

Senate Study Bill 3202

SENATE/HOUSE FILE _____
BY (PROPOSED JUDICIAL BRANCH
BILL)

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

A BILL FOR

1 An Act relating to the judicial branch and court administration
2 and procedure and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5301DP 81
5 rh/gg/14

PAG LIN

1 1 Section 1. Section 232.133, subsection 2, Code 2005, is
1 2 amended to read as follows:
1 3 2. Except for appeals from ~~final~~ orders entered in child
1 4 in need of assistance proceedings or ~~final~~ orders entered
1 5 pursuant to section 232.117, appellate procedures shall be
1 6 governed by the same provisions applicable to appeals from the
1 7 district court. The supreme court may prescribe rules to
1 8 expedite the resolution of appeals from final orders entered
1 9 in child in need of assistance proceedings or ~~final~~ orders
1 10 entered pursuant to section 232.117.
1 11 Sec. 2. Section 236.5, subsection 5, Code 2005, is amended
1 12 to read as follows:
1 13 5. A copy of any order or approved consent agreement shall
1 14 be issued to the plaintiff, the defendant, the county sheriff
1 15 ~~having jurisdiction to enforce the order or consent agreement~~
1 16 of the county in which the order or consent decree is
1 17 initially entered, and the twenty-four hour dispatcher for the
1 18 county sheriff. Any subsequent amendment or revocation of an
1 19 order or consent agreement shall be forwarded by the clerk to
1 20 all individuals and the county sheriff previously notified.
1 21 The clerk shall notify the county sheriff and the twenty-four
1 22 hour dispatcher for the county sheriff in writing so that the
1 23 county sheriff and the county sheriff's dispatcher receive
1 24 written notice within six hours of filing the order, approved
1 25 consent agreement, amendment, or revocation. The clerk may
1 26 fulfill this requirement by sending the notice by facsimile or
1 27 other electronic transmission which reproduces the notice in
1 28 writing within six hours of filing the order. The county
1 29 sheriff's dispatcher shall notify all law enforcement agencies
1 30 having jurisdiction over the matter and the twenty-four hour
1 31 dispatcher for the law enforcement agencies upon notification
1 32 by the clerk.
1 33 Sec. 3. Section 558.66, unnumbered paragraph 1, Code 2005,
1 34 is amended to read as follows:
1 35 Upon receipt of a certificate ~~from~~ issued by the clerk of
2 1 the district court or ~~an appellate clerk of the supreme court~~
2 2 indicating that the title to real estate has been finally
2 3 established in any named person by judgment or decree or by
2 4 will or by affidavit of or on behalf of a surviving spouse
2 5 that has been recorded by the recorder, the auditor shall
2 6 enter the information in the certificate upon the transfer
2 7 books, upon payment of a fee in the amount specified in
2 8 section 331.507, subsection 2, paragraph "a". ~~In the case of~~
2 9 ~~a certificate from the clerk of the district court or an~~
2 10 ~~appellate court, the fee shall be taxed as court costs,~~
2 11 ~~collected by the clerk, and paid to the treasurer as provided~~
2 12 ~~in section 331.902, subsection 3.~~ In the case of the
2 13 affidavit filed with the recorder, the fee set forth in
2 14 section 331.507, subsection 2, paragraph "a", and the fee set
2 15 forth in section 331.604, shall be collected by the recorder
2 16 and paid to the treasurer as provided in section 331.902,
2 17 subsection 3.

2 18 Sec. 4. Section 602.3101, subsection 2, Code 2005, is
2 19 amended to read as follows:

2 20 2. The state court administrator or a designee of the
2 21 state court administrator shall act as ~~secretary~~ administrator
2 22 to the board.

2 23 Sec. 5. Section 602.4102, subsection 5, Code 2005, is
2 24 amended to read as follows:

2 25 5. The court of appeals shall extend the time for filing
2 26 of an application if the court of appeals determines that a
2 27 failure to timely file an application was due to the failure
2 28 of the clerk of the court of appeals to notify the prospective
2 29 applicant of the filing of the decision. ~~If an application~~
~~2 30 for further review is not acted upon by the supreme court~~
~~2 31 within thirty days after the application was filed, the~~
~~2 32 application is deemed denied, the supreme court loses~~
~~2 33 jurisdiction, and the decision of the court of appeals is~~
~~2 34 conclusive.~~

2 35 Sec. 6. Section 602.5106, subsection 2, Code 2005, is
3 1 amended to read as follows:

3 2 2. A decision of the court of appeals is final and shall
3 3 not be reviewed by any other court except upon the granting by
3 4 the supreme court of an application for further review as
3 5 provided in section 602.4102. Upon the filing of the
3 6 application, the judgment and mandate of the court of appeals
3 7 is stayed pending action of the supreme court ~~or until the~~
~~3 8 expiration of the time specified in section 602.4102,~~
~~3 9 subsections 4 and 5.~~

