

Senate File 272 - Introduced

SENATE FILE 272
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1066)

A BILL FOR

1 An Act relating to the provision of debt management services
2 in connection with educational loans, and making penalties
3 applicable.

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

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

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

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

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

11 NEW SUBSECTION. 8A. "*Loan servicer*" means a person who is
12 engaged in the direct collection of payments on a loan from
13 the debtor or holds the right to undertake direct collection
14 of payments on a loan from the debtor, including but not
15 limited to receiving scheduled periodic payments from the
16 debtor pursuant to the terms of the loan or holding the right
17 to service the loan, such as by contracting with or otherwise
18 arranging for another person to service the loan.

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

22 1. In addition to any other requirements applicable to a
23 licensee pursuant to this chapter, a licensee who is engaged
24 primarily in the business of debt management in connection with
25 educational loans, as described in section 533A.1, subsection
26 2, paragraph "e", shall do so in accordance with this section.
27 The provisions of this section are not exclusive and do not
28 relieve persons or a contract from compliance with other
29 applicable law.

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

1 to fully performing all services.

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

7 *b.* Cancellation of a contract occurs when the debtor
8 delivers, by any means, written notice of cancellation to the
9 address specified in the contract. Notice of cancellation,
10 if delivered by mail, is effective when deposited in the
11 mail properly addressed with postage prepaid. Notice of
12 cancellation delivered by electronic mail is effective upon
13 transmission. Notice of cancellation delivered personally is
14 effective upon delivery. Notice of cancellation given by the
15 debtor need not take the particular form as provided in the
16 contract and, however expressed, is effective if the notice of
17 cancellation indicates the intention of the debtor not to be
18 bound by the contract.

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

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

1 other than mail.

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

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

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

13 NOTICE OF CANCELLATION

14

15 (date contract is signed and executed)

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

19 To cancel this contract, you may use any of the following
20 methods: (1) send by postal mail or otherwise deliver a
21 signed and dated copy of this cancellation notice, or any
22 other written notice of cancellation, to (physical address of
23 licensee's place of business); or (2) send by electronic mail a
24 notice of cancellation to (licensee's electronic mail address).

25 No later than midnight of (date).

26 I hereby cancel this contract.

27

28 (date)

29

30 (debtor's signature)

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

35 NOTICE REQUIRED BY IOWA LAW

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

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

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

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

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

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

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

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

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

33 *h.* Accept or receive any compensation, bonus, gift,
34 commission, or other consideration for service to the
35 debtor from any person other than the debtor, the debtor's

1 representative, or any third party providing financing that is
2 otherwise in compliance with the requirements of this section.

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

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

9 6. *a.* A violation of this section is an unlawful practice
10 pursuant to section 714.16, and all remedies of section
11 714.16 are available for such an action. A private cause of
12 action brought under this section by a debtor is in the public
13 interest. A debtor may bring an action against a licensee
14 for a violation of this section. If the court finds that the
15 licensee violated this section, the court shall award the
16 debtor actual damages, appropriate equitable relief, and the
17 costs of the action, and shall award reasonable fees to the
18 debtor's attorney.

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

25 *c.* Notwithstanding any other provision of this section,
26 an action shall not be brought on the basis of a violation of
27 this section, except by a debtor against whom the violation was
28 committed or by the attorney general or superintendent. This
29 limitation does not apply to administrative action by either
30 the attorney general or the superintendent.

31 EXPLANATION

32 The inclusion of this explanation does not constitute agreement with
33 the explanation's substance by the members of the general assembly.

34 This bill relates to debt management services in connection
35 with educational loans.

1 Current law requires persons engaged in the business of debt
2 management in Iowa, as defined, to be licensed and regulated by
3 the superintendent of the banking division of the department of
4 commerce under Code chapter 533A.

5 The bill expands the definition of "debt management"
6 by including in the definition the act of serving as an
7 intermediary between a debtor and one or more creditors or loan
8 servicers of the debtor for the purpose of modifying the terms
9 of an educational loan. The bill defines "educational loan"
10 as any loan that is made, insured, or guaranteed under Tit.
11 IV of the federal Higher Education Act solely for educational
12 purposes, or any private educational loan.

