

House File 724 - Introduced

HOUSE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 152)

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

A BILL FOR

1 An Act relating to the regulation of the business of debt
2 management and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1228HV 83
5 rn/nh/14

PAG LIN

1 1 Section 1. Section 533A.1, Code 2009, is amended to read
1 2 as follows:
1 3 533A.1 DEFINITIONS.
1 4 As used in this chapter:
1 5 ~~1. "Allowable cost" means an actual, identifiable~~
~~1 6 third-party expense incurred by the licensee on behalf of a~~
~~1 7 specific debtor, such as postage and long distance telephone~~
~~1 8 charges, that may be itemized and charged against the debtor~~
~~1 9 for payment.~~
1 10 2. 1. "Creditor" means a person who grants credit, a
1 11 person who takes assignment of the rights to payments of a
1 12 person who grants credit, or a person for whose benefit moneys
1 13 are being collected and distributed by ~~licensees~~ a licensee.
1 14 ~~3. 2. "Debt management" means the planning and management~~
~~1 15 of the financial affairs of a debtor and the receiving~~
~~1 16 therefrom of money or evidences thereof for the purpose of~~
~~1 17 distributing the same to the debtor's creditors in payment or~~
~~1 18 partial payment of the debtor's obligations for a fee, when~~
~~1 19 done for a fee, any of the following:~~
1 20 a. Arranging or negotiating, or attempting to arrange or
1 21 negotiate, the amount or terms of debt owed by a debtor to a
1 22 creditor.
1 23 b. Receiving from a debtor, directly or indirectly, money
1 24 or evidences thereof for the purposes of distributing the same
1 25 to one or more creditors of the debtor in payment or partial
1 26 payment of the debtor's obligations.
1 27 c. Serving as an intermediary between a debtor and one or
1 28 more creditors of the debtor for the purpose of obtaining
1 29 concessions from the creditors.
1 30 d. Engaging in debt settlement.
1 31 3. "Debt settlement" means seeking to settle the amount of
1 32 a debtor's debts with creditors for less than the amounts owed
1 33 on the debts.
1 34 4. "Debtor" means any natural person.
1 35 5. "Donation" means money given by the debtor to a
2 1 licensee as a gift for debt management and outside of the debt
2 2 management contract.
2 3 6. "Fee" means the moneys paid by the debtor to the
2 4 licensee as payment for debt management and shall not include
2 5 money paid to the licensee or held by the licensee for
2 6 distribution to a creditor, ~~allowable costs~~, a distribution to
2 7 the debtor as a refund, or a donation.
2 8 7. "Gratuitous debt-management service" means debt
2 9 management without charging a fee.
2 10 8. "Licensee" means any person licensed under this
2 11 chapter.
2 12 9. "Natural person" means an individual who is not an
2 13 association, joint venture, or joint stock company,
2 14 partnership, limited partnership, business corporation,
2 15 nonprofit corporation, other business entity, or any group of
2 16 individuals or business entities, however organized.
2 17 10. "Office" means each location by street number,
2 18 building number, city, and state where any person engages in

2 19 debt management.

2 20 11. "Person" means an individual, an association, joint
2 21 venture or joint stock company, partnership, limited
2 22 partnership, business corporation, nonprofit corporation, or
2 23 any other group of individuals however organized.

2 24 12. "Superintendent" means the superintendent of banking.

2 25 Sec. 2. Section 533A.2, subsection 2, Code 2009, is
2 26 amended by adding the following new paragraph:

2 27 NEW PARAGRAPH. h. A person licensed under chapter 533C,
2 28 including that person's authorized delegates as defined in
2 29 section 533C.102, or a person exempt from licensing under
2 30 section 533C.103, when engaging in money transmission or
2 31 currency exchange as defined in chapter 533C.102.

2 32 Sec. 3. Section 533A.2, subsection 3, Code 2009, is
2 33 amended to read as follows:

2 34 3. The application for a license shall be in the form
2 35 prescribed by the superintendent. If the applicant is not a
3 1 natural person, a copy of the legal documents creating the
3 2 applicant shall be filed with the application. The
3 3 application shall contain all of the following:

3 4 a. The name of the applicant.

3 5 b. If the applicant is not a natural person, the type of
3 6 business entity of the applicant and the date the entity was
3 7 organized.

