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Withdrew 6-2
Senate File 556

By COMMITTEE ON GOVERNMENTAL
AFFAIRS

H.F. 284 substituted 6-2-67

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

An Act to regulate the business of debt management; to require licenses and to fix fees therefor; to prescribe the powers and duties of the State Banking Board and Superintendent to prescribe conditions for debt management contract; to provide for the disposition of revenues; and to provide penalties for violations of the provisions of this Act.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. As used in this Act:

2 1. "Debt management" means the planning and management of
3 the financial affairs of a debtor and the receiving therefrom
4 of money or evidences thereof for the purpose of distributing
5 the same to his creditors in payment or partial payment of
6 his obligations for a fee.

7 2. "Licensee" means any individual, partnership, unincor-
8 porated association, agency or corporation licensed under this
9 Act.

10 3. "Superintendent" means the superintendent of banking.

11 4. "Debtor" means any natural person.

12 5. "Office" means each location by street number, building
13 number, city, and state where any person engages in debt manage-
14 ment.

15 6. "Creditor" means a person for whose benefit moneys are
16 being collected and distributed by licensees.

17 7. "Board" means the state banking board.

1 Sec. 2.

2 1. No individual, partnership, unincorporated association,

3 agency or corporation shall engage in the business of debt manage-
4 ment in this state without a license therefor as provided for
5 in this Act, except that the following persons shall not be re-
6 quired to be licensed when engaged in the regular course of their
7 respective businesses and professions:

8 a. Attorneys at law.

9 b. Banks and similar fiduciaries, as duly authorized and ad-
10 mitted to transact business in this state and performing credit
11 and financial adjusting in the regular course of their principal
12 business, or while performing an escrow function.

13 c. Abstract companies, while performing an escrow function.

14 d. Employees of licensees under this Act.

15 e. Judicial officers or others acting under court orders.

16 f. Nonprofit religious, fraternal or cooperative organizations,
17 including credit unions, offering to debtors gratuitous debt-
18 management service.

19 2. The application for such license shall be in writing, under
20 oath, and in the form prescribed by the superintendent. The ap-
21 plication shall contain the name of the applicant; date of incor-
22 poration, if incorporated, and the address where the business
23 is to be conducted; and similar information as to any branch of-
24 fice of the applicant; the name and resident address of the owner
25 or partners, or, if a corporation, association or agency, of the
26 directors, trustees, principal officers, and agents, and such
27 other pertinent information as the superintendent may require.
28 If the applicant is a partnership, a copy of the certificate of
29 assumed name or articles of partnership shall be filed with the
30 application. If the applicant is a corporation, a copy of the
31 articles of incorporation shall be filed with the application.

32 3. Each application shall be accompanied by a bond to be ap-
33 proved by the superintendent to the people of the state of Iowa
34 in the penal sum of ten thousand (10,000) dollars and conditioned
35 that the obligor will not violate any law pertaining to such busi-
36 ness and upon the faithful accounting of all moneys collected
37 upon accounts entrusted to such person engaged in debt management,

38 and their employees and agents for the purpose of indemnifying
39 debtors for loss resulting from conduct prohibited by this Act.
40 The aggregate liability of the surety to all debtors doing busi-
41 ness with the office for which the bond is filed shall, in no
42 event, exceed the penal sum of such bond. The surety on the
43 bond shall have the right to cancel such bond upon giving thirty
44 (30) days notice to the superintendent and thereafter shall
45 be relieved of liability for any breach of condition occurring
46 after the effective date of said cancellation. No individual,
47 partnership, unincorporated association, agency or corporation
48 shall engage in the business of debt management until a good
49 and sufficient bond is filed in accordance with the provisions
50 of this Act.

51 4. Each applicant shall furnish with his application a copy
52 of the contract he proposes to use between himself and the debtor,
53 which shall contain a schedule of fees to be charged the debtor
54 for his services.

55 5. At the time of making such application the applicant
56 shall pay to the superintendent the sum of fifty (50) dollars
57 as a license fee for each of his offices and an investigation
58 fee in the sum of one hundred (100) dollars. A separate appli-
59 cation shall be made for each office maintained by the applicant.

1 Sec. 3.

2 1. Upon the filing of each application and the payment of
3 such fees, the superintendent shall fix a date and a time for
4 a hearing upon such application, and shall make an investigation
5 of the facts concerning the application and the requirements
6 provided for in subsection three (3) of this section.

