

H- 3/3/95 Judiciary
H. 4/13/95 Unfinished Business
Calendar

Reprinted

SENATE FILE 195
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 68)

Passed Senate, Date ^(p. 506) 3/2/95 Passed House, Date _____
Vote: Ayes 49 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the judicial department, including
2 jurisdiction of district associate judges in domestic abuse
3 cases, retirement annuities for senior judges, and providing
4 effective and retroactive applicability dates.

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

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SENATE FILE 195

S-3091

1 Amend Senate File 195 as follows:
2 1. Page 1, by striking line 31 through page 2,
3 line 33.
4 2. Title, by striking lines 3 and 4, and
5 inserting the following: "cases."
By MICHAEL E. GRONSTAL

S-3091 FILED MARCH 2, 1995
ADOPTED (p. 605)

S.F. 195

1 Section 1. Section 236.6, subsection 1, Code 1995, is
2 amended to read as follows:

3 1. When the court is unavailable from the close of
4 business at the end of the day or week to the resumption of
5 business at the beginning of the day or week, a petition may
6 be filed before a district judge, or district associate judge
7 ~~designated by the chief judge of the judicial district~~, who
8 may grant emergency relief in accordance with section 236.5,
9 subsection 2 if the district judge or district associate judge
10 deems it necessary to protect the plaintiff from domestic
11 abuse, upon good cause shown in an ex parte proceeding.
12 Present danger of domestic abuse to the plaintiff constitutes
13 good cause for purposes of this subsection.

14 Sec. 2. Section 602.6306, subsection 2, Code 1995, is
15 amended to read as follows:

16 2. District associate judges also have jurisdiction in
17 civil actions for money judgment where the amount in
18 controversy does not exceed ten thousand dollars, jurisdiction
19 over involuntary commitment, treatment, or hospitalization
20 proceedings under chapters 125 and 229, jurisdiction of
21 indictable misdemeanors, and felony violations of section
22 321J.2, jurisdiction to enter a temporary or emergency order
23 of protection under chapter 236, and to make court
24 appointments and set hearings in criminal matters,
25 jurisdiction to enter orders in probate which do not require
26 notice and hearing and to set hearings in actions under
27 chapter 633, and the jurisdiction provided in section 602.7101
28 when designated as a judge of the juvenile court. While
29 presiding in these subject matters a district associate judge
30 shall employ district judges' practice and procedure.

31 Sec. 3. Section 602.9204, subsection 1, Code 1995, is
32 amended to read as follows:

33 1. A senior judge or a retired senior judge shall not be
34 paid a salary. A senior judge or retired senior judge shall
35 be paid an annuity under the judicial retirement system in the

1 manner provided in section 602.9109, but computed under this
2 section in lieu of section 602.9107, as follows: The annuity
3 paid to a senior judge or retired senior judge shall be an
4 amount equal to three percent of the basic senior judge
5 salary, multiplied by the judge's years of service prior to
6 retirement as a judge of one or more of the courts included
7 under this article, for which contributions were made to the
8 system, except the annuity of the senior judge or retired
9 senior judge shall not exceed fifty percent of the basic
10 senior judge salary used in calculating the annuity or fifty
11 percent of the basic annual salary which the judge is
12 receiving at the time the judge becomes separated from
13 service, whichever is greater. However, following the twelve-
14 month period during which the senior judge or retired senior
15 judge attains seventy-eight years of age, the annuity paid to
16 the person shall be an amount equal to three percent of the
17 basic senior judge salary cap, multiplied by the judge's years
18 of service prior to retirement as a judge of one or more of
19 the courts included under this article, for which
20 contributions were made to the system, except that the annuity
21 shall not exceed fifty percent of the basic senior judge
22 salary cap. A senior judge or retired senior judge shall not
23 receive benefits calculated using a basic senior judge salary
24 established after the twelve-month period in which the senior
25 judge or retired senior judge attains seventy-eight years of
26 age. In addition, if a senior judge is under sixty-five years
27 of age at the time the judge becomes a senior judge, the state
28 shall pay the state's share of the senior judge's medical
29 insurance premium until the judge attains age sixty-five.

