

MAR 10 2006
Place On Calendar

HOUSE FILE 2740
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 719)

Passed House, Date 3-30-06 Passed Senate, Date 4-12-06
Vote: Ayes 97 Nays 0 Vote: Ayes 49 Nays 0
Repassed Approved _____
4-17-06 98-0

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:

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HF 2740

1 Section 1. Section 232.133, subsection 2, Code 2005, is
2 amended to read as follows:

3 2. Except for appeals from ~~final~~ orders entered in child
4 in need of assistance proceedings or ~~final~~ orders entered
5 pursuant to section 232.117, appellate procedures shall be
6 governed by the same provisions applicable to appeals from the
7 district court. The supreme court may prescribe rules to
8 expedite the resolution of appeals from final orders entered
9 in child in need of assistance proceedings or ~~final~~ orders
10 entered pursuant to section 232.117.

11 Sec. 2. Section 236.5, subsection 5, Code 2005, is amended
12 to read as follows:

13 5. A copy of any order or approved consent agreement shall
14 be issued to the plaintiff, the defendant, the county sheriff
15 ~~having-jurisdiction-to-enforce-the-order-or-consent-agreement~~
16 of the county in which the order or consent decree is
17 initially entered, and the twenty-four hour dispatcher for the
18 county sheriff. Any subsequent amendment or revocation of an
19 order or consent agreement shall be forwarded by the clerk to
20 all individuals and the county sheriff previously notified.
21 The clerk shall notify the county sheriff and the twenty-four
22 hour dispatcher for the county sheriff in writing so that the
23 county sheriff and the county sheriff's dispatcher receive
24 written notice within six hours of filing the order, approved
25 consent agreement, amendment, or revocation. The clerk may
26 fulfill this requirement by sending the notice by facsimile or
27 other electronic transmission which reproduces the notice in
28 writing within six hours of filing the order. The county
29 sheriff's dispatcher shall notify all law enforcement agencies
30 having jurisdiction over the matter and the twenty-four hour
31 dispatcher for the law enforcement agencies upon notification
32 by the clerk.

33 Sec. 3. Section 558.66, unnumbered paragraph 1, Code 2005,
34 is amended to read as follows:

35 Upon receipt of a certificate ~~from~~ issued by the clerk of

1 the district court or an appellate clerk of the supreme court
2 indicating that the title to real estate has been finally
3 established in any named person by judgment or decree or by
4 will or by affidavit of or on behalf of a surviving spouse
5 that has been recorded by the recorder, the auditor shall
6 enter the information in the certificate upon the transfer
7 books, upon payment of a fee in the amount specified in
8 section 331.507, subsection 2, paragraph "a". ~~In the case of~~
9 ~~a certificate from the clerk of the district court or an~~
10 ~~appellate court, the fee shall be taxed as court costs,~~
11 ~~collected by the clerk, and paid to the treasurer as provided~~
12 ~~in section 331.902, subsection 3.~~ In the case of the
13 affidavit filed with the recorder, the fee set forth in
14 section 331.507, subsection 2, paragraph "a", and the fee set
15 forth in section 331.604, shall be collected by the recorder
16 and paid to the treasurer as provided in section 331.902,
17 subsection 3.

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

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

23 Sec. 5. Section 602.5106, subsection 2, Code 2005, is
24 amended to read as follows:

25 2. A decision of the court of appeals is final and shall
26 not be reviewed by any other court except upon the granting by
27 the supreme court of an application for further review as
28 provided in section 602.4102. Upon the filing of the
29 application, the judgment and mandate of the court of appeals
30 is stayed pending action of the supreme court or until the
31 expiration of the time specified in section 602.4102,
32 ~~subsections 4 and~~ subsection 5.

