

March 19, 1951.
Passed on File.

Senate File 483
By JUDICIARY 2.

Passed Senate, Date
Vote: Ayes..... Nays.....
Passed House, Date
Vote: Ayes..... Nays.....
Approved

A BILL FOR

An Act to amend chapter three hundred twenty-eight (328), Code 1950, relating to actions against nonresident operators of aircraft.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. Chapter three hundred twenty-eight (328), Code
2 1950, is amended by inserting therein the following new section:

3 "The use and operation of any aircraft either on the land
4 or over the land of this state by a person who is a nonresident
5 of this state shall be deemed:

6 1. An agreement by him that he shall be subject to the
7 jurisdiction of the district court of this state over all
8 civil actions and proceedings against him for damages to
9 person or property growing or arising out of such use or
10 operation, and

11 2. An appointment by such nonresident of the secretary
12 of state of this state as his lawful attorney upon whom may be
13 served all original notices of suit pertaining to such actions
14 and proceedings, and

15 3. An agreement by such nonresident that any original
16 notice of suit so served shall be of the same legal force and

17 validity as if personally served on him in this state.”

1 Sec. 2. Chapter three hundred twenty-eight (328), Code
2 1950, is amended by inserting therein the following new section:

3 “The term ‘person’ as used in section one (1) shall mean:

4 1. The owner of the aircraft whether it is being used and
5 operated personally by said owner, or by his agent.

6 2. An agent using and operating the aircraft for his
7 principal.

8 3. Any person who is in charge of the aircraft and of
9 the use and operation thereof with the express or implied
10 consent of the owner.

11 4. The executor or administrator of the estate of the
12 owner or operator of the aircraft.”.

1 Sec. 3. Chapter three hundred twenty-eight (328), Code
2 1950, is further amended by inserting therein the following
3 new sections:

4 “1. The original notice of suit filed with the secretary
5 of state shall be in form and substance the same as now provided
6 in suits against residents of this state, except that the part
7 of said notice pertaining to the return day shall be in
8 substantially the following form, to wit:

9 ‘and unless you appear thereto and defend in the district
10 court of Iowa in and for county at the courthouse in
11, Iowa before noon of the sixtieth (60th) day
12 following the filing of this notice with the secretary of
13 state of this state, default will be entered and judgment

14 rendered against you by the court if then in session in said
15 county, and if the court is not then in session said default
16 will be entered and judgment rendered by the court on the first
17 day of the first succeeding term or as soon thereafter as the
18 same may be reached.’

19 “2. Plaintiff in any such action shall cause the original
20 notice of suit to be served as follows:

21 1. By filing a copy of said original notice of suit with
22 said secretary of state, together with a fee of two dollars (\$2.00),
23 and

24 2. By mailing to the defendant, and to each of the
25 defendants if more than one (1), within ten (10) days after
26 said filing with the secretary of state, by restricted registered
27 mail addressed to the defendant at his last known residence or
28 place of abode, a notification of the said filing with the
29 secretary of state.

30 “3. The notification, provided for in this chapter shall
31 be in substantially the following form, to wit:

32 “To..... (Here insert the name of each
33 defendant and his residence or last known place of abode as
34 definitely as known.)

35 You will take notice that an original notice of suit against
36 you, a copy of which is hereto attached, was duly served upon
37 you at Des Moines, Iowa, by filing a copy of said notice on
38 the day of, 19....., with the secretary of state
39 of the state of Iowa.

40 Dated at , Iowa, this day of
41 19.....

42

43

44

Plaintiff.

45

By.....

46

Attorney for plaintiff.'

47 "4. The term 'restricted registered mail' means mail
48 which carries on the face thereof, in a conspicuous place
49 where it will not be obliterated, the indorsement, "Deliver
50 to addressee only", and which also requires a return receipt.

51 "5. In lieu of mailing said notification to the defendant
52 in a foreign state, plaintiff may cause said notification to
53 be personally served in the foreign state on the defendant by any
54 adult person not a party to the suit, by delivering said
55 notification to the defendant or by offering to make such
56 delivery in case defendant refuses to accept delivery.

57 "6. Proof of the filing of a copy of said original notice
58 of suit with the secretary of state, and proof of the mailing
59 or personal delivery of said notification to said nonresident
60 shall be made by affidavit of the party doing said acts. All
61 affidavits of service shall be indorsed upon or attached to
62 the originals of the papers to which they relate. All
63 proofs of service, including the return registry receipt, shall
64 be forthwith filed with the clerk of the district court.

65 "7. The foregoing provisions relative to service of

66 original notice of suit on nonresidents shall not be deemed
67 to prevent actual personal service in this state upon the
68 nonresident in the time, manner, form and under the conditions
69 provided for service on residents.

70 “8. Actions against nonresidents as contemplated by this
71 law may be brought in the county of which plaintiff is a
72 resident, or in the county in which the injury was received,
73 or damage done.

74 “9. The court in which such action is pending shall
75 grant such continuances to a nonresident defendant as may be
76 necessary to afford him reasonable opportunity to defend said
77 action.

78 “10. The secretary of state shall keep a record of all
79 notices of suit filed with him, shall not permit said filed
80 notices to be taken from his office except on an order of
81 court, and shall, on request, and without fee, furnish any
82 defendant with a certified copy of the notice in which he is
83 a defendant.

84 “11. If judgment is rendered against the plaintiff, upon
85 the trial of said action, said judgment shall include the
86 reasonable expenses incurred by the defendant and his attorney
87 in appearing to and defending against said action, provided
88 that in the judgment of the trial court said action was
89 commenced maliciously or without probable cause.

90 “12. The dismissal of an action after the nonresident
91 has entered a general appearance under the substituted service

92 herein authorized, shall bar the recommencement of the same
93 action against the same defendant unless said recommenced
94 action is accompanied by actual personal service of the original
95 notice of suit on said defendant in this state.

96 “13. The person in charge of such aircraft, shall
97 report within twenty-four (24) hours to the sheriff of the
98 county wherein the injury occurred the names and addresses
99 of the owners and operators of the aircraft and the names
100 and addresses of all other persons on board the same at
101 the time of the injury, together with a brief statement
102 as to how the accident occurred. Failure to make the report
103 required by this section will subject the owner of the aircraft
104 to a fine of not less than twenty-five dollars (\$25.00) and
105 not more than five hundred dollars (\$500.00) and will also
106 create a presumption of negligence against the owner and/or
107 operator of the aircraft involved.”.