

Senate Study Bill 1187

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 practices and procedures
2 including but not limited to adoption petitions, clerk of the
3 district court duties and recordkeeping affecting real estate,
4 the confidentiality of arrest warrants, and notices by the
5 department of corrections to the clerk of the district court.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 1412DP 82
8 jm/gg/14

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1 1 Section 1. Section 321A.24, subsection 1, paragraph c,
1 2 Code 2007, is amended to read as follows:
1 3 c. The bond constitutes a lien in favor of the state upon
1 4 the real estate so scheduled of any surety, which lien exists
1 5 in favor of any holder of a final judgment against the person
1 6 who has filed the bond, for damages, including damages for
1 7 care and loss of services, because of bodily injury to or
1 8 death of any person, or for damage because of injury to or
1 9 destruction of property, including the loss of use of the
1 10 property, resulting from the ownership, maintenance, use, or
1 11 operation of a motor vehicle after the bond was filed, upon
1 12 the filing of notice to that effect by the department in the
1 13 office of the proper clerk of the district court of the county
1 14 where the real estate is located. An individual surety
1 15 scheduling real estate security shall furnish satisfactory
1 16 evidence of title to the property and the nature and extent of
1 17 all encumbrances on the property and the value of the surety's
1 18 interest in the property, in the manner the judge or clerk of
1 19 the district court approving the bond requires. The notice
1 20 filed by the department shall contain, in addition to any
1 21 other matters deemed by the department to be pertinent, a
1 22 legal description of the real estate scheduled, the name of
1 23 the holder of the record title, the amount for which it stands
1 24 as security, and the name of the person in whose behalf proof
1 25 is so being made. ~~Upon the filing of the notice the clerk of~~
~~the district court shall retain the notice as part of the~~
~~records of the court and enter upon the encumbrance book the~~
~~date and hour of filing, the name of the surety, the name of~~
~~the record titleholder, the description of the real estate,~~
~~and the further notation that a lien is charged on the real~~
~~estate pursuant to the filed notice. From and after the entry~~
~~of the notice upon the encumbrance book all persons are~~
~~charged with notice of it.~~

1 34 Sec. 2. Section 600.3, Code 2007, is amended by adding the
1 35 following new subsection:

2 1 NEW SUBSECTION. 4. An adoption petition shall be limited
2 2 to the adoption of one natural person.

2 3 Sec. 3. Section 602.8102, subsection 103, Code 2007, is
2 4 amended by striking the subsection.

2 5 Sec. 4. Section 602.8103, subsection 4, Code 2007, is
2 6 amended by adding the following new paragraph:

2 7 NEW PARAGRAPH. k. Complaints, trial informations, and
2 8 uniform citations and complaints relating to parking
2 9 violations under sections 321.236, 321.239, 321.358, 321.360,
2 10 and 321.361.

2 11 Sec. 5. Section 602.8104, subsection 2, paragraph d, Code
2 12 2007, is amended by striking the paragraph.

2 13 Sec. 6. Section 602.8105, subsection 1, paragraph a, Code
2 14 2007, is amended to read as follows:

2 15 a. For filing and docketing a petition, other than a
2 16 modification of a dissolution decree to which a written

2 17 stipulation is attached at the time of filing containing the
2 18 agreement of the parties to the terms of modification, one
2 19 hundred dollars. In counties having a population of
2 20 ninety-eight thousand or over, an additional five dollars
2 21 shall be charged and collected to be known as the journal
2 22 publication fee and used for the purposes provided for in
2 23 section 618.13. For multiple adoption petitions filed at the
2 24 same time by the same petitioner under section 600.3, the
2 25 filing fee and any court costs for any petition filed in
2 26 addition to the first petition filed are waived.

2 27 Sec. 7. Section 615.1, Code 2007, is amended to read as
2 28 follows:

2 29 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

2 30 A judgment in an action for the foreclosure of a real
2 31 estate mortgage, deed of trust, or real estate contract upon
2 32 property which at the time of judgment is either used for an
2 33 agricultural purpose as defined in section 535.13 or a
2 34 one-family or two-family dwelling which is the residence of
2 35 the mortgagor, or in any action on a claim for rent shall be
3 1 null and void, all liens shall be ~~extinguished~~ unenforceable,
3 2 and no execution shall be issued for any purpose other than as
3 3 a setoff or counterclaim after the expiration of a period of
3 4 two years, exclusive of any time during which execution on the
3 5 judgment was stayed pending a bankruptcy action, from the
3 6 entry thereof. As used in this section, "mortgagor" means a
3 7 mortgagor or a borrower executing a deed of trust as provided
3 8 in chapter 654 or a vendee of a real estate contract.