33 Sec. 6. Section 602.6401, subsection 2, Code Supplement
34 2005, is amended to read as follows:

35 2. By February of each year in which magistrates' terms

1 expire, the state court administrator shall apportion
2 magistrate offices among the counties in accordance with the
3 following criteria:

4 ~~a. The number and type of proceedings contained in the~~
5 ~~administrative reports required by section 602.6606.~~

6 b. a. The existence of either permanent, temporary, or
7 seasonal populations not included in the current census
8 figures.

9 c. b. The geographical area to be served.

10 d. c. Any inordinate number of cases over which
11 magistrates have jurisdiction that were pending at the end of
12 the preceding year.

13 e. d. The number and types of juvenile proceedings
14 handled by district associate judges.

15 Sec. 7. Section 602.8102, subsections 44, 79, and 113,
16 Code Supplement 2005, are amended by striking the subsections.

17 Sec. 8. Section 602.8102, subsection 106, Code Supplement
18 2005, is amended to read as follows:

19 106. Carry out duties relating to the administration of
20 small estates as provided in sections 635.1, 635.7, and 635.9,
21 ~~and 635.11.~~

22 Sec. 9. Section 626.16, Code 2005, is amended to read as
23 follows:

24 626.16 RECEIPT AND RETURN.

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

31 Sec. 10. Section 633.305, Code 2005, is amended to read as
32 follows:

33 633.305 NOTICE IF NO ADMINISTRATION.

34 On admission of a will to probate without administration of
35 the estate, ~~and upon advanced payment of the costs by~~ the

1 proponent, ~~the clerk~~ shall cause to be published, in the
2 manner prescribed in the preceding section, a notice of the
3 admission of the will to probate. As soon as practicable
4 following the admission of the will to probate, the proponent
5 shall give notice of the admission of the will to probate by
6 ordinary mail addressed to the surviving spouse, each heir of
7 the decedent, and each devisee under the will admitted to
8 probate whose identities are reasonably ascertainable, at such
9 persons' last known addresses. The notice of the admission of
10 the will to probate shall include a notice that any action to
11 set aside the will must be brought within the later to occur
12 of four months from the date of the second publication of the
13 notice or one month from the date of mailing of this notice,
14 or thereafter be barred.

15 As used in this section, "heir" means only such person as
16 would, in an intestate estate, be entitled to a share under
17 section 633.219.

18 The notice shall be substantially in the following form:

19 Notice of Proof of Will Without Administration
20 In the District Court of Iowa
21 in and for County. Probate No.
22

23 In the Estate of, Deceased
24 To All Persons Interested in the Estate of, Deceased,
25 who died on or about (date):

26 You are hereby notified that on the day of
27 (month), ... (year), the last will and testament of,
28 deceased, bearing date of the day of (month), ...
29 (year), was admitted to probate in the above named court and
30 there will be no present administration of the estate. Any
31 action to set aside the will must be brought in the district
32 court of the county within the later to occur of four months
33 from the date of the second publication of this notice or one
34 month from the date of mailing of this notice to all heirs of
35 the decedent and devisees under the will whose identities are

1 reasonably ascertainable, or thereafter be forever barred.

2 Dated this day of (month), ... (year)

3

4 ~~Clerk-of-the-district-court~~ Proponent

5

6 Attorney for estate

7

8 Address

9 Date of second publication

10 day of (month), ... (year)

11 (Date to be inserted by publisher)

12 Sec. 11. Section 642.23, unnumbered paragraph 1, Code
13 2005, is amended to read as follows:

14 Notwithstanding the ~~seventy-day~~ one hundred twenty-day
15 period in section 626.16 for the return of an execution in
16 garnishment for the payment of a support obligation, the
17 sheriff shall promptly deposit any amounts collected with the
18 clerk of the district court, and the clerk shall disburse the
19 amounts, after subtracting applicable fees, within two working
20 days of the filing of an order condemning funds as follows:

21 Sec. 12. Section 655.4, Code 2005, is amended to read as
22 follows:

23 655.4 ENTRY OF FORECLOSURE.