3 8 c. If the applicant is a foreign corporation, both of the
3 9 following:

3 10 (1) An irrevocable consent, duly acknowledged, that suits
3 11 and actions may be commenced against the licensee in the
3 12 courts of this state by service of process performed as
3 13 provided in section 617.3 or as provided in the Iowa rules of
3 14 civil procedure.

3 15 (2) Proof of authorization to do business in this state.
3 16 e- d. The address where the business is to be conducted,
3 17 including information as to any branch office of the
3 18 applicant.

3 19 d- e. The name and resident address of the applicant's
3 20 owner or partners, or, if a corporation, association, or
3 21 agency, of the members, shareholders, directors, trustees,
3 22 principal officers, managers, and agents.

3 23 f. The name, physical address, and telephone number of the
3 24 licensee's agent for service of process.

3 25 e- g. Other pertinent information as the superintendent
3 26 may require, including a credit report.

3 27 Sec. 4. Section 533A.2, subsection 5, Code 2009, is
3 28 amended to read as follows:

3 29 5. Each applicant shall furnish with the application a
3 30 description of its proposed debt management program, a copy of
3 31 the disclosures it will be providing debtors pursuant to
3 32 section 533A.8, subsection 3, and a copy of the contract the
3 33 applicant proposes to use between the applicant and the
3 34 debtor, which shall contain a schedule of fees to be charged
3 35 the debtor for the applicant's services pursuant to section
4 1 533A.8, subsection 4.

4 2 Sec. 5. Section 533A.8, Code 2009, is amended by striking
4 3 the section and inserting in lieu thereof the following:

4 4 533A.8 LICENSEE REQUIREMENTS.

4 5 1. A licensee shall describe the methodology of its debt
4 6 management program to each potential debtor client so that the
4 7 debtor can make an informed decision as to whether or not the
4 8 licensee's program is an appropriate option for the debtor.

4 9 2. A licensee shall conduct a comprehensive review of a
4 10 debtor's debts and monthly budget and make a determination
4 11 that the licensee's program is an appropriate option for the
4 12 debtor before entering into a contract with the debtor. A
4 13 licensee shall not accept an account unless a written and
4 14 thorough budget analysis has been performed which indicates
4 15 that the debtor can meet the requirements determined by the
4 16 budget analysis.

4 17 3. a. A licensee, including any third party who markets
4 18 or sells a debt management program on behalf of a licensee,
4 19 shall make the following disclosures to a debtor both verbally
4 20 and in writing before the debtor signs a contract to enroll in
4 21 the debt management program:

4 22 (1) The total estimated fee the debtor will pay for
4 23 participating in the program if the debtor remains in the
4 24 program for the entire term of the contract.

4 25 (2) That the licensee cannot guarantee any specific
4 26 results from participation in the program.

4 27 (3) That the debtor may elect to discontinue participation
4 28 in the program without penalty at any time during the program.

4 29 (4) If the program includes obtaining concessions

4 30 regarding the principal amount of the debt from creditors,
4 31 that any concessions may be considered income to the debtor
4 32 subject to income tax.

4 33 (5) If the program is based on a model which does not
4 34 require the licensee or another licensee to receive money or
4 35 evidence thereof from the debtor to distribute to the debtor's
5 1 creditors, the following:

5 2 (a) That payments are not made to creditors on the
5 3 debtor's behalf, so the debtor is still obligated to make
5 4 payments to creditors.

5 5 (b) That creditors may continue to try to collect the
5 6 debtor's debts while the debtor is enrolled in the program.

5 7 (6) If the program is a debt settlement program, that the
5 8 following may occur:

5 9 (a) The debtor's credit report and credit score may be
5 10 harmed by participating in the program.

5 11 (b) Failure to make required minimum payments to the
5 12 debtor's creditors may violate the debtor's agreement with the
5 13 creditors and may result in additional charges, such as late
5 14 fees, over limit fees, and penalties and creditors may raise
5 15 the debtor's interest rate.

5 16 (c) The debtor may be sued by creditors if the debtor
5 17 fails to make required minimum payments to the debtor's
5 18 creditors.

5 19 b. The verbal disclosures required pursuant to this
5 20 subsection shall be made at a normal rate of speech in a
5 21 manner designed to ensure the debtor understands the
5 22 disclosures. The written disclosures shall be provided in a
5 23 separate document from the contract between the licensee and
5 24 the debtor and shall be designed to ensure the debtor
5 25 understands the disclosures. It is a violation of this
5 26 chapter for a licensee, or any third party who markets or
5 27 sells a debt management program on behalf of a licensee, to
5 28 contradict these disclosures in any representation,
5 29 advertising, or solicitation.

