

BONNIE J. CAMPBELL
ATTORNEY GENERAL



CONSUMER PROTECTION DIVISION
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5926
TELEFAX: 515-281-6771

Department of Justice

July 6, 1992

Re: Iowa Code § 537.2601

Dear

The Consumer Protection Division, as Administrator of the Iowa Consumer Credit Code (ICCC), has been asked by the legal counsel to the Division of Banking to clarify the applicability of Iowa Code § 537.2601(1) to non-consumer credit transactions. We believe the requirement that loans be calculated on a 365-day basis applies to all credit transactions in Iowa, including those for business, commercial and agricultural purposes, regardless of the lender's identity or charter.

Iowa Code § 537.2601(1) states:

1. Except as provided in subsection 2, with respect to a credit transaction other than a consumer credit transaction, the parties may contract for the payment by the debtor of any finance or other charge as permitted by law. Except with respect to debt obligations issued by a government, governmental agency or instrumentality, in calculating any finance charge contracted for, any month may be counted as one-twelfth of a year, but a day is to be counted as one three-hundred sixty-fifth of a year.

This section accomplishes several objectives. First, it eliminates finance charge or interest rate restrictions on non-consumer credit transactions. Second, it requires (with certain exceptions for government entities), that when calculating the finance charge, each day must be counted as 1/365 of a year. Clearly, this provision prohibits the use of a 360-day year for computing finance charges; the only issue is whether it applies to non-consumer credit transactions.

The ICCC generally applies to "consumer credit transactions", which exclude extensions of credit for commercial and agricultural purposes. See Iowa Code §§ 537.1301(11) - (14). However, the explicit statutory language in Iowa Code

§ 537.2601(1) refers to credit transactions "other than a consumer credit transaction." This phrase has no logical meaning or purpose other than to apply the requirements in Section 2601(1) to non-consumer lending agreements. Placing this 365-day year condition within the ICCC cannot be considered to limit this requirement to consumer rather than non-consumer transactions, given that the statutory language expressly references "other than" consumer transactions. In addition, the captions to Iowa Code § 537.2601 are titled "Other Credit Transactions" and "Charges for other credit transactions", indicating the intent that the provisions of this section apply to non-consumer transactions.

Further, the ICCC already specifies the use of a 365-day year for consumer credit transactions in several other sections. See Iowa Code §§ 537.2201(4), 537.2202(3), 537.2401(3), 537.2402(3). To construe Iowa Code § 537.2601(1) to apply only to consumer transactions would not only ignore the plain language of the statute, but also render these other ICCC sections superfluous, in violation of the principle that each provision of a statute should be given effect. See George H. Wentz, Inc. v. Sabasta, 337 N.W.2d 495, 500 (Iowa 1983); Iowa Auto Dealers V. Iowa Dept. of Revenue, 301 N.W.2d 760, 765 (Iowa 1981).

Finally, the 1974 "Compliance Guide" to the ICCC also recognizes that the 365-day year rule applies to non-consumer transactions. The guide notes:

The method of computing finance charges common in some institutions whereby one 1/360th of the APR is taken 365 times in a year is prohibited. A month may still be considered thirty days so long as twelve thirty-day periods are considered to be one year. (2.201(4), 2.401(3) and 2.601(1)) It should be noted that the 365 day rule applies to business as well as consumer loans by virtue of Section 2.601.

N. Butler and G. Wallace: A Compliance Guide to the Iowa Consumer Credit Code, 1974, p. 4.3. (emphasis added).

Although this guide cannot be granted the deference provided administrative agency interpretations, its authors participated in the drafting of the ICCC. This section recognizes that Iowa Code § 537.2601(1) deliberately reversed the practice of using a 360-day year for commercial transactions. A copy of this section of the manual is attached.

Having established that Iowa Code § 537.2601(1) requires the use of a 365-day year for non-consumer transactions, we must then examine the interplay between this section and Iowa Code Chapter 535, "Money and Interest." Iowa Code § 535.2 permits parties in

certain transactions, including those for business and agricultural purposes, to contract in writing for any agreed upon finance charge or rate of interest. Iowa Code § 535.2(2)(b)(6) specifically supersedes any conflicting interest rate or finance charge limitation in the Iowa Code, including those found in Chapter 537.

This provision of Chapter 535 was added in 1982. 1982 Iowa Acts, ch. 1153, § 4. The deregulation provisions in Iowa Code § 535.2 were intended to allow market forces to establish interest rates for certain transactions and encourage sufficient availability of credit. These purposes are furthered, not hindered, by the application of Iowa Code § 537.2601(1) to non-consumer transactions. Integral to the elimination of interest rate ceilings is the accurate disclosure of the cost of credit, for if parties are free to contract for any rate, then it is crucial that the rate agreed upon correctly reflect the true cost of credit. A 360-day "year" is patently inaccurate and distorts the cost of borrowing. There is no principled reason why the computation of interest rates or finance charges should be based on a fictitious 360-day year. Rather, Iowa Code § 537.2601(1) unremarkably recognizes that a year is composed of 365 days.