24 When a judgment of foreclosure is entered in any court, the
25 ~~clerk~~ mortgagee shall record with the recorder an instrument
26 in writing referring to the mortgage and duly acknowledging
27 that the mortgage was foreclosed and giving the date of the
28 decree. A mortgagee who fails to record such instrument
29 within thirty days of receiving a written request to record
30 shall be subject to a penalty of one hundred dollars plus
31 reasonable attorney fees incurred by the party aggrieved, to
32 be recovered in an action for the satisfaction or
33 acknowledgement by the party aggrieved. The fee for recording
34 and indexing an instrument shall be as provided in section
35 331.604.

1 administrator of the board of shorthand reporters.

2 The bill extends the period of time in which an execution
3 of judgment is made for recovery of a judgment from 70 days to
4 120 days.

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

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

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

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HOUSE FILE 2740

S-5185

1 Amend House File 2740, as passed by the House, as
2 follows:

3 1. Page 2, by striking lines 23 through 32 and
4 inserting the following:

5 "Sec. ____ . Section 602.4102, subsection 5, Code
6 2005, is amended to read as follows:

7 5. The court of appeals shall extend the time for
8 filing of an application if the court of appeals
9 determines that a failure to timely file an
10 application was due to the failure of the clerk of the
11 court of appeals to notify the prospective applicant
12 of the filing of the decision. ~~If an application for
13 further review is not acted upon by the supreme court
14 within thirty days after the application was filed,
15 the application is deemed denied, the supreme court
16 loses jurisdiction, and the decision of the court of
17 appeals is conclusive.~~

18 Sec. ____ . Section 602.5106, subsection 2, Code
19 2005, is amended to read as follows:

20 2. A decision of the court of appeals is final and
21 shall not be reviewed by any other court except upon
22 the granting by the supreme court of an application
23 for further review as provided in section 602.4102.
24 Upon the filing of the application, the judgment and
25 mandate of the court of appeals is stayed pending
26 action of the supreme court ~~or until the expiration of
27 the time specified in section 602.4102, subsections 4
28 and 5."~~

29 2. By renumbering as necessary.

By PAT WARD

S-5185 FILED APRIL 10, 2006

SENATE AMENDMENT TO
HOUSE FILE 2740

H-8546

1 Amend House File 2740, as passed by the House, as
2 follows:

3 1. Page 2, by striking lines 23 through 32 and
4 inserting the following:

5 "Sec. ____ . Section 602.4102, subsection 5, Code
6 2005, is amended to read as follows:

7 5. The court of appeals shall extend the time for
8 filing of an application if the court of appeals
9 determines that a failure to timely file an
10 application was due to the failure of the clerk of the
11 court of appeals to notify the prospective applicant
12 of the filing of the decision. ~~If an application for~~
13 ~~further review is not acted upon by the supreme court~~
14 ~~within thirty days after the application was filed,~~
15 ~~the application is deemed denied, the supreme court~~
16 ~~loses jurisdiction, and the decision of the court of~~
17 ~~appeals is conclusive.~~

18 Sec. ____ . Section 602.5106, subsection 2, Code
19 2005, is amended to read as follows:

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21 shall not be reviewed by any other court except upon
22 the granting by the supreme court of an application
23 for further review as provided in section 602.4102.
24 Upon the filing of the application, the judgment and
25 mandate of the court of appeals is stayed pending
26 action of the supreme court ~~or until the expiration of~~
27 ~~the time specified in section 602.4102, subsections 4~~
28 ~~and 5."~~

29 2. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8546 FILED APRIL 13, 2006

Erdman - ch

Hutter

Swain

HSB 719
JUDICIARY

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

Succeeded
SF 2740

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:

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1 Section 1. Section 232.133, subsection 2, Code 2005, is
2 amended to read as follows:

3 2. Except for appeals from ~~final~~ orders entered in child
4 in need of assistance proceedings or ~~final~~ orders entered
5 pursuant to section 232.117, appellate procedures shall be
6 governed by the same provisions applicable to appeals from the
7 district court. The supreme court may prescribe rules to
8 expedite the resolution of appeals from final orders entered
9 in child in need of assistance proceedings or ~~final~~ orders
10 entered pursuant to section 232.117.