7 2. The superintendent shall grant or deny each application
8 for a license within sixty (60) days from the filing thereof
9 with the required fee, unless the period is extended by written
10 agreement between the applicant and the superintendent.

11 3. a. If the superintendent shall find the experience,
12 financial responsibility, character and general fitness of the
13 applicant is such as to command the confidence of the public

14 and to warrant belief that the business will be operated lawfully,
15 honestly, fairly and efficiently within the purposes of this
16 Act, and that the applicant, or if the applicant is an unincorporated
17 association, agency or partnership, then the individuals involved,
18 or if the applicant is a corporation then the officers and directors
19 thereof, have not been convicted of a felony or a misdemeanor
20 involving moral turpitude, or have not had a record of having
21 defaulted in payment of money collected for others, including
22 the discharge of such debts through bankruptcy proceedings, the
23 superintendent shall thereupon enter an order granting such appli-
24 cation and forthwith issue and deliver a license to the applicant.
25 The superintendent may require as part of the application a credit
26 report and other information.

27 b. If the applicant has, at the time of the application,
28 a license for an office located within ten (10) statute miles
29 of the location of the office named in the application, no license
30 shall be issued unless the superintendent finds that public con-
31 venience will be served by the issuance of such license.

32 c. No license shall be transferable or assignable.

33 4. If the superintendent finds the applicant not qualified
34 by subsection three (3) of this section, he shall enter an order
35 denying such application and forthwith notify the applicant of
36 the denial, returning the license fee. Within fifteen (15) days
37 after the entry of such order, he shall prepare written findings
38 and shall forthwith deliver a copy thereof to the applicant.

1 Sec. 4. The license issued under this Act shall expire on
2 July 1 next following its issuance unless sooner surrendered,
3 revoked or suspended, but may be renewed as provided in this
4 Act.

1 Sec. 5. Each licensee on or before July 1 may make applica-
2 tion to the superintendent for renewal of its license. The ap-
3 plication shall be on the form prescribed by the superintendent
4 and shall be accompanied by a fee of one hundred (100) dollars,
5 together with a bond as in the case of an original application.
6 A separate renewal application shall be made for each office
7 maintained by the applicant.

1 Sec. 6.

2 1. No licensee shall transact business until it shall have
3 first appointed in writing the superintendent as agent of the
4 licensee for service of process in this state. Service upon
5 the superintendent or, in his absence, any employee in charge
6 of his office, shall be of the same legal force and validity
7 as if served upon any licensee under this Act.

8 2. Whenever lawful process against any licensee shall be
9 served upon the superintendent, two (2) copies shall be fur-
10 nished and he shall forthwith forward a copy of the process
11 served on him, by certified mail, postpaid and directed to the
12 licensee. For each service of process the sum of two (2) dol-
13 lars shall be collected, which shall be paid by the plaintiff
14 at the time of such service, the same to be recovered by him
15 as part of the taxable costs, if he prevails in the suit.

1 Sec. 7.

2 1. The superintendent may revoke or suspend any license
3 issued or applied for under this Act for the following causes:

4 a. Conviction of a felony or of a misdemeanor involving
5 moral turpitude.

6 b. For intentionally violating any of the provisions of
7 this Act.

8 c. For fraud or deceit in procuring the issuance of a license
9 or renewal under this Act.

10 d. For indulging in a continuous course of unfair conduct.

11 e. For insolvency, bankruptcy, receivership or assignment
12 for the benefit of creditors by a licensee or applicant for
13 a license under this Act.

14 2. The denial, revocation or suspension shall be made only
15 upon specific charges in writing, under oath, filed with the
16 superintendent or by the superintendent whereupon a hearing
17 shall be had as to the reasons for any denial, revocation or
18 suspension and a certified copy of the charges shall be served
19 on the licensee or applicant for license not less than ten (10)
20 days prior to the hearing.

1 Sec. 8.

2 1. Each licensee shall make a written contract between him-
3 self and a debtor and shall immediately and before collecting
4 any fee, furnish the debtor with a true copy of the contract.
5 The contract shall set forth the complete list of creditors who
6 are to receive payments under the contract, the total charges
7 agreed upon for the services of the licensee, a statement of how
8 the charges are to be paid, and the beginning and expiration date
9 of the contract. No contract shall extend for a period longer
10 than thirty-six (36) months.

