

Law Committee 4/10/81
D. Pass 4/16 (R 121)

HOUSE FILE 823

Commerce
Raugher, Chairperson
Craft
Husak

endar

To Pass (H.R. 79)

HOUSE FILE 823

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly Study Bill 319)

Passed House, Date 4-10-81 (p. 1174) Passed Senate, Date 1-21-82 (p. 146)

Vote: Ayes 78 Nays 16 Vote: Ayes 34 Nays 15

Approved March 4, 1982

Replaces the recommendations (p. 118?)
of the committee on the Judiciary (p. 124)

Replaces House file Senate recommendations
S-23-82 (p. 512) 74-19

A BILL FOR

1 An Act relating to the requirements for giving a notice to
2 cure in a consumer credit transaction.

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

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823

1 Section 1. Section 537.5110, subsection 2, Code 1981,
2 is amended to read as follows:

3 2. A creditor who believes in good faith that a consumer
4 is in default may give the consumer written notice of the
5 alleged default, and, if the consumer has a right to cure
6 the default, shall give the consumer the notice of right to
7 cure provided in section 537.5111 before ~~exercising any right~~
8 ~~he may have to enforce~~ commencing any legal action in any
9 court on an obligation of the consumer and before repossessing
10 collateral. However, this subsection and subsection 4 do
11 not require a creditor to give notice of right to cure prior
12 to the filing of a petition by a creditor seeking to enforce
13 the consumer's obligation in which attachment under chapter
14 639 is sought upon any of the grounds specified in section
15 639.3, subsections 3 through 12.

16 When property is attached without the giving of notice
17 of right to cure as permitted by this subsection, the creditor
18 immediately shall give notice of the attachment to the consumer
19 in the same manner as prescribed by the rules of civil
20 procedure for service of an original notice. The notice shall
21 advise the consumer that the attachment may be discharged
22 by the filing of a bond as provided in sections 639.42 and
23 639.45, or by the filing of a motion with the court to
24 discharge the attachment pursuant to section 639.63. The
25 notice required by this paragraph is in lieu of the notice
26 requirements of sections 639.31 and 639.33.

27 When a motion is filed to discharge an attachment made
28 without the giving of a prior notice of right to cure, the
29 court shall hear the motion within three days of the filing
30 of the motion to discharge. If the court finds that the
31 attachment should not have been issued or should not have
32 been levied on all or any part of the property held, the
33 attachment shall be discharged in whole or in part and property
34 wrongfully attached shall be returned to the consumer.

35 If the court finds that there was no probable cause to

1 believe the grounds upon which the attachment was issued,
2 the consumer may be awarded damages to the extent of actual
3 damages sustained, plus reasonable attorney's fees to be
4 determined by the court. If the court finds that the
5 attachment was brought maliciously, the consumer also may
6 be awarded exemplary damages.

7 Sec. 2. Section 537.5110, Code 1981, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. If a creditor in a consumer credit
10 transaction commences an action for money judgment prior to
11 giving the customer notice of right to cure as required by
12 this section and fails to follow the procedures set out in
13 this section, the court shall dismiss the action without
14 prejudice. If the action was commenced as a small claim under
15 chapter 631, the creditor is not in violation of this section
16 for purposes of section 537.5201, and the penalty provided
17 in that section does not apply to the creditor.

18 EXPLANATION

19 This bill relates to the duty of a creditor under the Iowa
20 consumer credit code to give a notice of right to cure to
21 a debtor prior to taking any action to recover on a debt.
22 Under the revised version, a creditor could under some
23 situations attach property of the debtor prior to giving
24 notice, but the debtor would have a right to a hearing in
25 court and could recover a penalty for wrongful attachment.
26 The revised language also provides that if a creditor files
27 an action for money judgment in small claims prior to giving
28 notice of right to cure, the remedy would be a dismissal of
29 the action. Under existing law, a penalty could be assessed
30 against the creditor.

31 The bill would take effect July 1 following enactment.

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SIXTY-NINTH GENERAL ASSEMBLY
1982 REGULAR SESSION

DAILY
HOUSE CLIP SHEET

January 27, 1982

SENATE AMENDMENT TO
HOUSE FILE 823

H-5018

- 1 Amend House File 823 as passed by the House as
2 follows:
- 3 1. Page 2, lines 2 and 3, by striking the words
4 "to the extent of actual damages sustained,".
- 5 2. Page 2, lines 4 through 6, by striking the words
6 "If the court finds that the attachment was brought
7 maliciously, the consumer also may be awarded exemplary
8 damages."
- 9 3. Page 2, by striking lines 15 through 17
10 and inserting in lieu thereof the words "chapter 631,
11 the creditor shall not be found to be in violation
12 of this section for purposes of section 537.5201 and
13 the penalties provided in that section shall not apply
14 if the creditor proves by a preponderance of the
15 evidence that the creditor did not at the time of
16 the violation have either knowledge or reason to know
17 of the requirements of this section, and for this
18 purpose the court shall consider all relevant evidence,
19 including but not limited to the education or
20 experience of the creditor with respect to the
21 collection of debts arising from consumer credit
22 transactions and any representation of the creditor
23 by legal counsel and any legal advice rendered to
24 the creditor with respect to the collection of debts
25 arising from consumer credit transactions."