11 Sec. 2. Section 236.5, subsection 5, Code 2005, is amended
12 to read as follows:

13 5. A copy of any order or approved consent agreement shall
14 be issued to the plaintiff, the defendant, the county sheriff
15 ~~having-jurisdiction-to-enforce-the-order-or-consent-agreement~~
16 of the county in which the order or consent decree is
17 initially entered, and the twenty-four hour dispatcher for the
18 county sheriff. Any subsequent amendment or revocation of an
19 order or consent agreement shall be forwarded by the clerk to
20 all individuals and the county sheriff previously notified.
21 The clerk shall notify the county sheriff and the twenty-four
22 hour dispatcher for the county sheriff in writing so that the
23 county sheriff and the county sheriff's dispatcher receive
24 written notice within six hours of filing the order, approved
25 consent agreement, amendment, or revocation. The clerk may
26 fulfill this requirement by sending the notice by facsimile or
27 other electronic transmission which reproduces the notice in
28 writing within six hours of filing the order. The county
29 sheriff's dispatcher shall notify all law enforcement agencies
30 having jurisdiction over the matter and the twenty-four hour
31 dispatcher for the law enforcement agencies upon notification
32 by the clerk.

33 Sec. 3. Section 558.66, unnumbered paragraph 1, Code 2005,
34 is amended to read as follows:

35 Upon receipt of a certificate ~~from~~ issued by the clerk of

1 the district court or an appellate clerk of the supreme court
2 indicating that the title to real estate has been finally
3 established in any named person by judgment or decree or by
4 will or by affidavit of or on behalf of a surviving spouse
5 that has been recorded by the recorder, the auditor shall
6 enter the information in the certificate upon the transfer
7 books, upon payment of a fee in the amount specified in
8 section 331.507, subsection 2, paragraph "a". ~~In-the-case-of~~
9 ~~a-certificate-from-the-clerk-of-the-district-court-or-an~~
10 ~~appellate-court, the fee shall be taxed as court costs,~~
11 ~~collected by the clerk, and paid to the treasurer as provided~~
12 ~~in section 331.902, subsection 3.~~ In the case of the
13 affidavit filed with the recorder, the fee set forth in
14 section 331.507, subsection 2, paragraph "a", and the fee set
15 forth in section 331.604, shall be collected by the recorder
16 and paid to the treasurer as provided in section 331.902,
17 subsection 3.

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

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

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

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

35 Sec. 6. Section 602.5106, subsection 2, Code 2005, is

1 amended to read as follows:

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

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

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

16 ~~a--The-number-and-type-of-proceedings-contained-in-the~~
17 ~~administrative-reports-required-by-section-602-6606-~~

18 ~~b-~~ a. The existence of either permanent, temporary, or
19 seasonal populations not included in the current census
20 figures.

21 ~~c-~~ b. The geographical area to be served.

22 ~~d-~~ c. Any inordinate number of cases over which
23 magistrates have jurisdiction that were pending at the end of
24 the preceding year.

25 ~~e-~~ d. The number and types of juvenile proceedings
26 handled by district associate judges.

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

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

31 106. Carry out duties relating to the administration of
32 small estates as provided in sections 635.1, 635.7, and 635.9
33 ~~and-635-11.~~

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

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1 626.16 RECEIPT AND RETURN.

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

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

10 633.305 NOTICE IF NO ADMINISTRATION.

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

27 As used in this section, "heir" means only such person as
28 would, in an intestate estate, be entitled to a share under
29 section 633.219.

