

PROPOSED AMENDMENT TO HSB633

Section 1. Section 562A.11, subsection 2, Code 2018, is amended to read as follows:

2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. Both landlord and tenant have the right to a legal lease. Either party may obtain an expedited declaratory judgment with regard to the legality of a lease provision. If a landlord or tenant willfully uses a rental agreement containing provisions known to be prohibited, the other party may recover actual damages sustained due to the prohibited provision and ~~not more than three months' periodic rent~~ and reasonable attorney fees.

Sec. 2. Section 562B.11, subsection 2, Code 2018, is amended to read as follows:

2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. Both landlord and tenant have the right to a legal lease. Either party may obtain an expedited declaratory judgment with regard to the legality of a lease provision. If a landlord or tenant knowingly uses a rental agreement containing provisions known to be prohibited ~~by this chapter~~, the other party may recover actual damages sustained due to the prohibited provision and reasonable attorney fees.

This Proposed Amendment (offered by Iowa Landlord Association):

- 1) Removes punitive damages for either party.
- 2) Establishes that the parties are entitled to a legal lease.
- 3) The amendment is a better bill for Landlords (and Tenants) because it balances language in 562A.11 and 562B.11
- 4) The Tenants Project has signed off on the substance of this amendment, particularly the removal of punitive damages and the rights of the LANDLORD as well as the tenant to a legal lease.
- 5) The language of the bill promotes industry best practices.

Summary from our Legal Counsel, of 20+ years:

The Proponents say this protects inadvertent violation by the landlord for inclusion of prohibited provisions. Opponents say, the uninformed landlord who inadvertently includes a provision may also inadvertently try to enforce.

The Opponents say this gives free range to the landlord to include in the rental agreement any sort of provision regardless of whether it is enforceable or not, and chills the tenant to abide by rental agreement provisions to which he is not obligated to abide. Further the landlord has protections in the current statute to protect him from penalties for inadvertent violation. And, that is the crux of the Supreme Court's opinion on the Iowa City case.

I don't have a personal point. I have seen landlords who have inserted unenforceable provisions on purpose, thinking the unwary tenant will abide by them.

Submitted 2/12/2018 by: Andrew Lietzow, MBA - Exec Dir Iowa Landlord Association - (515) 255-0675 Andrew.Lietzow@IaREIA.com