H-5018 FILED
JANUARY 26, 1982

RECEIVED FROM THE SENATE

House concurred 2/23 (p. 511)

HOUSE FILE 823

S-3546

1 Amend House File 823 as passed by the House as
2 follows:

- 3 1. Page 2, lines 2 and 3, by striking the words
4 "to the extent of actual damages sustained,".
5 2. Page 2, lines 4 through 6, by striking the words
6 "If the court finds that the attachment was brought
7 maliciously, the consumer also may be awarded exemplary
8 damages."
9 3. Page 2, by striking lines 7 through 17.

S-3546 FILED

BY BOB RUSH

APRIL 23, 1981

DIVISION A - ADOPTED (p. 1386)

DIVISION B - DEFERRED *Adopted*
see amended by 3611 1/21/82 (p. 145)

HOUSE FILE 823

S-3611

1 Amend amendment S-3546 to House File 823 as passed
2 by the House, as follows:

- 3 1. Page 1, by striking line 9 and inserting in
4 lieu thereof the following:
5 " . Page 2, by striking lines 15 through 17
6 and inserting in lieu thereof the words "chapter 631,
7 the creditor shall not be found to be in violation
8 of this section for purposes of section 537.5201 and
9 the penalties provided in that section shall not apply
10 if the creditor proves by a preponderance of the
11 evidence that the creditor did not at the time of
12 the violation have either knowledge or reason to know
13 of the requirements of this section, and for this
14 purpose the court shall consider all relevant evidence,
15 including but not limited to the education, or
16 experience of the creditor with respect to the
17 collection of debts arising from consumer credit
18 transactions and any representation of the creditor
19 by legal counsel and any legal advice rendered to
20 the creditor with respect to the collection of debts
21 arising from consumer credit transactions."

S-3611 FILED

BY DONALD V. DOYLE

APRIL 29, 1981

GARY L. BAUGHER

Adopted 1/21/82 (p. 145)

HOUSE FILE 823

AN ACT

RELATING TO THE REQUIREMENTS FOR GIVING A NOTICE TO CURE IN
A CONSUMER CREDIT TRANSACTION.

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

Section 1. Section 537.5110, subsection 2, Code 1981,
is amended to read as follows:

2. A creditor who believes in good faith that a consumer
is in default may give the consumer written notice of the
alleged default, and, if the consumer has a right to cure
the default, shall give the consumer the notice of right to
cure provided in section 537.5111 before ~~exercising any right~~
~~he may have to enforce~~ commencing any legal action in any
court on an obligation of the consumer and before repossessing
collateral. However, this subsection and subsection 4 do
not require a creditor to give notice of right to cure prior
to the filing of a petition by a creditor seeking to enforce
the consumer's obligation in which attachment under chapter
639 is sought upon any of the grounds specified in section
639.3, subsections 3 through 12.

When property is attached without the giving of notice
of right to cure as permitted by this subsection, the creditor
immediately shall give notice of the attachment to the consumer
in the same manner as prescribed by the rules of civil

procedure for service of an original notice. The notice shall
advise the consumer that the attachment may be discharged
by the filing of a bond as provided in sections 639.42 and
639.45, or by the filing of a motion with the court to
discharge the attachment pursuant to section 639.63. The
notice required by this paragraph is in lieu of the notice
requirements of sections 639.31 and 639.33.

When a motion is filed to discharge an attachment made
without the giving of a prior notice of right to cure, the
court shall hear the motion within three days of the filing
of the motion to discharge. If the court finds that the
attachment should not have been issued or should not have
been levied on all or any part of the property held, the
attachment shall be discharged in whole or in part and property
wrongfully attached shall be returned to the consumer.

If the court finds that there was no probable cause to
believe the grounds upon which the attachment was issued,
the consumer may be awarded damages plus reasonable attorney's
fees to be determined by the court.

Sec. 2. Section 537.5110, Code 1981, is amended by adding
the following new subsection:

NEW SUBSECTION. If a creditor in a consumer credit
transaction commences an action for money judgment prior to
giving the customer notice of right to cure as required by
this section and fails to follow the procedures set out in
this section, the court shall dismiss the action without
prejudice. If the action was commenced as a small claim under
chapter 631, the creditor shall not be found to be in violation
of this section for purposes of section 537.5201 and the
penalties provided in that section shall not apply if the
creditor proves by a preponderance of the evidence that the
creditor did not at the time of the violation have either
knowledge or reason to know of the requirements of this
section, and for this purpose the court shall consider all

relevant evidence, including but not limited to the education or experience of the creditor with respect to the collection of debts arising from consumer credit transactions and any representation of the creditor by legal counsel and any legal advice rendered to the creditor with respect to the collection of debts arising from consumer credit transactions.

DELWYN STROMER
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 823, Sixty-ninth General Assembly.

ELIZABETH A. ISAACSON
Chief Clerk of the House

Approved 3/4, 1982

ROBERT D. RAY
Governor