5 30 4. A licensee shall make a written contract with a debtor
5 31 and shall immediately and before collecting any fee, furnish
5 32 the debtor with a true copy of the contract. A contract shall
5 33 not extend for a period longer than sixty months. The
5 34 contract between a licensee and a debtor shall include all of
5 35 the following:

6 1 a. The total estimated charges agreed upon for the
6 2 services of the licensee and any third parties providing
6 3 services for or in conjunction with the licensee.

6 4 b. A statement of how and when the charges are to be paid.

6 5 c. A statement that the debtor may elect to discontinue
6 6 participation in the program without penalty at any time
6 7 during the program.

6 8 d. The beginning and expiration date of the contract.

6 9 e. The name, physical address, mailing address if
6 10 different from the physical address, and telephone number of
6 11 the licensee.

6 12 f. A description of the services to be provided by the
6 13 licensee, which shall include educational and counseling
6 14 services designed to assist the debtor in managing the
6 15 debtor's borrowing, spending, and saving habits.

6 16 g. If the debt management program is a debt settlement
6 17 program, the following:

6 18 (1) A comprehensive list of every debt at the time of
6 19 enrollment that is to be negotiated for settlement by the
6 20 licensee, including the creditors' names and identifying
6 21 information.

6 22 (2) The estimated amount of money needed to fund
6 23 settlements.

6 24 h. If the debt management program is based on a model
6 25 which requires the licensee or any licensee to receive money
6 26 or evidences thereof from the debtor to distribute to the
6 27 debtor's creditors, the contract shall set forth the complete
6 28 list of creditors who are to receive payments under the
6 29 contract.

6 30 5. If the debt management program is based on a model
6 31 which requires the licensee or any licensee to receive money
6 32 or evidences thereof from the debtor to distribute to the
6 33 debtor's creditors, the licensee who receives the money or
6 34 evidences thereof from the debtor for distribution to the
6 35 debtor's creditors shall do all of the following:

7 1 a. Maintain a separate bank trust account in which all
7 2 payments received from debtors for the benefit of creditors
7 3 shall be deposited and in which all payments shall remain
7 4 until a remittance is made to either the debtor or the
7 5 creditor.

7 6 b. Make remittances to creditors within forty-five days
7 7 after initial receipt of funds, and thereafter remittances
7 8 shall be made to creditors within thirty days of receipt, less
7 9 fees, unless the reasonable payment of one or more of the
7 10 debtor's obligations requires that such funds be held for a
7 11 longer period so as to accumulate a sum certain.

7 12 c. Provide each debtor a monthly written statement of
7 13 disbursements made and fees deducted from the debtor's
7 14 account. The licensee shall also provide a verbal accounting
7 15 of disbursements made and fees deducted from the debtor's
7 16 account at any time the debtor requests it during normal
7 17 business hours.

7 18 d. Not receive any fee, or have or cause any fee to be
7 19 received by any other licensee, other than the initiation fee
7 20 permitted in section 533A.9, subsection 2, unless the licensee
7 21 has the consent of at least fifty percent of the total number
7 22 of the creditors listed in the licensee's contract with the
7 23 debtor, or such a like number of creditors have accepted a
7 24 distribution of payment. The debtor shall be informed by the
7 25 licensee of those creditors who have not agreed to the
7 26 licensee's handling of the account.

7 27 6. If the debt management program is not based on a model
7 28 which requires the licensee or any licensee to receive money
7 29 or evidences thereof from the debtor to distribute to the
7 30 debtor's creditors, both of the following shall apply:

7 31 a. The debtor shall maintain full control of and access to
7 32 any moneys set aside for payment to creditors.

7 33 b. The licensee may not receive consideration from any
7 34 third party in connection with services rendered to a debtor.

7 35 7. A licensee shall keep, and use in the licensee's
8 1 business, books, accounts, and records which will enable the
8 2 superintendent to determine whether such licensee is complying
8 3 with the provisions of this chapter, any applicable state or
8 4 federal laws or regulations, and the rules and regulations of
8 5 the superintendent. A licensee shall preserve such books,
8 6 accounts, and records for at least five years after making the
8 7 final entry on any transaction recorded therein. Records
8 8 shall contain complete information regarding all contracts,
8 9 extensions thereof, payments, disbursements, and charges,
8 10 which records shall be open to inspection by the
8 11 superintendent and the superintendent's duly appointed agents
8 12 during normal business hours.