30 Sec. 4. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.
31 Section 3 of this Act, being deemed of immediate importance,
32 takes effect upon enactment and applies retroactively to July
33 1, 1994.

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EXPLANATION

35 This bill provides that district associate judges may enter

1 temporary protection orders in domestic abuse cases and
2 eliminates the requirement that district associate judges be
3 designated as authorized to enter emergency protection orders
4 by the chief judge of the judicial district. The bill also
5 provides that the maximum amount for a retirement annuity of a
6 senior judge shall not exceed 50 percent of the basic senior
7 judge salary used in calculating the annuity or 50 percent of
8 the basic annual salary which the judge received at the time
9 of separation from service, whichever is greater. This
10 provision is effective upon enactment and retroactive to July
11 1, 1994. This alters the change to this section enacted
12 during the 1994 session of the general assembly.

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H-4-10-95 amend/100 Done
w/ H-3819

SENATE FILE 195
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 68)

(AS AMENDED AND PASSED BY THE SENATE MARCH 2, 1995)

* - Language Stricken by the Senate

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the judicial department, including
2 jurisdiction of district associate judges in domestic abuse
* 3 cases.

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

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S.F. 195

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2 amended to read as follows:

3 1. When the court is unavailable from the close of
4 business at the end of the day or week to the resumption of
5 business at the beginning of the day or week, a petition may
6 be filed before a district judge, or district associate judge
7 ~~designated by the chief judge of the judicial district~~, who
8 may grant emergency relief in accordance with section 236.5,
9 subsection 2 if the district judge or district associate judge
10 deems it necessary to protect the plaintiff from domestic
11 abuse, upon good cause shown in an ex parte proceeding.
12 Present danger of domestic abuse to the plaintiff constitutes
13 good cause for purposes of this subsection.

14 Sec. 2. Section 602.6306, subsection 2, Code 1995, is
15 amended to read as follows:

16 2. District associate judges also have jurisdiction in
17 civil actions for money judgment where the amount in
18 controversy does not exceed ten thousand dollars, jurisdiction
19 over involuntary commitment, treatment, or hospitalization
20 proceedings under chapters 125 and 229, jurisdiction of
21 indictable misdemeanors, and felony violations of section
22 321J.2, jurisdiction to enter a temporary or emergency order
23 of protection under chapter 236, and to make court
24 appointments and set hearings in criminal matters,
25 jurisdiction to enter orders in probate which do not require
26 notice and hearing and to set hearings in actions under
27 chapter 633, and the jurisdiction provided in section 602.7101
28 when designated as a judge of the juvenile court. While
29 presiding in these subject matters a district associate judge
30 shall employ district judges' practice and procedure.

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Redfern - Chair
Giannetta
Vilsack
Newhauser
McKean

SSB-68

Judiciary
Succeeded By

SENATE/HOUSE, 195
BY (PROPOSED JUDICIAL DEPARTMENT
BILL)

Passed Senate, Date _____ Passed House, Date _____

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

Approved _____

A BILL FOR

1 An Act relating to the judicial department, including
2 jurisdiction of district associate judges in domestic abuse
3 cases, retirement annuities for senior judges, eliminating
4 restitution in traffic violation cases, and providing
5 effective and retroactive applicability dates.

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

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2 amended to read as follows:

