

Senate File 272 - Enrolled

Senate File 272

AN ACT

RELATING TO THE PROVISION OF DEBT MANAGEMENT SERVICES IN  
CONNECTION WITH EDUCATIONAL LOANS, AND MAKING PENALTIES  
APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 533A.1, subsection 2, Code 2019, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Serving as an intermediary between a debtor and one or more creditors or loan servicers of the debtor for the purpose of seeking modification of the terms of an educational loan.

Sec. 2. Section 533A.1, Code 2019, is amended by adding the following new subsections:

NEW SUBSECTION. 5A. "*Educational loan*" means the same as defined in section 261F.1.

NEW SUBSECTION. 8A. "*Loan servicer*" means a person who is engaged in the direct collection of payments on a loan from

the debtor or holds the right to undertake direct collection of payments on a loan from the debtor, including but not limited to receiving scheduled periodic payments from the debtor pursuant to the terms of the loan or holding the right to service the loan, such as by contracting with or otherwise arranging for another person to service the loan.

Sec. 3. NEW SECTION. 533A.8A Educational loan debt management services — contract requirements — prohibitions — remedies.

1. In addition to any other requirements applicable to a licensee pursuant to this chapter, a licensee who is engaged primarily in the business of debt management in connection with educational loans, as described in section 533A.1, subsection 2, paragraph "e", shall do so in accordance with this section. The provisions of this section are not exclusive and do not relieve persons or a contract from compliance with other applicable law.

2. A licensee shall not receive any compensation for providing educational loan debt management services until after the licensee has fully performed all services that the licensee contracted to perform or represented the licensee would perform, and shall not request any payment from the debtor or require the debtor to provide payment to any third party prior to fully performing all services.

3. a. A debtor has an unconditional right to cancel a contract with a licensee for educational loan debt management services at any time prior to midnight of the third business day following the date a contract which complies with this section is signed and executed.

b. Cancellation of a contract occurs when the debtor delivers, by any means, written notice of cancellation to the address specified in the contract. Notice of cancellation, if delivered by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice of cancellation delivered by electronic mail is effective upon transmission. Notice of cancellation delivered personally is effective upon delivery. Notice of cancellation given by the debtor need not take the particular form as provided in the

contract and, however expressed, is effective if the notice of cancellation indicates the intention of the debtor not to be bound by the contract.

4. A contract to provide debt management services in connection with an educational loan shall be written in clear, understandable language, shall clearly and conspicuously set forth any and all terms, restrictions, and conditions governing the contract, and shall describe fully and in detail all services that the licensee contracts to perform for the debtor. The contract shall be dated and signed by the debtor. The contract shall set forth information required in this section in at least ten point type. The following shall be included in the contract:

a. The licensee's name, the licensee's electronic mail address, and the physical address of the licensee's place of business to which the notice of cancellation is to be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail.

b. A disclosure statement in substantially the following form shall appear in at least fourteen point boldface type immediately above the place where the debtor is to sign:

You, the debtor, may cancel this contract at any time prior to midnight of the third business day after the contract is signed and executed. See the attached notice of cancellation form for an explanation of this right.

c. A completed, easily detachable form in duplicate, captioned "notice of cancellation", as an attachment, in at least fourteen point boldface type, containing the following statement in substantially the following form and language:

NOTICE OF CANCELLATION

.....

(date contract is signed and executed)

You, the debtor, may cancel this contract without any penalty or obligation, within three business days from the above date.

To cancel this contract, you may use any of the following

methods: (1) send by postal mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation, to (physical address of licensee's place of business); or (2) send by electronic mail a notice of cancellation to (licensee's electronic mail address).

No later than midnight of (date).

I hereby cancel this contract.

.....

(date)

.....

(debtor's signature)

d. A disclosure statement in substantially the following form shall appear in at least fourteen point boldface type immediately above the "Notice of Cancellation" form described in paragraph "c":

NOTICE REQUIRED BY IOWA LAW

(Insert name of licensee) or anyone working for (insert name of licensee) CANNOT take payment directly from you or require you to pay for or finance its services through a third party until (insert name of licensee) has fully performed each and every service that (insert name of licensee) contracted to perform or represented that (insert name of licensee) would perform.

5. A licensee who is engaged primarily in the business of debt management in connection with educational loans shall not do any of the following:

a. Claim, demand, charge, collect, or receive compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented the licensee would perform.

b. Execute a contract with a debtor for educational loan debt management services in violation of this section.

c. Receive consideration from any third party in connection with services rendered to a debtor unless the consideration is first fully disclosed to the debtor.

d. Prohibit or impede a debtor from contacting any creditor, lender, loan servicer, government entity, attorney, counselor, individual, or company that may seek to help the debtor. Any such provision is void and unenforceable.

*e.* Access or obtain a debtor's federal student aid information in violation of federal law.

*f.* Compensate employees, including independent contractors, based on the number of debtors recruited by the employees or enrolled in particular programs, or provide compensation to employees on any other commission-based system.

*g.* Pay or offer to pay any compensation, bonus, gift, commission, or other consideration to any person for the referral of a debtor to the licensee's business.

*h.* Accept or receive any compensation, bonus, gift, commission, or other consideration for service to the debtor from any person other than the debtor, the debtor's representative, or any third party providing financing that is otherwise in compliance with the requirements of this section.

*i.* Disclose any information regarding a debtor to anyone other than law enforcement, government entities, loan servicers, creditors of the debtor, or as required by law.

*j.* Disclose any information regarding the creditor of a debtor to anyone other than the debtor, the debtor's representative, or as required by law.

6. *a.* A violation of this section is an unlawful practice pursuant to section 714.16, and all remedies of section 714.16 are available for such an action. A private cause of action brought under this section by a debtor is in the public interest. A debtor may bring an action against a licensee for a violation of this section. If the court finds that the licensee violated this section, the court shall award the debtor actual damages, appropriate equitable relief, and the costs of the action, and shall award reasonable fees to the debtor's attorney.

*b.* The rights and remedies provided in paragraph "a" are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought by a person other than the attorney general or the superintendent pursuant to this section must be commenced within four years from the date of the alleged violation.

*c.* Notwithstanding any other provision of this section, an action shall not be brought on the basis of a violation of this section, except by a debtor against whom the violation was

committed or by the attorney general or superintendent. This limitation does not apply to administrative action by either the attorney general or the superintendent.

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CHARLES SCHNEIDER  
President of the Senate

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PAT GRASSLEY  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 272, Eighty-eighth General Assembly.

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W. CHARLES SMITHSON  
Secretary of the Senate

Approved \_\_\_\_\_, 2020

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KIM REYNOLDS  
Governor