8 13 8. In the event a compromise of a debt is arranged by a
8 14 licensee with one or more creditors, the debtor shall have the
8 15 full benefit of such compromise.

8 16 9. All licensee advertising content, and data supporting
8 17 any claims made in the advertising, shall be maintained in
8 18 retrievable format and available to the superintendent for
8 19 inspection for a minimum of five years.

8 20 10. If the licensee maintains an internet website, the
8 21 licensee shall make available on its internet website a
8 22 physical address for its headquarters, a main telephone
8 23 number, and an electronic mail contact address.

8 24 11. The superintendent may adopt additional requirements
8 25 applicable to licensees pursuant to administrative rule.

8 26 Sec. 6. Section 533A.9, Code 2009, is amended to read as
8 27 follows:

8 28 533A.9 FEE AGREED IN ADVANCE.

8 29 1. The fee of the a licensee charged to the a debtor shall
8 30 be agreed upon in advance and stated in the contract and
8 31 provision for settlement in case of cancellation or prepayment
8 32 shall also be clearly stated in the contract. The fee of the
~~8 33 licensee charged to the debtor shall not exceed fifteen~~
~~8 34 percent of any payment made by the debtor and distributed to~~
~~8 35 the creditors pursuant to the contract. In case of total~~
~~9 1 payment of the contract before the contract period has~~
~~9 2 expired, the licensee shall be entitled only to a fee of no~~
~~9 3 more than three percent of the final payment.~~

9 4 2. A debtor may be charged a one-time initiation fee for
9 5 debt management services, which shall not exceed fifty
9 6 dollars.

9 7 3. If a debt management program is based on a model that
9 8 required the licensee or any other licensee to receive money
9 9 or evidences thereof from the debtor to distribute to the
9 10 debtor's creditors, the debtor may not be charged a fee
9 11 exceeding the initiation fee permitted in subsection 2 plus a
9 12 fee not to exceed fifteen percent of amounts actually applied
9 13 to the debtor's accounts with the creditors. Other than the
9 14 initiation fee, the debtor shall at no time be required to pay
9 15 fees exceeding fifteen percent of amounts actually applied to
9 16 the debtor's accounts with the creditors.

9 17 4. If a debt management program is not based on a model
9 18 that requires the licensee or another licensee to receive
9 19 money or evidences thereof from the debtor to distribute to
9 20 the debtor's creditors, a debtor may not be charged a fee
9 21 exceeding the sum of the following:
9 22 a. The initiation fee permitted in subsection 2.
9 23 b. An additional fee not to exceed eighteen percent of the
9 24 total amount of the debtor's debts enrolled in the licensee's
9 25 program at the time the debtor enrolled in the program. The
9 26 additional fee shall not be collected pursuant to a method
9 27 other than the percent of total debt method or the percent of
9 28 savings method, as provided in subparagraphs (1) and (2),
9 29 respectively.

9 30 (1) The percent of total debt method involves the
9 31 additional fee being collected in equal monthly installments
9 32 payable over the first two-thirds of the term of the contract
9 33 between the debtor and the licensee. The debtor may elect to
9 34 discontinue participation at any time during the program by
9 35 providing written notice to the licensee at the address
10 1 specified in the contract. Notice of discontinuance, if given
10 2 by mail, is effective when deposited in the mail properly
10 3 addressed with postage paid. If the debtor discontinues
10 4 participation in the program, no future installments are due
10 5 after the mailing of the notice. If participation is
10 6 discontinued within the first twelve months of the contract,
10 7 the licensee may retain only fifty percent of the installments
10 8 it is scheduled to receive through the date the debtor gives
10 9 the discontinuation notice and shall refund the excess to the
10 10 debtor. Notwithstanding the foregoing, the licensee may
10 11 collect a pro rata portion of the total fee upon completion of
10 12 a settlement of a debtor's debt. The pro rata portion shall
10 13 be calculated by multiplying the total dollar amount of the
10 14 contracted additional fee by the percentage of debt settled of
10 15 the original amount of debt enrolled in the program. In no
10 16 event shall the additional fee exceed eighteen percent of the
10 17 total amount of the debtor's debts enrolled in the licensee's
10 18 program at the time the debtor enrolled in the program.