30 The notice shall be substantially in the following form:

31 Notice of Proof of Will Without Administration
32 In the District Court of Iowa
33 in and for County. Probate No.
34
35 In the Estate of, Deceased

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

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

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

15

16 Clerk-of-the-district-court Proponent

17

18 Attorney for estate

19

20 Address

21 Date of second publication

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

23 (Date to be inserted by publisher)

24 Sec. 12. Section 642.23, unnumbered paragraph 1, Code
25 2005, is amended to read as follows:

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

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

35 648.5 JURISDICTION -- HEARING -- PERSONAL SERVICE.

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

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

15 655.4 ENTRY OF FORECLOSURE.

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

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

30 655.5 INSTRUMENT OF SATISFACTION.

31 When the judgment is fully paid and satisfied upon the
32 judgment docket of the court, the ~~clerk~~ mortgagee shall record
33 with the recorder an instrument in writing, referring to the
34 mortgage and duly acknowledging a satisfaction of the
35 mortgage. A mortgagee who fails to record such instrument

1 within thirty days of receiving a written request to record
2 shall be subject to a penalty of one hundred dollars plus
3 reasonable attorney fees incurred by the party aggrieved, to
4 be recovered in an action for the satisfaction or
5 acknowledgement by the party aggrieved. The fee for recording
6 and indexing an instrument shall be as provided in section
7 331.604.

8 Sec. 16. Sections 602.6605, 602.6606, and 635.11, Code
9 2005, are repealed.

10

EXPLANATION

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

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

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

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

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

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

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

34 The bill amends the procedure for publication of a notice
35 of an estate without administration by placing the

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1 responsibility with the proponent of the estate instead of
2 with the clerk of court.

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

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

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

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MEMORANDUM

TO: MEMBERS OF THE GENERAL ASSEMBLY

FROM: IOWA JUDICIAL BRANCH

DATE: February 13, 2006

RE: TLSB 5301DP

This bill would streamline and clarify certain court practices and procedures.

Sections 1, 5 and 6 of the proposed legislation deal with appellate court procedures. Current law restricts the use of rules that facilitate expedited appeals for child in need of assistance and termination of parental rights cases to final orders only. Section 1 extends this benefit to interlocutory appeals. Sections 5 and 6 of the bill eliminate the 30-day deadline for action by the supreme court on applications for further review. The 30-day deadline is unrealistic. It does not allow sufficient time for the other party to respond to the application nor sufficient time for the court to consider the application.

Section 2 clarifies the extent of the clerk's duty to send copies of protective orders. The amendment requires copies be sent to the sheriff in the county where the order is issued and that sheriff's 24-hour dispatcher. This service is in addition to the clerk's procedure to send information electronically for entry in the state's domestic abuse registry.

Section 3 streamlines to procedure for payment of the fee for recording a transfer of title to real estate enabled by judgment, decree, will or other means by eliminating the clerk as the go between with the county recorder. Eliminating the clerk of as the go between reduces the time and expense required to tax these costs and transfer them to another government entity, which is usually located in the same building as the clerk.

Sections 4, 7, 8 and 9 replace outdated language, eliminate obsolete reports, or correspond to other sections of the bill.

Sections 10 and 12 extends the period of time for which an execution of judgment is effective so that the time period is a more realistic framework for recovery of a judgment. The extended time period would benefit litigants.

Section 11 streamlines the procedure for publication of a notice of an estate without administration by placing the responsibility directly with the proponent of the estate instead of having the clerk make arrangements for publication and taxing the costs.

Sections 14 and 15 establish a procedure for ensuring that foreclosures and satisfaction of foreclosures are recorded promptly by the mortgagor. This procedure is similar to the procedure for filing a satisfaction of judgment.

HOUSE FILE 2740

AN ACT

RELATING TO THE JUDICIAL BRANCH AND COURT ADMINISTRATION AND
PROCEDURE AND PROVIDING A PENALTY.

