

Advisory



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ADDRESS REPLY TO:
CONSUMER PROTECTION DIVISION
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September 2, 1983

RE: Your Inquiry Concerning Application of Iowa
Consumer Credit Code to Transactions by a
South Dakota Finance Company With Iowans

Dear

Please excuse the delay in responding to your inquiry concerning whether certain transactions are covered by the Iowa Consumer Credit Code (ICCC). You should be aware that this Office is responding as administrator of the ICCC and that this letter is advisory in nature and is not a formal attorney general's opinion, nor should it be construed as such or relied upon as such.

In your letter, you posed two separate, presumably hypothetical, situations each of which raises a number of related questions in connection with the jurisdiction of the ICCC.

Your first question was:

"Will an Iowa court enforce promissory notes secured by purchase money security interest in personal property where the buyer-debtor is an Iowa resident who traveled to the State of South Dakota to purchase the personal property securing the obligation from a South Dakota retailer who thereafter assigned the obligation, (as secured), to a South Dakota finance company?"

The transaction in question is a consumer credit transaction covered by the ICCC so long as the buyer/debtor purchases personal property worth less than \$25,000 and so long as the buyer was an individual purchasing for personal, family, or household use. (See: § 537.1301[12]) Assuming the transaction is a consumer credit sale, the next question is whether the transaction is covered by the jurisdictional provisions of the ICCC. The jurisdictional provisions of the ICCC are quite

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broad with very few situations where a transaction would not be "entered into" in Iowa as defined by the ICCC. There are, however, certain limited exceptions, chief among which is the situation in which an Iowan is physically located outside the state when he enters into a closed-end consumer credit transaction. Under § 537.1201(1)(a), subsections one through three:

(1) If the buyer, lessee or debtor was physically located outside of this state, at the time he signed the writing evidencing the transaction or made, in face-to-face solicitation, a written or oral offer to enter into the transaction,

(2) If the transaction or acts, practices or conduct with respect to the transaction were not in violation of law in the state in which the buyer, lessee or debtor was physically located, and

(3) If, with respect to charges and agreements, the person does not collect or enforce that transaction except to the extent permitted by this chapter.

There may be no administrative enforcement of the ICCC or application of penalties under the ICCC so long as the transaction was: closed-end; the consumer was outside the state when the transaction was entered into; and the transaction complies with the laws of the lender's residence. However, if the lender moves to collect and enforce on that transaction, any collection or enforcement must be done pursuant to the provisions of the ICCC.

You also asked the following four separate questions in connection with the first hypothetical question.

Firstly, you asked must the South Dakota retailer be licensed as a lender under Iowa law. The ICCC does provide for notification and fees to be paid by all credit sellers to the ICCC Administrator (See: § 537.6202). However, owing to an Attorney General's Opinion written in 1974, this section is not presently enforced. There are no other Iowa licensing provisions for retailers as credit sellers.

The retailer and the lender should, however, take note of the assignment provisions of the ICCC since questions concerning any defenses the debtor might have against the retailer might arise in the course of any efforts to collect and enforce the ICCC (See: § 537.3404).

You also asked whether under the circumstances of your first hypothetical, the lender must be licensed in Iowa. So long as the facts are as stated above, there is no consumer credit loan being made by the lender, therefore licensing provisions of Chapter 536 and 536A and § 537.2301 of the ICCC would not apply.

Thirdly, you asked whether, if the transaction complied with South Dakota law on interest or finance charge restrictions, would the ICCC impose further restrictions. Under the peculiar or limited facts as stated above, the ICCC applies only as regards collection and enforcement. This of course also answers your fourth question concerning your first hypothetical regarding methods of collection. The lender would have to comply with all the default and repossession provisions set out in §§ 537.5103, .5104, .5105, .5109, .5110, and .5111 of the ICCC and the debt collection provisions of Article 7 of the ICCC.

Your second hypothetical raises the entirely separate question of a consumer credit loan made by the South Dakota lender to the Iowan after the Iowan has travelled to South Dakota. You posed the same related questions for your second hypothetical as you did your first with the exception that you do not inquire whether the retailer must be licensed since there is no retailer involved in this transaction.

In order to answer your second hypothetical, certain assumptions must be made. You state that the loan is "secured by property located in Iowa" but you do not state whether the property is personal or real property. You also do not indicate whether the purpose of the loan is for personal, family or household use and whether it is for less than \$25,000. This answer assumes the loan is for less than \$25,000 and is primarily for a personal, family or household purpose and is also secured by personal and not real property (but See: §§ 537.2307 and 537.3301 regarding security interest in real estate).

The limited exception discussed in the answer to your first hypothetical does not apply in this situation for a number of reasons. Firstly, § 537.1201(1)(a) ^{and} in its limited jurisdictional exceptions would not apply because the credit extended in this situation is most likely not closed-end credit (See: Definition of open-end credit at § 537.1301[28]). Secondly, the transaction in your second hypothetical question differs from that in your first because it is far more likely that this transaction was "entered into" in Iowa as defined in § 537.1201(2)(a) and § 537.1201(2)(b). Please note that we are not assuming, as you recommended, that there was no solicitation received by the Iowan in Iowa since such an across-the-board assumption would be unfounded in the ordinary consumer credit loan situation.

In concluding that the ICCC applies to the loan transaction in question, the answers to your related questions are as follows:

1. The lender must be licensed pursuant to § 537.2301 (2) before it engages in any such loan transactions so long as the finance charge exceeds the floating rate set out in § 535.2 (3)(a) of the Code of Iowa, 1983. You should note that even if the narrow jurisdictional exception discussed in the answer to

your first hypothetical did apply to the second hypothetical as well, § 537.2301(2) clearly provides that the licensing is required to collect and enforce on supervised loans.

2. The interest rate or finance charge could not exceed the limit set out in § 537.2401 and § 537.2402.

3. Collection and enforcement in Iowa would have to be pursuant to the ICCC as stated above in hypothetical number 1.

If you should have any further questions after having reviewed our response to your inquiry, please feel free to contact the undersigned.

Sincerely,

LINDA THOMAS LOWE
Assistant Attorney General

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Enclosures: § 535.2
§ 537.1201(1) (a)
§ 537.1201(2) (a) & (b)
§ 537.1301(12)
§ 537.1301(28)
§ 537.2301
§ 537.2401 & .2402
§ 537.3404
§ 537.5103-.5105
§ 537.5109-.5111
§ 537.6202
Article 7 of Chapter 537