

INTERPRETIVE LETTER 95-8 (SEPTEMBER 13, 1995)

Service charges in addition to interest on simple interest loans for more than \$800 are not limited by Section 4a(b) of the Interest Act which limits changes on loans that are less than \$800. Section 4.1a(b) permits banks to collect bad check charges.

This letter responds to your letter, dated *, to the Commissioner of Banks and Trust Companies ("Commissioner"). Your letter requests an interpretation of the Interest Act ("Act"), 815 ILCS 205/1 et seq. (1994), on the following two issues:

1. Whether, on a simple interest installment loan in excess of \$800, Section 4a(b) limits the dollar amount of service charges contracted for and received by a bank in addition to interest, provided that the service charge is an element of the finance charge and fully disclosed; and
2. Whether, on simple interest installment loans, a bank may contract for and receive all fees and charges authorized by Section 4.1a of the Act, specifically including charges on dishonored or unpaid checks under Section 4.1a(e) .

As set forth in this letter and subject to the conditions and limitations herein, we conclude that: 1) Section 4a(b) does not limit the dollar amount of agreed upon service charges which are elements of the finance charge and fully disclosed on a simple interest installment loan in excess of \$800; and 2) a bank may receive all fees authorized by Section 4.1a of the Act, including fees for dishonored or unpaid checks ("Bad Check Fees") on all loans including simple interest installment loans.

Section 4 of the Act establishes the general interest rate permitted to be charged, but also provides that state banks may lawfully "receive or . . . 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 (1994) (emphasis added). Similarly, Section 4a establishes the installment loan rate stating that "there 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) (1994) (emphasis added). Section 4a goes on to describe the rates of interest and allowable charges and the manner in which these charges must be disclosed as part of the finance charge. Interpretive Letter 94-021 concluded that Section 4a does not limit the amount of interest or charges listed except for the alternative minimum charges in Section 4a(b) and the delinquency and collection charges in Section 4a(e).

Section 4a(b) Service Charge

Section 4a(b) states explicitly that the limit on the "service charge" that a lender is permitted to assess applies only to loans where "the principal amount of the loan (excluding interest) is \$800 or less." 815 ILCS 205/4a(b) (1994). As stated in Interpretive Letter 94-021, although Section 4a appears to limit charges, except for the alternative minimum charges in Section 4a(b) any charge that is an element of the "finance charge" and fully disclosed may be imposed by a state bank without limit. By the language of Section 4a(b), the service charge limit does not apply to an installment loan under Section 4a for an amount over \$800. Therefore, Section 4a(b) does not limit the amount of interest and charges that may be contracted for and received by the bank on installment loans over \$800, provided that they are an element of the finance charge and fully disclosed. This interpretation merely clarifies Interpretive Letter 94-021 that service charges, on installment loans in excess of \$800, may be contracted for without limit if an element of the finance charge and fully disclosed.

Section 4.1a Charges

Section 4.1a provides that a bank may contract for and receive all fees authorized, including Bad Check Fees. Section 4.1a(e) permits Bad Check Fees to be charged "if the agreement governing the loan so provides." 815 ILCS 204/4.1a(e) (1994), but Bad Check Fees are limited to the amount permitted under Section 3-806 of the Illinois Uniform Commercial Code, 815 ILCS 5/3-806 (1994), which is currently \$25 or the costs of collection. The preamble in Section 4.1a provides that the "charges" listed and authorized in the Section "shall not be deemed to be charges for or in connection with any loan of money referred to in Section 6 of this Act, or charges by the lender as a consideration for the loan referred to in this Section." 815 ILCS 205/4.1a. Therefore charges assessed to the borrower under and within the limits of Section 4.1a are not the type of charges that are unlawful or actionable under Section 6 of the Act. These charges are also not included with other charges such as a service charge which are assessed as a consideration for the loan and disclosed within the finance charge. Therefore, we conclude that the bank and the borrower may contract for the charges listed under Section 4.1a, specifically including Bad Check Fees on "any loan" as stated in the preamble of Section 4.1a, including simple interest installment loans.