

A BILL

FOR AN ACT RELATING TO THE REORGANIZATION OF THE JUDICIAL DEPARTMENT OF THE STATE, ENLARGING, DEFINING AND DETERMINING THE POWERS, JURISDICTION AND CONTINUANCE OF THE DISTRICT AND CIRCUIT COURTS, AND PROVIDING FOR THE ABOLITION OF THE CIRCUIT COURTS, THE APPOINTMENT OF SURROGATE REFEREES, AND FIXING THEIR DUTIES, RESPONSIBILITIES AND COMPENSATION.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. At the general election in the year 1886, there shall be elected in each of the 2 following named districts as the same now exist, to-wit: First, Second, Third, Fourth, 3 Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh, a district judge, who shall hold 4 his office for four years and until his successor is elected and qualified.

SEC. 2. From and after the first day of January, 1889, the office of circuit judge shall be 2 and is hereby abolished. And all provisions of law now in force providing or requiring 3 the election at the general election in 1888 or subsequently of circuit judges are hereby ex- 4 pressly repealed; *Provided*, that until said first day of January, 1889, the circuit judges 5 now in office, or those who, prior to said January 1, 1889, may be appointed or elected to fill 6 vacancies, as provided by law, shall have and exercise all the powers and jurisdiction, while 7 sitting as a judge or as a court, which are now exercised by them or are conferred on them 8 by this act.

SEC. 3. There is hereby conferred on the circuit courts of this State, in addition to the 2 powers now conferred on them, exclusive appellate jurisdiction from justices of the peace 3 and mayors of towns and cities, in civil and criminal actions, prosecutions and proceedings. 4 And all appeals, writs of error, or other proceedings and processes in review from said jus- 5 tices or mayors, which are now returnable to, or jurisdiction over which is now conferred 6 upon, the district court, or the judges thereof, are hereby made returnable to, and jurisdic- 7 tion thereof is hereby conferred on, said circuit courts and the judges thereof, to the same 8 extent and with the same effect as the same are now returnable to or conferred upon said 9 district court or judge. And all provisions of law which now apply to the said district 10 courts or to the judges thereof, as to said appeals, writs of error, and other proceedings and 11 processes in review from said justices or mayors, are hereby made to apply, after the taking

3 of this act, the district judge or judges in said section declared and fixed for said
4 several districts. The district judge shall be a resident of the district in which he is
5 elected, and shall hold his office for four years and until his successor is elected and quali-
6 fied. *Provided*, that whenever within any of said districts is located the county wherein
7 resides a district judge whose election at the general election in 1886 is provided for by sec-
8 tion one of this act, the successor of such district judge shall be elected at the general elec-
9 tion in the year 1890, and every four years thereafter, as provided by law.

SEC. 9. Whenever the district court, as the same is now, or may at any time hereafter be
2 constituted, shall not have completed, at the close of any regular term thereof, the trial of
3 all the criminal causes on his docket, at said term, but there shall remain thereon
4 or more criminal causes untried, it is hereby made the duty of the judge of said court to
5 order a special term of his court for a date within three months from the final adjournment
6 of said regular term, which said special term shall be specially for the trial of criminal
7 causes, and such other causes as the parties thereto may agree to try thereat. But no
8 causes other than criminal, shall be tried at said term, unless all criminal causes on said
9 docket have been tried.

SEC. 10. The district and circuit judges shall hold their courts in the several counties of
2 their districts and circuits at all the places where district courts or circuit courts are now
3 authorized to be held. They shall hold their courts at such times and in such order as
4 shall best dispose of the business thereof and as they may arrange among themselves;
5 *provided, however*, there shall be held not less than four terms a year in each county. In
6 case the judges within any district are unable to agree as to the manner of holding their
7 courts or as to the counties in which they are severally to preside, they shall refer the mat-
8 ter to the Chief Justice of the Supreme Court, who shall assign said judges to such coun-
9 ties as he may determine; and the Chief Justice of the Supreme Court shall also have
10 power to assign any district or circuit judge, when not occupied in holding court in his
11 own district, to hold court in any other district or circuit in the State where there may arise
12 a necessity therefor.

