



February 19, 2019

HOUSE BILL No. 1137

DIGEST OF HB 1137 (Updated February 19, 2019 2:26 pm - DI 101)

Citations Affected: IC 24-5; IC 28-1.

Synopsis: Credit services organizations. Amends the definition of "credit services organization" for purposes of the Indiana statute governing credit services organizations to more closely align the definition with the definition of "credit repair organization" set forth in the federal Credit Repair Organizations Act. Makes conforming amendments by: (1) amending the definition of "buyer" in the Indiana statute; (2) repealing the definition of "debt settlement services" from the statute; and (3) amending a definitions section in the statute governing debt management companies. Provides that it is a deceptive act for a credit services organization to fail to disclose the credit service organization's contact information on all communications to consumers, data furnishers, creditors, and credit reporting agencies. Specifies that a person that receives a communication from a credit services organization that does not include the credit services organization's contact information may bring a cause of action to recover damages under the statute.

Effective: July 1, 2019.

Burton

January 7, 2019, read first time and referred to Committee on Financial Institutions.
February 19, 2019, amended, reported — Do Pass.

HB 1137—LS 6746/DI 101



February 19, 2019

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1137

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5-15-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. As used in this
3 chapter, "buyer" means an individual **consumer** who is solicited to
4 purchase or who purchases the services of a credit services
5 organization.
- 6 SECTION 2. IC 24-5-15-2, AS AMENDED BY P.L.114-2010,
7 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2019]: Sec. 2. (a) As used in this chapter, "credit services
9 organization" means a **any** person that ~~with respect to the extension of~~
10 ~~credit by another person~~, sells, provides, **or** performs (or represents that
11 the person can or will sell, provide, or perform) **any service**, in return
12 for the payment of money or other valuable consideration, ~~any of the~~
13 ~~following services: for the express or implied purpose of:~~
- 14 (1) improving a ~~buyer's~~ **any consumer's** credit record, credit
15 history, or credit rating; **or**
16 (2) ~~Obtaining an extension of credit for a buyer.~~
17 (3) ~~Obtaining a delay or forbearance of a buyer's obligation under~~

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- 1 a mortgage.
- 2 ~~(4)~~ Obtaining a lower interest rate for:
- 3 (A) a consumer loan; or
- 4 (B) a residential mortgage loan;
- 5 to which the buyer is a debtor or a prospective debtor.
- 6 ~~(5)~~ Providing debt settlement services on behalf of a buyer.
- 7 ~~(6)~~ **(2)** providing advice or assistance to a buyer **any consumer**
- 8 **concerning the services any activity or service** described in
- 9 **subdivisions subdivision (1) through (5).**
- 10 (b) The term "credit services organization" does not include any of
- 11 the following:
- 12 ~~(1)~~ A person authorized to make loans or extensions of credit
- 13 under state or federal laws that is subject to regulation and
- 14 supervision under state or federal laws; or a lender approved by
- 15 the United States Secretary of Housing and Urban Development
- 16 for participation in a mortgage insurance program under the
- 17 federal National Housing Act (12 U.S.C. 1701 et seq.);
- 18 ~~(2)~~ A bank or savings association or a subsidiary of a bank or
- 19 savings association that has deposits or accounts that are eligible
- 20 for insurance by the Federal Deposit Insurance Corporation;
- 21 ~~(3)~~ A credit union doing business in Indiana;
- 22 ~~(4)~~ **(1)** Any nonprofit organization exempt from taxation under
- 23 Section 501(c)(3) of the Internal Revenue Code **(26 U.S.C.**
- 24 **501(c)(3)).**
- 25 ~~(5)~~ **(2)** A person licensed as a real estate broker under IC 25-34.1
- 26 if the person is acting within the course and scope of the person's
- 27 license.
- 28 ~~(6)~~ A person admitted to the practice of law in Indiana if the
- 29 person is acting within the course and scope of the person's
- 30 practice as an attorney.
- 31 ~~(7)~~ **(3)** A broker-dealer registered with the Securities and
- 32 Exchange Commission or the Commodity Futures Trading
- 33 Commission if the broker-dealer is acting within the course and
- 34 scope of the broker-dealer's regulation.
- 35 ~~(8)~~ **(4)** A consumer reporting agency (as defined in the Federal
- 36 Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).
- 37 ~~(9)~~ **(5)** A loan servicer acting on behalf of the holder of:
- 38 (A) a consumer loan; or
- 39 (B) a residential mortgage loan.
- 40 ~~(10)~~ A debt management company (as defined in
- 41 IC 28-1-29-1(2)).
- 42 **(6) Any creditor (as defined in Section 103 of the federal**



