

## A BILL

FOR AN ACT TO REGULATE THE PRACTICE IN COURTS OF RECORD AS TO COMMENCEMENT OF ACTIONS, THE MAKING UP AND TRIAL OF ISSUES, AND RENDITION OF JUDGMENT IN CERTAIN CASES.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* Actions in a court of record shall be commenced by serving the defendant with an original notice, signed by the plaintiff or his attorney, informing the defendant of the name of the plaintiff, and that on or before a date named a petition will be filed in the office of the clerk of the court wherein suit is brought, naming it, and stating, in general terms, the cause or causes of action, and that such defendant is required to appear and answer the petition in such action and serve a copy of his answer on the plaintiff or his attorney within twenty days after the service of such notice, exclusive of the day of service, and in case of failure to appear or answer, judgment will be taken against him by default for the relief asked for in the petition. The plaintiff or his attorney must add to his signature his residence or office and post-office address, which must be at a place within the state. If in a city, he must add the street or street number, if any, or other suitable designation of the particular locality.

SEC. 2. Said notice shall also contain, in substance, as follows:

*First.* In an action arising on contract, for the payment of money only, that he will take judgment for a sum specified therein if the defendant fails to appear or answer the petition.

*Second.* In other actions, for the recovery of money only, that he will, upon such failure, have the amount he is entitled to recover ascertained by the court, or under its direction, and take judgment for the amount so ascertained.

*Third.* In other actions, that he will, upon such failure, apply to the court for the relief demanded therein.

SEC. 3. If the petition is not filed by the date thus fixed, and ten days before the time for default, the action will be deemed discontinued.

SEC. 4. A copy of the petition must be served upon the defendant with the notice, unless the petition itself be filed in the office of the clerk of the court in which the action is com-

3 menced, in which case the service of the copy may be omitted, but the notice in such case  
 4 must notify the defendant that the petition has been filed with the clerk, as aforesaid, and  
 5 if the defendant appear within ten days after the service of the notice the plaintiff must  
 6 serve a copy of the petition on the defendant or his attorney within five days after the no-  
 7 tice of such appearance, and the defendant shall have at least ten days thereafter to answer  
 8 the same, and no judgment shall be entered against him for want of an answer in such case  
 9 until the expiration of that time.

SEC. 5. If the plaintiff or his attorney fail to serve a copy of the petition, upon a defend-  
 2 ant, who has given notice of his appearance, as prescribed in the last section, the defendant  
 3 may apply to the court for a dismissal of the action.

SEC. 6. A defendant appears in an action when he files in the office of the clerk an  
 2 answer or demurrer and serves a copy of the same on the plaintiff or his attorney, or gives  
 3 the plaintiff written notice of his appearance; after appearance a defendant is entitled to no-  
 4 tice of all subsequent proceedings; but when a defendant has not appeared, service of notices  
 5 or papers in the ordinary proceedings in an action subsequent to the original notice need not  
 6 be made upon him.

SEC. 7. Except as herein otherwise provided, each pleading subsequent to the peti-  
 2 tion must be filed in the office of the clerk, and a copy thereof served on the adverse party or  
 3 his attorney within twenty days after service of a copy of the preceding pleading. But  
 4 the court may, in term time, upon the decision of an issue at law, or motion assailing  
 5 a pleading, order either party to plead during the term, and within such time as it may direct.  
 6 Notices shall be in writing; and notices subsequent to the original notice, and other papers,  
 7 may be served on the party or attorney in the manner prescribed in the next three sections,  
 8 where not otherwise provided by statute.

SEC. 8. The service may be personal or by delivery to the party or attorney on whom the  
 2 service is required to be made, or it may be as follows:

3 *First.* If upon an attorney, it may be made during his absence from his office, by leaving  
 4 the papers with his clerk, therein, or with a person having charge thereof, or, when there is  
 5 no person in the office, by leaving it, between the hours of six in the morning and nine in the  
 6 evening, in a conspicuous place in the office, or, if it is not open so as to admit of such service,  
 7 then by leaving it at the attorney's residence, with some member of his family over fourteen  
 8 years of age.

SEC. 9. Service by mail may be made when the person making the service and the per-

2 son on whom it is to be made reside in different places, between which there is a regular  
3 communication by mail.

SEC. 10. In case of service by mail, the papers shall be deposited in the post-office, ad-  
2 dressed to the person on whom it is served at his place of residence, and the postage paid,  
3 and in such case the time of service shall be five days in addition to that required in case of  
4 personal service.

