

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES INSURANCE AND
FINANCIAL SERVICES

~~BUREAU OF CORPORATIONS, SECURITIES AND LAND DEVELOPMENT~~

~~MOBILE HOME AND LAND RESOURCES DIVISION~~

DEBT MANAGEMENT

Filed with the secretary of state on

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of ~~commerce~~ **insurance and financial services** by section 22 of the **debt management act, 1975 PA 148, MCL** of Act No. 148 of the Public Acts of 1975, ~~being S451.432 of the Michigan Compiled Laws~~)

R 451.1229, R 451.1231, R 451.1232, and R 451.1244 of the Michigan Administrative Code are rescinded, and R 451.1221, R 451.1222, R 451.1223, R 451.1225, R 451.1226, R 451.1227, R 451.1228, R 451.1233, R 451.1234, R 451.1235, R 451.1236, R 451.1237, R 451.1238, R 451.1239, R 451.1240, R 451.1241, R 451.1242, R 451.1243, and R 451.1245 are amended, as follows:

R 451.1221 Definitions.

Rule 1. As used in these rules:

(a) "Act" means **the debt management act, 1975 PA 148, MCL 451.411 to 451.437**. ~~Act No. 148 of the Public Acts of 1975, being S451.411 et seq. of the Michigan Compiled Laws, known as the debt management act.~~

(b) "Certified counselor" means that term as defined in MCL 451.412(b).

(c) "Department" means the department of insurance and financial services.

~~(b)~~ "Firm" means a debt management licensee or exempt person.

~~(e)~~ "Monthly amortizable amount" means the payment made in equal monthly amounts, extinguishing the fees and charges stated in the contract, less the ~~\$25.00~~ **\$50.00** initial fee. No more than 1 monthly fee may be taken in any calendar month.

~~(d) "Qualified person" means a person who has successfully completed the examination required by section 6(3) of the act.~~

~~(e)~~ "Rate" means the percentage of a firm's fees or charges in relation to the debt to be liquidated during the life of the contract.

~~(f) "Trainee" means a person who has not successfully completed the qualification examination provided by section 6(3) of the act.~~

March 27, 2019

R 451.1222 Application for license or exemption order; renewal application.

Rule 2. (1) The application for license or exemption order shall be on the form prescribed by the ~~bureau~~ **department**.

(2) The application shall be accompanied by the financial statements of the applicant for its last fiscal year and as of a date not more than 45 days prior to the filing.

(3) Financial statements, for the purposes of this rule, shall include a balance sheet and income statement prepared in accordance with generally accepted accounting principles.

(4) Payment of fees shall be made by a check payable to the "State of Michigan."

(5) The original application shall be accompanied by a business history form, ~~3 affidavits of character, and a fingerprint card~~ for each officer and director of an association or corporation, for each partner if a partnership, **for each member if a limited liability company**, and for each proprietor, counselor, and officer manager. A credit report on the firm shall also be submitted.

(6) A firm that has operated without interruption during the past year under a license or exemption order pursuant to section 4(2) of the act may file a renewal application on the form prescribed by the ~~bureau~~ **department**.

(7) The application shall request a license or exemption order for each location from which the business of debt management is conducted.

(8) In the event of a change of business form, a new application shall be filed prior to the effective date of the change. The application shall include payment of a new fee as on renewal application.

(9) The ~~bureau~~ **department** shall not accept for filing an application with a name that would cause confusion with the name of an existing firm or governmental agency or cause confusion about services to be received from a licensee.

R 451.1223 Amended application.

Rule 3. (1) A proposed change of name of a firm shall be filed with the ~~bureau~~ **department** for approval prior to effecting the change. The ~~bureau~~ **department** shall not accept a name change that would be confusing with the name of an existing firm or governmental agency, or cause confusion about services to be received from a licensee. An amended application shall be filed contemporaneously with the name change.

(2) A firm shall file an amended application with the ~~bureau~~ **department** within 5 days of the occurrence of any of the following:

(a) If a firm is a corporation, a change in its officers or directors.

(b) If a firm is a partnership, a change in its ~~members~~ **partners**.

(c) If a firm is a sole proprietorship, a change in ownership.

(d) If a firm is limited liability company, a change in its members.

~~(de)~~ Conviction of an officer, director, partner, or sole proprietor of the firm of a felony or misdemeanor involving moral turpitude.

~~(ef)~~ Insolvency, filing in bankruptcy, receivership, or assignment for the benefit of creditors of the licensee.

(3) If a firm transfers its debt management business to another office at a different address, its license shall be deemed to apply to its new office only if the following requirements are met:

(a) The ~~bureau~~ **department** amends its application to reflect the effective date of the transfer.

(b) The firm ceases to conduct debt management business at the old address on the date indicated, and has notified its clients of the change of address not less than 5 days prior to the change.

(c) The surety company has notified the ~~bureau~~ **department** that the bond furnished pursuant to the act shall apply in full force and effect to the new office after the date of the transfer.

(d) The firm has submitted its license certificate or order to the ~~bureau~~ **department** for reissuance to cover the new office, and the license or order has been so reissued.

(4) The firm shall promptly file an amended application upon the occurrence of any material event affecting the accuracy of the information contained in the current application.

