each service. The sheriff
23 may refuse to serve ~~original notices~~ any legal processes in
24 civil cases until the fees and estimated mileage for service
25 have been paid.

26 Sec. 3. Section 626.50, Code 1987, is amended to read as
27 follows:

28 626.50 DUTY TO LEVY -- NOTICE OF OWNERSHIP OR EXEMPTION.

29 An officer is bound to levy an execution on any personal
30 property in the possession of, or that the officer has reason
31 to believe belongs to, the defendant, or on which the
32 plaintiff directs the officer to levy, after having received
33 written instructions for the levy from the plaintiff or the
34 attorney who had the execution issued to the sheriff, unless
35 the officer has received notice in writing under oath from

1 some other person, the or that person's agent or attorney,
2 that such the property belongs to the person, stating the
3 nature of the person's interests therein in the property, how
4 and from whom the person acquired the same property, and the
5 consideration paid therefor for the property; or from the
6 defendant, that the property is exempt from execution.

7 EXPLANATION

8 This bill provides that a sheriff may refuse to serve any
9 legal process in a civil action until any fees or estimated
10 mileage due for service have been paid. The bill also
11 provides that the plaintiff or attorney having an execution
12 issued to a sheriff for levy must communicate written
13 instructions to the sheriff concerning the levy before the
14 sheriff is obligated to perform. The bill further provides
15 that fees do not have to be collected in advance when orders,
16 judgments, or decrees of a court are to be entered or
17 performed in divorce-related matters including child support,
18 temporary custody, restraining orders, and writs of habeus
19 corpus.

20 SUCCESSOR TO SSB 2272 (LSB 8479SC)

21 SIMILAR TO HSB 794 (LSB 8320HC) and LSB 8270SC

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SENATE FILE 2331

AN ACT

RELATING TO THE COLLECTION OF FEES FOR AND THE RIGHTS AND DUTIES OF THE SHERIFF REGARDING SERVICE OF LEGAL PROCESS AND LEVY OF EXECUTION.

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

Section 1. Section 79.5, subsection 3, Code 1987, is amended to read as follows:

3. When the orders, judgments, or decrees of a court are to be entered, or performed, ~~or its writs executed in divorce-related matters including child support, temporary custody, restraining orders, and writs of habeas corpus.~~

Sec. 2. Section 331.655, subsection 1, paragraph j, Code 1987, is amended to read as follows:

j. Mileage at the rate specified in section 79.9 in all cases required by law, going and returning. Mileage fees do not apply where provision is made for expenses, and both mileage and expenses shall not be allowed for the same services and for the same trip. If the sheriff transports one or more persons by auto to a state institution or any other destination required by law or if one or more legal papers are served on the same trip, the sheriff is entitled to one mileage, the mileage cost of which shall be prorated to the persons transported or papers served. However, in serving original notices in civil cases and in serving and returning a subpoena, the sheriff shall be allowed mileage in each action where the original notice or subpoena is served, with a minimum mileage of one dollar for each service. The sheriff may refuse to serve original notices any legal processes in civil cases until the fees and estimated mileage for service have been paid.

Sec. 3. Section 626.50, Code 1987, is amended to read as follows:

626.50 DUTY TO LEVY -- NOTICE OF OWNERSHIP OR EXEMPTION.

An officer is bound to levy an execution on any personal property in the possession of, or that the officer has reason to believe belongs to, the defendant, or on which the plaintiff directs the officer to levy, after having received written instructions for the levy from the plaintiff or the attorney who had the execution issued to the sheriff, unless the officer has received notice in writing under oath from some other person, the or that person's agent or attorney, that such the property belongs to the person, stating the nature of the person's interests therein in the property, how and from whom the person acquired the same property, and the consideration paid therefor for the property; or from the defendant, that the property is exempt from execution.

JO ANN ZIMMERMAN
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 2331, Seventy-second General Assembly.

JOHN P. DWYER
Secretary of the Senate

Approved *April 28*, 1988

TERRY E. BRANSTAD
Governor

SF 2331