SEC. 11. Where a plaintiff or defendant who has appeared resides out of the state, and  
2 has no attorney in the action, the service may be made by mail if his residence is known; if  
3 not known, on the clerk for him. But when a party, whether resident or non-resident, has an  
4 attorney in the action, the service of papers shall be upon the attorney instead of the party.  
5 But if the attorney shall have removed from the state, such service may be made upon him,  
6 personally, either within or without the state, or by mail to him at his place of residence, if  
7 known: and if not known, then by mail upon the party, if his residence is known, whether  
8 within or without the state. And if the residence of neither the party nor attorney is known,  
9 the service may be made on the clerk for the attorney.

SEC. 12. Proof of service of any notice, subsequent to the original notice, or copy of any  
2 pleading or motion, may be made by affidavit of the party, or his attorney, or by any person  
3 making the service, stating the time, place, and manner of service.

SEC. 13. A demurrer or motion assailing any pleading or count thereof, suspends the ne-  
2 cessity of filing any other pleading to such pleading or count, until the same has been de-  
3 termined; and the next pleading shall be filed, and a copy thereof served, within twenty  
4 days thereafter, unless such determination is made in term, when the court may, in its dis-  
5 cretion, direct another time within which it shall be filed and served. Upon any such decision  
6 being made out of term, the clerk shall immediately notify the parties thereof, by mail.

SEC. 14. When a demurrer or motion assailing any pleading has been filed, and a copy  
2 thereof served, either party may have the same heard by the court or judge, out of term, by  
3 serving a notice thereof, giving the time and place, ten days before the day fixed for such  
4 hearing. The party serving such notice shall furnish to the court or judge a copy of the plead-  
5 ing assailed, and of the demurrer or motion, and proof of service of notice of such hearing.  
6 The court or judge may, in its discretion, impose costs upon the losing party, and shall do  
7 so when satisfied that such demurrer or motion or defective pleading was filed for the pur-  
8 pose of delay.

SEC. 15. A motion or other paper is valid and effectual, though the title of the action in  
 2 which it is made is omitted, or it is defective, either in respect to the court or parties, if it  
 3 intelligently refers to such action or proceedings: and in furtherance of justice, upon proper  
 4 terms, any other defect or error in any notice or other paper or proceeding, may be amended  
 5 by the court, and any mischance, omission or defect relieved, within one year thereafter;  
 6 and the court may enlarge or extend the time, for good cause shown, within which, by stat-  
 7 ute, any act is to be done, proceeding had or taken, notice or paper filed<sup>2</sup> or served, or may, on  
 8 such terms as are just, permit the same to be done or supplied after the time therefor has  
 9 expired, except that the time for bringing a writ of error or appeal shall in no case be en-  
 10 larged, or a party be permitted to bring such writ of error or appeal after the time therefor  
 11 has expired.

SEC. 16. A defendant who has appeared may, without answering, demand in writing an  
 2 assessment of damages, or of the amount which the plaintiff is entitled to recover, and there-  
 3 upon such assessment shall be had or any such amount ascertained, in such manner as the  
 4 court may, upon application, direct, and judgment entered by the clerk for the amount so  
 5 assessed or ascertained.

SEC. 17. When the judgment may determine the ultimate rights of two or more defend-  
 2 ants, as between themselves, a defendant who requires such determination must demand it  
 3 in his answer, and must, at least ten days before the trial, serve a copy of his answer upon  
 4 each of the defendants, to be affected by the determination, or their attorney. The contro-  
 5 versy between the defendants shall not delay a judgment to which the plaintiff is entitled,  
 6 unless the court otherwise directs.

SEC. 18. Within twenty days after a pleading, or the answer, or demurrer, or reply thereto  
 2 is served, or at any time before the period for answering it expires, the pleading may be once  
 3 amended by the party, of course, without costs, and without prejudice to the proceedings  
 4 already had. But if it is made to appear to the court that the pleading was amended for the  
 5 purpose of delay, and that the adverse party will thereby lose the benefit of a term for which  
 6 the cause is or may be noticed, the amended pleading may be stricken out, or the pleading  
 7 may be restored to its original form and such terms imposed as the court deems just. This  
 8 section shall not be construed to repeal section 2689 of the Code.

SEC. 19. Where a pleading is amended as prescribed in the last section, a copy thereof  
 2 must be served upon the attorney for the adverse party. A failure to demur to or answer the  
 3 amended pleading, within twenty days thereafter, has the same effect as a like failure to de-  
 4 mur to or answer the original pleading.

SEC. 20. At any time after issue, and at least eight days before the term, either party  
 2 may give notice of trial. The party giving the notice shall furnish the clerk, at least four  
 3 days before the term, with a note of issue, containing the title of the action, the names of  
 4 the attorneys, and the clerk shall thereupon enter the cause upon the calendar, according to  
 5 the date of the issue. The cause, once placed upon the calendar of a term, if not tried at  
 6 the term for which the notice was given, need not be noticed for a subsequent term, but shall  
 7 remain upon the calendar from term to term until finally disposed of.