10 19 (2) The percent of savings method involves the additional
10 20 fee being collected in monthly installments of fifty dollars
10 21 per month, and the monthly fees collected shall be credited
10 22 against any fees the licensee earns as the result of
10 23 settlements. The debtor may elect to discontinue
10 24 participation at any time during the program by providing
10 25 written notice to the licensee at the address specified in the
10 26 contract. Notice of discontinuance, if given by mail, is
10 27 effective when deposited in the mail properly addressed with
10 28 postage paid. If the debtor discontinues participation in the
10 29 program, no future installments are due after the mailing of
10 30 the notice. If participation is discontinued within the first
10 31 twelve months of the contract, the licensee may retain only
10 32 fifty percent of the installments it is scheduled to receive
10 33 through the date the debtor gives the discontinuation notice
10 34 and shall refund the excess to the debtor. Notwithstanding
10 35 the foregoing, the licensee may collect a pro rata portion of
11 1 the total fee upon completion of a settlement of a debtor's
11 2 debt. The pro rata portion, which may be collected at the
11 3 time of settlement, shall be calculated by multiplying the
11 4 contracted savings percentage, not to exceed thirty percent,
11 5 by the amount saved on settled debt. The amount saved on
11 6 settled debt is the difference between the balance of that
11 7 debt upon enrollment in the program and the amount settled.
11 8 In no event shall the additional fee exceed eighteen percent
11 9 of the total amount of the debtor's debts enrolled in the
11 10 licensee's program at the time the debtor enrolled in the
11 11 program.

11 12 5. Any services provided by a third party, other than the
11 13 debtor's own banking fees, including lead generating,
11 14 marketing, and selling services, shall be paid for by the
11 15 licensee. Under no circumstances shall a debtor be required
11 16 to pay a fee to a third party to obtain a licensee's services.

11 17 Sec. 7. Section 533A.11, Code 2009, is amended to read as
11 18 follows:

- 11 19 533A.11 UNLAWFUL ACTS OF LICENSEE.
11 20 It shall be is unlawful and a violation of this chapter for
11 21 the holder of any license issued under the terms and
11 22 provisions hereto this chapter:
11 23 1. To purchase from a creditor any obligation of a debtor.
11 24 2. To operate as a collection agent and as a licensee as
11 25 to the same debtor's account without first disclosing in
11 26 writing such fact to both the debtor and creditor.
11 27 3. To execute any contract or agreement to be signed by

11 28 the debtor unless the contract or agreement is fully and
11 29 completely filled in and finished.

11 30 4. To receive or charge any fee in the form of a
11 31 promissory note or other promise to pay, or receive or accept
11 32 any mortgage or other security for any fee, both as to real or
11 33 personal property.

11 34 5. To pay any bonus or other consideration to any
11 35 individual, agency, partnership, unincorporated association,
12 1 or corporation for the referral of a debtor to the licensee's
12 2 business, or to accept or receive any bonus, commission, or
12 3 other consideration for referring any debtor to any
12 4 individual, partnership, unincorporated association, agency,
12 5 or corporation for any reason.

12 6 6. To advertise the licensee's services, display,
12 7 distribute, broadcast, or televise, or permit to be displayed,
12 8 advertised, distributed, broadcast, or televised the
12 9 licensee's services in any manner inconsistent with the law.

12 10 7. To make, or facilitate the debtor in making, any false
12 11 or misleading claim regarding a creditor's right to collect a
12 12 debt.

12 13 8. To dispute, or facilitate the debtor in disputing, the
12 14 validity of a debt absent a good faith belief by the debtor
12 15 that the debt is not validly owing.

12 16 9. To challenge a debt without the written consent of the
12 17 debtor.

12 18 10. To provide or offer to provide legal advice or legal
12 19 services, including but not limited to the negotiation of
12 20 payments or the settlement of a debtor's delinquent account
12 21 that is subject to pending litigation, unless the person
12 22 providing or offering to provide legal advice is licensed to
12 23 practice law in the state in which the debtor resides.

12 24 11. To execute a power of attorney or any other written
12 25 agreement that extinguishes or limits the debtor's right to
12 26 contact or communicate with any creditor.

12 27 12. To take a wage assignment, a lien of any type on real
12 28 or personal property, or other security to secure the payment
12 29 of compensation. Any such security is void and unenforceable.