SEC. 11. On or before the first day of October, 1887, and each odd-numbered year there-
2 after the judges shall meet in their respective districts and determine the times and places
3 of holding their courts during the two succeeding calendar years. The plan or schedule
4 thus agreed upon, or ordered by the Chief Justice of the Supreme Court when they cannot
5 agree, shall, before going into effect be published as now required by law for similar orders
6 of the judges of the district and circuit courts.

SEC. 12. The district court when organized and constituted as provided in section — of
2 this act, shall have original jurisdiction of both civil and criminal matters, and appellate
3 jurisdiction on all civil and criminal matters on appeals and writs of error, from inferior

21 and guardian records as the same are now used shall continue in use as though no change
22 had been made with reference to the records of said courts.

SEC. 6. From and after the first day of January 1887, at each term of the circuit or dis-
2 trict courts of any county,—which terms shall be held as now provided by law,—all causes
3 pending in either court and over whose subject matter the judge presiding at said term is
4 given jurisdiction, shall be placed on the docket prepared for the court and also on the
5 docket prepared for the bar, in the order of their filing in the office of the clerk of said
6 courts. Said causes shall be called for trial or other disposition on the call of the docket,
7 according to law and the rules of said court, and the judge shall try or otherwise dispose of
8 the same, in the same manner as though such cases had been originally commenced in the
9 court to the judgeship of which the judge presiding had been elected. *Provided*, that pro-
10 bate and guardianship matters shall be entered on said docket by themselves. *And pro-*
11 *vided farther*, that all criminal causes triable upon indictment shall be tried only before the
12 district judge, and a grand jury shall be summoned only for the terms over which said dis-
13 trict judge shall preside. And all appeals in civil and criminal actions, and writs of error
14 and other proceedings in review, from justices or mayors, shall be tried only before said cir-
15 cuit judge, except by consent of parties entered on the record. *And provided farther*, that
16 this section shall become inoperative and of no effect from and after the first day of Janu-
17 ary, 1889.

SEC. 7. On and after the first day of January, 1889, the judicial districts, as the same now
2 exist shall be and the same are hereby abolished. And for judicial purposes the State shall
3 be divided and organized on and after said January 1, 1889, into _____ districts and
4 with judges in said several districts, as follows, viz :

(Here insert judicial districts as the same are to stand after January 1, 1889.)

5 No two judges in this (or foregoing) section provided for, shall be residents of the same
6 county, except in such districts as shall consist of but one county. And in case it is found
7 on the canvass of votes cast for said judges at any election, that except for the foregoing
8 prohibition two of the judges residing in the same county voted for at the same election
9 would have been declared elected,—then the board of canvassers of said votes shall declare
10 that that one of such two persons is elected who received the highest vote, and shall discard
11 the votes cast for the other of the said two persons, and shall proceed with their said can-
12 vass as though such discarded votes had not been cast. *Provided*, that the several district
13 judges elected in 1886, and their successors, shall on and after said first day of January,
14 1889, sit as district judges of the respective districts within which shall lie the counties of
15 their respective residences, as said districts are created and organized by this section.

SEC. 8. At the general election in the year 1888, and every four years thereafter, there
2 shall be elected in each of the judicial districts, as above created and organized in section

14 county of the State. And immediately upon the receipt of such copy of the rules so
15 adopted, such clerk shall spread the same upon the records of said court, and such rules so
16 adopted, shall from the date therein provided therein for the taking effect thereof, have the
17 force of statutes within this State, and shall continue in force until altered or amended in
18 convention as provided in this act.

SEC. 17. The salary of district judges elected or appointed, after the taking effect of this
2 act, under the provisions of the Constitution of the State and this act, shall be three thou-
3 sand dollars per year, to be paid from the State treasury in manner now provided by law
4 for the payment of judges of the district and circuit court.

