

House Study Bill 135

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 judicial branch procedures, including
2 appointments of court of appeals judges, district judges,
3 district associate judges, associate juvenile judges,
4 associate probate judges, magistrates, clerks of the district
5 court, and patient advocates, and compensation to judges and
6 other court personnel serving as fiduciaries.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 TLSB 1375DP 82
9 jm/gg/14

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1 1 Section 1. NEW SECTION. 46.14A COURT OF APPEALS ==
1 2 NOMINEES.
1 3 Vacancies in the court of appeals shall be filled by
1 4 appointment by the governor from a list of nominees submitted
1 5 by the state judicial nominating commission. Three nominees
1 6 shall be submitted for each vacancy. Nominees to the court of
1 7 appeals shall have the qualifications prescribed for nominees
1 8 to the supreme court.
1 9 Sec. 2. Section 46.15, Code 2007, is amended to read as
1 10 follows:
1 11 46.15 APPOINTMENTS TO BE FROM NOMINEES.
1 12 1. All appointments to the supreme court and court of
1 13 appeals shall be made from the nominees of the state judicial
1 14 nominating commission, and all appointments to the district
1 15 court shall be made from the nominees of the district judicial
1 16 nominating commission. ~~Nominees to the court of appeals shall~~
~~1 17 have the qualifications prescribed for nominees to the supreme~~
~~1 18 court.~~
1 19 2. ~~Vacancies in the court of appeals shall be filled by~~
~~1 20 appointment by the governor from a list of nominees submitted~~
~~1 21 by the state judicial nominating commission. Five nominees~~
~~1 22 shall be submitted for each vacancy. If the governor fails to~~
1 23 make an appointment within thirty days after a list of
1 24 nominees has been submitted, the appointment shall be made
1 25 from the list of nominees by the chief justice of the supreme
1 26 court.
1 27 Sec. 3. Section 229.19, subsection 1, unnumbered paragraph
1 28 1, Code 2007, is amended to read as follows:
1 29 ~~The district court in each county with a population of~~
~~1 30 under three hundred thousand inhabitants and the board of~~
~~1 31 supervisors in~~ In each county with a population of three
1 32 hundred thousand or more inhabitants the board of supervisors
1 33 shall appoint an individual who has demonstrated by prior
1 34 activities an informed concern for the welfare and
1 35 rehabilitation of persons with mental illness, and who is not
2 1 an officer or employee of the department of human services nor
2 2 of any agency or facility providing care or treatment to
2 3 persons with mental illness, to act as advocate representing
2 4 the interests of patients involuntarily hospitalized by the
2 5 court, in any matter relating to the patients' hospitalization
2 6 or treatment under section 229.14 or 229.15. In each county
~~2 7 with a population of under three hundred thousand inhabitants,~~
~~2 8 the chief judge of the judicial district encompassing the~~
~~2 9 county shall appoint the advocate.~~
2 10 PARAGRAPH DIVIDED. The court or, if the advocate is
2 11 appointed by the county board of supervisors, the board shall
2 12 assign the advocate appointed from a patient's county of legal
2 13 settlement to represent the interests of the patient. If a
2 14 patient has no county of legal settlement, the court or, if
2 15 the advocate is appointed by the county board of supervisors,

2 16 the board shall assign the advocate appointed from the county
2 17 where the hospital or facility is located to represent the
2 18 interests of the patient.

2 19 PARAGRAPH DIVIDED. The advocate's responsibility with
2 20 respect to any patient shall begin at whatever time the
2 21 attorney employed or appointed to represent that patient as
2 22 respondent in hospitalization proceedings, conducted under
2 23 sections 229.6 to 229.13, reports to the court that the
2 24 attorney's services are no longer required and requests the
2 25 court's approval to withdraw as counsel for that patient.
2 26 However, if the patient is found to be seriously mentally
2 27 impaired at the hospitalization hearing, the attorney
2 28 representing the patient shall automatically be relieved of
2 29 responsibility in the case and an advocate shall be assigned
2 30 to the patient at the conclusion of the hearing unless the
2 31 attorney indicates an intent to continue the attorney's
2 32 services and the court so directs. If the court directs the
2 33 attorney to remain on the case, the attorney shall assume all
2 34 the duties of an advocate. The clerk shall furnish the
2 35 advocate with a copy of the court's order approving the
3 1 withdrawal and shall inform the patient of the name of the
3 2 patient's advocate.

