

May 22, 2013  
2013 Legislative Amendments to the Indiana Code Relating  
to Debt Management Companies (the “Act”)

Effective July 1, 2013 (unless otherwise noted)

**Questions, Answers, and Administrative Interpretations:** This document contains a Q&A relating to new provisions in the Act. In 2010 the Act was substantially revised and many of the provisions of the Uniform Debt Management Act were adopted. In the intervening years, the staff of the department has determined that certain amendments were necessary or desirable to improve the operation of the Act. As always, careful review of the entire Act is recommended. The new provisions of the Act can be found in House Enrolled Act 1081 (“HEA 1081”) beginning at Section 19 (page 35) at the following link: <http://www.in.gov/legislative/bills/2013/PDF/HE/HE1081.1.pdf>.

**1. What changes have been made to the exemption under the Act applicable to attorneys?**

Answer: IC 28-1-29-0.5 has been amended to clarify that the Act does not apply to an attorney authorized to practice in Indiana or to persons under the supervision and control of an attorney authorized to practice in Indiana, to the extent the attorney’s debt management services are incidental to the attorney’s general practice of law.

**2. What is the definition of an Indiana contract debtor?**

Answer: The Act has been amended to define an Indiana contract debtor to mean a contract debtor whose principal residence is located in Indiana (see IC 28-1-29-1(9)).

The amended definition of an Indiana contract debtor has a significant impact on the amendments to the trust account requirements under IC 28-1-29-9. Section 9 was amended to require a licensee to maintain a state specific trust account specifically for Indiana contract debtors. (See Questions 3 and 16)

**3. What changes have been made to the definition of a trust account?**

Answer: IC 28-1-29-1(15) has been amended to require, except as otherwise permitted under Section 9(a) of the Act, that the trust account be specifically for the benefit of the licensee’s Indiana contract debtors and that the account be used to hold money of one or more Indiana contract debtors for disbursement to creditors of the Indiana contract debtors.

#### **4. What is the definition of a lead generator?**

Answer: The Act has been amended to define a lead generator to mean a person that, in the regular course of business, supplies a debt management company with the name of a potential contract debtor; directs an individual to contact or communicate with a debt management company; or otherwise refers a debtor to a debt management company (see IC 28-1-29-1(21)).

#### **5. Are licensees required to include financial statements with their yearly license renewal application?**

Answer: Yes, IC 28-1-29-3(f) has been amended to specifically require a license renewal application to be accompanied by the licensee's most recent audited financial statements covering the licensee's immediately preceding fiscal year, as prepared by an independent certified public accountant. If the licensee's financial statements for the immediately preceding fiscal year are not available at the time of renewal, the licensee has 120 days after the end of the immediately preceding fiscal year to file the financial statements. Audited financial statements will be required with all license renewal applications starting with the renewal applications due August 31, 2013.

Please note the Act has also been amended to require audited financial statements with all new license applications as of July 1, 2013. (See IC 28-1-29-5)

#### **6. Have the bonding requirements changed? (effective July 1, 2014)**

Answer: Yes, IC 28-1-29-6 has been amended to require each application for a license to be accompanied by proof that the applicant has executed a surety bond. The surety bond must:

- be in a form prescribed by the director;
- be in effect during the term of the license issued under the Act;
- remain in effect during the two years after the licensee ceases offering debt management services to individuals in Indiana;
- be payable to the department for the benefit of the state and individuals who reside in Indiana when they agree to receive debt management services from the licensee;
- be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one nationally recognized investment rating service; and
- have payment conditioned upon noncompliance with or violation of the Act or other applicable federal or state laws or regulations by the licensee or its employees or agents.

#### **7. The surety bond is required to be in what amount? (effective July 1, 2014)**

Answer: In the case of an initial surety bond for a new applicant, the surety bond must be in an amount equal to \$50,000. (See IC 28-1-29-6(b) (5))

Beginning with the first renewal of a license, each year that a licensee continues to offer debt management services to individuals in Indiana, the licensee shall file a new or an additional

surety bond in an amount that ensures that the licensee's surety bond is equal to the greater of \$50,000 or the average of the highest daily balance of funds held in trust for Indiana residents for each month during the licensee's most recently concluded fiscal year, not to exceed \$100,000. (See IC 28-1-29-6(d))

**8. Are there any other new provisions concerning the surety bond? (effective July 1, 2014)**

Answer: Yes, IC 28-1-29-6 has been amended to include the following provisions:

- If the principal amount of a surety bond is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than 30 days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.
- If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in an amount as prescribed in IC 28-1-29-6(b)(5).
- Cancellation of a surety bond does not affect any liability incurred or accrued during the period when the surety bond was in effect.
- The director may obtain satisfaction from a surety bond if the director incurs expenses, issues a final order, or recovers a final judgment under the Act.
- Notices required under IC 28-1-29-6 must be in writing and delivered by certified mail, return receipt requested and postage.