SEC. 18. On and after the first day of January, 1887, the clerk of the circuit and district
2 courts shall have and exercise within his county all the powers and jurisdiction of the cir-
3 cuit or district court, and of the judges thereof, in the appointment of administrators,
4 executors and guardians, and the approval of any and all bonds given by such persons in
5 the discharge of their several trusts; provided, that if there shall arise a contest in any
6 such appointment, or if the appointment be applied for under section 2272 of the Code, in
7 such case said clerk shall refer the matter of such appointment, with all papers filed relating
8 thereto, to the surrogate referee hereinafter provided for, if there be such referee within
9 his county. And such referee, after having first given to all parties interested due notice
10 of time and place of hearing the matter, shall proceed at such time to hear the testimony
11 offered, and enter due order accordingly. Such decision of said referee shall be subject to
12 review by the judge of the district or circuit court, in the manner hereinafter provided. If
13 no surrogate referee has been appointed in such county, the clerk shall place said applica-
14 tion upon the probate docket of the court, and the same shall stand for trial at the next
15 term of court, of which all parties interested shall take notice, unless other or further
16 notice shall be ordered by the judge, or may be required by the rules of court.

SEC. 19. All letters, commissions, appointments, citations and other processes issued in
2 probate, and not issued under or pursuant to any special authority of the district court,
3 shall issue under the seal of the circuit court, as now provided by law, until the abolition
4 of the circuit court as herein provided. But it shall constitute no defense and shall not
5 impair the force or validity of any of said processes, nor of any acts performed thereunder
6 pursuant to law and the order contained therein, that such process was erroneously issued
7 in the name of or was erroneously issued under the seal of either of said courts.

SEC. 20. The judge or judges within any district are hereby authorized and empowered
2 to appoint in each or any county within such district, when in the judgment of said judges
3 such appointment is necessary for the prompt despatch of business in such county, a surro-
4 gate referee, who shall be a resident and practicing attorney within the county for which
5 he is appointed. Said appointment shall be revocable at the pleasure of a majority of the

4 courts, tribunals or officers and shall have general supervision thereof except when other-
5 wise expressly provided and to prevent and correct abuses where no other remedy is pro-
6 vided, and shall have and exercise all the powers usually possessed and exercised by courts
7 of record.

SEC. 13. All the rights, duties, powers and jurisdiction now by law belonging to or vested
2 in, or exercised by the circuit court, shall, upon and after the said first day of January,
3 1889, be transferred to, conferred upon and exercised by the district court; and all causes,
4 proceedings and remedies of every kind, pending or undetermined in the circuit court at
5 said date shall stand for trial or other disposition in the district court as if originally
6 brought therein.

SEC. 14. Upon the abolition of the circuit court as in this act provided, the district court
2 shall succeed to and exercise full authority and jurisdiction over the records of the circuit
3 court, and may enforce all judgments, decrees and orders thereof in the same manner and
4 to the same extent as it may exercise like jurisdiction and authority over its own records;
5 and for the purpose of the issuance of process, and of any and all other acts necessary to
6 the due and efficient enforcement of the orders, judgments and decrees of the circuit court,
7 the records thereof shall be deemed records of the district court. Transcripts and process
8 from the judgments, decrees and records of the circuit court shall thereafter be issued by
9 the clerk of the district court and under the seal of his office.

SEC. 15. Where a change of venue is granted, after the abolition of the circuit court, on
2 the ground of objection made to the judge, such judge may, in his discretion, send the
3 cause to another county where it can be tried by another judge of the same or another dis-
4 trict; or may procure another judge of the same or another district to interchange with
5 him for the trial of such cause.

SEC. 16. The district and circuit judges of the State shall convene on the first Tuesday
2 of August in 1886 in convention at the capital, and the district judges of the State shall so
3 convene on the first Tuesday of August in every fifth year thereafter, for the purpose of
4 prescribing uniform rules for the practice in said courts, and for making up issues in vaca-
5 tion and entering in vacation judgments in default of appearance or pleading. Said con-
6 vention shall have use of the Supreme Court room in the Capitol, and shall organize by the
7 election of a president, a vice-president, and secretary, from their number, and the Secre-
8 tary of State shall upon the requisition of the presiding officer supply the convention with
9 such stationery as shall be deemed necessary for the dispatch of the business of the conven-
10 tion. When the convention shall have agreed upon such rules, the same shall be signed by
11 the president and countersigned by the secretary of the convention, and filed with the Sec-
12 retary of State, and the Secretary of State shall cause such rules to be printed, and when
13 so printed he shall forward certified copies thereof to the clerk of the district court in each

27 set down for trial at the next term of the court, and said referee shall proceed no
28 farther therein. And the several parties in interest shall be held to appear at the next
29 term of the court for trial of such contest without farther notice. But if no jury is by
30 either party demanded before said referee, before the hearing as to said probate is
31 actually entered therein, a jury shall be deemed to be thereby waived.

