

June 13, 2011

## 2011 Legislative Amendments to the Indiana Code Relating to Debt Management Companies (the “Act”)

Effective July 1, 2011 (except as otherwise indicated)

**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 year, 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 1528 (“HEA 1528”) beginning at Section 36 (page 91) at the following link:  
<http://www.in.gov/legislative/bills/2011/PDF/HE/HE1528.1.pdf>.

**1. What change has been made to the definition of a debt management company?**

Answer – IC 28-1-29-1(2) has been amended to clarify that a debt management company does not include a person that provides debt settlement services (as defined in IC 24-5-15-2.5).

**2. HEA 1528 consolidates the disclosures which must be given to a prospective contract debtor before entering into a debt management contract. What do those disclosures look like?**

Answer: IC 28-1-29-7.7 provides that before a debtor enters into an agreement with a licensee, the licensee shall, in a written form that is provided to the debtor separately, that contains no other information, and that the debtor may keep whether or not the debtor enters into the agreement, provide the following disclosure in clear and conspicuous type, surrounded by black lines:

**"IMPORTANT INFORMATION FOR YOU TO CONSIDER**  
**(1) Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.**  
**(2) We may receive compensation for our services from your creditors.**  
**(3) Nonpayment of your debts under our program may:**  
**(A) hurt your ability to obtain credit;**  
**(B) lead your creditors to increase finance and other charges;**  
**and**  
**(C) lead your creditors to undertake activity, including lawsuits, to collect the debts.**  
**(4) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.**

\_\_\_\_\_  
**(Name and business address of licensee)".**

**3. What change has been made to the calculation of the monthly fees as a result of the maximum terms for debt management agreements being extended to sixty (60) months?**

Answer – Effective July 1, 2010, the maximum term for a debt management agreement was extended from twenty-four (24) months to sixty (60) months. IC 28-1-29-8(h). Along with extending the term, the Act was amended in 2010 to require the licensee to perform a thorough budget analysis at thirty (30) months to determine the continued suitability of the debt management plan for the contract debtor. Because the 2010 changes allow the licensee to revise the debt management agreement using the figures obtained from the 30-month budget analysis, the General Assembly in 2011 further amended IC 28-1-29-8(h) to clarify two aspects of the monthly fees:

During the term of the original debt management plan agreement:

- (1) The amount of monthly fee may not *increase* over the amount originally calculated under IC 29-1-29-8.3(c)(2) at the beginning of the term of the agreement; **and**
- (2) The amount of the monthly fee must *decrease* from the amount of the monthly fee as originally calculated under IC 29-1-29-8.3(c)(2) at the beginning of the term of the agreement if applying the percentage specified in IC 29-1-29-8.3(c)(2)(A) to the revised monthly amount of indebtedness to be paid through the licensee (as of the date of the review under this subsection) would result in an amount that is less than seventy-five dollars (\$75) in any month.

**4. What changes made to the telemarketing sales rules of the Federal Trade Commission affected fees charged by debt management companies?**

Answer – In October, 2010, the Federal Trade Commission (“FTC”) amended its Telemarketing Sales Rules (16 CFR Part 310)(“Rules”), bringing the business of debt-management services within the scope of the Rules. The FTC implemented a ban on the payment of fees in advance of rendering services to the debtor. Specifically, the Rules have been revised to prohibit the collection of any fees before the debtor and at least one creditor have agreed to a modification of a debt and the debtor has made a payment toward satisfying the modified terms of the debt.

In order to comply with the changes in the Rules adopted by the FTC, IC 28-1-29-8.3(b) and (c) have been amended as follows:

- (b) A licensee may not impose charges or receive payment for debt management services until:
  - (1) the licensee and the debtor have agreed upon a plan and have signed an agreement that complies with sections 8, 8.6, and 9.5 of this chapter; and
  - (2) at least one (1) payment has been made to a creditor under the plan.

All creditors must be notified of the debtor's and licensee's relationship.

- (c) If a debtor assents to a plan, the licensee may charge the following:
  - (1) A set up fee of not more than fifty dollars (\$50) for consultation, obtaining a credit report, and setting up an account.  
Acceptance of a plan payment constitutes agreement by the creditor to the plan. A set up fee under this subdivision may not be collected until the debtor, or the licensee on behalf of the debtor, has made at least one (1) payment to a creditor under the plan.

**5. What changes have been made to the requirements imposed upon the licensee relating to money held on behalf of contract debtors?**

Answer - IC 28-1-29-9 (b) (3) now provides that after the initial receipt of funds, remittances shall be made not later than thirty (30) days (instead of the fifteen (15) days previously stated in the Act) after receipt of funds, less fees and costs, unless the reasonable payment of one (1) or more of the contract debtor's obligations requires that the funds be held for a longer period to accumulate a sum certain.

**6. What changes have been made to the provisions requiring embezzlement or other unlawful appropriation of money held in trust be reported to the department?**

Answer – In addition to obliging a licensee to report to the department any reasonable suspicion of embezzlement or other unlawful appropriation of money held in trust, the 2011 General Assembly amended IC 28-1-29-9 (f) to impose the obligation to report embezzlement or other unlawful appropriation of money held in trust on the *licensee's employees*. [Emphasis added.]

**7. What revisions did the 2011 General Assembly make relating to “fair share fees”?**

Answer - IC 28-1-29-9 (i) was amended to provide that as of July 1, 2011, licensees are no longer required to include the amount of any fair share fees it collects in the required periodic statements provided to the debtor.

**8. Under what circumstance can a license be assigned or transferred?**

Answer - IC 28-1-29-3(f) has been amended to provide a debt management company license is not assignable or transferable except in a transaction that constitutes a change of control under IC 28-1-29-3.1. Under IC 28-1-29-3.1(b), an organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control.

**9. What constitutes “control” under IC 28-1-29-3.1?**

Answer - IC 28-1-29-3.1(a) provides that "control" means possession of the power directly or indirectly to:

- (1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or
- (2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.