Iowa Code § 535.2(2)(b)(6) does not change this analysis.¹ The deregulation provisions of Iowa Code § 535.2 supersede any interest rate limitation. Iowa Code § 537.2601(1) does not limit interest rates or finance charges; indeed, it harmonizes with Iowa Code § 535.2(2)(a) by stating that in non-consumer transactions the parties may agree to any finance charge. When supplanting certain Code sections, Iowa Code § 535.2(2)(b)(6) does not refer to laws "relating to" or "affecting" interest rates. Instead, it merely notes that laws "limiting" (i.e. restricting) interest rates are superseded. A requirement as to how a finance charge or interest rate may be calculated is not a limitation on the amount of the charge; mandating a 365-day year merely establishes procedures for the calculation of the agreed upon rate, regardless of whether that rate is 1% or 100%.

Further, if the legislature had viewed a 365-day year requirement as a limitation on an interest rate, it would not have placed this requirement within Section 537.2601(1), since this section specifically eliminates any finance charge limitations for non-consumer credit transactions. Rather, the legislature's construction clarifies that finance charges can be

¹ This provision states: "With respect to any transaction referred to in paragraph 'a' of this subsection, this subsection supersedes any interest-rate or finance-charge limitations contained in the Code, including but not limited to this chapter and chapter 321, 322, 524, 533, 534, 536A and 537."

deregulated and still contain statutory requirements as to how the contracted rate will be calculated.

Recognizing that the 365-day year requirement applies to non-consumer transactions also conforms to the statutory construction maxim that different statutes should each be given effect and harmonized if possible. See American Asbestos v. E. Iowa Com. College, 463 N.W.2d 56, 58 (Iowa 1990); Harden v. State, 434 N.W.2d 881, 884 (Iowa 1989), cert.denied 493 U.S. 869 (1989) ("When more than one statute is pertinent to the inquiry, we consider the statutes together in an attempt to harmonize them.").²

These two statutes can be readily harmonized. Iowa Code § 535.2(2) states that the parties may agree to "any rate of interest" and supersedes statutory interest rate limitations. Iowa Code § 537.2601(1) parallels this policy and also adds the 365-day year requirement for non-consumer transactions. These provisions do not conflict through either their language or purpose. Parties can agree to any rate and still calculate that rate using a 365-day year; nor is the legislative intent to deregulate interest rates impeded by statutory requirements that these rates be calculated accurately.

Moreover, to hold that Iowa Code § 535.2(2) as amended in 1982 implicitly repeals Iowa Code § 537.2601 violates the presumption against repeal by implication. State v. Rauhauser, 272 N.W.2d 432, 434 (Iowa 1978).³ To overcome this presumption there must be clear legislative intent to repeal a different

² Courts are directed to harmonize statutes when possible, even when assuming potential conflicts may exist between them: "The general rule is, prior and later statutes dealing with the same subject matter although in apparent conflict, should, as far as reasonably possible be construed in harmony with each other so as to allow both to stand and to give force and effect to each." Polk County v. IA. Natural Resources Council, 377 N.W.2d 236, 241 (Iowa 1985), citing Baird v. Webster City, 130 N.W.2d 432, 441-42 (Iowa 1964).

³ "There is a presumption against repeal of statutes by implication. Such repeals are not favored by the courts and will not be sustained unless legislative intent to repeal is clear in the language used and such a holding is absolutely necessary . . . [citations] . . . To constitute an implicit repeal, the new statute must cover the same subject matter as the old statute and the provisions of the statutes must be irreconcilably repugnant . . . [citations] . . . If at all possible, the statutes will be construed in such a manner as to be consistent with each other." Rauhauser at 434.

statute. Id. As noted, these statutes are complimentary rather than inconsistent and no legislative intent to repeal appears.

In summary, while Iowa Code §§ 535.2(2) and 537.2601(1) permit parties in commercial and agricultural transactions to contract for any interest rate or finance charge, Iowa Code § 537.2601(1) also requires the use of a 365-day year for these transactions. This 365-day rule applies to state and national banks, state and federal credit unions, state and federal savings and loan associations, industrial loan companies, regulated loan companies and all other lenders who compute interest rates or finance charges on commercial and agricultural loans.

I hope this letter is responsive to your concerns. Please note that this letter is not a formal opinion of the Attorney General.

Sincerely,



Peter Kochenburger
Assistant Attorney General
Deputy Administrator of the
Iowa Consumer Credit Code