32 *Fourth.* Said referee shall hear and decide the question of admission to probate as
33 provided by law, of wills which have been probated in another State or country.

34 *Fifth.* Said referee shall hear and determine the allowance of all contested claims
35 against the estates of deceased persons, or of insane persons, minors or other persons
36 under guardianship. A claim which has been regularly filed against an estate and not
37 allowed shall be deemed to be contested, and to be denied without final pleading by the
38 administrator or guardian. Upon the presentation of said claim to said referee, together
39 with the statement by said claimant of the filing of said claim and that the same has
40 been presented and refused allowance, or that the guardian or administrator cannot be
41 found within said county, said referee shall cause notice to be served upon said guardian
42 or administrator in the manner and for the time provided by law for original notices
43 in civil actions, of the time and place of hearing said claim. At the time so fixed in
44 said notice, if no jury be demanded, he shall proceed to hear and determine such claim,
45 and enter proper order in accordance with said claim. If a jury be demanded, the
46 referee shall proceed no farther, and said claim shall stand for trial at the next term of
47 the court without further notice. A failure to demand a jury before said hearing is
48 actually entered upon by said referee shall be deemed a waiver of notice.

49 *Sixth.* Said referee shall examine all sales and conveyances by administrators and
50 guardians, and if the same are found pursuant to authority, duly conferred, and the
51 proceedings therein are regular and as authorized by law and the rules and orders of
52 the court said referee shall approve the same, and order the clerk enter on such con-
53 veyance under the seal of said court, the fact of such approval. *Provided, however,* that
54 if any objection to such sale or conveyance shall have been filed with the clerk of said
55 court or said referee before said approval is had, said referee shall fix time and place
56 of hearing same, and shall give to the party objecting and the administrator or guardian
57 reasonable notice thereof. Upon such hearing said referee may approve or disapprove
58 such sale or conveyance, as may be determined by him to be legal and just under all
59 the circumstances.

SEC. 22. In performing the duties assigned him under the preceding section or elsewhere,
2 said referee is hereby given, so far as practicable, all the powers which are or may hereafter
3 be conferred by statute upon said courts or the judges thereof, with reference thereto.

6 judges within the district. His term of office shall be two years or until his appointment is
7 revoked or his successor is appointed and qualified. Said appointment or revocation thereof
8 shall be spread upon the records of the proceedings of said district court. Said referee
9 shall take the oath prescribed by section of the Code, which oath shall also be filed in
10 the office of the clerk of said courts. Said referee shall keep a record of his proceedings,
11 and shall file with the clerk of the court, and accompanying the papers submitted to or filed
12 before him in any matter, his report and decision touching such matter. He shall hold his
13 sessions at the county seat. It shall be unlawful for said referee while he is holding said
14 appointment to accept a retainer in probate or guardianship matters in his county, or en-
15 gage in the practice of law in probate matters therein. A violation of the preceding provis-
16 ions is hereby made a misdemeanor.

SEC. 21. Said surrogate referee is hereby authorized, and it is hereby made his duty, to
2 perform the following duties:

3 *First.* He shall examine the accountings and reports, including final reports, of ad-
4 ministrators, executors, trustees under wills, and guardians. Such reports shall, as
5 heretofore, first be filed with the clerk of the courts. For purpose of such examination,
6 said referee is hereby given the power to subpœna for examination before him, at such
7 time as he may fix, such witnesses as he may deem necessary. And the clerk of said
8 court, on demand of said referee, shall for that purpose provide said referee with blank
9 subpœnas, signed by said clerk and bearing the seal of the court. Before entering upon
10 the examination of a final report or accounting, said referee shall give notice of time
11 and place when said report or accounting will be examined, by publishing the same in a
12 weekly newspaper published in said county at the county seat and of general circula-
13 tion therein, for at least two successive weeks, the first publication to be at least fifteen
14 days before the date of said examination. If no paper is published thereat, notice of
15 said time and place shall be posted at least thirty days prior to said time, upon the door
16 of the place where the last term of said court was held.

