

*Substituted by HF 485*

*4/3/95 Referred to Judiciary  
4/5/95 Do Pass*

WITHDRAWN

SENATE FILE **452**  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 145)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to remedies upon the dishonoring of a financial  
2 instrument and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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**SENATE FILE 452**

**S-3254**

1 Amend Senate File 452 as follows:  
2 1. Page 1, line 10, by inserting after the word  
3 "drawee." the following: "If the check, draft, or  
4 order was presented twice or the maker does not have  
5 an account with the drawee, the amount of the  
6 surcharge shall not exceed one hundred dollars."  
7 2. Page 1, line 22, by inserting after the word  
8 "drawee." the following: "If the check, draft, or  
9 order was presented twice or the maker does not have  
10 an account with the drawee, the amount of the  
11 surcharge shall not exceed one hundred dollars."

By ANDY MCKEAN

S-3254 FILED MARCH 28, 1995  
*Adopted 4/11/95 (p.1121)*

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WITHDRAWN

**S.F. 452**

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

3 g. A surcharge of not more than ten five percent of the  
4 amount of the face value of the payment instrument or twenty  
5 dollars, whichever is greater, for each dishonored payment  
6 instrument provided that the fee is clearly and conspicuously  
7 disclosed in the cardholder agreement. However, the amount of  
8 the surcharge shall not exceed twenty dollars unless the  
9 check, draft, or order was presented twice or the maker does  
10 not have an account with the drawee. The surcharge shall not  
11 be assessed against the maker if the reason for the dishonor  
12 of the instrument is that the maker has stopped payment  
13 pursuant to section 554.4403.

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

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

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

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

32 1. In a civil action against a person who makes a check,  
33 draft, or order, which has been dishonored for lack of funds  
34 or credit, after having been presented twice, or because the  
35 maker has no account with the drawee, the plaintiff shall

1 recover from the defendant total damages equaling three times  
2 the face value of the dishonored check, draft, or order, which  
3 sum shall include the face value of the check, draft, or  
4 order. However, total recovery under this section shall not  
5 exceed by more than five hundred dollars the amount of the  
6 check, draft, or order and may be awarded only if all of the  
7 following apply:

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

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

16 c. 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 face value of the dishonored check, draft, or  
19 order.

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

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

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

1 fide dispute between the maker and the holder relating to the  
2 consideration for which the check, draft, or order was given.

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

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

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

17 EXPLANATION

18 This bill provides for remedies of a holder of a financial  
19 instrument. The bill amends provisions in the consumer credit  
20 code and the uniform commercial code to provide for surcharges  
21 for a dishonored payment instrument. Section 537.2501  
22 provides that the amount of surcharge must not exceed \$20.  
23 The bill provides that the amount cannot exceed 5 percent of  
24 the amount of the face value of the payment instrument or \$20,  
25 whichever is greater. The bill also provides that the amount  
26 of the surcharge shall not exceed \$20 unless the check, draft,  
27 or order was presented twice or the maker does not have an  
28 account with the drawee.

29 The bill provides that in a civil action against a person  
30 who makes a check, draft, or order which has been dishonored  
31 for lack of funds or credit after having been presented twice,  
32 or because the maker has no account with the drawee, the  
33 plaintiff may recover from the defendant damages triple the  
34 amount for which the dishonored check, draft, or order is  
35 drawn. The bill provides that the total amount of damages

1 cannot exceed \$500 more than the amount of the check, draft,  
2 or order. The damages are contingent upon a number of  
3 conditions. The plaintiff must provide a written demand for  
4 the payment, the defendant must have failed to tender the  
5 amount of the check, draft, or order, plus other associated  
6 costs, and the plaintiff must have posted a notice on the  
7 premises. The bill provides for reduced damages in cases of  
8 hardship, and provides that the section does not apply in  
9 cases involving a bona fide dispute between the parties  
10 arising out of a stop payment order. The bill limits punitive  
11 or exemplary damages.

12 A violation of section 554.3513 is an unlawful practice as  
13 provided in section 714.16.

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Mc Kean  
Giannetto  
Fraise  
Vilsack  
Redfern

SSB-145

Judiciary

Succeeded By  
SF/HF

SENATE FILE 452

BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON GIANNETTO)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

### A BILL FOR

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

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

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

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

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

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

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

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

35 a. The plaintiff made written demand by restricted

1 certified mail of the defendant for payment of the amount of  
2 the check, draft, or order not less than thirty days before  
3 commencing the action.

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

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

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

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

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

27 EXPLANATION

28 This bill provides for remedies of a holder of a financial  
29 instrument. First, the bill amends the consumer credit code,  
30 and specifically section 537.2501, relating to charges  
31 involving consumer credit transactions. A consumer credit  
32 transaction includes a consumer credit sale, consumer loan, a  
33 refinancing or consolidation of a consumer credit sale or  
34 consumer loan, a consumer lease, or a consumer rental purchase  
35 agreement. The current law provides that a surcharge of not

1 more than \$10 may be charged for each dishonored payment  
2 instrument. The bill increases the amount to \$20 or 5 percent  
3 of the amount of the transaction, whichever is greater.

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

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

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