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FILED JAN 15 1998

SENATE FILE 2038

BY DELUHERY

Passed Senate, ^(p.752) Date 3-17-98

Passed House, ^(p.1641) Date 4/15/98

Vote: Ayes 43 Nays 0

Vote: Ayes 99 Nays 0

Approved May 14, 1998

A BILL FOR

1 An Act relating to disqualification from voting or registering to
2 vote for reasons of mental incompetence.

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

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SENATE FILE 2038

S-5056

1 Amend Senate File 2038 as follows:

2 1. Page 2, line 3, by striking the word "Notify"
3 and inserting the following: "Notify Monthly notify".

4 2. Page 2, line 5, by inserting after the word
5 "felony" the following: "during the preceding
6 calendar month".

7 3. Page 2, line 7, by inserting after the word
8 "vote" the following: "at any time during the
9 preceding calendar month".

By COMMITTEE ON STATE GOVERNMENT
SHELDON RITTMER, Chairperson

Adopted 3/17/98 (p.752)

S-5056 FILED FEBRUARY 23, 1998

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1 Section 1. Section 48A.2, subsection 3, Code 1997, is
2 amended to read as follows:

3 3. "Person who is mentally incompetent to vote" means a
4 person who has been legally determined to be severely or
5 profoundly mentally retarded, or has been found incompetent in
6 a proceeding held pursuant to section 229.27.

7 Sec. 2. Section 48A.6, subsection 2, Code 1997, is amended
8 to read as follows:

9 2. A person who ~~has been legally determined to be~~ is
10 mentally incompetent to vote. Certification by the clerk of
11 the district court that any such person has been found no
12 longer incompetent by a court shall qualify such person to
13 again be an elector, subject to the other provisions of this
14 chapter.

15 Sec. 3. Section 48A.10, Code 1997, is amended to read as
16 follows:

17 48A.10 REGISTRATION REQUIRED.

18 If a registered voter moves to a different county, the
19 person shall submit a completed voter registration form to the
20 commissioner in order to be qualified to vote in that county.
21 An otherwise eligible elector whose right to vote has been
22 restored pursuant to chapter 914 or who has been found not to
23 be a person who is mentally incompetent to vote may register
24 to vote.

25 Sec. 4. Section 48A.14, subsection 1, paragraph f, Code
26 1997, is amended to read as follows:

27 f. The challenged registrant has been adjudged by a court
28 of law to be a person who is mentally incompetent ~~by a court~~
29 ~~of law~~ to vote and no subsequent proceeding has reversed that
30 finding.

31 Sec. 5. Section 48A.30, subsection 1, paragraph e, Code
32 1997, is amended to read as follows:

33 e. The clerk of the district court or the state registrar
34 sends notice that the registered voter has been declared a
35 person who is mentally incompetent to vote under state law.

1 Sec. 6. Section 602.8102, subsection 15, Code Supplement
2 1997, is amended to read as follows:

3 15. Notify the county commissioner of registration and the
4 state registrar of voters of persons seventeen and one-half
5 years of age and older who have been convicted of a felony or
6 persons who ~~have-been-legally-declared-to-be~~ are mentally
7 incompetent to vote.

8 EXPLANATION

9 This bill adds the words "to vote" to the statutory
10 language which disqualifies an elector from voting or
11 registering to vote if the elector is a person who is mentally
12 incompetent. A person who is mentally incompetent to vote is
13 a person who has been legally determined to be severely or
14 profoundly mentally retarded or who is found to be incompetent
15 due to mental illness.

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SENATE FILE 2038

S-5270

1 Amend Senate File 2038 as follows:

2 1. Page 1, by striking lines 3 through 6 and
3 inserting the following:

4 "3. "Person who is mentally incompetent to vote"
5 means a person who has been ~~legally-determined-to-be~~
6 ~~severely-or-profoundly-mentally-retarded,-or-has-been~~
7 found incompetent to vote in a proceeding held
8 pursuant to section 229.27, or found to lack the
9 mental capacity to vote pursuant to section 222.31 or
10 633.556."