3 9 Sec. 8. Section 617.10, Code 2007, is amended to read as
3 10 follows:

3 11 617.10 REAL ESTATE == ACTION INDEXED.

3 12 1. When a petition affecting real estate is filed, the
3 13 clerk of the district court where the petition is filed shall
3 14 ~~forthwith index same the petition~~ in an index book ~~to be~~
3 15 ~~provided therefor~~, under the tract number which describes the
3 16 property, entering in each instance the ~~cause~~ case number as a
3 17 guide to the record of court proceedings which affect ~~such the~~
3 18 real estate. If the petition ~~be is~~ amended to include other
3 19 parties or other lands, ~~same the amended petition~~ shall be
3 20 similarly indexed. ~~When the cause is finally a final result~~
3 21 ~~is determined in the case~~, the result shall be indicated in
3 22 ~~said the index~~ book wherever indexed.

3 23 2. As used in this section, "book" means any mode of
3 24 permanent recording, including but not limited to card files,
3 25 microfilm, microfiche, and electronic records.

3 26 Sec. 9. Section 617.13, Code 2007, is amended to read as
3 27 follows:

3 28 617.13 REAL ESTATE IN OTHER COUNTY.

3 29 When any part of real property, the subject of an action,
3 30 is situated in any other county than the one in which the
3 31 action is brought, the plaintiff must, in order to affect
3 32 third persons with constructive notice of the pendency of the
3 33 action, file with the clerk of the district court of the other
3 34 county a notice of the pendency of the action, containing the
3 35 names of the parties, the object of the action, and a
4 1 description of the property in that county affected by the
4 2 action. ~~The clerk shall at once index and enter a memorandum~~
4 3 ~~of the notice in the encumbrance book.~~

4 4 Sec. 10. Section 624.23, subsection 7, Code 2007, is
4 5 amended to read as follows:

4 6 7. If a case file has been sealed by the court, or if by
4 7 law the court records in a case are not available to the
4 8 general public, ~~any judgments entered in the case shall not~~
4 9 ~~become a lien on real property until either the identity of~~
4 10 ~~the judgment creditor becomes public record, or until the~~
4 11 ~~judgment creditor, in a public document in the case in which~~
4 12 ~~judgment is entered, or the court records are made~~
4 13 confidential by the court, the following information shall be
4 14 considered a public record and available for inspection: the
4 15 name of the court, the title of the action, the case number,
4 16 the amount of the judgment, the name of the judgment creditor,
4 17 the affidavit designating the agent and office of the
4 18 creditor, and any full or partial satisfaction of the
4 19 judgment. A judgment creditor shall file with the clerk of
4 20 the district court an affidavit that designates an agent and
4 21 office, consistent with the requirements of section 490.501,
4 22 on which process on the judgment creditor may be served.
4 23 Service may be made on the agent in the same manner as service
4 24 may be made on a corporate agent pursuant to section 490.504.
4 25 An agent who has resigned without designating a successor
4 26 agent and office and who is otherwise unavailable for service
4 27 may be served in the manner provided in section 490.504,

4 28 subsection 2, at the agent's office of record.

4 29 Sec. 11. Section 629.3, Code 2007, is amended to read as
4 30 follows:

4 31 629.3 RECORD OF LIEN.