12 30 13. To induce or attempt to induce a debtor to enter into
12 31 a contract which does not comply in all respects with the
12 32 requirements of this chapter.

12 33 14. Where applicable, to make any statements, or allow a
12 34 third party marketing or selling the licensee's program to
12 35 make any statements, in the course of advertising or
13 1 solicitation that contradicts the disclosures required by
13 2 section 533A.8.

13 3 15. When the licensee's program is a debt settlement
13 4 program, the following:

13 5 a. To advise a debtor to stop making payments to
13 6 creditors.

13 7 b. To lead a debtor to believe that a payment to a
13 8 creditor is in settlement of a debt to the creditor unless the
13 9 creditor provides a written certification or confirmation that
13 10 the payment is in full settlement of the debt, or is part of a
13 11 payment plan that is in full settlement of the debt.

13 12 c. To make any of the following representations:

13 13 (1) The licensee will furnish money to pay bills or
13 14 prevent attachments.

13 15 (2) Payment of a certain amount will guarantee
13 16 satisfaction of a certain amount or range of indebtedness.

13 17 (3) Participation in a program will prevent debt
13 18 collection calls, litigation, garnishment, attachment,
13 19 repossession, foreclosure, eviction, or loss of employment.

13 20 (4) Participation in a program will not harm the debtor's
13 21 credit report or credit score.

13 22 (5) Participation in a program will prevent the debtor
13 23 from having to declare bankruptcy.

13 24 (6) That the licensee is authorized or competent to
13 25 furnish legal advice or perform legal services, including but
13 26 not limited to the negotiation of payments or the settlement
13 27 of a debtor's delinquent account that is subject to pending
13 28 litigation.

13 29 (7) That the licensee's negotiations with creditors will
13 30 result in the elimination of adverse information on the
13 31 debtor's credit report.

13 32 Sec. 8. NEW SECTION. 533A.17 WAIVER NOT ALLOWED.

13 33 A waiver by a debtor of the provisions of this chapter is
13 34 void and unenforceable as contrary to public policy. An
13 35 attempt by a licensee to induce a debtor to waive the debtor's
14 1 rights is a violation of this chapter.

14 2 Sec. 9. Section 533A.6, Code 2009, is repealed.

14 3 EXPLANATION

14 4 This bill relates to the regulation of the business of debt
14 5 management pursuant to Code chapter 533A.

14 6 The bill modifies definitions applicable to debt
14 7 management. The bill adds to the definition of a "creditor" a
14 8 person who grants credit or who takes assignment of the rights
14 9 to payments of a person granting credit. The bill expands the
14 10 definition of "debt management" to mean arranging or
14 11 negotiating, or attempting to arrange or negotiate, for a fee,
14 12 the amount or terms of debt owed by a debtor to a creditor;
14 13 receiving from a debtor, directly or indirectly, money or
14 14 evidences thereof for the purposes of distributing it to one
14 15 or more creditors of the debtor in payment or partial payment
14 16 of the debtor's obligations; serving as an intermediary
14 17 between a debtor and one or more creditors of the debtor for
14 18 the purpose of obtaining concessions from the creditors, or
14 19 engaging in debt settlement. The bill defines "debt
14 20 settlement" as seeking to settle the amount of a debtor's
14 21 debts with creditors for less than the amounts owed on the
14 22 debts. The bill additionally deletes a definition of
14 23 "allowable cost" which was not utilized within the chapter.

14 24 The bill adds to the list of persons exempt from the
14 25 chapter's licensing requirements a person licensed pursuant to
14 26 Code chapter 533C in connection with money transmission or
14 27 currency exchange and related persons as specified in the
14 28 bill.

14 29 The bill requires additional information to be supplied on
14 30 an application for licensure, including in the case of a
14 31 foreign corporation applicant a duly acknowledged irrevocable
14 32 consent that suits and actions may be commenced against the
14 33 licensee by service of process performed as provided in Code
14 34 section 617.3 or as provided in the Iowa rules of civil
14 35 procedure, and proof of authorization to do business. The
15 1 bill requires furnishing the name, physical address, mailing
15 2 address if different from the physical address, and telephone
15 3 number of the licensee's agent for service of process, which
15 4 replaces a provision repealed by the bill which had designated
15 5 the superintendent of banking as the agent for service of
15 6 process. The bill also requires an applicant to furnish a
15 7 description of their proposed debt management program and a
15 8 copy of disclosures required in the chapter to be provided to
15 9 debtors.

