

In Judiciary
Amended from 523 - H. Res. 2/27/90 (p. 765)

MAR 20 1989

HOUSE FILE 677

Place On Calendar

BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(SUCCESSOR TO HSB 295)

Passed House, Date 3/30/89 (p. 124) Passed Senate, Date 5/30/90 (p. 143)
Vote: Ayes 91 Nays 6 Vote: Ayes 52 Nays 14
Approved April 19, 1990

Repealed House for 6027
4/6/90 (p. 2175)
78-4

A BILL FOR

1 An Act relating to written credit agreements between a creditor
2 and debtor and rights of action on that agreement.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 677

5253 amends all

1 Section 1. NEW SECTION. 535.17 WRITTEN CREDIT
2 AGREEMENTS.

3 1. For the purposes of this section:

4 a. "Credit agreement" means an agreement to lend or
5 forbear repayment of money, goods, or things in action, to
6 otherwise extend credit, or to make any other financial
7 accommodation.

8 b. "Creditor" means a person who extends credit or a
9 financial accommodation under a credit agreement with a
10 debtor.

11 c. "Debtor" means a person who obtains credit or seeks a
12 credit agreement with a creditor or who owes money to a
13 creditor.

14 2. A debtor shall not maintain an action on a credit
15 agreement and evidence of a credit agreement is not competent
16 unless the credit agreement is in writing, expresses
17 consideration, sets forth the relevant terms and conditions,
18 and is signed by the creditor and the debtor.

19 3. A credit agreement shall not be implied from the
20 relationship, fiduciary or otherwise, of the creditor and the
21 debtor.

22 4. One or more of the following actions do not give rise
23 to a claim that a new credit agreement is created, unless the
24 agreement satisfies the requirements of subsection 2:

25 a. The rendering of financial advice by a creditor to a
26 debtor.

27 b. The consultation by a creditor with a debtor.

28 c. The agreement by a creditor to take certain actions,
29 such as entering into a new credit agreement, modifying an
30 existing credit agreement, forbearing from exercising remedies
31 under prior credit agreements, or extending installments due
32 under prior credit agreements.

33 d. A statement or promise by the creditor which the
34 creditor would reasonably expect to induce action or
35 forbearance on the part of the debtor or a third person.

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EXPLANATION

This bill requires that credit agreements be in writing and signed by the debtor and the creditor to be enforceable by the debtor. The bill provides that a credit agreement cannot be implied from the relationship between the debtor and the creditor, and that certain actions or statements by a creditor do not give rise to a claim that a new credit agreement is created unless there is an agreement in writing, which is signed by the creditor and debtor and which expresses consideration and includes terms and conditions.

SENATE AMENDMENT TO HOUSE FILE 677

H-6027

1 Amend House File 677, as passed by the House, as
2 follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 535.17 REQUIREMENTS OF
6 CREDIT AGREEMENTS -- STATUTE OF FRAUDS --
7 MODIFICATIONS.

8 1. A credit agreement is not enforceable in
9 contract law by way of action or defense by any party
10 unless a writing exists which contains all of the
11 material terms of the agreement and is signed by the
12 party against whom enforcement is sought.

13 2. Unless otherwise expressly agreed in writing, a
14 modification of a credit agreement which occurs after
15 the person asserting the modification has been
16 notified in writing that oral or implied modifications
17 to the credit agreement are unenforceable and should
18 not be relied upon, is not enforceable in contract law
19 by way of action or defense by any party unless a
20 writing exists containing the material terms of the
21 modification and is signed by the party against whom
22 enforcement is sought. This notification can be
23 included among the terms of a credit agreement, can be
24 included on a separate form or together with other
25 disclosures that are provided when the agreement is
26 made, or can be given wholly apart from the agreement
27 and at any time after the agreement has been made. To
28 be effective, the notification and its language must
29 be conspicuous. A person who gives a notification is
30 bound by it to the same extent as the person notified.
31 A notification with respect to any credit agreement is
32 effective with respect to all other credit agreements
33 then in effect between the parties if the notification
34 conspicuously so provides. When a modification is
35 required by this section to be in writing and signed,
36 such requirement cannot be modified except by clear
37 and explicit language in a writing signed by the
38 person against whom the modification is to be
39 enforced.

