

CHAPTER 136
LIABILITY OF MOTOR VEHICLE OWNERS
H.F. 504

AN ACT relating to a motor vehicle owner's liability for damages caused by the driver.

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

Section 1. Section 321.493, Code 1995, is amended to read as follows:
 321.493 LIABILITY FOR DAMAGES.

1. In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage. For purposes of this subsection, "owner" means the person to whom the certificate of title for the vehicle has been issued or assigned or to whom a manufacturer's or importer's certificate of origin for the vehicle has been delivered or assigned. However, if the vehicle is leased, "owner" means the person to whom the vehicle is leased, not the person to whom the certificate of title for the vehicle has been issued or assigned or to whom the manufacturer's or importer's certificate of origin for the vehicle has been delivered or assigned. For purposes of this subsection, "leased" means the transfer of the possession or right to possession of a vehicle to a lessee for a valuable consideration for a continuous period of twelve months or more, pursuant to a written agreement.

2. A person who has made a bona fide sale or transfer of the person's right, title, or interest in or to a motor vehicle and who has delivered possession of ~~such~~ the motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of ~~such~~ the motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall not apply in determining, for the purpose of fixing liability ~~hereunder~~ under this subsection, whether such sale or transfer was made.

Sec. 2. Section 321A.1, subsection 8, Code 1995, is amended to read as follows:

8. OWNER. A "Owner" means a person who holds the legal title of a motor vehicle, ~~or in however, if the event~~ a motor vehicle is the subject of a security agreement with a right of possession in the debtor, then such the debtor shall be deemed the owner for ~~the purpose~~ purposes of this chapter or if the motor vehicle is leased as defined in section 321.493, the lessee shall be deemed the owner for purposes of this chapter.

Approved May 1, 1995

CHAPTER 137
REMEDIES FOR DISHONOR OF FINANCIAL INSTRUMENTS
H.F. 485

AN ACT relating to remedies upon the dishonoring of a financial instrument and providing penalties.

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

Section 1. Section 537.2501, subsection 1, paragraph g, Code 1995, is amended to read as follows:

g. A surcharge of not more than ~~ten~~ five percent of the amount of the face value of the payment instrument or twenty dollars, whichever is greater, for each dishonored payment

instrument provided that the fee is clearly and conspicuously disclosed in the cardholder agreement. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars. The surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

Sec. 2. NEW SECTION. 554.3512 HOLDER'S RECOURSE FOR DISHONOR.

1. The holder of a dishonored check, draft, or order may assess against the maker of that check, draft, or order a surcharge of not more than the greater of twenty dollars or five percent of the face value of the check. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars.

2. The surcharge authorized by this section shall not be assessed unless the holder clearly and conspicuously posts a notice at the usual place of payment, or in the billing statement of the holder, stating that a surcharge will be assessed and the amount of the surcharge. However, the surcharge shall not be assessed against the maker if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403.

Sec. 3. NEW SECTION. 554.3513 CIVIL REMEDY FOR DISHONOR.

1. In a civil action against a person who makes a check, draft, or order, which has been dishonored for lack of funds or credit, after having been presented twice, or because the maker has no account with the drawee, the plaintiff shall recover from the defendant total damages equaling three times the face value of the dishonored check, draft, or order, which sum shall include the face value of the check, draft, or order. However, total recovery under this section shall not exceed by more than five hundred dollars the amount of the check, draft, or order and may be awarded only if all of the following apply:

a. The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than thirty days before commencing the action.

b. The written demand notified the defendant that treble damages would be sought if the face value of the dishonored check was not paid within thirty days of receipt, and was received by the defendant through personal service or restricted certified mail.

c. The defendant has failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the face value of the dishonored check, draft, or order.

d. The plaintiff clearly and conspicuously posted a notice at the usual place of payment, or in a billing statement of the plaintiff, stating that civil damages pursuant to this section would be sought upon dishonorment.

2. In an action for damages pursuant to subsection 1, if the court or jury determines that the failure of the defendant to satisfy the dishonored check, draft, or order is due to economic hardship, the court or jury may waive all or part of the allowable civil damages. However, if the court or jury waives all or part of the civil damages, the court or jury shall render judgment against the defendant in the amount of the dishonored check, draft, or order and the actual costs incurred by the plaintiff in bringing the action.

3. This section does not apply if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403 because of a bona fide dispute between the maker and the holder relating to the consideration for which the check, draft, or order was given.

4. In actions brought pursuant to this section, no additional award pursuant to section 554.3512 or 625.22 shall be made.

5. The plaintiff in a civil action to collect a dishonored check, draft, or order brought before the district court sitting in small claims shall not request or recover punitive or exemplary damages, but may seek the civil damages allowed under this section. The plaintiff in a civil action to collect a dishonored check, draft, or order in the district court not sitting in small claims, may seek punitive or exemplary damages if appropriate under chapter 668A, or civil damages allowed under this section, but not both.

6. A violation of this section is an unlawful practice as provided in section 714.16, subsection 2, paragraph "a".

Approved May 1, 1995

CHAPTER 138
LIMITED LIABILITY COMPANIES
H.F. 490

AN ACT relating to limited liability companies.

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

Section 1. Section 490A.202, subsection 17, paragraph a, unnumbered paragraph 1, Code 1995, is amended to read as follows:

Except as otherwise provided in the articles of organization or an operating agreement, or as provided in paragraph "d", indemnify an individual made a party to a proceeding because the individual is or was a member or manager against liability incurred in the proceeding if all of the following apply:

Sec. 2. Section 490A.401, subsection 1, Code 1995, is amended to read as follows:

1. A limited liability company name must contain the words "Limited Company" or "Limited Liability Company" or the abbreviation "L.C." or "L.L.C." or words or abbreviations of like import in another language.

Sec. 3. Section 490A.702, subsection 3, paragraph b, Code 1995, is amended to read as follows:

b. Every manager is an agent of the limited liability company for the purpose of its business or affairs, unless otherwise provided in the articles of organization or an operating agreement. The act of any manager with agency authority, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

Sec. 4. Section 490A.702, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 6. For purposes of this section, a person is deemed to have knowledge of a provision in the articles of organization limiting the agency authority of a manager or class of managers.

Sec. 5. Section 490A.1301, subsection 3, Code 1995, is amended to read as follows:

3. Unless otherwise provided in the articles of organization or an operating agreement,