11 2. Each licensee shall maintain a separate bank trust account
12 in which all payments received from debtors for the benefit of
13 creditors shall be deposited and in which all payments shall re-
14 main until a remittance is made to either the debtor or the creditor.
15 Every licensee shall keep, and use in his business, books, accounts
16 and records which will enable the superintendent to determine
17 whether such licensee is complying with the provisions of this
18 Act and with the rules and regulations of the superintendent.
19 Every licensee shall preserve such books, accounts and records
20 for at least seven (7) years after making the final entry on any
21 transaction recorded therein.

22 3. Each licensee shall keep complete and adequate records
23 during the term of the contract and for a period of five (5) years
24 from the date of cancellation or completion of the contract with
25 each debtor, which records shall contain complete information
26 regarding the contract, extensions thereof, payments, disbursements,
27 and charges, which records shall be open to inspection by the
28 superintendent and his duly appointed agents during normal busi-
29 ness hours.

30 4. Each licensee shall make remittances to creditors within
31 forty-five (45) days after initial receipt of funds, and there-
32 after remittances shall be made to creditors within thirty (30)
33 days of receipt, less fees and costs, unless the reasonable pay-
34 ment of one (1) or more of the debtor's obligations requires that
35 such funds be held for a longer period so as to accumulate a sum
36 certain.

37 5. Each licensee shall, upon request, furnish the debtor
38 a written statement of his account monthly or a verbal accounting
39 at any time the debtor may request it during normal business
40 hours. A monthly written statement of disbursements made and
41 fees deducted from his account shall be made to the debtor,
42 whether he requests it or not.

43 6. No licensee shall accept an account unless a written
44 and thorough budget analysis has been performed and indicates
45 that the debtor can meet the requirements determined by the
46 budget analysis.

47 7. In the event a compromise of a debt is arranged by the
48 licensee with any one or more creditors, the debtor shall have
49 the full benefit of such compromise.

1 Sec. 9. The fee of the licensee shall be agreed upon in
2 advance and stated in the contract and provision for settlement
3 in case of cancellation or prepayment shall be clearly stated
4 herein. The total fee of the licensee shall at no time exceed
5 twelve and one-half (12 1/2) percent of the total moneys paid
6 in for the period of the contract. The fee of the licensee
7 shall be prorated monthly over the life of the contract. In
8 addition to the prorated amount, the licensee shall be allowed
9 to deduct from the first-month payments a reasonable amount
10 for an application fee, said amount not to exceed ten (10) dol-
11 lars. In the event of total payment of the contract before
12 the term of the contract has expired, the licensee shall be
13 entitled to an amount equal to twenty-five (25) percent of the
14 remaining fee, or any lesser amount as may be agreed upon.

1 Sec. 10.

2 1. The superintendent may examine the condition and affairs
3 of said licensee. In connection with any examination, the super-
4 intendent may examine on oath any licensee, and any director,
5 officer, employec, customer, creditor or stockholder of a licensee
6 concerning the affairs and business of the licensee. The super-
7 intendent shall ascertain whether the licensee transacts its
8 business in the manner prescribed by the law and the rules and
9 regulations issued thereunder. The licensee shall pay the cost

10 of the examination as determined by the superintendent, which
11 fee shall not exceed the sum of one hundred (100) dollars per
12 day of examination. Failure to pay the examination fee within
13 thirty (30) days of receipt of demand from the superintendent
14 shall automatically suspend the license until the fee is paid.

15 2. In the investigation of alleged violations of this Act,
16 the superintendent may compel the attendance of any person or
17 the production of any books, accounts, records and files used
18 therein, and may examine under oath all persons in attendance
19 pursuant thereto.

20 The board is authorized to make and promulgate as prescribed
21 by law regulations necessary to carry out the purposes of this
22 Act.

1 Sec. 11.

2 It shall be unlawful and a violation of this Act for the holder
3 of any license issued under the terms and provisions hereto:

4 1. To purchase from a creditor any obligation of a debtor.

5 2. To operate as a collection agent and as a licensee as to
6 the same debtor's account without first disclosing in writing
7 such fact to both the debtor and creditor.

8 3. To execute any contract or agreement to be signed by the
9 debtor unless the contract or agreement is fully and completely
10 filled in and finished.

11 4. To receive or charge any fee in the form of a promissory
12 note or other promise to pay, or receive or accept any mortgage
13 or other security for any fee, both as to real or personal prop-
14 erty.

