

**INTERPRETIVE LETTER 94-021 (OCTOBER 4, 1994)**

**State banks may contract for and receive interest and charges at any agreed upon rate.**

We are writing in response to your request for the Illinois Commissioner of Banks and Trust Companies ("Commissioner") to provide an interpretation of the Illinois Interest Act ("Act"), 815 ILCS 205 (1992), pursuant to Section 6 of the Act. Specifically, you asked whether "state banks may receive, contract for and collect charges included in the definition of finance charge under Section 4a of the Interest Act at any rate agreed to by the borrower and the bank in connection with all loans, including installment loans as defined in Section 4a of the Interest Act." The Commissioner finds that a state bank may contract for and receive the charges included in the calculation of the finance charge and any rate of interest that is agreed to by the bank and borrower in connection with all loans.

Section 6 authorizes a lender to rely on an interpretation of the Act issued by the Commissioner.

No provision of this Section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation or interpretation thereof by the Department of Financial Institutions or any other department or agency of the State, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

815 ILCS 205/6. We deem this analysis and our conclusions to be an "interpretation" pursuant to Section 6 of the Act.

The Act contains various sections that limit the allowable interest and charges that lenders may contract for and receive in Illinois. These sections cover different types of loans and appear to conflict in certain provisions. The following analysis discusses the interest and charges allowable for state banks in Illinois.

Section 4 allows state banks to receive any amount of interest on their extensions of credit when it provides:

General Interest Rate....It is lawful for a state bank to receive or to contract to receive and collect interest and charges at any rate or rates agreed upon by the bank and the borrower.

(815 ILCS 205/4(1). Section 4a sets forth the types of interest and charges permitted for installment loans, and states:

[T]here shall be no limit on the rate of interest that may be received or contracted to be received and collected by (1) a state banking corporation chartered under the Illinois Banking Act...;

815 ILCS 205/4a(a)(i). Section 4a(e) refers to "the charges authorized by this Section," but the Section does not explicitly "authorize" charges that may be imposed in connection with an installment loan. We conclude that "authorized" refers to charges that are acknowledged or listed in Section 4a. Section 4a(f), which requires that a lender disclose various charges, is logically consistent if these charges can legally be imposed. Examples of charges that are acknowledged in Section 4a are:

- minimum charges and service charges in Section 4a(b);
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- delinquency charges, collection charges, and attorney's fees in Section 4a(e);
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- the finance charge that must be disclosed under Section 4a(f); and
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- the elements enumerated that comprise the "finance charge" for an installment loan in Section 4a(g) (which are, for the most part, the elements under federal Truth in Lending provisions in Regulation Z, 12 C.F.R. 226.)
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Except for the alternative minimum charges in Section 4a(b) and the delinquency and collection charges in Section 4a(e), Section 4a does not limit any of the charges it lists.

As set forth above, the third paragraph of Section 4 of the Act permits a state bank to "receive or to contract to receive and collect interest and charges at any rate or rates agreed upon by the bank and borrower," but the provision does not state the intended effect, if any, on loans made under Section 4a of the Act. P.A. 82-660, which amended the third paragraph of Section 4 to its present language, reads as follows:

It is lawful for a state bank to receive or to contract to receive and collect interest and charges at any rate or rates agreed upon by the bank and the borrower ~~a rate of 1% in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the bank is located.~~

P.A. 82-660, Laws of Illinois (1981) page 3440 (added language underlined, deleted language struck through).

"Interest and charges," which was existing language, added up to a percentage rate for the use of money and removing the limit in Section 4 (1% in excess of the discount rate on ninety-day commercial paper) did not change the meaning of these existing terms.

It is clear that Illinois state banks may contract for and receive any amount of interest that the bank and the borrower agree upon. Although Section 4a appears to limit charges, any charge that is an element of the "finance charge" and fully disclosed may be imposed without limit. Any other reading of Section 4a would fail to give effect to the plain language of the statute which allows a state bank to contract for and receive interest and charges at any rate agreed upon. Based on the above, we conclude that Section 4a "authorizes" any charge that is enumerated or listed in the Section. We also conclude that except for the alternative minimum charges in Section 4a(b) and the delinquency and collection charges in Section 4a(e), Section 4a does not limit any of the charges that are authorized. Finally, we conclude that the "interest" that state banks charge, which is not limited, is any payment for the use of the money including the terms that must be included and disclosed as part of the "finance charge" under Section 4a(g) of the Act and the federal Truth in Lending Act.