17 *Second.* Said referee shall hear and determine all applications under sections 2386
18 and 2388 of the Code. And all provisions of law relating thereto conferring power upon
19 the court or the judge thereof, in the matters in said sections contained, are hereby
20 made to apply with equal force and with same power to said referee.

21 *Third.* Said referee shall take testimony and decide the question of admitting to
22 probate all domestic wills. And the provisions of law now in force, as to giving notice
23 of time and place of hearing testimony and determining as to said probate, shall apply
24 so far as practicable to said hearing before said referee. The time and place of said
25 hearing may be in vacation and shall be stated in said notice. Provided, however, that
26 where a jury is demanded by either party to a contest, said contest shall thereupon be

Section to be inserted as

SEC. —. There is hereby ordered to be elected at the general election in the year 1886, by
2 the qualified voters residing within the circuits below named, one circuit judge for each of
3 the circuits below named, viz :

(Here insert numbers of the circuits whose business requires an additional circuit judge.)

4 Said circuit judges shall qualify as required by law for circuit judge, and shall enter upon
5 their respective offices on the first day of January, 1887, and their several offices shall end
6 upon the thirty-first day of December, 1888. They shall hold such of the terms within their
7 said circuits,—either sitting by themselves, or at the same term at which another circuit
8 judge is sitting,—as may be agreed upon by the circuit judges of said circuit.

4 And while so acting, said referee shall be considered and have, for the purposes of the
5 matters before him, the powers of a court sitting for such purpose.

SEC. 23. The clerk of the court shall enter upon the probate side of the court docket all
2 reports and accountings, and other matters which have been heard during vacation before
3 said referee. And if no objections have been filed against the action of the referee
4 therein, or if on call of said probate docket no objection is made thereto, the action of said
5 referee shall stand approved by said court without further action. But if such objection
6 has been so filed, or is so made, said matter shall be tried *de novo* before said court. And
7 said court shall have the power, at any time before the estate or guardianship is closed, to
8 review, on its own motion, the action of said referee.

SEC. 24. As full compensation for the services by him performed, said referee shall
2 receive the following fees, to be taxed against and paid by the estate, with reference to
3 which said matters pertain, viz :

- 4 For each probate of will,
- 5 For examination, etc., of each uncontested report,
- 6 For examination, etc., of each contested report,
- 7 For examination, etc., each application for sale or conveyance of real or personal
8 property,
- 9 For examination, etc., of each report of sale and deeds therefor,
- 10 For hearing and deciding as to each contested claim,
- 11 For time necessarily employed by him in his duties in the matters assigned said
12 referee, and which are not included in above items in this section,

13 Such fees shall be taxed by the clerk upon filing with him of fee bill, certified by said
14 referee with each report made by him. But said fees may be reviewed by said court upon
15 petition of either party, within reasonable time after same are so taxed. And where an
16 objection or protest is not sustained, but is by said referee overruled, he may tax the fees
17 attending contest thereon against the person objecting or protesting, or against said estate,
18 as said referee may find just. And if in the judgment of the board of supervisors the fees
19 above ordered taxed are insufficient for proper compensation, said board may add thereto a
20 a further amount in their judgment proper, not exceeding the sum of \$300 per annum.

SEC. 25. The records, orders and judgments made and entered by the clerk and surro-
2 gate referee as hereinbefore provided and not reversed, set aside or modified by the court,
3 shall stand and be of the same force, validity and effect, and shall be entitled to the same
4 faith and credit as if made by the court or by the judge thereof.

SEC. 26. All acts and parts of acts and sections of the Code inconsistent with the provis-
2 ions of this act are hereby repealed.