~~4 32 It shall be the duty of the clerk of the district court to
4 33 record the statements so filed in the encumbrance book and to
4 34 enter the same in the lien index. Payments advanced after
4 35 execution has been issued upon the junior lien, shall be added
5 1 to the execution upon receipt, by the sheriff, of a verified
5 2 statement of such advancements and when the redemption period
5 3 has expired the clerk shall release them on the clerk's
5 4 record.~~

5 5 Sec. 12. Section 639.64, Code 2007, is amended to read as
5 6 follows:

~~5 7 639.64 AUTOMATIC DISCHARGE == CANCELING ENTRY ON
5 8 ENCUMBRANCE BOOK.~~

~~5 9 If the judgment is rendered in the action for the
5 10 defendant, or, if the action is dismissed by the court, by the
5 11 plaintiff, or, by agreement of the parties, or, if judgment
5 12 has been entered for the plaintiff and has been satisfied of
5 13 record, the attachment shall, subject to the right of appeal,
5 14 automatically be discharged and the property attached, or its
5 15 proceeds, shall be returned to the defendant. ~~If the
5 16 attachment has been entered on the encumbrance book, it shall
5 17 be the duty of the clerk to cancel such attachment, and in the
5 18 entry of cancellation, the clerk shall refer to the entry in
5 19 the case showing the clerk's authority to cancel said
5 20 attachment.~~~~

5 21 Sec. 13. Section 654.17, Code 2007, is amended to read as
5 22 follows:

5 23 654.17 RECISION OF FORECLOSURE.

~~5 24 1. At any time prior to the recording of the sheriff's
5 25 deed, and before the mortgagee's rights become unenforceable
5 26 by operation of the statute of limitations, the judgment
5 27 creditor, or the judgment creditor who is the successful
5 28 bidder at the sheriff's sale, with the written consent of the
5 29 mortgagor may rescind the foreclosure action by filing a
5 30 notice of recision with the clerk of court in the county in
5 31 which the property is located along with a filing fee of fifty
5 32 dollars. In addition, such person if the original mortgage
5 33 and mortgage note are contained in the court file, the
5 34 mortgagor shall pay a fee of twenty-five dollars for documents
5 35 filed in the foreclosure action which the plaintiff requests
6 1 returned to the clerk of the district court. Upon the payment
6 2 of the fee, the clerk shall make copies of the original
6 3 mortgage and mortgage note for the court file, and return the
6 4 original mortgage and mortgage note to the mortgagor.~~

~~6 5 2. Upon the filing of the notice of recision, the mortgage
6 6 loan shall be enforceable according to the original terms of
6 7 the foreclosure and the rights of all persons with an interest
6 8 in the property may be enforced as if the foreclosure had not
6 9 been filed. However, any findings of fact or law shall be
6 10 preclusive for purposes of any future action unless the court,
6 11 upon hearing, rules otherwise. The mortgagor shall be
6 12 assessed costs, including reasonable attorney fees, of
6 13 foreclosure and recision if provided by the mortgage
6 14 agreement.~~

6 15 Sec. 14. Section 804.29, Code 2007, is amended to read as
6 16 follows:

6 17 804.29 CONFIDENTIALITY.

~~6 18 All Except for a bench warrant issued by a court for
6 19 failure to appear, all information filed with the court for
6 20 the purpose of securing a warrant for an arrest, including but
6 21 not limited to a citation and affidavits, shall be a
6 22 confidential record until such time as a peace officer has
6 23 made the arrest and has made the officer's return on the
6 24 warrant. During the period of time that information is
6 25 confidential, ~~it the warrant shall be sealed by the court and
6 26 the information contained therein in the warrant shall not be
6 27 disseminated to any person other than a peace officer,
6 28 employee of a county attorney's office, magistrate, or another
6 29 court employee, in the course of official duties.~~~~

6 30 Sec. 15. NEW SECTION. 904.119 NOTICE OF DISCHARGE OR
6 31 PAROLE.

6 32 The department, in cooperation with the judicial district
6 33 departments of correctional services and the board of parole,
6 34 shall notify the clerk of the district court of the offender's
6 35 county of conviction, of the date of discharge from a
7 1 correctional institution or the date of release on parole, and
7 2 the subsequent date of discharge from parole. The notice to
7 3 the clerk of the district court shall also include the name,

7 4 date of birth, court case numbers from the sentencing order
7 5 committing the offender to the department, and if known the
7 6 new address of the offender.
7 7 Sec. 16. Section 904.602, Code 2007, is amended by adding
7 8 the following new subsection:
7 9 NEW SUBSECTION. 13. This section does not preclude the
7 10 disclosure of otherwise confidential information to the clerk
7 11 of the district court for the purpose of implementing section
7 12 904.119.

