



ADVISORY

THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BLDG., SECOND FLOOR
1300 EAST WALNUT
DES MOINES, IOWA 50319
515/281-5926

Department of Justice

CONSUMER PROTECTION DIVISION

June 5, 1985

RE: Financing of Automobile Service Contracts by

Dear

Your March, 1985, letter to the Iowa Department of Banking was, as you know, forwarded to the Office of the Administrator of the Iowa Consumer Credit Code. In your letter, you requested information on Iowa statutes or regulations governing the retail installment financing of automobile service contracts by a licensed Nebraska sales finance company in connection with sales of automobiles to Iowans. This letter is the response of the Administrator of the Iowa Consumer Credit Code, hereinafter referred to as the ICCC, and is advisory in nature. It is not an opinion of the Attorney General, nor is it a ruling of the ICCC Administrator.

The financing of consumer automobile service contracts clearly falls under the ICCC, Iowa Code ch. 537 (1985). The pertinent provisions of the ICCC and their application to the type of transaction you have described will be discussed below. However, you should also know that, as of July 1, 1985, automobile service contracts will be regulated by the Iowa Department of Insurance.

Enclosed for your review and information is a copy of Senate File 392. This Act provides, among other requirements, that no automobile service contract may be issued, sold or offered for sale in this state unless a true and correct copy of the service contract and the provider's reimbursement insurance policy is on file with the [Insurance] Commissioner." This office recommends that you contact the Iowa Department of Insurance (phone # 515-281-4025) concerning compliance with Senate File 392.

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The financing of consumer sales contracts is governed by the ICCC regardless of the location of the seller, lender or assignee connected with the contract. The nature and extent of the regulation would depend primarily on whether or not Universal Warranty is actually the lender. You state in your March 13, 1985, letter that "in some cases the cost is included in the loan arranged for the purchase of the automobile. When that is not done, we wish to make the financing available from our office in Omaha." These two possible methods will be discussed below.

If Universal Warranty makes consumer loans to Iowans to finance service contracts purchased by consumers from automobile dealers, then pursuant to § 537.2301 of the ICCC Universal Warranty would need to be licensed under either the Small Loan Act, Chapter 536, or the Iowa Industrial Loan Act, Chapter 536A. Such licensing would be required so long as the loans were "supervised loans" as defined in § 537.1301(42). Any consumer loan which exceeds the rate set monthly by the Iowa Department of Banking under the authority of Iowa Code § 535.2(3)(a) (1985) is a supervised loan. If a consumer lender is not licensed, they may not charge the finance charge permitted by § 537.2401 of the ICCC (21% of A.P.R.). Practically speaking, the rate set monthly by the Banking Department has not in recent history exceeded the ICCC ceiling.

If Universal Warranty merely purchases the retail installment contracts from the automobile dealers who sell the service contracts, no license is necessary. The ICCC, § 537.6202 to .6203, does contain filing and fee requirements which apply to all consumer creditors (including assignees) who are not otherwise licensed or authorized to engage in consumer credit transactions. However, due to a 1974 Attorney General's opinion which questioned the constitutionality of these sections, these requirements are not presently enforced. The requirements may be enforced in the future if rules interpreting these sections are adopted by the Administrator.

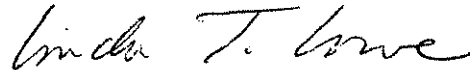
You also need to consider whether the item you are financing is insurance. You describe the product offered by Universal Warranty as an "automobile service contract." Senate File 392 provides that if such contracts are issued by an insurance company authorized to do business in Iowa, then the contracts are "mechanical breakdown insurance" and not automobile service contracts. This distinction is important in part because the ICCC contains certain provisions regarding insurance premium loan agreements (see: § 537.3207 and § 537.5110[4][b] and .5110[6]) which, of course, must be complied with if the item being financed is actually insurance.

As noted above, you indicated in your March 13, 1985, letter that the service contracts may actually be financed by the dealer as part of the sale of the automobile. The ICCC does not permit a "creditor" (see: definition of creditor at § 537.1301[17]) to receive any charges other than finance charges unless the additional charges are expressly permitted by § 537.2501. Service contracts which are sold in the course of a consumer credit

transaction are not authorized under § 537.2501 as a permissible additional charge. In order for creditors to receive charges for such contracts, there would have to be a rule of the ICCA Administrator which specifically authorized the additional charge.

The question you raised in your letter is obviously a complicated one. Each of the issues discussed above must be considered before it can be determined whether or not your company may offer to sell or finance the product in question. Without more specific information on exactly how the product will be marketed and financed in Iowa, we are unable to advise you further. If after analyzing the advice contained herein you have additional questions, please contact the undersigned and we will arrange to discuss the matter with you in more detail.

Sincerely,



LINDA THOMAS LOWE
Assistant Attorney General

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Encl.: S.F. # 392