

**CHAPTER 380****DEBT MANAGEMENT****H. F. 284**

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 superintendent of banking; 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 the  
3 financial affairs of a debtor and the receiving therefrom of money or  
4 evidences thereof for the purpose of distributing the same to his  
5 creditors in payment or partial payment of his obligations for a fee.  
6     2. "Licensee" means any individual, partnership, unincorporated as-  
7 sociation, agency or corporation licensed under this Act.  
8     3. "Superintendent" means the superintendent of banking.  
9     4. "Debtor" means any natural person.  
10    5. "Office" means each location by street number, building number,  
11 city, and state where any person engages in debt management.  
12    6. "Creditor" means a person for whose benefit moneys are being  
13 collected and distributed by licensees.

1     **SEC. 2.**

- 2     1. No individual, partnership, unincorporated association, agency  
3 or corporation shall engage in the business of debt management in this  
4 state without a license therefor as provided for in this Act, except that  
5 the following persons shall not be required to be licensed when engaged  
6 in the regular course of their respective businesses and professions:  
7     a. Attorneys at law.  
8     b. Banks, savings and loan associations, insurance companies and  
9 similar fiduciaries, chattel loan companies licensed under chapter five  
10 hundred thirty-six (536) of the Code and industrial loan companies  
11 licensed under chapter five hundred thirty-six A (536A) of the Code,  
12 as duly licensed in Iowa by law, authorized and admitted to transact  
13 business in this state and performing credit and financial adjusting in  
14 the regular course of their principal business, or while performing an  
15 escrow function.  
16     c. Abstract companies, while performing an escrow function.  
17     d. Employees of licensees under this Act.  
18     e. Judicial officers or others acting under court orders.  
19     f. Nonprofit religious, fraternal or cooperative organizations, in-  
20 cluding credit unions, offering to debtors gratuitous debt-management  
21 service.  
22     g. Those persons, associations, or corporations whose principal busi-  
23 ness is the origination of first mortgage loans on real estate for their  
24 own portfolios or for sale to institutional investors.  
25     2. The application for such license shall be in writing, under oath,  
26 and in the form prescribed by the superintendent. The application  
27 shall contain the name of the applicant; date of incorporation, if in-  
28 corporated, and the address where the business is to be conducted; and

29 similar information as to any branch office of the applicant; the name  
30 and resident address of the owner or partners, or, if a corporation,  
31 association or agency, of the directors, trustees, principal officers, and  
32 agents, and such other pertinent information as the superintendent  
33 may require. If the applicant is a partnership, a copy of the certificate  
34 of assumed name or articles of partnership shall be filed with the  
35 application. If the applicant is a corporation, a copy of the articles of  
36 incorporation shall be filed with the application.

37 3. Each application shall be accompanied by a bond to be approved  
38 by the superintendent to the people of the state of Iowa in the penal  
39 sum of ten thousand (10,000) dollars for each office, providing, how-  
40 ever, the superintendent may require such bond to be raised to a maxi-  
41 mum sum of twenty-five thousand (25,000) dollars, and conditioned  
42 that the obligor will not violate any law pertaining to such business  
43 and upon the faithful accounting of all moneys collected upon accounts  
44 entrusted to such person engaged in debt management, and their em-  
45 ployees and agents for the purpose of indemnifying debtors for loss  
46 resulting from conduct prohibited by this Act. The aggregate liability  
47 of the surety to all debtors doing business with the office for which  
48 the bond is filed shall, in no event, exceed the penal sum of such bond.  
49 The surety on the bond shall have the right to cancel such bond upon  
50 giving thirty (30) days notice to the superintendent and thereafter  
51 shall be relieved of liability for any breach of condition occurring after  
52 the effective date of said cancellation. No individual, partnership, un-  
53 incorporated association, agency or corporation shall engage in the  
54 business of debt management until a good and sufficient bond is filed  
55 in accordance with the provisions of this Act.

56 4. Each applicant shall furnish with his application a copy of the  
57 contract he proposes to use between himself and the debtor, which  
58 shall contain a schedule of fees to be charged the debtor for his serv-  
59 ices.

60 5. At the time of making such application the applicant shall pay to  
61 the superintendent the sum of fifty (50) dollars as a license fee for  
62 each of his offices and an investigation fee in the sum of one hundred  
63 (100) dollars. A separate application shall be made for each office  
64 maintained by the applicant.