11 2. Page 2, by inserting before line 1 the
12 following:

13 "Sec. ____ . Section 222.16, Code 1997, is amended
14 by adding the following new unnumbered paragraph:
15 NEW UNNUMBERED PARAGRAPH. Commitment of a person
16 pursuant to section 222.31 does not constitute a
17 finding or raise a presumption that the person is
18 incompetent to vote. The court shall make a separate
19 determination as to the person's competency to vote.
20 The court shall find a person incompetent to vote only
21 upon determining that the person lacks sufficient
22 mental capacity to comprehend and exercise the right
23 to vote.

24 Sec. ____ . Section 222.31, Code 1997, is amended by
25 adding the following new subsection:

26 NEW SUBSECTION. 3. In its order, the court shall
27 include a finding as to whether the person has
28 sufficient mental capacity to comprehend and exercise
29 the right to vote.

30 Sec. ____ . Section 222.45, Code 1997, is amended to
31 read as follows:

32 222.45 POWER OF COURT.

33 On the hearing, the court may discharge the person
34 with mental retardation from all supervision, control,
35 and care, or may transfer the person from a public
36 institution to a private institution, or vice versa,
37 or transfer the person from a special unit to a
38 hospital-school, or vice versa, as the court deems
39 appropriate under all the circumstances. If the
40 person has been determined to lack the mental capacity
41 to vote, the court shall include in its order a
42 finding that this determination remains in force or is
43 revoked.

44 Sec. ____ . Section 229.27, subsection 2, Code 1997,
45 is amended to read as follows:

46 2. The applicant may, in initiating a petition for
47 involuntary hospitalization of a person under section
48 229.6 or at any subsequent time prior to conclusion of
49 the involuntary hospitalization proceeding, also
50 petition the court for a finding that the person is

S-5270

1 incompetent by reason of mental illness. The test of
 2 competence for the purpose of this section shall be
 3 whether the person possesses sufficient mind to
 4 understand in a reasonable manner the nature and
 5 effect of the act in which the person is engaged; the
 6 fact that a person is mentally ill and in need of
 7 treatment for that illness but because of the illness
 8 lacks sufficient judgment to make responsible
 9 decisions with respect to the person's hospitalization
 10 or treatment does not necessarily mean that that
 11 person is incapable of transacting business on any
 12 subject. The court shall also make a finding as to
 13 whether the person has sufficient mental capacity to
 14 comprehend and exercise the right to vote.

15 Sec. ____ . Section 229.27, Code 1997, is amended by
 16 adding the following new subsection:

17 NEW SUBSECTION. 4A. If the person has been
 18 determined to lack the mental capacity to vote, the
 19 court shall include in its order a finding that this
 20 determination remains in force or is revoked."

21 3. Page 2, by inserting after line 7 the
 22 following:

23 "Sec. ____ . Section 633.556, subsection 1, Code
 24 Supplement 1997, is amended to read as follows:

25 1. If the allegations of the petition as to the
 26 status of the proposed ward and the necessity for the
 27 appointment of a guardian are proved by clear and
 28 convincing evidence, the court may appoint a guardian.
 29 If the court appoints a guardian based upon mental
 30 incapacity of the proposed ward, the court shall make
 31 a separate determination as to the ward's competency
 32 to vote. The court shall find a ward incompetent to
 33 vote only upon determining that the person lacks
 34 sufficient mental capacity to comprehend and exercise
 35 the right to vote.

36 Sec. ____ . Section 633.679, Code 1997, is amended
 37 to read as follows:

38 633.679 PETITION TO TERMINATE.

39 At any time after the appointment of a guardian or
 40 conservator, the person under guardianship or
 41 conservatorship may apply to the court by petition,
 42 alleging that the person is no longer a proper subject
 43 thereof, and asking that the guardianship or
 44 conservatorship be terminated. A person under an
 45 order appointing a guardian which order found the
 46 person incompetent to vote may include a request for
 47 reinstatement of the person's voting rights in a
 48 petition to terminate the guardianship or by filing a
 49 separate petition for modification of this
 50 determination."