3 3 PARAGRAPH DIVIDED. With regard to each patient whose
3 4 interests the advocate is required to represent pursuant to
3 5 this section, the advocate's duties shall include all of the
3 6 following:

3 7 Sec. 4. Section 602.1215, subsection 1, Code 2007, is
3 8 amended to read as follows:

3 9 1. Subject to the provisions of section 602.1209,
3 10 subsection 3, the ~~district judges~~ chief judge of ~~each the~~
3 11 judicial ~~election~~ district shall ~~by majority vote~~ appoint
3 12 persons to serve as clerks of the district court within the
3 13 judicial ~~election~~ district. The ~~district judges~~ chief judge
3 14 of a judicial ~~election~~ district may appoint a person to serve
3 15 as clerk of the district court for more than one but not more
3 16 than four contiguous counties in the same judicial district.
3 17 A person does not qualify for appointment to the office of
3 18 clerk of the district court unless the person is at the time
3 19 of application a resident of the state. A clerk of the
3 20 district court may be removed from office for cause by a
3 21 ~~majority vote of the district judges~~ chief judge of the
3 22 judicial ~~election~~ district. Before removal, the clerk of the
3 23 district court shall be notified of the cause for removal.

3 24 Sec. 5. Section 602.6201, subsection 2, Code 2007, is
3 25 amended to read as follows:

3 26 2. A district judge must be a resident of the judicial
3 27 election district in which appointed and retained. Subject to
3 28 the provision for reassignment of judges under section
3 29 602.6108, a district judge shall serve in the district of the
3 30 judge's residence while in office, regardless of the number of
3 31 judgeships to which the district is entitled under the formula
3 32 prescribed by the supreme court in subsection 3.

3 33 Sec. 6. Section 602.6201, subsection 3, Code 2007, is
3 34 amended by striking the subsection and inserting in lieu
3 35 thereof the following:

4 1 3. The supreme court shall prescribe, subject to the
4 2 restrictions of this section, a formula to determine the
4 3 number of district judges who will serve in each judicial
4 4 election district. The formula shall be based upon a model
4 5 that measures and applies an estimated case-related workload
4 6 formula of judicial officers, and shall account for
4 7 administrative duties, travel time, and other judicial duties
4 8 not related to a specific case.

4 9 Sec. 7. Section 602.6201, subsections 4, 5, 6, 7, 8, 9,
4 10 and 10, Code 2007, are amended to read as follows:

4 11 4. For purposes of this section, a vacancy means the
4 12 death, resignation, retirement, or removal of a district
4 13 judge, or the failure of a district judge to be retained in
4 14 office at the judicial election, or an increase in judgeships
4 15 under this section the formula prescribed in subsection 3.

4 16 5. In those judicial election districts having more
4 17 district judges than the number of judgeships specified by the
4 18 formula prescribed in subsection 3, vacancies shall not be
4 19 filled.

4 20 6. In those judicial election districts having fewer or
4 21 the same number of district judges as the number of judgeships
4 22 specified by the formula prescribed in subsection 3, vacancies
4 23 in the number of district judges shall be filled as they
4 24 occur.

4 25 7. In those judicial districts that contain more than one
4 26 judicial election district, a vacancy in a judicial election

4 27 district shall not be filled if the total number of district
4 28 judges in all judicial election districts within the judicial
4 29 district equals or exceeds the aggregate number of judgeships
4 30 to which all of the judicial election districts of the
4 31 judicial district are authorized by the formula in subsection
4 32 3.

4 33 8. An incumbent district judge shall not be removed from
4 34 office because of a reduction in the number of authorized
4 35 judgeships specified by the formula prescribed in subsection
5 1 3.

5 2 9. During February of each year, and at other times as
5 3 appropriate, the state court administrator shall make the
5 4 determinations ~~required under this section~~ specified by the
5 5 formula prescribed in subsection 3, and shall notify the
5 6 appropriate nominating commissions and the governor of
5 7 appointments that are required.

5 8 10. Notwithstanding the formula for determining the number
5 9 of ~~judgeships in this section~~ district judges prescribed in
5 10 subsection 3, the number of district judges shall not exceed
5 11 one hundred sixteen during the period commencing July 1, 1999.

5 12 Sec. 8. Section 602.6201, subsections 11 and 12, Code
5 13 2007, are amended by striking the subsections.