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

Section 1. Section 232.133, subsection 2, Code 2005, is amended to read as follows:

2. Except for appeals from ~~final~~ orders entered in child in need of assistance proceedings or ~~final~~ orders entered pursuant to section 232.117, appellate procedures shall be governed by the same provisions applicable to appeals from the district court. The supreme court may prescribe rules to expedite the resolution of appeals from final orders entered in child in need of assistance proceedings or ~~final~~ orders entered pursuant to section 232.117.

Sec. 2. Section 236.5, subsection 5, Code 2005, is amended to read as follows:

5. A copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant, the county sheriff ~~having jurisdiction to enforce the order or consent agreement of the county in which the order or consent decree is initially entered~~, and the twenty-four hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified.

The clerk shall notify the county sheriff and the twenty-four hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The clerk may fulfill this requirement by sending the notice by facsimile or other electronic transmission which reproduces the notice in writing within six hours of filing the order. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four hour dispatcher for the law enforcement agencies upon notification by the clerk.

Sec. 3. Section 558.66, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Upon receipt of a certificate ~~from issued by~~ the clerk of the district court or ~~an appellate clerk of the supreme court indicating~~ that the title to real estate has been finally established in any named person by judgment or decree or by will or by affidavit of or on behalf of a surviving spouse that has been recorded by the recorder, the auditor shall enter the information in the certificate upon the transfer books, upon payment of a fee in the amount specified in section 331.507, subsection 2, paragraph "a". ~~In the case of a certificate from the clerk of the district court or an appellate court, the fee shall be taxed as court costs, collected by the clerk, and paid to the treasurer as provided in section 331.902, subsection 3.~~ In the case of the affidavit filed with the recorder, the fee set forth in section 331.507, subsection 2, paragraph "a", and the fee set forth in section 331.604, shall be collected by the recorder and paid to the treasurer as provided in section 331.902, subsection 3.

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

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

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

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

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

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

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

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

~~a. The number and type of proceedings contained in the administrative reports required by section 602.6606.~~

b. a. The existence of either permanent, temporary, or seasonal populations not included in the current census figures.

c. b. The geographical area to be served.

d. c. Any inordinate number of cases over which magistrates have jurisdiction that were pending at the end of the preceding year.

e. d. The number and types of juvenile proceedings handled by district associate judges.

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

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

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

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

626.16 RECEIPT AND RETURN.

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

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

633.305 NOTICE IF NO ADMINISTRATION.

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

As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219.

The notice shall be substantially in the following form:

Notice of Proof of Will Without Administration

In the District Court of Iowa

in and for County.

Probate No.

....

In the Estate of, Deceased

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

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

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

.....
~~Clerk-of-the-district-court~~ Proponent

.....
Attorney for estate

.....

Address

Date of second publication

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

(Date to be inserted by publisher)

Sec. 12. Section 642.23, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Notwithstanding the seventy-day one hundred twenty-day period in section 626.16 for the return of an execution in

garnishment for the payment of a support obligation, the sheriff shall promptly deposit any amounts collected with the clerk of the district court, and the clerk shall disburse the amounts, after subtracting applicable fees, within two working days of the filing of an order condemning funds as follows:

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

655.4 ENTRY OF FORECLOSURE.

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

Sec. 14. Section 655.5, Code 2005, is amended to read as follows:

655.5 INSTRUMENT OF SATISFACTION.

When the judgment is fully paid and satisfied upon the judgment docket of the court, the clerk mortgagee shall record with the recorder an instrument in writing, referring to the mortgage and duly acknowledging a satisfaction of the mortgage. A mortgagee who fails to record such instrument within thirty days of receiving a written request to record shall be subject to a penalty of one hundred dollars plus reasonable attorney fees incurred by the party aggrieved, to be recovered in an action for the satisfaction or acknowledgement by the party aggrieved. The fee for recording and indexing an instrument shall be as provided in section 331.604.

Sec. 15. Sections 602.6605, 602.6606, and 635.11, Code 2005, are repealed.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2740, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2006

THOMAS J. VILSACK
Governor