3 10 Sec. 7. Section 602.6401, subsection 2, Code Supplement
3 11 2005, is amended to read as follows:

3 12 2. By February of each year in which magistrates' terms
3 13 expire, the state court administrator shall apportion
3 14 magistrate offices among the counties in accordance with the
3 15 following criteria:

3 16 ~~a. The number and type of proceedings contained in the~~
~~3 17 administrative reports required by section 602.6606.~~
3 18 ~~b. a.~~ The existence of either permanent, temporary, or
3 19 seasonal populations not included in the current census
3 20 figures.
3 21 ~~c. b.~~ The geographical area to be served.
3 22 ~~d. c.~~ Any inordinate number of cases over which
3 23 magistrates have jurisdiction that were pending at the end of
3 24 the preceding year.
3 25 ~~e. d.~~ The number and types of juvenile proceedings
3 26 handled by district associate judges.

3 27 Sec. 8. Section 602.8102, subsection 44, 79, and 113, Code
3 28 Supplement 2005, are amended by striking the subsections.

3 29 Sec. 9. Section 602.8102, subsection 106, Code Supplement
3 30 2005, is amended to read as follows:

3 31 106. Carry out duties relating to the administration of
3 32 small estates as provided in sections 635.1, 635.7, and 635.9-
~~3 33 and 635.11.~~

3 34 Sec. 10. Section 626.16, Code 2005, is amended to read as
3 35 follows:

4 1 626.16 RECEIPT AND RETURN.

4 2 Every officer to whose hands who receives an execution ~~may~~
~~4 3 come shall give provide~~ a receipt ~~therefor~~, if required,
4 4 stating the hour when the same was received, and shall make
4 5 sufficient return ~~thereof of the execution~~, together with the
4 6 money collected, on or before the ~~seventieth one hundred~~
~~4 7 twentieth~~ day from the date of its issuance.

4 8 Sec. 11. Section 633.305, Code 2005, is amended to read as
4 9 follows:

4 10 633.305 NOTICE IF NO ADMINISTRATION.

4 11 On admission of a will to probate without administration of
4 12 the estate, ~~and upon advanced payment of the costs by the~~
4 13 ~~proponent, the clerk~~ shall cause to be published, in the
4 14 manner prescribed in the preceding section, a notice of the
4 15 admission of the will to probate. As soon as practicable
4 16 following the admission of the will to probate, the proponent
4 17 shall give notice of the admission of the will to probate by
4 18 ordinary mail addressed to the surviving spouse, each heir of
4 19 the decedent, and each devisee under the will admitted to
4 20 probate whose identities are reasonably ascertainable, at such
4 21 persons' last known addresses. The notice of the admission of
4 22 the will to probate shall include a notice that any action to
4 23 set aside the will must be brought within the later to occur
4 24 of four months from the date of the second publication of the
4 25 notice or one month from the date of mailing of this notice,
4 26 or thereafter be barred.

4 27 As used in this section, "heir" means only such person as
4 28 would, in an intestate estate, be entitled to a share under

4 29 section 633.219.

4 30 The notice shall be substantially in the following form:

4 31 Notice of Proof of Will Without Administration

4 32 In the District Court of Iowa

4 33 in and for County.

Probate No.

4 34

4 35 In the Estate of, Deceased

5 1 To All Persons Interested in the Estate of, Deceased,
5 2 who died on or about (date):

5 3 You are hereby notified that on the day of
5 4 (month), ... (year), the last will and testament of,
5 5 deceased, bearing date of the day of (month), ...
5 6 (year), was admitted to probate in the above named court and
5 7 there will be no present administration of the estate. Any
5 8 action to set aside the will must be brought in the district
5 9 court of the county within the later to occur of four months
5 10 from the date of the second publication of this notice or one
5 11 month from the date of mailing of this notice to all heirs of
5 12 the decedent and devisees under the will whose identities are
5 13 reasonably ascertainable, or thereafter be forever barred.

5 14 Dated this day of (month), ... (year)

5 15

5 16 ~~Clerk of the district court~~ Proponent

5 17

5 18 Attorney for estate

5 19

5 20 Address

5 21 Date of second publication

5 22 day of (month), ... (year)

5 23 (Date to be inserted by publisher)

5 24 Sec. 12. Section 642.23, unnumbered paragraph 1, Code

5 25 2005, is amended to read as follows:

5 26 Notwithstanding the ~~seventy-day~~ one hundred twenty-day
5 27 period in section 626.16 for the return of an execution in
5 28 garnishment for the payment of a support obligation, the
5 29 sheriff shall promptly deposit any amounts collected with the
5 30 clerk of the district court, and the clerk shall disburse the
5 31 amounts, after subtracting applicable fees, within two working
5 32 days of the filing of an order condemning funds as follows:

5 33 Sec. 13. Section 648.5, Code 2005, is amended to read as
5 34 follows:

5 35 648.5 JURISDICTION == HEARING == PERSONAL SERVICE.