1 SEC. 3.

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

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

11 3. a. If the superintendent shall find the experience, financial re-  
12 sponsibility, character and general fitness of the applicant is such as  
13 to command the confidence of the public and to warrant belief that the  
14 business will be operated lawfully, honestly, fairly and efficiently with-  
15 in the purposes of this Act, and that the applicant, or if the applicant  
16 is an unincorporated association, agency or partnership, then the in-

17 individuals involved, or if the applicant is a corporation then the offi-  
18 cers and directors thereof, have not been convicted of a felony or a  
19 misdemeanor involving moral turpitude, or have not had a record of  
20 having defaulted in payment of money collected for others, including  
21 the discharge of such debts through bankruptcy proceedings, the  
22 superintendent shall thereupon enter an order granting such applica-  
23 tion and forthwith issue and deliver a license to the applicant. The  
24 superintendent may require as part of the application a credit report  
25 and other information.

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

31 c. No license shall be transferable or assignable.

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

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

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

1 SEC. 6.

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

8 2. Whenever lawful process against any licensee shall be served  
9 upon the superintendent, two (2) copies shall be furnished and he  
10 shall forthwith forward a copy of the process served on him, by cer-  
11 tified mail, postpaid and directed to the licensee. For each service of  
12 process the sum of two (2) dollars shall be collected, which shall be  
13 paid by the plaintiff at the time of such service, the same to be re-  
14 covered by him 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 issued or  
3 applied for under this Act for the following causes:

4 a. Conviction of a felony or of a misdemeanor involving moral tur-  
5 pitude.

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

7 c. For fraud or deceit in procuring the issuance of a license or re-  
8 newal under this Act.

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

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

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

1 SEC. 8.

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

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

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

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

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

38 6. A licensee shall not receive any fee unless he has the consent of  
39 at least fifty (50) percent of the total number of the creditors listed in  
40 the licensee's contract with the debtor, or such a like number of cred-

41 itors have accepted a distribution of payment. The debtor shall be  
42 informed by the licensee of those creditors who have not agreed to the  
43 licensee's handling of the account. No licensee shall accept an account  
44 unless a written and thorough budget analysis has been performed  
45 which indicates that the debtor can meet the requirements determined  
46 by the budget analysis.

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

1 SEC. 9. The fee of the licensee shall be agreed upon in advance and  
2 stated in the contract and provision for settlement in case of cancel-  
3 lation or prepayment shall be clearly stated herein. The fee of the  
4 licensee shall not exceed twelve and one-half (12½) percent of any  
5 payment made by the debtor and distributed to the creditors pursuant  
6 to the contract. In case of total payment of the contract before the  
7 contract period has expired, the licensee shall be entitled only to a fee  
8 of no more than three (3) percent of such final payment.

1 SEC. 10.

2 1. The superintendent may examine the condition and affairs of said  
3 licensee. In connection with any examination, the superintendent may  
4 examine on oath any licensee, and any director, officer, employee, cus-  
5 tomer, creditor or stockholder of a licensee concerning the affairs and  
6 business of the licensee. The superintendent shall ascertain whether  
7 the licensee transacts its business in the manner prescribed by the law  
8 and the rules and regulations issued thereunder. The licensee shall  
9 pay the cost of the examination as determined by the superintendent,  
10 which fee shall not exceed the sum of one hundred (100) dollars per  
11 day of examination. Failure to pay the examination fee within thirty  
12 (30) days of receipt of demand from the superintendent shall auto-  
13 matically suspend the license until the fee is paid.

14 2. In the investigation of alleged violations of this Act, the super-  
15 intendent may compel the attendance of any person or the production  
16 of any books, accounts, records and files used therein, and may ex-  
17 amine under oath all persons in attendance pursuant thereto.

18 The superintendent is authorized to make and promulgate as pre-  
19 scribed by law regulations necessary to carry out the purposes of this  
20 Act.

1 SEC. 11.

2 It shall be unlawful and a violation of this Act for the holder of any  
3 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 the same  
6 debtor's account without first disclosing in writing such fact to both  
7 the debtor and creditor.

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

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

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

20 6. To advertise his services, display, distribute, broadcast or tele-  
21 vise or permit to be displayed, advertised, distributed, broadcast or  
22 televised his services in any manner inconsistent with the law.

23 7. To collect a fee or any other consideration from both the debtor  
24 and any creditor.

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

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

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

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

Approved June 27, 1967.