1 **Truth in Lending Act (15 U.S.C. 1602)), with respect to any**
 2 **consumer, to the extent the creditor is assisting the consumer**
 3 **to restructure any debt owed by the consumer to the creditor.**
 4 **(7) Any depository institution (as defined in Section 3 of the**
 5 **Federal Deposit Insurance Act (12 U.S.C. 1813)) or any**
 6 **federal or state credit union (as those terms are defined in**
 7 **Section 101 of the Federal Credit Union Act (12 U.S.C. 1752)),**
 8 **or any affiliate or subsidiary of a depository institution or of**
 9 **a federal or state credit union.**

10 SECTION 3. IC 24-5-15-2.5 IS REPEALED [EFFECTIVE JULY
 11 1, 2019]. Sec. 2.5: As used in this chapter, "debt settlement services"
 12 means any of the following services that a person performs; offers to
 13 perform; or represents; either directly or by implication; that the person
 14 will perform with respect to a debt between a buyer and one (1) or
 15 more unsecured creditors or debt collectors:

16 (1) A renegotiation of the debt.

17 (2) A settlement of the debt.

18 (3) An alteration of the terms of payment or other terms of the
 19 debt, including a reduction in the balance, interest rate, or fees
 20 owed by the buyer to the creditor or debt collector.

21 SECTION 4. IC 24-5-15-5, AS AMENDED BY P.L.171-2006,
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2019]: Sec. 5. The following are deceptive acts:

24 (1) To charge or receive money or other valuable consideration
 25 before the complete performance of services that a credit services
 26 organization has agreed to perform for or on behalf of a
 27 consumer, unless the credit services organization has under
 28 section 8 of this chapter:

29 (A) obtained a surety bond issued by a surety company
 30 admitted to do business in Indiana; or

31 (B) established an irrevocable letter of credit.

32 (2) To charge or receive money or other valuable consideration to
 33 refer a buyer to a retail seller that will or may extend credit to the
 34 buyer if the extension of credit is made upon substantially the
 35 same terms as those available to the general public.

36 (3) To make or to advise a buyer to make a statement with respect
 37 to the buyer's creditworthiness, credit standing, or credit capacity
 38 that is:

39 (A) false or misleading; or

40 (B) that should be known by the exercise of reasonable care to
 41 be false or misleading;

42 to a consumer reporting agency or to a person that has extended



1 credit to the buyer or to whom the buyer is applying for an
2 extension of credit.

3 (4) To make or use a false or misleading representation in an offer
4 to sell or a sale of the services of a credit services organization,
5 including:

6 (A) guaranteeing to "erase bad credit" or using words to that
7 effect unless the representation clearly discloses that this can
8 be done only if a person's credit history is inaccurate or
9 obsolete;

10 (B) guaranteeing an extension of credit regardless of the
11 buyer's previous credit history unless the representation clearly
12 discloses the eligibility requirements for obtaining the
13 extension of credit; or

14 (C) requiring a buyer to waive a right protected by a state or
15 federal law.

16 (5) To take a power of attorney from a buyer for any purpose
17 other than inspecting documents as provided by law.

18 **(6) To fail to disclose the contact information of the credit**
19 **services organization on all communications from the credit**
20 **services organization to consumers, data furnishers, creditors,**
21 **and credit reporting agencies, so that respondents can attempt**
22 **to resolve disputes and inquiries.**

23 SECTION 5. IC 24-5-15-9 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. A person that is
25 damaged by a credit services organization's violation of this chapter,
26 **including a person that receives a communication from a credit**
27 **services organization that does not include the credit service's**
28 **contact information, as described in section 5(6) of this chapter,**
29 may:

30 (1) bring an action to recover the greater of two (2) times the
31 amount of actual damages or one thousand dollars (\$1,000) and
32 attorney's fees; and

33 (2) bring an action against the bond or irrevocable letter of credit
34 required under section 8 of this chapter to recover an amount
35 equal to the person's actual damages.