40 3. A notification referred to in subsection 2 in
41 the following form in boldface, ten-point type,
42 complies with the requirements of this section:
43 **IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS**
44 **AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE**
45 **TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR**
46 **ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT**
47 **MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF**
48 **THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

49 4. Notwithstanding subsections 1 and 2, a credit
50 agreement or modification of a credit agreement which

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1 is not in writing, but which is valid in other
2 respects, is enforceable if the party against whom
3 enforcement is sought admits in court that the
4 agreement or modification was made, but no agreement
5 or modification is enforceable under this subsection
6 beyond the terms admitted.

7 5. For purposes of this section, unless the
8 context otherwise requires:

9 a. "Action" includes petition, complaint,
10 counterclaim, cross-claim, or any other pleading or
11 proceeding to enforce affirmatively any right or duty
12 or to recover damages for the nonperformance of any
13 duty.

14 b. "Contract" means a promise or set of promises
15 for the breach of which the law would give a remedy or
16 the performance of which the law would recognize a
17 duty, and includes promissory obligations based on
18 instruments and similar documents or on the contract
19 doctrine of promissory estoppel.

20 c. "Credit agreement" means any contract made or
21 acquired by a lender to loan money, finance any
22 transaction, or otherwise extend credit for any
23 purpose, and includes all of the terms of the
24 contract. "Credit agreement" does not mean a contract
25 to loan money, finance a transaction, or otherwise
26 extend credit by means of or pursuant to a credit
27 card, as defined in section 537.1301, subsection 16,
28 or pursuant to open-end credit, as defined in section
29 537.1301, subsection 28, or pursuant to a home equity
30 line of credit, as defined in section 535.10 whether
31 the loan, financing, or credit is for consumer or
32 business purposes or a consumer rental purchase
33 agreement as defined in section 537.3604, subsection
34 8.

35 d. "Defense" includes setoff, recoupment, and any
36 basis or means for barring or reducing liability or
37 obligation on any claim.

38 e. "Lender" means any person primarily in the
39 business of loaning money, or financing sales, leases,
40 or other provision of property or services.

41 f. "Modification" includes change, addition,
42 waiver, rescission, and any other variation of any
43 kind whether expressly made or implied by, or inferred
44 from, conduct of any kind.

45 6. This section shall be interpreted and applied
46 purposively to ensure that contract actions and
47 defenses on credit agreements are supported by clear
48 and certain written proof of the terms of such
49 agreements to protect against fraud and to enhance the
50 clear and predictable understanding of rights and

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1. duties under credit agreements.

2 7. This section entirely displaces principles of
3 common law and equity that would make or recognize
4 exceptions to or otherwise limit or dilute the force
5 and effect of its provisions concerning the
6 enforcement in contract law of credit agreements or
7 modifications of credit agreements. However, this
8 section does not displace any additional or other
9 requirements of contract law, which shall continue to
10 apply, with respect to the making of enforceable
11 contracts, including the requirement of consideration
12 or other basis of validation.

13 8. This section does not apply to a credit
14 agreement made primarily for a personal, family, or
15 household purpose where the credit extended is twenty
16 thousand dollars or less.

17 Sec. 2.

18 This Act applies to credit agreements and
19 modifications of credit agreements entered into on or
20 after the effective date of this Act.

21 Sec. 3.

22 This Act takes effect on January 1, 1991."

RECEIVED FROM THE SENATE

H-6027 FILED MARCH 30, 1990

House concerned 4/6 (p. 2175)

HOUSE FILE 677

S-5253

1 Amend House File 677, as passed by the House, as
2 follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 535.17 REQUIREMENTS OF
6 CREDIT AGREEMENTS -- STATUTE OF FRAUDS --
7 MODIFICATIONS.

8 1. A credit agreement is not enforceable in
9 contract law by way of action or defense by any party
10 unless a writing exists which contains all of the
11 material terms of the agreement and is signed by the
12 party against whom enforcement is sought.