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4 business at the end of the day or week to the resumption of
5 business at the beginning of the day or week, a petition may
6 be filed before a district judge, or district associate judge
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20 proceedings under chapters 125 and 229, jurisdiction of
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22 321J.2, jurisdiction to enter a temporary or emergency order
23 of protection under chapter 236, and to make court
24 appointments and set hearings in criminal matters,
25 jurisdiction to enter orders in probate which do not require
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1 manner provided in section 602.9109, but computed under this
2 section in lieu of section 602.9107, as follows: The annuity
3 paid to a senior judge or retired senior judge shall be an
4 amount equal to three percent of the basic senior judge
5 salary, multiplied by the judge's years of service prior to
6 retirement as a judge of one or more of the courts included
7 under this article, for which contributions were made to the
8 system, except the annuity of the senior judge or retired
9 senior judge shall not exceed fifty percent of the basic
10 senior judge salary used in calculating the annuity or fifty
11 percent of the basic annual salary which the judge is
12 receiving at the time the judge becomes separated from
13 service, whichever is greater. However, following the twelve-
14 month period during which the senior judge or retired senior
15 judge attains seventy-eight years of age, the annuity paid to
16 the person shall be an amount equal to three percent of the
17 basic senior judge salary cap, multiplied by the judge's years
18 of service prior to retirement as a judge of one or more of
19 the courts included under this article, for which
20 contributions were made to the system, except that the annuity
21 shall not exceed fifty percent of the basic senior judge
22 salary cap. A senior judge or retired senior judge shall not
23 receive benefits calculated using a basic senior judge salary
24 established after the twelve-month period in which the senior
25 judge or retired senior judge attains seventy-eight years of
26 age. In addition, if a senior judge is under sixty-five years
27 of age at the time the judge becomes a senior judge, the state
28 shall pay the state's share of the senior judge's medical
29 insurance premium until the judge attains age sixty-five.

30 Sec. 4. Section 910.2, Code 1995, is amended to read as
31 follows:

32 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
33 SENTENCING COURT.

34 In all criminal cases ~~including-but-not-limited-to~~ except
35 restitution to victims for simple misdemeanors under chapter

1 321, in which there is a plea of guilty, verdict of guilty, or
2 special verdict upon which a judgment of conviction is
3 rendered, the sentencing court shall order that restitution be
4 made by each offender to the victims of the offender's
5 criminal activities, to the clerk of court for fines,
6 penalties, surcharges, and, to the extent that the offender is
7 reasonably able to pay, for crime victim assistance
8 reimbursement, court costs, court-appointed attorney's fees,
9 or the expense of a public defender when applicable. However,
10 victims shall be paid in full before fines, penalties, and
11 surcharges, crime victim compensation program reimbursement,
12 court costs, court-appointed attorney's fees, or the expenses
13 of a public defender are paid. In structuring a plan of
14 restitution, the court shall provide for payments in the
15 following order of priority: victim, fines, penalties, and
16 surcharges, crime victim compensation program reimbursement,
17 court costs, and court-appointed attorney's fees, or the
18 expense of a public defender. When the offender is not
19 reasonably able to pay all or a part of the crime victim
20 compensation program reimbursement, court costs, court-
21 appointed attorney's fees, or the expense of a public
22 defender, the court may require the offender in lieu of that
23 portion of the crime victim compensation program
24 reimbursement, court costs, court-appointed attorney's fees,
25 or expense of a public defender for which the offender is not
26 reasonably able to pay, to perform a needed public service for
27 a governmental agency or for a private, nonprofit agency which
28 provides a service to the youth, elderly, or poor of the
29 community. When community service is ordered, the court shall
30 set a specific number of hours of service to be performed by
31 the offender. The judicial district department of
32 correctional services shall provide for the assignment of the
33 offender to a public agency or private nonprofit agency to
34 perform the required service.

35 Sec. 5. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

1 Section 3 of this Act, being deemed of immediate importance,
2 takes effect upon enactment and applies retroactively to July
3 1, 1994.

4

EXPLANATION

5 This bill provides that district associate judges may enter
6 temporary protection orders in domestic abuse cases and
7 eliminates the requirement that district associate judges be
8 designated as authorized to enter emergency protection orders
9 by the chief judge of the judicial district. The bill also
10 provides that the maximum amount for a retirement annuity of a
11 senior judge shall not exceed 50 percent of the basic senior
12 judge salary used in calculating the annuity or 50 percent of
13 the basic annual salary which the judge received at the time
14 of separation from service, whichever is greater. This
15 provision is effective upon enactment and retroactive to July
16 1, 1994. This alters the change to this section enacted
17 during the 1994 session of the general assembly. Finally, the
18 bill provides that restitution to victims shall not be
19 assessed in traffic violation cases which are simple
20 misdemeanors.