36 SECTION 6. IC 28-1-29-1, AS AMENDED BY P.L.216-2013,
37 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2019]: Sec. 1. The following words, when used in this chapter,
39 shall have the meaning ascribed to them unless the context clearly
40 requires a different meaning:

41 (1) "Person" includes individuals, sole proprietorships,
42 partnerships, limited liability companies, trusts, joint ventures,



1 corporations, unincorporated organizations, other entities, and
2 their affiliates, however organized.

3 (2) "Debt management company" is any person doing business as
4 a budget counseling, credit counseling, debt management, or debt
5 pooling service or holding the person out, by words of similar
6 import, as providing services to debtors in the management of
7 their debts, and having a written agreement with the debtor to
8 disburse money or anything of value. The term includes the
9 following:

10 (A) A person that simply holds any money, funds, check,
11 personal check, money order, personal money order, draft, or
12 any other instrument for the transmission of money.

13 (B) A person or an entity known as a "budget service
14 company".

15 The term does not include a person that provides debt settlement
16 services. ~~(as defined in IC 24-5-15-2.5):~~

17 (3) "License" means a license issued under the provisions of this
18 chapter.

19 (4) "Licensee" means any person to whom a license has been
20 issued pursuant to the provisions of this chapter.

21 (5) "Contract debtor" means a debtor who has entered into a
22 written agreement with a licensee.

23 (6) "Debt" means an obligation arising out of personal, family, or
24 household use.

25 (7) "Debtor" means an individual whose principal debts and
26 obligations arise out of personal, family, or household use and not
27 out of business purpose transactions.

28 (8) "Department" means the members of the department of
29 financial institutions.

30 (9) "Indiana contract debtor" means a contract debtor whose
31 principal residence is located in Indiana.

32 (10) "Affiliate" means a person that, directly or indirectly, through
33 one (1) or more intermediaries:

34 (A) controls;

35 (B) is controlled by; or

36 (C) is under common control with;

37 a person subject to this chapter.

38 (11) "Fee" means the total amount of money charged to a contract
39 debtor by a debt management company for the administration of
40 a debt management plan.

41 (12) "Plan" means a written debt repayment program in which a
42 debt management company furnishes debt management services



- 1 to a contract debtor and that includes a schedule of payments to
 2 be made by or on behalf of the contract debtor and used to pay
 3 debts owed by the contract debtor.
- 4 (13) "Principal amount of the debt" means the total amount of a
 5 debt at the time the contract debtor enters into an agreement.
- 6 (14) "Agreement" means an agreement between a debt
 7 management company and a debtor for the performance of debt
 8 management services.
- 9 (15) "Trust account" means an account held by a licensee that is:
 10 (A) established in a bank insured by the Federal Deposit
 11 Insurance Corporation;
 12 (B) separate from other accounts held by the licensee;
 13 (C) except as otherwise permitted under section 9(a) of this
 14 chapter, maintained specifically for the benefit of the licensee's
 15 Indiana contract debtors;
 16 (D) designated as a trust account indicating that the money in
 17 the trust account is not the money of the licensee; and
 18 (E) used to hold money of one (1) or more Indiana contract
 19 debtors for disbursement to creditors of the Indiana contract
 20 debtors.
- 21 (16) "Month" means a calendar month.
- 22 (17) "Day" means a calendar day.
- 23 (18) "Concessions" means assent to repayment of a debt on terms
 24 more favorable to a contract debtor than the terms of the contract
 25 between that debtor and a creditor.
- 26 (19) "Good faith" means honesty in fact and the observance of
 27 reasonable standards of fair dealing.
- 28 (20) "Control of a related interest" refers to a situation in which
 29 a person, directly or indirectly, or through or in concert with one
 30 (1) or more other persons, possesses any of the following:
 31 (A) The ownership of, control of, or power to vote at least
 32 twenty-five percent (25%) of the voting securities of a related
 33 interest.
 34 (B) The control in any manner of the election of a majority of
 35 the directors of a related interest.
 36 (C) The power to exercise a controlling influence over the
 37 management or policies of a related interest. For purposes of
 38 this clause, a person is presumed to have control, including the
 39 power to exercise a controlling influence over the management
 40 or policies of the related interest, if the person:
 41 (i) is an executive officer or a director of the related interest
 42 and directly or indirectly owns, controls, or has the power to



