

MAR 9 1995

JUDICIARY

HOUSE FILE 320

BY KREIMAN

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to civil remedies upon the dishonoring of a
2 financial instrument.

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

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HF 320

1 Section 1. NEW SECTION. 554.3512 CIVIL REMEDY FOR
2 DISHONOR.

3 1. In a civil action against a person who makes a check,
4 draft, or order, which has been dishonored for lack of funds
5 or credit or because the maker has no account with the drawee,
6 the plaintiff may recover from the defendant damages triple
7 the amount for which the dishonored check, draft, or order is
8 drawn. However, damages under this section shall not exceed
9 by more than five hundred dollars the amount of the check,
10 draft, or order and may be awarded only if all of the
11 following apply:

12 a. The plaintiff made written demand by restricted
13 certified mail of the defendant for payment of the amount of
14 the check, draft, or order not less than thirty days before
15 commencing the action.

16 b. The defendant has failed to tender to the plaintiff,
17 prior to commencement of the action, an amount of money not
18 less than the amount demanded.

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

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

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

1 consideration for which the check, draft, or order was given.
 2 4. In actions brought pursuant to this section, no
 3 additional award pursuant to section 625.22 shall be made.

4 EXPLANATION

5 The bill provides that in a civil action against a person
 6 who makes a check, draft, or order which has been dishonored
 7 for lack of funds or credit or because the maker has no
 8 account with the drawee, the plaintiff may recover from the
 9 defendant damages triple the amount for which the dishonored
 10 check, draft, or order is drawn. The bill provides that the
 11 total amount of damages cannot exceed \$500 more than the
 12 amount of the check, draft, or order. The damages are
 13 contingent upon a number of conditions. First, the plaintiff
 14 must have made written demand by restricted certified mail of
 15 the defendant within 30 days before commencing the action; the
 16 defendant must have failed to pay the plaintiff the amount of
 17 money demanded; and the plaintiff must have clearly and
 18 conspicuously posted a notice at the usual place of payment,
 19 or in a billing statement. The bill provides that a court may
 20 waive damages if the check was dishonored due to economic
 21 hardship. However, the court must render judgment against the
 22 defendant in the amount of the dishonored check, draft, or
 23 order and the actual costs incurred by the plaintiff in
 24 bringing the action.

25 The bill excuses dishonor in cases where a maker of an
 26 instrument stops payment.

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