7 13 Sec. 17. Sections 626.9, 626.20, 639.28, 639.70, and
7 14 674.11, Code 2007, are repealed.

7 15 EXPLANATION

7 16 This bill relates to judicial branch practices and
7 17 procedures including but not limited to adoption petitions,
7 18 clerk of the district court duties and recordkeeping affecting
7 19 real estate, the confidentiality of arrest warrants, and
7 20 notices by the department of corrections to the clerk of the
7 21 district court.

7 22 The amendment to Code section 600.3 requires a petitioner
7 23 to file a separate adoption petition for each person being
7 24 adopted.

7 25 The amendment to Code section 602.8103 permits the clerk of
7 26 the district court to destroy, without prior court approval or
7 27 reproduction, a complaint, trial information, or uniform
7 28 citation and complaint related to a parking violation.

7 29 The amendment to Code section 602.8104 eliminates the
7 30 requirement that the clerk of the district court keep an
7 31 encumbrance book that contains a statement of the levy of each
7 32 attachment on real estate entered by the sheriff. The
7 33 amendments to Code sections 321A.24, 602.8102, 617.13, 629.3,
7 34 and 639.64, and the repeal of Code sections 626.9, 626.20,
7 35 639.28, and 639.70, conform the Code sections to the

8 1 elimination of the encumbrance book in Code section 602.8104.

8 2 The amendment to Code section 602.8105 waives the filing
8 3 and docketing fee and any court costs for multiple adoption
8 4 petitions filed at the same time by the same petitioner under
8 5 Code section 600.3.

8 6 The amendment to Code section 615.1 provides that a
8 7 judgment in an action for the foreclosure of a real estate
8 8 mortgage is "unenforceable" after the expiration of two years,
8 9 unless a bankruptcy is filed. Current law provides that a
8 10 judgment in an action for foreclosure of a real estate
8 11 mortgage is "extinguished" after two years unless a bankruptcy
8 12 is filed.

8 13 The amendment to Code section 617.10 permits the clerk of
8 14 the district court to keep the index of petitions affecting
8 15 real estate with card files, microfilm, microfiche, or in an
8 16 electronic format. The amendment to Code section 617.10 also
8 17 enhances the readability of the section.

8 18 The amendment to Code section 624.23 concerns the
8 19 disclosure of certain court records relating to judgment liens
8 20 when the case filed has been sealed or made confidential.
8 21 Under the bill, the following records are considered a public
8 22 record even if the court file has been sealed or made
8 23 confidential: the name of the court, the title of the action,
8 24 the case number, the amount of the judgment, the name of the
8 25 judgment creditor, the affidavit designating the agent and
8 26 office of the creditor, and any full or partial satisfaction
8 27 of the judgment.

8 28 The amendment to Code section 654.17 relates to the
8 29 rescission of a foreclosure action. Under the bill, if a
8 30 foreclosure action is rescinded by a judgment creditor, and
8 31 the original mortgage and mortgage note are in the court file,
8 32 the mortgagor shall pay a \$25 fee to the clerk of the district
8 33 court prior to receiving the original mortgage and mortgage
8 34 note from the clerk.

8 35 The amendment to Code section 804.29 provides that a bench
9 1 warrant issued by the court for failure to appear is not
9 2 confidential if it is contained with information related to
9 3 securing an arrest warrant. Current law provides that all
9 4 information filed with the court for the purpose of securing
9 5 an arrest warrant is confidential.

9 6 New Code section 904.119 requires the department of
9 7 corrections to notify the clerk of the district court in the
9 8 offender's county of conviction of the date of discharge from
9 9 a correctional institution or the date of release on parole,
9 10 and the subsequent date of discharge from parole. The notice
9 11 shall also include the name, date of birth, court case numbers
9 12 from the sentencing order committing the offender to the
9 13 department of corrections, and if known the new address of the
9 14 offender.

9 15 The amendment to Code section 904.602 permits the
9 16 department of corrections to release information to the clerk
9 17 of the district court to implement the notice provisions of
9 18 new Code section 904.119.
9 19 Code section 674.11 is repealed, eliminating the provision
9 20 requiring the clerk of the district court to keep a
9 21 change-of-name record in regard to changes of legal names by
9 22 petitions to the court.
9 23 LSB 1412DP 82
9 24 jm:rj/gg/14