§ 5-328. Processing fee by holder of dishonored check. 1. As used in this section the following terms shall have the following meanings:

(a) "Holder of a check" means the holder or its assignee, representative or any other person retained by the holder to seek collection of the face value of a dishonored check.

(b) "Dishonored check" means a check, draft or like instrument drawn on a bank or depository institution as full or partial payment for an unpaid balance on an account, or for other extensions of credit or payments of money in connection with a consumer transaction, which is not paid or is dishonored or is returned by such institution due to insufficient funds or other cause not attributable to the holder.

(c) "Consumer transaction" means a transaction in which a natural person is extended credit for, or purchases or leases, personal property, money or services primarily for personal, family or household purposes.

(d) "Account" means a loan account, a retail credit account or an obligation under a retail lease agreement, retail instalment contract or retail instalment obligation or a retail instalment credit agreement, as defined in sections three hundred one, three hundred thirty-one and four hundred one of the personal property law.

2. Notwithstanding the provisions of any law:

(a) The holder of a dishonored check given in payment for a consumer transaction or an account may collect from, charge, or add to the outstanding balance of the account of, the person from whom such check was received or to whom such credit was extended, a dishonored check charge of not more than the lesser of the amount agreed upon, if contracted for, or twenty dollars.

(b) A dishonored check charge shall not be deemed a credit service charge, interest or an incident to or a condition to the extension of credit, for any purpose of law.

3. (a) Notwithstanding any other provision of law, any person to whom a check, draft or like instrument, other than a money order, bank cashier's check or certified check, is tendered for any transaction, other than a consumer transaction, may, if such instrument is dishonored charge or collect from the maker or drawer the amount of twenty dollars

for the return of such unpaid or dishonored instrument.

(b) Notwithstanding any other provision of this subdivision, a landlord, lessor, sub-lessor or grantor to whom a check, draft or like instrument, other than a money order, bank cashier's check or certified check, is tendered for payment of rent, may if such instrument is dishonored charge or collect from the maker or drawer the amount of actual costs, charges or fees incurred by such landlord, lessor, sub-lessor or grantor for the return of such dishonored check or the amount set forth in paragraph (a) of this subdivision, whichever is greater, provided that:

(i) if the payment, fee or charge exceeds the amount set forth in paragraph (a) of this subdivision the landlord, lessor, sub-lessor or grantor shall provide to the tenant upon request evidence substantiating the equivalence between the payment, fee or charge and the amount of actual costs, charges or fees incurred for the return of the dishonored check; and

(ii) such dishonored check charge was contracted for in the lease agreement between the tenant and landlord, lessor, sub-lessor or grantor in accordance with the requirements of subdivision two-a of section two hundred thirty-eight-a of the real property law. The provisions of this paragraph shall not apply to a shareholder of a cooperative housing corporation, provided, however, that the provisions of this paragraph shall apply with respect to any tenant or subtenant of such a shareholder.