

Advisory



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ADDRESS REPLY TO:
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August 27, 1984

RE: S.F. 420 - Charges for Nonsufficient Funds Checks & the ICCC.

Dear

Please excuse the delay in responding to your letter which inquired whether the NSF charge allowed by S.F. 420 would be a permissible charge under the Iowa Consumer Credit Code (ICCC).

As you know, any charge assessed by the creditor in a consumer credit transaction must either be included and disclosed as part of the finance charge or fall under the classification of additional charges. A charge for a NSF returned check clearly does not fall under the ICCC definition of finance charge § 537.1301(19). The Truth-In-Lending Act also considers such a charge to be one which is excluded from the finance charge. (See: 12 CFR; Reg. Z § 226.4, para. 4[c][2].)

As you note in your letter, the question is whether an NSF check charge is permitted by § 537.2501 of the ICCC. In my review of the question, I cannot find any basis to support the argument that such charges are included under § 537.2501. This is true even when it is considered that S.F. 420 is found in the U.C.C. The ICCC does incorporate the UCC where applicable (See: 537.1103); however, this is, of course, true only if the U.C.C. is not displaced by particular provisions of the ICCC.

I recognize that such a conclusion may be contrary to the legislative intent of S.F. 420. If, indeed, this is true, it would appear that the Legislature will have to explicitly include NSF charges under § 537.2501.


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I should note that I have not surveyed the other U.C.C.C. jurisdictions, and I am unable to tell you if they have taken a position on this question.

Please note, this letter is neither an opinion of the Attorney General nor a ruling of the ICCA Administrator and should not be construed or relied upon as such.

If you would like to discuss the matter further, please feel free to give me a call.

Sincerely,



LINDA THOMAS LOWE
Assistant Attorney General

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