SEC. 21. The issues on the calendar shall be disposed of in the following order, unless for  
 2 the convenience of parties or the dispatch of business, the court otherwise directs :

3 *First*—Issues of fact to be tried by jury.

4 *Second*—Issues of fact to be tried by the court.

5 *Third*—Issues of law.

SEC. 22. Either party, after the notice of trial, whether given by himself or by the ad-  
 2 verse party, may bring the issue to trial, and in the absence of the adverse party, unless the  
 3 court, for good cause, otherwise directs, may proceed with his case, and take a dismissal of  
 4 the action or a verdict or judgment, as the case may require.

SEC. 23. In addition to the regular terms, the district and circuit courts shall always be  
 2 open for the transaction of all business; for the entry of judgments, of decrees, of orders of  
 3 course, and all such other orders as have been granted by the court or judge, and for the hear-  
 4 ing and determination of all matters brought before the court or judge, except the trial  
 5 of issues of fact. The judges of either of such courts may, by order, appoint such special  
 6 terms in the counties of their respective districts or circuits as may be deemed necessary or  
 7 convenient, and at such terms all business hereinbefore mentioned may be transacted. When  
 8 any matter is heard by the court or judge, the decision may be made out of term, and such  
 9 decision may be an order or a direction that an order or judgment or decree be entered:  
 10 and upon filing in the office of the clerk in the county where the action or proceeding is  
 11 pending, the decision, in writing, signed by the judge, an order or judgment or decree, as  
 12 the case may require, shall be entered by such clerk, in conformity with such decision. But  
 13 when any such matter is heard by the court or judge during term, such decision shall be  
 14 given and filed within thirty days after the term.

SEC. 24. Judgment may be had if the defendant fails to answer the petition as follows :

2 *First*—Wherein actions arising on contract for the payment of money only, the original no-  
 3 tice has been personally served, and the plaintiff shall file, or cause to be filed, with the clerk,

4 proof of the personal service of the original notice, and that no answer has been received  
 5 within the time allowed by law, the clerk shall thereupon enter judgment against the  
 6 defendant served, for the amount claimed in the petition, not to exceed the amount stated in  
 7 the original notice. In other actions for the recovery of money only, on filing the like proof,  
 8 the plaintiff may apply to the court to have the amount he is entitled to recover ascertained  
 9 by the court, or by a reference, or in any other manner, and for judgment.

10 *Second*- In other actions the plaintiff may, upon like service and proof, apply to the court,  
 11 after the expiration of the time for answering, for the relief demanded in the complaint. If  
 12 the taking of an account or the proof of any fact is necessary to enable the court to give  
 13 judgment, or to carry the judgment into effect, the court may take the account or hear the  
 14 proof, or may, in its discretion, order a reference for that purpose. The court may, in any  
 15 case, in its discretion, before rendering judgment, require the plaintiff to file an undertaking  
 16 to abide the order of the court, touching the restitution of any estate or effects which may  
 17 be directed by the judgment to be transferred or delivered, or the restitution of any money  
 18 that may be collected, under or by virtue of the judgment, in case the defendant or his rep-  
 19 resentatives shall thereafter apply and be admitted to defend the action, and shall succeed  
 20 in his defense.

SEC. 25. When final judgment may be entered by the clerk, as prescribed in the last  
 2 section, the amount thereof must be determined as follows :

3 *First*—If the petition is verified, the judgment must be entered for the sum demanded in the  
 4 petition, not to exceed the amount claimed in the original notice, or at the plaintiff's option.  
 5 for a smaller sum, and if a computation of interest is necessary it may be made by the clerk.

6 *Second*—If the petition is not verified the clerk must assess the amount due upon the instru-  
 7 ment, the non-payment of which constitutes a cause of action stated in the petition, and  
 8 ascertain by examination of the plaintiff, upon oath, or by other competent proof, that such  
 9 amount is due and owing to the plaintiff therein.

SEC. 26. A judgment shall not be taken against an infant defendant until five days sub-  
 2 sequent to the appointment of a guardian *ad litem* for him.

SEC. 27. Either party may except to any order, decision, judgment or decree rendered  
 2 out of term, in any cause, by filing the same, in writing, in the clerk's office within twenty  
 3 days after the rendition thereof.

SEC. 28. Sections 2599, 2600, 2626, 2635, 2636, 2637, 2640, 2641, 2643, 2647 of the Code,  
 2 and all acts and parts of acts inconsistent herewith are hereby repealed.