

# Senate File 381 - Introduced

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1129)

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, and patient advocates,  
5 and compensation to judges and other court personnel serving  
6 as fiduciaries.  
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
8 TLSB 1375SV 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 602.6201, subsection 2, Code 2007, is  
3 8 amended to read as follows:

3 9 2. A district judge must be a resident of the judicial  
3 10 election district in which appointed and retained. Subject to  
3 11 the provision for reassignment of judges under section  
3 12 602.6108, a district judge shall serve in the district of the  
3 13 judge's residence while in office, regardless of the number of  
3 14 judgeships to which the district is entitled under the formula  
3 15 prescribed by the supreme court in subsection 3.

3 16 Sec. 5. Section 602.6201, subsection 3, Code 2007, is  
3 17 amended by striking the subsection and inserting in lieu  
3 18 thereof the following:

3 19 3. The supreme court shall prescribe, subject to the  
3 20 restrictions of this section, a formula to determine the  
3 21 number of district judges who will serve in each judicial  
3 22 election district. The formula shall be based upon a model  
3 23 that measures and applies an estimated case-related workload  
3 24 formula of judicial officers, and shall account for  
3 25 administrative duties, travel time, and other judicial duties  
3 26 not related to a specific case.

3 27 Sec. 6. Section 602.6201, subsections 4, 5, 6, 7, 8, 9,  
3 28 and 10, Code 2007, are amended to read as follows:

3 29 4. For purposes of this section, a vacancy means the  
3 30 death, resignation, retirement, or removal of a district  
3 31 judge, or the failure of a district judge to be retained in  
3 32 office at the judicial election, or an increase in judgeships  
3 33 under this section the formula prescribed in subsection 3.

3 34 5. In those judicial election districts having more  
3 35 district judges than the number of judgeships specified by the  
4 1 formula prescribed in subsection 3, vacancies shall not be  
4 2 filled.

4 3 6. In those judicial election districts having fewer or  
4 4 the same number of district judges as the number of judgeships  
4 5 specified by the formula prescribed in subsection 3, vacancies  
4 6 in the number of district judges shall be filled as they  
4 7 occur.

4 8 7. In those judicial districts that contain more than one  
4 9 judicial election district, a vacancy in a judicial election  
4 10 district shall not be filled if the total number of district  
4 11 judges in all judicial election districts within the judicial  
4 12 district equals or exceeds the aggregate number of judgeships  
4 13 to which all of the judicial election districts of the  
4 14 judicial district are authorized by the formula in subsection  
4 15 3.

4 16 8. An incumbent district judge shall not be removed from  
4 17 office because of a reduction in the number of authorized  
4 18 judgeships specified by the formula prescribed in subsection  
4 19 3.

4 20 9. During February of each year, and at other times as  
4 21 appropriate, the state court administrator shall make the  
4 22 determinations required under this section specified by the  
4 23 formula prescribed in subsection 3, and shall notify the  
4 24 appropriate nominating commissions and the governor of  
4 25 appointments that are required.

4 26 10. Notwithstanding the formula for determining the number  
4 27 of ~~judgeships in this section~~ district judges prescribed in  
4 28 subsection 3, the number of district judges shall not exceed  
4 29 one hundred sixteen during the period commencing July 1, 1999.  
4 30 Sec. 7. Section 602.6201, subsections 11 and 12, Code  
4 31 2007, are amended by striking the subsections.  
4 32 Sec. 8. Section 602.6502, Code 2007, is amended to read as  
4 33 follows:

4 34 602.6502 ~~MEMBER OF COMMISSION NOT TO BE APPOINTED TO~~  
4 35 ~~OFFICE PROHIBITIONS TO APPOINTMENT.~~

5 1 A member of a county magistrate appointing commission shall  
5 2 not be appointed to the office of magistrate, and shall not be  
5 3 nominated for or appointed to the office of district associate  
5 4 judge, office of associate juvenile judge, or office of  
5 5 associate probate judge. A member of the commission shall not  
5 6 be eligible to vote for the appointment or nomination of a  
5 7 family member, current law partner, or current business  
5 8 partner. For purposes of this section, "family member" means  
5 9 a spouse, son, daughter, brother, sister, uncle, aunt, first  
5 10 cousin, nephew, niece, father=in=law, mother=in=law,  
5 11 son=in=law, daughter=in=law, brother=in=law, sister=in=law,  
5 12 father, mother, stepfather, stepmother, stepson, stepdaughter,  
5 13 stepbrother, stepsister, half brother, or half sister.