**9. When will the new bonding requirements of IC 28-1-29-6 take effect? (effective July 1, 2014)**

Answer: The new bonding requirements will apply to all new license applications as of July 1, 2014. The new bonding requirements and amounts will apply to all license renewal applications starting with the renewal applications due August 31, 2014.

**10. Have there been any additional department notifications added to the Act?**

Answer: Yes, IC 28-1-29-7.5(d) was added to the Act and reads as follows:

Not later than thirty (30) days after a licensee receives notice of any enforcement action initiated against the licensee (or an employee or agent of the licensee) by a federal or state regulatory or law enforcement agency, the licensee shall notify the director in writing of the notice received.

**11. Have there been any changes to the budget analysis requirements?**

Answer: Yes, concerning the monthly living expense figures, which must be reasonable for the particular family size and part of Indiana, if expenditure reductions are part of the planned budget for the debtor, details of the expected savings must be documented in the debtor's file and set forth in the budget provided to the debtor. (See IC 28-1-29-8(g))

**12. In 2010 the Act was amended to extend the maximum term of a debt management plan from 24 to 60 months. Along with extending the term, the Act was amended to require the licensee to perform a thorough budget analysis at 30 months to determine the continued suitability of the debt management plan for the contract debtor. Is a licensee still required to perform a new budget analysis at 30 months?**

Answer: No, the 30 month budget analysis provision of IC 28-1-28-8(h) has been removed from the Act.

**13. What changes have been made to the calculation method of the monthly fees?**

Answer: The calculation method of the monthly fee under IC 28-1-29-8.3(c) was amended. As of July 1, 2013, a licensee may contract for and impose a monthly service fee of the lesser of 15% of the amount the licensee receives from the contract debtor for the applicable month or \$75. However, if the amount calculated is less than \$5 for a particular month, the licensee may charge a monthly service fee of \$5 for that month.

**14. Is a licensee still required to provide a debtor with a notice of right to cancel?**

Answer: No, effective July 1, 2013, the debtor's right to cancel provisions of IC 28-1-29-8.6 have been repealed.

Although a licensee will not be required to provide a notice of right to cancel, IC 28-1-29-8 still requires a debt management agreement to provide the debtor with the right to terminate the agreement at any time without penalty, notwithstanding the close-out fee as permitted under the Act, and requires the licensee to refund all unexpended money.

**15. Have there been any changes in the provisions found under IC 28-1-28-8.8 concerning the debtor's failure to make payments, cancellation of an agreement, or the letter of continuation?**

Answer: Yes, several aspects of IC 28-1-28-8.8 have been amended. Section 8.8 was amended to read as follows:

- (a) If a contract debtor fails to make a payment to a licensee within ninety (90) days after the date a payment is due under an agreement, the agreement may be considered canceled by the licensee unless:
  - 1) one or more creditors included in the contract debtor's plan object to the termination; or
  - 2) subject to subsection (b), the contract debtor files a letter of continuation.
- (b) A contract debtor may file a letter of continuation of an agreement even if the contract debtor did not make a payment within ninety (90) days after a payment was due. All of the following apply to a letter of continuation of an agreement:
  - 1) A contract debtor may file only one letter of continuation with a licensee for each 12 month period the agreement is in effect.
  - 2) A letter of continuation must contain a detailed explanation of the reason or reasons for the missed payment.
  - 3) If an agreement for which a letter of continuation that meets the requirements of this subsection is filed, the agreement remains in effect and subject to cancellation for any future failure to make a payment as described in this section.
  - 4) A contract debtor may not file a letter of continuation with a licensee during the first six months an agreement is in effect.
  - 5) If one or more creditors included in the contract debtor's plan agree to continue the plan based on the explanation provided under subdivision (2), the contract debtor and the licensee shall modify the agreement then in effect between the contract debtor and the licensee to reflect the changes agreed to under the letter of continuation.
- (c) If a licensee or a contract debtor terminates an agreement, the licensee shall immediately return to the contract debtor any money of the contract debtor held in trust for the benefit of the contract debtor.