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BACKGROUND STATEMENT

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SUBMITTED BY THE AGENCY

23 Sections 1 and 2 of the bill expand the jurisdiction of a
24 district associate judge so that the judge has authority to
25 enter temporary protection orders in domestic abuse cases
26 under chapter 236. Plaintiffs in the rural areas of Iowa are
27 often unable to obtain temporary protection orders as quickly
28 as plaintiffs living in urban areas because of the lack of
29 district court judges in rural counties. Many rural counties
30 have a district court judge available only once every two
31 weeks. These changes would increase the number of judges with
32 jurisdiction to enter temporary protection orders in domestic
33 abuse cases and, consequently, provide the rural domestic
34 violence victim with a greater opportunity to obtain legal
35 protection. There are approximately 56 district associate

1 judges in Iowa.

2 Section 3 fixes a technical defect in the 1994 changes to
3 the senior judge program. Last session's bill altered the
4 retirement benefit which can be received by a judge who
5 participates in the senior judge program. The result is that
6 the annuity of a senior judge with sufficient years of service
7 to attain the maximum annuity is less than that of a judge who
8 has attained the maximum annuity, retires, and does not become
9 a senior judge, until the active judges attain a salary
10 increase.

11 Section 4 amends section 910.2 so that restitution cannot
12 be assessed in traffic violation cases. Prior to last
13 session, restitution could not be ordered in traffic violation
14 cases. House File 2352 amended section 910.2 to allow
15 restitution in those cases. This change has created some
16 confusion and problems for magistrates.

17 First of all, magistrates may only order fines up to \$100.
18 Their civil jurisdiction is limited to small claims cases in
19 which the jurisdictional amount is currently \$3,000. There is
20 no limit on the amount of restitution which may be ordered
21 under chapter 910. Consequently, magistrates are in the
22 position of ordering restitution in amounts which may exceed
23 the jurisdictional limits.

24 Second, in traffic offenses, the magistrate may be asked to
25 determine questions of fault, comparative fault, and damages
26 for purposes of restitution. The time it takes to dispose of
27 a traffic offense, usually a few minutes, could mushroom into
28 a hearing which lasts for hours, tying up the magistrate and
29 causing delays for other cases.

30 Furthermore, there is confusion about whether a restitution
31 plan would toll the statute of limitations for filing a civil
32 action.

33 Finally, in most traffic offense cases, only the defendant
34 appears in court. Without the victim in court, determination
35 of restitution is made more difficult.

SENATE FILE 195

H-3819

1 Amend Senate File 195 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting after line 30 the
4 following:

5 "Sec. ____ . NEW SECTION. 724.11A REVIEW OF DENIED
6 APPLICATIONS -- RULES.

7 All applications for nonprofessional permits to
8 carry weapons which are denied by the sheriff shall be
9 forwarded to the commissioner of public safety for
10 review in accordance with rules adopted in accordance
11 with chapter 17A. A person who meets the criteria of
12 section 724.8 and who provides reasonable
13 justification for going armed under the rules adopted
14 pursuant to this section shall be issued a permit to
15 carry weapons by the commissioner. Reasonable
16 justification under the rules shall include personal
17 protection. A copy of the permit issued by the
18 commissioner shall be sent to the sheriff of the
19 county in which the person resides. It is the intent
20 of the general assembly that the rules adopted
21 pursuant to this section provide for uniform standards
22 for awarding nonprofessional permits to carry
23 weapons."

24 2. Title page, line 3, by inserting after the
25 word "cases" the following: "and nonprofessional
26 permits to carry weapons".

27 3. By renumbering as necessary.

By COMMITTEE ON JUDICIARY

HURLEY of Fayette, Chairperson

H-3819 FILED APRIL 10, 1995