

THOMAS J. MILLER  
ATTORNEY GENERAL



## Department of Justice

#79  
CONSUMER PROTECTION DIVISION  
HOOVER BUILDING  
DES MOINES, IOWA 50319  
TELEPHONE: 515-281-5926  
TELEFAX: 515-281-6771

December 18, 1996

RE: I-CCC § 537.2501(1)(g)

Dear

I am writing in response to your December 2 letter to Bill Brauch. Bill has asked me to respond.

As I understand your letter, you have two questions. The crux of the first one appears to be whether can impose at least a \$20 NSF surcharge where the consumer tried to issue a stop-payment, but failed to win a race with the clearinghouse. The second question appears to be whether you can charge an NSF surcharge along with a late fee and/or OTL fee.

Our office's interpretation of Iowa Code § 537.2501(1)(g) is as follows: If a payment instrument is returned for any reason except a stop-payment request, a fee of up to \$20 or 5% of the check amount, whichever is greater, may be imposed. If the reason for the dishonor is a closed or non-existent account, or if the check has been presented twice, the NSF fee may be as much as \$50. If the consumer requested a stop-payment, no surcharge whatsoever may be imposed.

We would be reluctant to impose a time-clock kind of test for whether the check was processed prior to the time the consumer was able to reach a bank to issue the stop-order. The legitimate purpose for authorizing NSF surcharges is to deter reckless or deliberate writing of cold checks. There is no legitimate deterrent purpose to be served if a check was returned at the end of business on Monday, but the consumer was not able to reach her bank until 9:03 am on Tuesday. If it has been your experience that there is a substantial problem with people writing cold checks, then trying to get out of paying the surcharge by issuing stop-payment orders when they knew it was too late, there may be a deterrent role for imposing the surcharge, and we may reconsider. But absent that, it would appear to us to violate the spirit of the law, which is that people who were trying to avoid having a check

bounce by stopping payment not be penalized.

As to your second question, we agree that the NSF "surcharge" appears to be one authorized in addition to other authorized fees such as delinquency fees and OTL fees.

We would like to add a note of caution, however, about consistently assessing maximum fees and cumulative fees. The I-CCC authorizes these fees as maximum amounts. As you may know, some courts have held that simply because a statute authorizes certain maximum fees, it does not automatically legitimize the imposition of the maximum charge in every circumstance. Cf. Cumberland Capitol Corp. v. Patty, 556 S.W.2d 516 (Tenn. 1977.) Further, as you undoubtedly know, fees such as these have been the subject of considerable private litigation involving theories such as unconscionability (given the relationship between the cost incurred and the charges imposed), or breach of duty of good faith and fair dealing. It is the position of our office that the I-CCC simply sets outside limits on these charges; it does not supplant any common law doctrine and economic analysis which could lead a fact-finder to a conclusion that fees within the statutory maximum range were nonetheless excessive in any given situation.

This is merely an advisory opinion; it is neither an opinion of the Attorney General, nor a formal ruling by the I-CCC administrator. If you have any further questions, please feel free to call.

Sincerely,



Kathleen E. Keest  
Assistant Attorney General,  
Deputy Administrator, Iowa  
Consumer Credit Code