6 1 The court within the county shall have jurisdiction of
6 2 actions for forcible entry and detainer. They shall be tried
6 3 as equitable actions. Unless commenced as a small claim, a
6 4 petition shall be presented to a district court judge. Upon
6 5 receipt of the petition, the court shall order a hearing which
6 6 shall not be later than ~~seven~~ fourteen days from the date of
6 7 the order. Personal service shall be made upon the defendant
6 8 not less than three days prior to the hearing. In the event
6 9 that personal service cannot be completed in time to give the
6 10 defendant the minimum notice required by this section, the
6 11 court may set a new hearing date. A default cannot be made
6 12 upon a defendant unless the three days' notice has been given.

6 13 Sec. 14. Section 655.4, Code 2005, is amended to read as
6 14 follows:

6 15 655.4 ENTRY OF FORECLOSURE.

6 16 When a judgment of foreclosure is entered in any court, the
6 17 ~~clerk mortgagee~~ shall record with the recorder an instrument
6 18 in writing referring to the mortgage and duly acknowledging
6 19 that the mortgage was foreclosed and giving the date of the
6 20 decree. A mortgagee who fails to record such instrument
6 21 within thirty days of receiving a written request to record
6 22 shall be subject to a penalty of one hundred dollars plus
6 23 reasonable attorney fees incurred by the party aggrieved, to
6 24 be recovered in an action for the satisfaction or
6 25 acknowledgement by the party aggrieved. The fee for recording
6 26 and indexing an instrument shall be as provided in section
6 27 331.604.

6 28 Sec. 15. Section 655.5, Code 2005, is amended to read as
6 29 follows:

6 30 655.5 INSTRUMENT OF SATISFACTION.

6 31 When the judgment is fully paid and satisfied upon the
6 32 judgment docket of the court, the ~~clerk mortgagee~~ shall record
6 33 with the recorder an instrument in writing, referring to the
6 34 mortgage and duly acknowledging a satisfaction of the
6 35 mortgage. A mortgagee who fails to record such instrument
7 1 within thirty days of receiving a written request to record
7 2 shall be subject to a penalty of one hundred dollars plus
7 3 reasonable attorney fees incurred by the party aggrieved, to
7 4 be recovered in an action for the satisfaction or

7 5 acknowledgement by the party aggrieved. The fee for recording
7 6 and indexing an instrument shall be as provided in section
7 7 331.604.
7 8 Sec. 16. Sections 602.6605, 602.6606, and 635.11, Code
7 9 2005, are repealed.

7 10 EXPLANATION

7 11 This bill relates to the judicial branch and court
7 12 administration and procedure.

7 13 The bill expands the supreme court's authority to adopt
7 14 rules relating to expedited time frames for appeals from
7 15 interlocutory orders entered in child in need of assistance
7 16 proceedings or termination of parental rights orders entered
7 17 pursuant to Code section 232.117. Current law limits the
7 18 supreme court's authority to adopt rules to expedite the
7 19 resolution of appeals from final orders only.

7 20 The bill specifies that the clerk of court shall send a
7 21 copy of any order or approved consent agreement in a domestic
7 22 abuse case to the county sheriff of the county in which the
7 23 order or consent decree is initially entered.

7 24 The bill eliminates the requirement that a clerk of court
7 25 serve as a collection agent for the fee involved in recording
7 26 a transfer of title to real estate.

7 27 The bill identifies the state court administrator as the
7 28 administrator of the board of shorthand reporters.

7 29 The bill eliminates the 30-day deadline for action by the
7 30 supreme court on applications for further review.

7 31 The bill extends the period of time in which an execution
7 32 of judgment is made for recovery of a judgment from 70 days to
7 33 120 days.

7 34 The bill amends the procedure for publication of a notice
7 35 of an estate without administration by placing the
8 1 responsibility with the proponent of the estate instead of
8 2 with the clerk of court.

8 3 The bill extends the time period for holding a hearing for
8 4 a forcible entry and detainer action from 7 to 14 days after
8 5 the date of scheduling.

8 6 The bill establishes a procedure for prompt recording of
8 7 foreclosures and satisfaction of foreclosures by the mortgagee
8 8 instead of by the clerk of court, and establishes a monetary
8 9 penalty of \$100 for failure to record.

8 10 The bill eliminates obsolete language concerning jail time
8 11 reports by clerks of court and magistrate and judge reporting
8 12 requirements, and provides other corrective amendments
8 13 consistent with the amendments in the bill.

8 14 LSB 5301DP 81
8 15 rh:rj/gg/14.1