15 5. To pay any bonus or other consideration to any individual,
16 agency, partnership, unincorporated association or corporation
17 for the referral of a debtor to his business, or to accept or
18 receive any bonus, commission or other consideration for referring
19 any debtor to any individual, partnership, unincorporated associa-
20 tion, agency or corporation for any reason.

21 6. To advertise his services, display, distribute, broadcast
22 or televise or permit to be displayed, advertised, distributed,
23 broadcast or televised his services in any manner inconsistent

24 with the law.

1 Sec. 12. Any individual, partnership, unincorporated associa-
2 tion, agency or corporation lawfully engaged in debt management
3 in this state for a period of at least two (2) years immediately
4 preceding the effective date of this Act shall be entitled to
5 receive a license within the provisions of this Act by filing
6 an application, furnishing a bond and paying the annual fee as
7 herein specified within ninety (90) days after the effective date of
8 this Act.

1 Sec. 13. It shall be unlawful for an individual, partnership,
2 unincorporated association, agency or corporation to engage
3 in the business of debt management without first obtaining
4 a license as required by this Act. Any individual, partnership,
5 unincorporated association, agency, corporation or any other
6 group of individuals, however organized, or any owner, partner,
7 member, officer, director, employee, agent or representative
8 thereof who shall willfully or knowingly engage in the business
9 of debt management without the license required by this Act,
10 shall be guilty of a misdemeanor and upon conviction thereof shall
11 be fined not more than one thousand (1,000) dollars for each
12 violation or imprisoned in the county jail for not more than
13 six (6) months, or by both such fine and imprisonment.

1 Sec. 14. All moneys received by the superintendent from
2 fees, licenses and examinations pursuant to this Act shall
3 be deposited by the superintendent with the treasurer of state
4 and credited to the general fund of the state.

1 Sec. 15. Any applicant or licensee aggrieved by a final
2 decision of the board pursuant to sections three (3) and seven
3 (7) of this Act may, within ten (10) days after receiving noti-
4 fication of such decision, file a petition for review in the
5 district court of the county in which the applicant or business
6 resides. The review shall be in the form prescribed by the
7 Code for writs of certiorari and tried on the record of evidence
8 made before the board. The decision of the board shall be af-
9 firmed if supported by a preponderance of competent and relevant
10 evidence.

1 Amend Senate File 556 by striking all of section eight (8)
2 subsection six (6) and substitute the following new section:
3 "No licensee shall accept an account unless one-half (1/2)
4 of the listed creditors have consented to the licensee's
5 of the account. The debtor shall be informed of those
6 who have not agreed to the licensee's handling of the account.
7 licensee shall accept an account unless a written and thorough
8 budget analysis has been performed which indicates that the
9 can meet the requirements determined by the budget analysis."

Filed - *Withdrawn 6-2*
April 21, 1967

By GAUDINEER

1 Amend Senate File 556 by inserting in line nine (9) of
2 section two (2) after the comma (,) the words "chattel loan
3 companies licensed under chapter five hundred thirty-six (536)
4 and industrial loan companies licensed under chapter five hundred
5 thirty-six A (536A) of the Code,".

Filed - *Withdrawn 6-2*
April 25, 1967

By REPERT

1 Amend Senate File 556 as follows:
2 1. By inserting in line nine (9) of Section two (2) after
3 the comma (,) the words "chattel loan companies licensed under
4 chapter five hundred thirty-six (536), Code 1966, and
5 loan companies licensed under Chapter five hundred thirty-six A
6 (536A), Code 1966,".

Filed - *Withdrawn 6-2*
April 26, 1967

By BENDA

1 Amend Senate File 556 as follows:
2 1. Amend the title by striking from line three (3) the
3 words "State Banking Board and Superintendent" and by insert-
4 ing in lieu thereof the words "Superintendent of Banking;".
5 2. Amend section one (1) by striking line seventeen (17).
6 3. Amend section ten (10) by striking from line twenty
7 (20) the word "board" and by inserting in lieu thereof the
8 word "superintendent".
9 4. Amend section twelve (12) by striking from line three
10 (3) the words "two (2) years" and by inserting in lieu thereof
11 the words "one (1) year".
12 5. Amend section fourteen (14) by striking line four (4)
13 and by inserting in lieu thereof a period (.).
14 6. Amend section fifteen (15) by striking from lines two
15 (2) and eight (8) the word "board" and by inserting in lieu
16 thereof the word "superintendent".

Filed - *Adopted 6-2*
May 16, 1967

By GAUDINEER