1 4. By renumbering as necessary.

By PATRICK J. DELUHERY
 MAGGIE TINSMAN

(1152)

H. 3/18/98 Still Gov.
H. 3/19/98 Do Pass
H. 3/26/98 Unfinished Bus. Calendar

SENATE FILE 2038
BY DELUHERY

(AS AMENDED AND PASSED BY THE SENATE MARCH 17, 1998)

(P. 1641)

~~_____~~ - New Language by the Senate
Passed Senate, (P. 1330) Date 4/16/98 Passed House, Date 4-15-98
Vote: Ayes 47 Nays 0 Vote: Ayes 99 Nays 0
Approved May 14, 1998

A BILL FOR

1 An Act relating to disqualification from voting or registering to
2 vote for reasons of mental incompetence.

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

4

SENATE FILE 2038

H-9047

1 Amend Senate File 2038, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by striking lines 3 through 8 and
4 inserting the following:
5 "3. "person who is mentally incompetent to vote"
6 means a person who has been ~~legally-determined-to-be~~
7 ~~severely-or-profoundly-mentally-retarded,-or-has-been~~
8 ~~found incompetent to lack the mental capacity to vote~~
9 in a proceeding held pursuant to section 229-27 222.31
10 or 633.556."
11 2. By striking page 2, line 29, through page 3,
12 line 18.
13 3. Page 3, by striking lines 25 through 27 and
14 inserting the following: "persons who at any time
15 during the preceding calendar month have been legally
16 declared to be mentally incompetent to vote."

By JOCHUM of Dubuque
GRUNDBERG of Polk

H-9047 FILED APRIL 9, 1998

Adopted 4/15/98 (P. 1641)

S.F. 2038

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1 Section 1. Section 48A.2, subsection 3, Code 1997, is
2 amended to read as follows:

3 3. "Person who is mentally incompetent to vote" means a
4 person who has been legally-determined-to-be-severely-or
5 profoundly-mentally-retarded,-or-has-been found incompetent to
6 vote in a proceeding held pursuant to section 229.27, or found
7 to lack the mental capacity to vote pursuant to section 222.31
8 or 633.556.

9 Sec. 2. Section 48A.6, subsection 2, Code 1997, is amended
10 to read as follows:

11 2. A person who has-been-legally-determined-to-be is
12 mentally incompetent to vote. Certification by the clerk of
13 the district court that any such person has been found no
14 longer incompetent by a court shall qualify such person to
15 again be an elector, subject to the other provisions of this
16 chapter.

17 Sec. 3. Section 48A.10, Code 1997, is amended to read as
18 follows:

19 48A.10 REGISTRATION REQUIRED.

20 If a registered voter moves to a different county, the
21 person shall submit a completed voter registration form to the
22 commissioner in order to be qualified to vote in that county.
23 An otherwise eligible elector whose right to vote has been
24 restored pursuant to chapter 914 or who has been found not to
25 be a person who is mentally incompetent to vote may register
26 to vote.

27 Sec. 4. Section 48A.14, subsection 1, paragraph f, Code
28 1997, is amended to read as follows:

29 f. The challenged registrant has been adjudged by a court
30 of law to be a person who is mentally incompetent by-a-court
31 of-law to vote and no subsequent proceeding has reversed that
32 finding.

33 Sec. 5. Section 48A.30, subsection 1, paragraph e, Code
34 1997, is amended to read as follows:

35 e. The clerk of the district court or the state registrar

1 sends notice that the registered voter has been declared a
2 person who is mentally incompetent to vote under state law.

3 Sec. 6. Section 222.16, Code 1997, is amended by adding
4 the following new unnumbered paragraph:

5 NEW UNNUMBERED PARAGRAPH. Commitment of a person pursuant
6 to section 222.31 does not constitute a finding or raise a
7 presumption that the person is incompetent to vote. The court
8 shall make a separate determination as to the person's
9 competency to vote. The court shall find a person incompetent
10 to vote only upon determining that the person lacks sufficient
11 mental capacity to comprehend and exercise the right to vote.