15 10 The bill replaces current Code section 533A.8 specifying
15 11 written contract requirements with a new list of requirements
15 12 applicable to a licensee when dealing with a potential debtor
15 13 client or otherwise engaging in the business of debt
15 14 management. The requirements include describing the
15 15 methodology of the debt management program so a debtor can
15 16 make an informed decision regarding the appropriateness of the
15 17 program, conducting a comprehensive review of the debtor's
15 18 debts and the debtor's monthly budget, and performing a
15 19 thorough written budget analysis.

15 20 The bill provides additional requirements relating to
15 21 disclosures required to be made by a licensee. The bill
15 22 provides that a licensee, including any third party who
15 23 markets or sells a debt management program on behalf of a
15 24 licensee, must make a series of disclosures to a debtor both
15 25 verbally and in writing before the debtor signs a contract to
15 26 enroll in the debt management program. The disclosures
15 27 include the total estimated fee the debtor will pay for
15 28 participating in the program, that the licensee cannot
15 29 guarantee any specific results, that the debtor may elect to
15 30 discontinue participation in the program without penalty at
15 31 any time, and that any concession obtained regarding the
15 32 principal amount of debt may be considered income to the
15 33 debtor subject to income tax. Disclosures are also specified
15 34 applicable to debt management programs which do not require
15 35 receipt of money from the debtor to distribute to the debtor's
16 1 creditors, and to debt settlement programs. The bill contains
16 2 requirements regarding the form and manner of verbal and
16 3 written disclosures, and states that it is a violation of the
16 4 Code chapter for a licensee, or any third party who markets or
16 5 sells a debt management program on behalf of the licensee, to
16 6 contradict the required disclosures in any representation,
16 7 advertising, or solicitation.

16 8 Further, the bill specifies the nature of the contents of a
16 9 written contract entered into between a licensee and a debtor,
16 10 including the duration of the contract, charges, termination
16 11 options, licensee information, and a description of services
16 12 to be performed. If the debt management program is based on a
16 13 model which requires the licensee or any licensee to receive
16 14 money or evidences thereof from the debtor to distribute to

16 15 the debtor's creditors, the bill specifies procedures
16 16 regarding such receipt and distribution. If it does not, the
16 17 bill requires the debtor to maintain control of the funds.
16 18 The licensee may not receive consideration from third parties
16 19 in connection with services rendered to a debtor.
16 20 Requirements relating to books, accounts, records,
16 21 advertising, and internet website content are also provided.
16 22 In addition, the bill addresses fees. The bill provides
16 23 for a one-time initiation fee not to exceed \$50, and
16 24 additional fees in amounts and at intervals which vary
16 25 depending upon whether the debt management program requires
16 26 distribution of money to the debtor's creditors.
16 27 The bill adds several new licensee actions which are
16 28 considered unlawful acts and a violation of the Code chapter.
16 29 They include making, or facilitating the debtor in making, any
16 30 false or misleading claim regarding a creditor's right to
16 31 collect a debt; disputing, or facilitating the debtor to
16 32 dispute, the validity of the debt absent a good faith belief
16 33 by the debtor that the debt is not validly owing; challenging
16 34 a debt without the written consent of the debtor; providing or
16 35 offering to provide legal advice or legal services, including
17 1 but not limited to the negotiation of payments or the
17 2 settlement of a debtor's delinquent account that is subject to
17 3 pending litigation, unless the person providing or offering to
17 4 provide legal advice is licensed to practice law in the state
17 5 in which the debtor resides; executing a power of attorney or
17 6 any other oral or written express or implied agreement that
17 7 extinguishes or limits the debtor's right at any time to
17 8 contact or communicate with any creditor; taking a wage
17 9 assignment or lien or other security to secure the payment of
17 10 compensation; and inducing or attempting to induce a debtor to
17 11 enter into a contract which does not comply in all respects
17 12 with the requirements of Code chapter 533A. Additional
17 13 unlawful acts specified in the bill relate to advertising and
17 14 misrepresentation.
17 15 Finally, the bill provides that a waiver of the provisions
17 16 of Code chapter 533A is void and unenforceable as contrary to
17 17 public policy, and prohibits the attempt by a licensee to
17 18 induce a debtor to waive the debtor's rights.
17 19 LSB 1228HV 83
17 20 rn/nh/14.1