5 14 Sec. 9. Section 602.6502, Code 2007, is amended to read as
5 15 follows:

5 16 602.6502 ~~MEMBER OF COMMISSION NOT TO BE APPOINTED TO~~
5 17 ~~OFFICE PROHIBITIONS TO APPOINTMENT.~~

5 18 A member of a county magistrate appointing commission shall
5 19 not be appointed to the office of magistrate, and shall not be
5 20 nominated for or appointed to the office of district associate
5 21 judge, office of associate juvenile judge, or office of
5 22 associate probate judge. A member of the commission shall not
5 23 be eligible to vote for the appointment or nomination of a
5 24 family member, current law partner, or current business
5 25 partner. For purposes of this section, "family member" means
5 26 a spouse, son, daughter, brother, sister, uncle, aunt, first
5 27 cousin, nephew, niece, father-in-law, mother-in-law,
5 28 son-in-law, daughter-in-law, brother-in-law, sister-in-law,
5 29 father, mother, stepfather, stepmother, stepson, stepdaughter,
5 30 stepbrother, stepsister, half brother, or half sister.

5 31 Sec. 10. Section 633.201, Code 2007, is amended to read as
5 32 follows:

5 33 633.201 COURT OFFICERS AS FIDUCIARIES.

5 34 Judges, clerks, and deputy clerks serving as fiduciaries
5 35 shall not be allowed any compensation for services as such
6 1 fiduciaries. A judge, clerk, or deputy clerk serving as a
6 2 fiduciary may be compensated for fiduciary services if the
6 3 services are for a family member's estate, trust,
6 4 guardianship, or conservatorship. For purposes of this
6 5 section, "family member" means a spouse, child, grandchild,
6 6 parent, grandparent, sibling, niece, nephew, cousin, or other
6 7 relative or individual with significant personal ties to the
6 8 fiduciary.

6 9 EXPLANATION

6 10 This bill relates to judicial branch procedures, including
6 11 appointments of court of appeals judges, district court
6 12 judges, magistrates, clerks of the district court, and patient
6 13 advocates, and compensation to judges and other court
6 14 personnel serving as fiduciaries.

6 15 The bill changes the number of nominees the state judicial
6 16 nominating commission certifies to the governor when a vacancy
6 17 occurs on the court of appeals. Under the bill, the state
6 18 judicial nominating commission certifies three nominees to the
6 19 governor for an appointment to the court of appeals. Current
6 20 law provides that the state judicial nominating commission
6 21 certify five nominees to the governor for an appointment to
6 22 the court of appeals.

6 23 The bill provides that in each county with a population of
6 24 under 300,000 inhabitants, the chief judge of the judicial
6 25 district encompassing the county shall appoint the patient
6 26 advocate. Current law provides that the district court in
6 27 each county with a population under 300,000 inhabitants
6 28 appoints the patient advocate. In counties with a population
6 29 equal to or greater than 300,000 inhabitants, the board of
6 30 supervisors would continue to appoint the patient advocate. A
6 31 patient advocate represents the interests of patients
6 32 involuntarily hospitalized by the court.

6 33 The bill provides that the chief judge of the judicial
6 34 district shall appoint each clerk of the district court within
6 35 the judicial district. The bill also provides that the chief
7 1 judge may remove the clerk of the district court for cause.
7 2 Current law provides that the district judges of each judicial

7 3 election district, by a majority vote, appoint or remove the
7 4 clerk of the district court within the judicial election
7 5 district.

7 6 The bill eliminates the formula for the distribution of
7 7 district judges among the judicial election districts in Code
7 8 section 602.6201(3) and replaces it with a formula prescribed
7 9 by the supreme court. The bill provides that the formula
7 10 prescribed by the supreme court shall be based upon a model
7 11 that measures and applies an estimated case-related workload
7 12 formula of judicial officers, and shall account for
7 13 administrative duties, travel time, and other judicial duties
7 14 not related to a specific case. Under the bill and in current
7 15 law, an incumbent district judge shall not be removed from
7 16 office because of a reduction in the number of authorized
7 17 judgeships within a particular judicial election district, and
7 18 the number of judges remains capped at 116 district judges.

7 19 Under the bill, a member of the county magistrate
7 20 appointing commission is prohibited from being appointed to or
7 21 nominated for the office of associate juvenile judge or
7 22 associate probate judge. Current law prohibits a member of
7 23 the commission from being appointed to or nominated for the
7 24 position of magistrate or the office of district associate
7 25 judge.

7 26 The bill also prohibits a member of the county magistrate
7 27 appointing commission from voting for a family member or
7 28 current law or business partner for a magistrate position, or
7 29 the office of district associate judge, associate juvenile
7 30 judge, or associate probate judge.

7 31 The bill provides that a judge, clerk, or deputy clerk
7 32 serving as a fiduciary may be compensated for providing
7 33 fiduciary services if such services are for a close friend's
7 34 or family member's estate, trust, guardianship, or
7 35 conservatorship. Current law prohibits a judge, clerk, or
8 1 deputy clerk from being compensated for providing fiduciary
8 2 services.

8 3 LSB 1375DP 82
8 4 jm:rj/gg/14.1