

House Study Bill 169

Conference Committee Text

PAG LIN

1 1 Section 1. Section 537.2501, subsection 1, paragraph g,
1 2 Code 1995, is amended to read as follows:
1 3 g. A surcharge of not more than

~~ten~~

- five percent of the

1 4 amount of the face value of the payment instrument or twenty
1 5 dollars, whichever is greater, for each dishonored payment
1 6 instrument provided that the fee is clearly and conspicuously
1 7 disclosed in the cardholder agreement. However, the surcharge
1 8 shall not be assessed against the maker if the reason for the
1 9 dishonor of the instrument is that the maker has stopped
1 10 payment pursuant to section 554.4403.

1 11 Sec. 2. NEW SECTION. 554.3512 HOLDER'S RECOURSE FOR
1 12 DISHONOR.

1 13 The holder of a dishonored check, draft, or order may
1 14 assess against the maker of that check, draft, or order a
1 15 surcharge of not more than the greater of twenty dollars or
1 16 five percent of the face value of the check. The surcharge
1 17 authorized by this section shall not be assessed unless the
1 18 holder clearly and conspicuously posts a notice at the usual
1 19 place of payment, or in the billing statement of the holder,
1 20 stating that a surcharge will be assessed and the amount of
1 21 the surcharge. However, the surcharge shall not be assessed
1 22 against the maker if the reason for the dishonor of the check,
1 23 draft, or order is that the maker has stopped payment pursuant
1 24 to section 554.4403.

1 25 Sec. 3. NEW SECTION. 554.3513 CIVIL REMEDY FOR DISHONOR.

1 26 1. In a civil action against a person who makes a check,
1 27 draft, or order, which has been dishonored for lack of funds
1 28 or credit or because the maker has no account with the drawee,
1 29 the plaintiff may recover from the defendant damages triple
1 30 the amount for which the dishonored check, draft, or order is
1 31 drawn. However, damages under this section shall not exceed
1 32 by more than five hundred dollars the amount of the check,
1 33 draft, or order and may be awarded only if all of the
1 34 following apply:

1 35 a. The plaintiff made written demand by restricted
2 1 certified mail of the defendant for payment of the amount of
2 2 the check, draft, or order not less than thirty days before
2 3 commencing the action.

2 4 b. The defendant has failed to tender to the plaintiff,
2 5 prior to commencement of the action, an amount of money not
2 6 less than the amount demanded.

2 7 c. The plaintiff clearly and conspicuously posted a notice
2 8 at the usual place of payment, or in a billing statement of
2 9 the plaintiff, stating that civil damages pursuant to this
2 10 section would be sought upon dishonorment.

2 11 2. In an action for damages pursuant to subsection 1, if
2 12 the court or jury determines that the failure of the defendant
2 13 to satisfy the dishonored check, draft, or order is due to
2 14 economic hardship, the court or jury may waive all or part of
2 15 the allowable civil damages. However, if the court or jury
2 16 waives all or part of the civil damages, the court or jury
2 17 shall render judgment against the defendant in the amount of
2 18 the dishonored check, draft, or order and the actual costs

2 19 incurred by the plaintiff in bringing the action.

2 20 3. This section does not apply if the reason for the
2 21 dishonor of the check, draft, or order is that the maker has
2 22 stopped payment pursuant to section 554.4403 because of a bona
2 23 fide dispute between the maker and the holder relating to the
2 24 consideration for which the check, draft, or order was given.

2 25 4. In actions brought pursuant to this section, no
2 26 additional award pursuant to section 625.22 shall be made.

2 27 EXPLANATION

2 28 This bill provides for remedies of a holder of a financial
2 29 instrument. First, the bill amends the consumer credit code,
2 30 and specifically section 537.2501, relating to charges
2 31 involving consumer credit transactions. A consumer credit
2 32 transaction includes a consumer credit sale, consumer loan, a
2 33 refinancing or consolidation of a consumer credit sale or
2 34 consumer loan, a consumer lease, or a consumer rental purchase
2 35 agreement. The current law provides that a surcharge of not
3 1 more than \$10 may be charged for each dishonored payment
3 2 instrument. The bill increases the amount to \$20 or 5 percent
3 3 of the amount of the transaction, whichever is greater.

3 4 The bill also amends the uniform commercial code, and
3 5 specifically article 3, part 5, which relates to the dishonor
3 6 of negotiable instruments. The bill provides that the holder
3 7 of a dishonored check may assess against the maker of that
3 8 check a surcharge of not more than the greater of \$20 or 5
3 9 percent of the face value of the check. The surcharge cannot
3 10 be assessed unless the holder clearly and conspicuously posts
3 11 a notice at the usual place of payment, or in the billing
3 12 statement of the holder, stating that a surcharge will be
3 13 assessed and the amount of the surcharge.

3 14 The bill provides that in a civil action against a person
3 15 who makes a check, draft, or order which has been dishonored
3 16 for lack of funds or credit or because the maker has no
3 17 account with the drawee, the plaintiff may recover from the
3 18 defendant damages triple the amount for which the dishonored
3 19 check, draft, or order is drawn. The bill provides that the
3 20 total amount of damages cannot exceed \$500 more than the
3 21 amount of the check, draft, or order. The damages are
3 22 contingent upon a number of conditions. First, the plaintiff
3 23 must have made written demand by restricted certified mail of
3 24 the defendant within 30 days before commencing the action; the
3 25 defendant must have failed to pay the plaintiff the amount of
3 26 money demanded; and the plaintiff must have clearly and
3 27 conspicuously posted a notice at the usual place of payment,
3 28 or in a billing statement. The bill provides that a court may
3 29 waive damages if the check was dishonored due to economic
3 30 hardship. However, the court must render judgment against the
3 31 defendant in the amount of the dishonored check, draft, or
3 32 order and the actual costs incurred by the plaintiff in
3 33 bringing the action.

3 34 The bill excuses dishonor in cases where a maker of an
3 35 instrument stops payment.

4 1 LSB 1797HC 76

4 2 da/jw/5