- 1 vote more than ten percent (10%) of any class of voting
2 securities of the related interest; or
3 (ii) directly or indirectly owns, controls, or has the power to
4 vote more than ten percent (10%) of any class of voting
5 securities of the related interest and no other person owns,
6 controls, or has the power to vote a greater percentage of
7 that class of voting securities.
- 8 (21) "Lead generator" means a person that, in the regular course
9 of business:
- 10 (A) supplies a debt management company with the name of a
11 potential contract debtor;
12 (B) directs an individual to contact or communicate with a
13 debt management company; or
14 (C) otherwise refers a debtor to a debt management company.
- 15 **(22) "Debt settlement services" means any of the following**
16 **services that a person performs, offers to perform, or**
17 **represents, either directly or by implication, that the person**
18 **will perform with respect to a debt between a debtor and one**
19 **(1) or more unsecured creditors or debt collectors:**
- 20 (A) A renegotiation of the debt.
21 (B) A settlement of the debt.
22 (C) An alteration of the terms of payment or other terms
23 of the debt, including a reduction in the balance, interest
24 rate, or fees owed by the debtor to the creditor or debt
25 collector.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1137, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 31, after "(7)" insert "(3)".

Page 2, line 31, reset in roman "A broker-dealer registered with the Securities and Exchange".

Page 2, reset in roman lines 32 through 34.

Page 2, line 35, delete "(3)" and insert "(4)".

Page 2, line 37, delete "(4)" and insert "(5)".

Page 2, line 42, delete "(5)" and insert "(6)".

Page 3, line 4, delete "(6)" and insert "(7)".

Page 3, delete lines 10 through 42, begin a new paragraph and insert:

"SECTION 3. IC 24-5-15-2.5 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 2.5: As used in this chapter, "debt settlement services" means any of the following services that a person performs, offers to perform, or represents, either directly or by implication, that the person will perform with respect to a debt between a buyer and one (1) or more unsecured creditors or debt collectors:

(1) A renegotiation of the debt.

(2) A settlement of the debt.

(3) An alteration of the terms of payment or other terms of the debt, including a reduction in the balance, interest rate, or fees owed by the buyer to the creditor or debt collector.

SECTION 4. IC 24-5-15-5, AS AMENDED BY P.L.171-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. The following are deceptive acts:

(1) To charge or receive money or other valuable consideration before the complete performance of services that a credit services organization has agreed to perform for or on behalf of a consumer, unless the credit services organization has under section 8 of this chapter:

(A) obtained a surety bond issued by a surety company admitted to do business in Indiana; or

(B) established an irrevocable letter of credit.

(2) To charge or receive money or other valuable consideration to refer a buyer to a retail seller that will or may extend credit to the buyer if the extension of credit is made upon substantially the same terms as those available to the general public.



(3) To make or to advise a buyer to make a statement with respect to the buyer's creditworthiness, credit standing, or credit capacity that is:

- (A) false or misleading; or
- (B) that should be known by the exercise of reasonable care to be false or misleading;

to a consumer reporting agency or to a person that has extended credit to the buyer or to whom the buyer is applying for an extension of credit.

(4) To make or use a false or misleading representation in an offer to sell or a sale of the services of a credit services organization, including:

- (A) guaranteeing to "erase bad credit" or using words to that effect unless the representation clearly discloses that this can be done only if a person's credit history is inaccurate or obsolete;
- (B) guaranteeing an extension of credit regardless of the buyer's previous credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension of credit; or
- (C) requiring a buyer to waive a right protected by a state or federal law.

(5) To take a power of attorney from a buyer for any purpose other than inspecting documents as provided by law.

(6) To fail to disclose the contact information of the credit services organization on all communications from the credit services organization to consumers, data furnishers, creditors, and credit reporting agencies, so that respondents can attempt to resolve disputes and inquiries.

SECTION 5. IC 24-5-15-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. A person that is damaged by a credit services organization's violation of this chapter, **including a person that receives a communication from a credit services organization that does not include the credit service's contact information, as described in section 5(6) of this chapter,** may:

- (1) bring an action to recover the greater of two (2) times the amount of actual damages or one thousand dollars (\$1,000) and attorney's fees; and
- (2) bring an action against the bond or irrevocable letter of credit required under section 8 of this chapter to recover an amount equal to the person's actual damages.