13 2. Unless otherwise expressly agreed in writing, a
14 modification of a credit agreement which occurs after
15 the person asserting the modification has been
16 notified in writing that oral or implied modifications
17 to the credit agreement are unenforceable and should
18 not be relied upon, is not enforceable in contract law
19 by way of action or defense by any party unless a
20 writing exists containing the material terms of the
21 modification and is signed by the party against whom
22 enforcement is sought. This notification can be
23 included among the terms of a credit agreement, can be
24 included on a separate form or together with other
25 disclosures that are provided when the agreement is
26 made, or can be given wholly apart from the agreement
27 and at any time after the agreement has been made. To
28 be effective, the notification and its language must
29 be conspicuous. A person who gives a notification is
30 bound by it to the same extent as the person notified.
31 A notification with respect to any credit agreement is
32 effective with respect to all other credit agreements
33 then in effect between the parties if the notification
34 conspicuously so provides. When a modification is
35 required by this section to be in writing and signed,
36 such requirement cannot be modified except by clear
37 and explicit language in a writing signed by the
38 person against whom the modification is to be
39 enforced. This section does not displace any
40 additional or other requirements of contract law,
41 which shall continue to apply, with respect to the
42 making of enforceable contract modifications,
43 including the requirement of consideration or other
44 basis of validation.

45 3. A notification referred to in subsection 2 in
46 the following form in boldface, ten-point type,
47 complies with the requirements of this section:
48 **IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS**
49 **AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE**
50 **TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR**

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Page 2

1 ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT
2 MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF
3 THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

4 4. Notwithstanding subsections 1 and 2, a credit
5 agreement or modification of a credit agreement which
6 is not in writing, but which is valid in other
7 respects, is enforceable if the party against whom
8 enforcement is sought admits in court that the
9 agreement or modification was made, but no agreement
10 or modification is enforceable under this subsection
11 beyond the terms admitted.

12 5. For purposes of this section, unless the
13 context otherwise requires:

14 a. "Action" includes complaint, counterclaim,
15 cross-claim, or any other pleading or proceeding to
16 enforce affirmatively any right or duty.

17 b. "Contract" means a promise or set of promises
18 for the breach of which the law would give a remedy or
19 the performance of which the law would recognize a
20 duty, and includes promissory obligations based on
21 instruments and similar documents or on the contract
22 doctrine of promissory estoppel.

23 c. "Credit agreement" means any contract made or
24 acquired by a lender to loan money, finance any
25 transaction, or otherwise extend credit for any
26 purpose, and includes all of the terms of the
27 contract. "Credit agreement" does not mean a contract
28 to loan money, finance a transaction, or otherwise
29 extend credit by means of or pursuant to a credit
30 card, as defined in section 537.1301, subsection 16,
31 whether the loan, financing, or credit is for consumer
32 or business purposes or a consumer rental purchase
33 agreement as defined in section 537.3604, subsection
34 8.

35 d. "Defense" includes setoff, recoupment, and any
36 basis or means for barring or reducing liability or
37 obligation on any claim.

38 e. "Lender" means any person primarily in the
39 business of loaning money, or financing sales, leases,
40 or other provision of property or services.

41 f. "Modification" includes change, addition,
42 waiver, rescission, and any other variation of any
43 kind whether expressly made or implied by, or inferred
44 from, conduct of any kind.

45 6. This section shall be interpreted and applied
46 purposively to ensure that contract actions and
47 defenses on credit agreements are supported by clear
48 and certain written proof of the terms of such
49 agreements to protect against fraud and to enhance the
50 clear and predictable understanding of rights and

1 duties under credit agreements.

2 7. This section entirely displaces principles of
3 common law and equity that would make or recognize
4 exceptions to its provisions or otherwise limit or
5 dilute the force and effect of its provisions.

6 8. This section does not apply to a credit
7 agreement made primarily for a personal, family, or
8 household purpose where the credit extended is two
9 thousand dollars or less, provided that this amount
10 shall be adjusted annually in accordance with the
11 annual change in the consumer price index.

12 Sec. 2.

13 This Act applies to credit agreements and
14 modifications of credit agreements entered into on or
15 after the effective date of this Act.