13 The bill provides that in addition to any other requirements
14 applicable to a licensed debt management services provider
15 pursuant to Code chapter 533A, a licensee who is engaged
16 primarily in the business of debt management services in
17 connection with educational loans shall do so pursuant to the
18 bill. The bill specifies that the provisions of the bill are
19 not exclusive and do not relieve persons or contracts from
20 compliance with other applicable laws.

21 The bill provides that a licensee shall not receive
22 any compensation in connection with educational loan debt
23 management services until after the licensee has fully
24 performed all services that the licensee contracted to perform
25 or represented the licensee would perform, and shall not
26 request any payment or require payment to any third party prior
27 to fully performing all services.

28 The bill provides that a debtor has an unconditional right
29 to cancel a contract with a licensee for educational loan debt
30 management services at any time prior to midnight of the third
31 business day following the date a contract which complies with
32 the bill is signed and executed. Cancellation of a contract
33 occurs when the debtor delivers, by any means, written notice
34 of cancellation to the specified address. A written notice
35 delivered by mail is effective when deposited in the mail

1 properly addressed with postage prepaid. A written notice
2 delivered by electronic mail is effective upon transmission. A
3 written notice delivered personally is effective upon delivery.
4 A written notice of cancellation may take any form and is
5 effective if it indicates the debtor's intent to cancel the
6 contract.

7 The bill provides that a contract to provide educational
8 loan debt management services shall be written in clear and
9 understandable language, clearly set forth all terms and
10 conditions, and fully describe all services that the licensee
11 contracts to perform for the debtor. The contract shall be in
12 at least 10 point type and shall include the following: the
13 licensee's name, electronic mail address, and physical address
14 of the licensee's place of business; a disclosure statement
15 located in the contract regarding the debtor's cancellation
16 rights, as specified in the bill; an attached "notice of
17 cancellation" form regarding the debtor's cancellation rights,
18 as specified in the bill; and a disclosure statement located
19 on the attached "notice of cancellation" form regarding the
20 requirement that a licensee fully perform all services prior
21 to receiving any payment from the debtor, as specified in the
22 bill.

23 The bill prohibits a licensee from doing any of the
24 following: requesting or receiving compensation prior to fully
25 performing all contracted or represented services; executing
26 a contract in violation of the bill; receiving consideration
27 from any third party unless the consideration is first fully
28 disclosed to the debtor; prohibiting or impeding a debtor from
29 contacting any creditor, lender, loan servicer, as defined in
30 the bill, government entity, attorney, or other individual
31 that may seek to help the debtor; accessing or obtaining a
32 debtor's federal student aid information in violation of
33 federal law; compensating employees and independent contractors
34 on a commission-based system; paying or offering to pay any
35 consideration to any person for referring debtors to the

1 licensee's business; accepting or receiving any consideration
2 for service to the debtor from any person other than the
3 debtor, the debtor's representative, or certain third parties;
4 disclosing any information regarding a debtor to anyone other
5 than certain specified entities, or as required by law; or
6 disclosing any information regarding the creditor of a debtor
7 to anyone other than the debtor, the debtor's representative,
8 or as required by law.

9 A violation of the bill's provisions constitutes an
10 unlawful practice under Code section 714.16, which relates
11 to consumer frauds. Pursuant to that Code section, the
12 attorney general may investigate, issue subpoenas, and commence
13 civil proceedings seeking restraining orders or injunctions
14 prohibiting persons from engaging in unlawful practices
15 or seeking termination of the business affairs of a person
16 engaging in unlawful practices. A court may further impose a
17 civil penalty of up to \$40,000 per violation against a person
18 found guilty of committing an unlawful practice. The bill also
19 provides that a debtor may bring an action against a licensee
20 for a violation of the bill's provisions. The debtor must
21 bring the action within four years from the date of the alleged
22 violation. If the court finds that a violation has occurred,
23 the court shall award actual damages, appropriate equitable
24 relief, court costs, and reasonable attorney fees.

25 In addition to the remedies provided in the bill, Code
26 section 533A.16 allows the superintendent to apply for an
27 injunction in district court upon the belief that a person
28 has engaged in or is about to engage in an act or practice
29 in violation of Code chapter 533A. The superintendent may
30 also investigate or initiate a complaint against a person
31 not licensed under Code chapter 533A to determine whether a
32 violation has occurred, issue an order requiring compliance
33 with Code chapter 533A after providing written notice and the
34 opportunity for a hearing, impose a penalty of up to \$5,000 for
35 each violation, and order the person to pay restitution.