5 14 Sec. 9. Section 633.201, Code 2007, is amended to read as  
5 15 follows:

5 16 633.201 COURT OFFICERS AS FIDUCIARIES.

5 17 Judges, clerks, and deputy clerks serving as fiduciaries  
5 18 shall not be allowed any compensation for services as such  
5 19 fiduciaries. A judge, clerk, or deputy clerk serving as a  
5 20 fiduciary may be compensated for fiduciary services if the  
5 21 services are for a family member's estate, trust,  
5 22 guardianship, or conservatorship. For purposes of this  
5 23 section, "family member" means a spouse, child, grandchild,  
5 24 parent, grandparent, sibling, niece, nephew, cousin, or other  
5 25 relative or individual with significant personal ties to the  
5 26 fiduciary.

#### 5 27 EXPLANATION

5 28 This bill relates to judicial branch procedures, including  
5 29 appointments of court of appeals judges, district court  
5 30 judges, magistrates, and patient advocates, and compensation  
5 31 to judges and other court personnel serving as fiduciaries.

5 32 The bill changes the number of nominees the state judicial  
5 33 nominating commission certifies to the governor when a vacancy  
5 34 occurs on the court of appeals. Under the bill, the state  
5 35 judicial nominating commission certifies three nominees to the  
6 1 governor for an appointment to the court of appeals. Current  
6 2 law provides that the state judicial nominating commission  
6 3 certify five nominees to the governor for an appointment to  
6 4 the court of appeals.

6 5 The bill provides that in each county with a population of  
6 6 under 300,000 inhabitants, the chief judge of the judicial  
6 7 district encompassing the county shall appoint the patient  
6 8 advocate. Current law provides that the district court in  
6 9 each county with a population under 300,000 inhabitants  
6 10 appoints the patient advocate. In counties with a population  
6 11 equal to or greater than 300,000 inhabitants, the board of  
6 12 supervisors would continue to appoint the patient advocate. A  
6 13 patient advocate represents the interests of patients  
6 14 involuntarily hospitalized by the court.

6 15 The bill eliminates the formula for the distribution of  
6 16 district judges among the judicial election districts in Code  
6 17 section 602.6201(3) and replaces it with a formula prescribed  
6 18 by the supreme court. The bill provides that the formula  
6 19 prescribed by the supreme court shall be based upon a model  
6 20 that measures and applies an estimated case-related workload  
6 21 formula of judicial officers, and shall account for  
6 22 administrative duties, travel time, and other judicial duties  
6 23 not related to a specific case. Under the bill and in current  
6 24 law, an incumbent district judge shall not be removed from  
6 25 office because of a reduction in the number of authorized  
6 26 judgeships within a particular judicial election district, and  
6 27 the number of judges remains capped at 116 district judges.

6 28 Under the bill, a member of the county magistrate  
6 29 appointing commission is prohibited from being appointed to or  
6 30 nominated for the office of associate juvenile judge or  
6 31 associate probate judge. Current law prohibits a member of  
6 32 the commission from being appointed to or nominated for the  
6 33 position of magistrate or the office of district associate  
6 34 judge.

6 35 The bill also prohibits a member of the county magistrate  
7 1 appointing commission from voting for a family member or

7 2 current law or business partner for a magistrate position, or  
7 3 the office of district associate judge, associate juvenile  
7 4 judge, or associate probate judge.  
7 5 The bill provides that a judge, clerk, or deputy clerk  
7 6 serving as a fiduciary may be compensated for providing  
7 7 fiduciary services if such services are for a close friend's  
7 8 or family member's estate, trust, guardianship, or  
7 9 conservatorship. Current law prohibits a judge, clerk, or  
7 10 deputy clerk from being compensated for providing fiduciary  
7 11 services.  
7 12 LSB 1375SV 82  
7 13 jm:rj/gg/14