16 Sec. 3.

17 This Act takes effect on January 1, 1991."

By COMMITTEE ON JUDICIARY
RICHARD VARN, Chairperson

S-5253 FILED FEBRUARY 27, 1990

Adopted as amended by S752 3/30 (p. 1430)

HOUSE FILE 677

S-5752

1 Amend the amendment, S-5253, to House File 677, as
2 passed by the House, as follows:

3 1. Page 1, by striking lines 39 through 44 and
4 inserting the following: "enforced."

5 2. Page 2, line 14, by inserting after the word
6 "includes" the following: "petition,".

7 3. Page 2, line 16, by inserting after the word
8 "duty" the following: "or to recover damages for the
9 nonperformance of any duty".

10 4. Page 2, line 30, by inserting after the figure
11 "16," the following: "or pursuant to open-end credit,
12 as defined in section 537.1301, subsection 28, or
13 pursuant to a home equity line of credit, as defined
14 in section 535.10".

15 5. Page 3, line 4, by striking the words "its
16 provisions".

17 6. Page 3, line 5, by inserting after the word
18 "provisions" the following: "concerning the
19 enforcement in contract law of credit agreements or
20 modifications of credit agreements. However, this
21 section does not displace any additional or other
22 requirements of contract law, which shall continue to
23 apply, with respect to the making of enforceable
24 contracts, including the requirement of consideration
25 or other basis of validation".

26 7. Page 3, by striking lines 8 through 11 and
27 inserting the following: "household purpose where the
28 credit extended is twenty thousand dollars or less."

By RICHARD VARN

S-5752 FILED MARCH 28, 1990

Adopted 3/30 (p. 1430)

HSB 295 Halvorson

Judiciary & Law Enforcement

Jay

Hanson

Succeeded By

SF (HF) 677

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW ENFORCE-
MENT BILL)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to written credit agreements between a creditor
2 and debtor and rights of action on that agreement.

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

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S.F. _____ H.F. _____

Harrison
Jay
Harrison

1 Section 1. NEW SECTION. 535.17 WRITTEN CREDIT
2 AGREEMENTS.

3 1. For the purposes of this section:

4 a. "Credit agreement" means an agreement to lend or
5 forbear repayment of money, goods, or things in action, to
6 otherwise extend credit, or to make any other financial
7 accommodation.

8 b. "Creditor" means a person who extends credit or a
9 financial accommodation under a credit agreement with a
10 debtor.

11 c. "Debtor" means a person who obtains credit or seeks a
12 credit agreement with a creditor or who owes money to a
13 creditor.

14 2. A debtor shall not maintain an action on a credit
15 agreement and evidence of a credit agreement is not competent
16 unless the credit agreement is in writing, expresses
17 consideration, sets forth the relevant terms and conditions,
18 and is signed by the creditor and the debtor.

19 3. A credit agreement shall not be implied from the
20 relationship, fiduciary or otherwise, of the creditor and the
21 debtor.

22 4. One or more of the following actions do not give rise
23 to a claim that a new credit agreement is created, unless the
24 agreement satisfies the requirements of subsection 2:

25 a. The rendering of financial advice by a creditor to a
26 debtor.

27 b. The consultation by a creditor with a debtor.

28 c. The agreement by a creditor to take certain actions,
29 such as entering into a new credit agreement, modifying an
30 existing credit agreement, forbearing from exercising remedies
31 under prior credit agreements, or extending installments due
32 under prior credit agreements.

33 d. A statement or promise by the creditor which the
34 creditor would reasonably expect to induce action or
35 forbearance on the part of the debtor or a third person.

EXPLANATION

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2 This bill requires that credit agreements be in writing and
3 signed by the debtor and the creditor to be enforceable by the
4 debtor. The bill provides that a credit agreement cannot be
5 implied from the relationship between the debtor and the
6 creditor, and that certain actions or statements by a creditor
7 do not give rise to a claim that a new credit agreement is
8 created unless there is an agreement in writing, which is
9 signed by the creditor and debtor and which expresses
10 consideration and includes terms and conditions.

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HOUSE FILE 677

AN ACT

RELATING TO WRITTEN CREDIT AGREEMENTS BETWEEN A CREDITOR AND DEBTOR AND RIGHTS OF ACTION ON THAT AGREEMENT.