**16. Are licensees required to maintain a separate trust account specifically for Indiana contract debtors?**

Answer: IC 28-1-29-9 was amended to require all money paid to a licensee by or on behalf of an Indiana contract debtor for distribution to creditors under a plan to be held in trust in a separate account maintained specifically for the benefit of the licensee's Indiana contract debtors. However, as an alternative to maintaining a separate trust account specifically for the benefit of the licensee's Indiana contract debtors, a licensee may submit a request to the director for approval to maintain a trust account that holds both money paid to the licensee by or on behalf of Indiana contract debtors and money paid to the licensee by or on behalf of contract debtors who do not reside in Indiana. The request must include documentation of the licensee's account

reconciliation procedures sufficient to demonstrate to the director that the licensee will be able to comply with the reconciliation requirements set forth in the Act with respect to each Indiana contract debtor whose money is held in the account and to accurately determine the appropriate surety bond level under Section 6(d) of the Act at the time of each renewal of the licensee's license. Upon approval by the director of such a request, the licensee shall maintain the documentation described in IC 28-1-29-9 for review by department examiners during the course of the department's routine examinations.

**17. What must a licensee do if the reconciliation of the trust account reflects a shortage or a surplus?**

Answer: IC 28-1-29-9(e) was amended to require a licensee to reconcile the trust account at least every 30 days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account for all the licensee's Indiana contract debtors whose money is held in the account with the sum of the balances in each of those Indiana contract debtor's individual accounts. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a shortage when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall immediately provide written notice to the department of that fact and of any remedial action taken by the licensee. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a surplus when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall attempt to remedy the surplus and shall retain, for review by department examiners, documentation of the actions taken.

**18. What must a licensee do if a contract debtor terminates an agreement or it becomes apparent that the plan has failed?**

Answer: If a contract debtor terminates an agreement or it becomes reasonably apparent to a licensee that a plan has failed, IC 28-1-29-9(g) was amended and requires, not later than 15 days after the effective date of the termination of the agreement or the date on which it becomes apparent to the licensee that the plan has failed, as applicable, to refund to the contract debtor all money paid by or on behalf of the contract debtor that has not been paid to creditors less the fee that is payable to the licensee under Section 8.3(d) of the Act.

**19. What must a licensee do before adding or replacing any signatory on the trust account?**

Answer: Before adding or replacing any signatory on the trust account, IC 28-1-29-9(i) requires the licensee to ensure that the new signatory is qualified based on a background check consistent with Section 3(c) of the Act and to maintain, for review by department examiners, documentation of the background check conducted.

**20. How often must a licensee send an accounting statement to the debtor?**

Answer: IC 28-1-29-9(j) requires the licensee to render to the contract debtor an accounting statement at least once each month while an agreement between a licensee and a contract debtor is in effect.

**21. What is required to be disclosed on the debtor's monthly accounting statement?**

Answer: IC 28-1-29-9(j) requires the debtor's monthly accounting statement to include the following for the month the accounting statement is prepared:

- The total amount received from the contract debtor.
- The total amount paid to each creditor on behalf of the contract debtor.
- The amount of any charges deducted by the licensee.
- Any amount held in reserve on behalf of the contract debtor.

The debtor's monthly accounting statement must also include a statement that the contract debtor's plan is regulated by the department, along with the department's contact information, including the department's address, Internet web site address, and toll free telephone number.

**22. Why was the lead generator added to the Act?**

Answer: To resolve any doubt whether lead generators are regulated under the Act, the Act was amended to define a "lead generator" and the sections of the Act which proscribes deception were also amended to cover lead generators.

IC 28-1-29-9.5(a) (5) was amended to include lead generators. Section 9.5(a) (5) now states that a licensee may not, directly or indirectly offer, pay, or give a gift or bonus; a premium; a reward; or other compensation to a *lead generator or another* person for referring a prospective customer if the person making the referral has a financial interest in the outcome of debt management services provided to the customer.

In addition, IC 28-1-29-18 was amended to include lead generator and reads as follows:

- a) If a licensee delegates any of the licensee's duties or obligations under an agreement or this chapter to another person, including an independent contractor or a *lead generator*, the licensee is liable for any conduct of the person which, if done by the licensee, would violate the agreement or this chapter.
- b) A *lead generator* or another person that:
  - (1) provides services to or for a licensee; and
  - (2) violates this chapter;

commits a deceptive act that is actionable under IC 24-5-0.5 and subject to the penalties of IC 24-5-0.5.