12 Sec. 7. Section 222.31, Code 1997, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 3. In its order, the court shall include
15 a finding as to whether the person has sufficient mental
16 capacity to comprehend and exercise the right to vote.

17 Sec. 8. Section 222.45, Code 1997, is amended to read as
18 follows:

19 222.45 POWER OF COURT.

20 On the hearing, the court may discharge the person with
21 mental retardation from all supervision, control, and care, or
22 may transfer the person from a public institution to a private
23 institution, or vice versa, or transfer the person from a
24 special unit to a hospital-school, or vice versa, as the court
25 deems appropriate under all the circumstances. If the person
26 has been determined to lack the mental capacity to vote, the
27 court shall include in its order a finding that this
28 determination remains in force or is revoked.

29 Sec. 9. Section 229.27, subsection 2, Code 1997, is
30 amended to read as follows:

31 2. The applicant may, in initiating a petition for
32 involuntary hospitalization of a person under section 229.6 or
33 at any subsequent time prior to conclusion of the involuntary
34 hospitalization proceeding, also petition the court for a
35 finding that the person is incompetent by reason of mental

1 illness. The test of competence for the purpose of this
2 section shall be whether the person possesses sufficient mind
3 to understand in a reasonable manner the nature and effect of
4 the act in which the person is engaged; the fact that a person
5 is mentally ill and in need of treatment for that illness but
6 because of the illness lacks sufficient judgment to make
7 responsible decisions with respect to the person's
8 hospitalization or treatment does not necessarily mean that
9 that person is incapable of transacting business on any
10 subject. The court shall also make a finding as to whether
11 the person has sufficient mental capacity to comprehend and
12 exercise the right to vote.

13 Sec. 10. Section 229.27, Code 1997, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 4A. If the person has been determined to
16 lack the mental capacity to vote, the court shall include in
17 its order a finding that this determination remains in force
18 or is revoked.

19 Sec. 11. Section 602.8102, subsection 15, Code Supplement
20 1997, is amended to read as follows:

21 15. ~~Notify~~ Monthly notify the county commissioner of
22 registration and the state registrar of voters of persons
23 seventeen and one-half years of age and older who have been
24 convicted of a felony during the preceding calendar month or
25 persons who have been regally declared to be are mentally
26 incompetent to vote at any time during the preceding calendar
27 month.

28 Sec. 12. Section 633.556, subsection 1, Code Supplement
29 1997, is amended to read as follows:

30 1. If the allegations of the petition as to the status of
31 the proposed ward and the necessity for the appointment of a
32 guardian are proved by clear and convincing evidence, the
33 court may appoint a guardian. If the court appoints a
34 guardian based upon mental incapacity of the proposed ward,
35 the court shall make a separate determination as to the ward's

1 competency to vote. The court shall find a ward incompetent
2 to vote only upon determining that the person lacks sufficient
3 mental capacity to comprehend and exercise the right to vote.

4 Sec. 13. Section 633.679, Code 1997, is amended to read as
5 follows:

6 633.679 PETITION TO TERMINATE.

7 At any time after the appointment of a guardian or
8 conservator, the person under guardianship or conservatorship
9 may apply to the court by petition, alleging that the person
10 is no longer a proper subject thereof, and asking that the
11 guardianship or conservatorship be terminated. A person under
12 an order appointing a guardian which order found the person
13 incompetent to vote may include a request for reinstatement of
14 the person's voting rights in a petition to terminate the
15 guardianship or by filing a separate petition for modification
16 of this determination.

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HOUSE AMENDMENT TO
SENATE FILE 2038

S-5681

1 Amend Senate File 2038, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by striking lines 3 through 8 and
4 inserting the following:
5 "3. "Person who is mentally incompetent to vote"
6 means a person who has been ~~legally-determined-to-be~~
7 ~~severely-or-profoundly-mentally-retarded,-or-has-been~~
8 found incompetent to lack the mental capacity to vote
9 in a proceeding held pursuant to section 229-27 222.31
10 or 633.556."
11 2. By striking page 2, line 29, through page 3,
12 line 18.
13 3. Page 3, by striking lines 25 through 27 and
14 inserting the following: "persons who at any time
15 during the preceding calendar month have been legally
16 declared to be mentally incompetent to vote."