SECTION 6. IC 28-1-29-1, AS AMENDED BY P.L.216-2013, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. The following words, when used in this chapter, shall have the meaning ascribed to them unless the context clearly requires a different meaning:

(1) "Person" includes individuals, sole proprietorships, partnerships, limited liability companies, trusts, joint ventures, corporations, unincorporated organizations, other entities, and their affiliates, however organized.

(2) "Debt management company" is any person doing business as a budget counseling, credit counseling, debt management, or debt pooling service or holding the person out, by words of similar import, as providing services to debtors in the management of their debts, and having a written agreement with the debtor to disburse money or anything of value. The term includes the following:

(A) A person that simply holds any money, funds, check, personal check, money order, personal money order, draft, or any other instrument for the transmission of money.

(B) A person or an entity known as a "budget service company".

The term does not include a person that provides debt settlement services. ~~(as defined in IC 24-5-15-2.5).~~

(3) "License" means a license issued under the provisions of this chapter.

(4) "Licensee" means any person to whom a license has been issued pursuant to the provisions of this chapter.

(5) "Contract debtor" means a debtor who has entered into a written agreement with a licensee.

(6) "Debt" means an obligation arising out of personal, family, or household use.

(7) "Debtor" means an individual whose principal debts and obligations arise out of personal, family, or household use and not out of business purpose transactions.

(8) "Department" means the members of the department of financial institutions.

(9) "Indiana contract debtor" means a contract debtor whose principal residence is located in Indiana.

(10) "Affiliate" means a person that, directly or indirectly, through one (1) or more intermediaries:

(A) controls;

(B) is controlled by; or



- (C) is under common control with;
a person subject to this chapter.
- (11) "Fee" means the total amount of money charged to a contract debtor by a debt management company for the administration of a debt management plan.
- (12) "Plan" means a written debt repayment program in which a debt management company furnishes debt management services to a contract debtor and that includes a schedule of payments to be made by or on behalf of the contract debtor and used to pay debts owed by the contract debtor.
- (13) "Principal amount of the debt" means the total amount of a debt at the time the contract debtor enters into an agreement.
- (14) "Agreement" means an agreement between a debt management company and a debtor for the performance of debt management services.
- (15) "Trust account" means an account held by a licensee that is:
- (A) established in a bank insured by the Federal Deposit Insurance Corporation;
 - (B) separate from other accounts held by the licensee;
 - (C) except as otherwise permitted under section 9(a) of this chapter, maintained specifically for the benefit of the licensee's Indiana contract debtors;
 - (D) designated as a trust account indicating that the money in the trust account is not the money of the licensee; and
 - (E) used to hold money of one (1) or more Indiana contract debtors for disbursement to creditors of the Indiana contract debtors.
- (16) "Month" means a calendar month.
- (17) "Day" means a calendar day.
- (18) "Concessions" means assent to repayment of a debt on terms more favorable to a contract debtor than the terms of the contract between that debtor and a creditor.
- (19) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.
- (20) "Control of a related interest" refers to a situation in which a person, directly or indirectly, or through or in concert with one (1) or more other persons, possesses any of the following:
- (A) The ownership of, control of, or power to vote at least twenty-five percent (25%) of the voting securities of a related interest.
 - (B) The control in any manner of the election of a majority of the directors of a related interest.



(C) The power to exercise a controlling influence over the management or policies of a related interest. For purposes of this clause, a person is presumed to have control, including the power to exercise a controlling influence over the management or policies of the related interest, if the person:

- (i) is an executive officer or a director of the related interest and directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest; or
- (ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(21) "Lead generator" means a person that, in the regular course of business:

- (A) supplies a debt management company with the name of a potential contract debtor;
- (B) directs an individual to contact or communicate with a debt management company; or
- (C) otherwise refers a debtor to a debt management company.

(22) "Debt settlement services" means any of the following services that a person performs, offers to perform, or represents, either directly or by implication, that the person will perform with respect to a debt between a debtor and one (1) or more unsecured creditors or debt collectors:

- (A) A renegotiation of the debt.**
- (B) A settlement of the debt.**
- (C) An alteration of the terms of payment or other terms of the debt, including a reduction in the balance, interest rate, or fees owed by the debtor to the creditor or debt collector."**

Delete page 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1137 as introduced.)

BURTON

Committee Vote: yeas 5, nays 4.

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