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

Section 1. NEW SECTION. 535.17 REQUIREMENTS OF CREDIT AGREEMENTS -- STATUTE OF FRAUDS -- MODIFICATIONS.

1. A credit agreement is not enforceable in contract law by way of action or defense by any party unless a writing exists which contains all of the material terms of the agreement and is signed by the party against whom enforcement is sought.

2. Unless otherwise expressly agreed in writing, a modification of a credit agreement which occurs after the person asserting the modification has been notified in writing that oral or implied modifications to the credit agreement are unenforceable and should not be relied upon, is not enforceable in contract law by way of action or defense by any party unless a writing exists containing the material terms of the modification and is signed by the party against whom enforcement is sought. This notification can be included among the terms of a credit agreement, can be included on a separate form or together with other disclosures that are provided when the agreement is made, or can be given wholly apart from the agreement and at any time after the agreement has been made. To be effective, the notification and its language must be conspicuous. A person who gives a notification is bound by it to the same extent as the person notified. A notification with respect to any credit agreement is effective with respect to all other credit agreements then in effect between the parties if the notification conspicuously so provides. When a modification is required by

this section to be in writing and signed, such requirement cannot be modified except by clear and explicit language in a writing signed by the person against whom the modification is to be enforced.

3. A notification referred to in subsection 2 in the following form in boldface, ten-point type, complies with the requirements of this section:

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

4. Notwithstanding subsections 1 and 2, a credit agreement or modification of a credit agreement which is not in writing, but which is valid in other respects, is enforceable if the party against whom enforcement is sought admits in court that the agreement or modification was made, but no agreement or modification is enforceable under this subsection beyond the terms admitted.

5. For purposes of this section, unless the context otherwise requires:

a. "Action" includes petition, complaint, counterclaim, cross-claim, or any other pleading or proceeding to enforce affirmatively any right or duty or to recover damages for the nonperformance of any duty.

b. "Contract" means a promise or set of promises for the breach of which the law would give a remedy or the performance of which the law would recognize a duty, and includes promissory obligations based on instruments and similar documents or on the contract doctrine of promissory estoppel.

c. "Credit agreement" means any contract made or acquired by a lender to loan money, finance any transaction, or otherwise extend credit for any purpose, and includes all of the terms of the contract. "Credit agreement" does not mean a

contract to loan money, finance a transaction, or otherwise extend credit by means of or pursuant to a credit card, as defined in section 537.1301, subsection 16, or pursuant to open-end credit, as defined in section 537.1301, subsection 28, or pursuant to a home equity line of credit, as defined in section 535.10 whether the loan, financing, or credit is for consumer or business purposes or a consumer rental purchase agreement as defined in section 537.3604, subsection 8.

d. "Defense" includes setoff, recoupment, and any basis or means for barring or reducing liability or obligation on any claim.

e. "Lender" means any person primarily in the business of loaning money, or financing sales, leases, or other provision of property or services.

f. "Modification" includes change, addition, waiver, rescission, and any other variation of any kind whether expressly made or implied by, or inferred from, conduct of any kind.

6. This section shall be interpreted and applied purposively to ensure that contract actions and defenses on credit agreements are supported by clear and certain written proof of the terms of such agreements to protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements.

7. This section entirely displaces principles of common law and equity that would make or recognize exceptions to or otherwise limit or dilute the force and effect of its provisions concerning the enforcement in contract law of credit agreements or modifications of credit agreements. However, this section does not displace any additional or other requirements of contract law, which shall continue to apply, with respect to the making of enforceable contracts, including the requirement of consideration or other basis of validation.

8. This section does not apply to a credit agreement made primarily for a personal, family, or household purpose where the credit extended is twenty thousand dollars or less.

Sec. 2.

This Act applies to credit agreements and modifications of credit agreements entered into on or after the effective date of this Act.

Sec. 3.

This Act takes effect on January 1, 1991.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 677, Seventy-third General Assembly.

Approved *Sept 19*, 1990

JOSEPH O'HERN
Chief Clerk of the House

TERRY E. BRANSTAD
Governor