RECEIVED FROM THE HOUSE

S-5681 FILED APRIL 15, 1998

Senate Concurred
4-16-98 (p.1330)

SENATE FILE 2038

AN ACT

RELATING TO DISQUALIFICATION FROM VOTING OR REGISTERING TO VOTE
FOR REASONS OF MENTAL INCOMPETENCE.

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

Section 1. Section 48A.2, subsection 3, Code 1997, is amended to read as follows:

3. "Person who is mentally incompetent to vote" means a person who has been ~~legally-determined-to-be-severely-or-profoundly-mentally-retarded,-or-has-been~~ found incompetent to lack the mental capacity to vote in a proceeding held pursuant to section ~~229.27~~ 222.31 or 633.556.

Sec. 2. Section 48A.6, subsection 2, Code 1997, is amended to read as follows:

2. A person who ~~has-been-legally-determined-to-be~~ is mentally incompetent to vote. Certification by the clerk of the district court that any such person has been found no longer incompetent by a court shall qualify such person to again be an elector, subject to the other provisions of this chapter.

Sec. 3. Section 48A.10, Code 1997, is amended to read as follows:

48A.10 REGISTRATION REQUIRED.

If a registered voter moves to a different county, the person shall submit a completed voter registration form to the commissioner in order to be qualified to vote in that county.

An otherwise eligible elector whose right to vote has been restored pursuant to chapter 914 or who has been found not to be a person who is mentally incompetent to vote may register to vote.

Sec. 4. Section 48A.14, subsection 1, paragraph f, Code 1997, is amended to read as follows:

f. The challenged registrant has been adjudged by a court of law to be a person who is mentally incompetent by a court of law to vote and no subsequent proceeding has reversed that finding.

Sec. 5. Section 48A.30, subsection 1, paragraph e, Code 1997, is amended to read as follows:

e. The clerk of the district court or the state registrar sends notice that the registered voter has been declared a person who is mentally incompetent to vote under state law.

Sec. 6. Section 222.16, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Commitment of a person pursuant to section 222.31 does not constitute a finding or raise a presumption that the person is incompetent to vote. The court shall make a separate determination as to the person's competency to vote. The court shall find a person incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

Sec. 7. Section 222.31, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. In its order, the court shall include a finding as to whether the person has sufficient mental capacity to comprehend and exercise the right to vote.

Sec. 8. Section 222.45, Code 1997, is amended to read as follows:

222.45 POWER OF COURT.

On the hearing, the court may discharge the person with mental retardation from all supervision, control, and care, or may transfer the person from a public institution to a private

institution, or vice versa, or transfer the person from a special unit to a hospital-school, or vice versa, as the court deems appropriate under all the circumstances. If the person has been determined to lack the mental capacity to vote, the court shall include in its order a finding that this determination remains in force or is revoked.

Sec. 9. Section 602.8102, subsection 15, Code Supplement 1997, is amended to read as follows:

15. Notify Monthly notify the county commissioner of registration and the state registrar of voters of persons seventeen and one-half years of age and older who have been convicted of a felony during the preceding calendar month or persons who at any time during the preceding calendar month have been legally declared to be mentally incompetent to vote.

Sec. 10. Section 633.556, subsection 1, Code Supplement 1997, is amended to read as follows:

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian. If the court appoints a guardian based upon mental incapacity of the proposed ward, the court shall make a separate determination as to the ward's competency to vote. The court shall find a ward incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

Sec. 11. Section 633.679, Code 1997, is amended to read as follows:

633.679 PETITION TO TERMINATE.

At any time after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated. A person under an order appointing a guardian which order found the person incompetent to vote may include a request for reinstatement of

the person's voting rights in a petition to terminate the guardianship or by filing a separate petition for modification of this determination.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2038, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved May 14, 1998

TERRY E. BRANSTAD
Governor