(5) When the partnership agreement of a firm provides for the substitution, withdrawal, or addition of ~~members~~ **partners** of the partnership without winding up the partnership business, it shall not be necessary to obtain a new license or exemption order because of substitutions, withdrawals, or additions if evidence satisfactory to the ~~bureau~~ **department** is furnished as to the following:

(a) That the surety bond furnished pursuant to the act shall continue in full force and effect.

(b) The financial responsibility, experience, character, and general fitness of new ~~members~~ **partners**. The licensee shall furnish an executed business history form, ~~3 affidavits of character, and a fingerprint card~~ for each new partner.

(c) That the withdrawal or substitution of new partners will not render the partnership insolvent.

(d) That at least 2/3 in number and interest of those who were partners when the license was applied for and issued are continuing as ~~members~~ **partners** of the partnership, or that 1 of the original partners remains in a 2-person partnership and a new partner is added simultaneously with the departure of original partner.

(6) A change in the ownership of a sole proprietorship firm shall operate to terminate the license and require the filing of a new application and the issuance of a new license before continuance of the debt management business.

(7) If the firm seeks to open an additional branch office, it shall amend its current application to reflect the address of the additional office and the name of the office manager. The licensee or exempted person shall file the appropriate forms with the ~~bureau~~ **department** and pay the statutory fee.

R 451.1225 ~~Bond; cash or securities in lieu of bond.~~ Notice of termination of bond.

~~Rule 5. (1) Bond coverage in the penal amount of \$5,000.00 for each office shall be filed with an original or a renewal application. An extension of an existing bond shall not be acceptable.~~

(21) If a surety company gives 30 days' notice of termination of a bond, the firm, if continuing in the debt management business, shall furnish a satisfactory new bond before the expiration of the 30 days. Failure to maintain a bond shall be cause for issuance of a summary suspension order.

~~-(3) In lieu of bond, the bureau may approve for a firm which maintains net worth of at least \$10,000.00 for each licensed or exempted office the following:~~

~~-(a) A deposit of cash in a certificate of deposit or savings account, which may be withdrawn only upon order of the bureau.~~

~~-(b) A deposit in escrow at a Michigan-based bank or savings and loan association of securities which have sufficient trading volume to assure immediate liquidity, which securities may only be removed from escrow upon order of the bureau and over which the bureau is given a stock power. The bureau shall assess a discount of 25% of the market value of the securities in determining the appropriate amount of deposit.~~

~~-(c) The amount of deposit of cash or securities in lieu of bond and the duration of the deposit shall be determined by, but not be limited to, the following:~~

- ~~-(i) The financial condition of the applicant.~~
- ~~-(ii) The liabilities of the applicant.~~
- ~~-(iii) The number of debtors assisted by the applicant.~~
- ~~-(iv) The current asset position of the applicant.~~
- ~~-(v) The existence of appropriate fidelity bond.~~
- ~~-(vi) The number of employees of the firm.~~

R 451.1226 Debt management contract; budget analysis format; creditors agreement form.

Rule 6. (1) The applicant shall file a copy of its proposed debt management contract for debtors at the time of filing its application for review and acceptance by the ~~bureau~~ **department**. ~~The contract or revised contract shall not be used without bureau review and letter of acceptance.~~

(2) The applicant shall file a copy of its proposed budget analysis format with the ~~bureau~~ **department**. ~~This format, as accepted by the bureau, shall be completed for each debtor prior to entry into any contract with the debtor. The format shall contain not less than the following information:~~

- ~~-(a) Name and address of the debtor.~~
- ~~-(b) Marital status and number of dependents.~~
- ~~-(c) All wages, salary, and other income, as well as the source thereof, which shall include, but not be limited to, aid to dependent children, food stamps, welfare, or child support.~~
- ~~-(d) Number of exemptions claimed for federal income tax withholding.~~
- ~~-(e) Payroll deductions and net take-home pay.~~
- ~~-(f) If the debtor is the owner of a home, any encumbrance, tax not included in monthly payment, and monthly payment on the home; if a tenant, monthly rent.~~
- ~~-(g) Amount and kind of other fixed periodic payments.~~
- ~~-(h) Complete list of living expenses for food, clothing, utilities, auto, insurance, and other expenses.~~
- ~~-(i) List of creditors, showing accounts to be adjusted and accounts not to be adjusted.~~
- ~~-(j) Information on any existing garnishments and judgments.~~
- ~~-(k) Periodic amount available for payment toward the plan.~~

(32) A true copy of the budget analysis shall be provided to each debtor before a contract is signed.

(43) The applicant shall file a copy of its proposed creditor's agreement form with the **bureau department**. This form shall be accepted as to form and content by the bureau prior to use.

R 451.1227 Books and records.

Rule 7. The firm shall make and keep current the following books and records relating to its business:

(a) Journals or other records of original entry containing an itemized daily record of all payments and receipts for, or on behalf of, debtors of the firm, all receipts and disbursements of cash, and all other debits and credits.

(b) Ledgers or other records reflecting all assets, liabilities, income, expense, and capital accounts.

(c) Ledger accounts or other records, itemizing separately as to each debtor all receipts from the debtor, payments to the firm, and disbursements on behalf of the debtor, the creditor's representative contacted, the response obtained or whether there has been a response within 14 days after the mailing of the creditor consent form, any revised or special conditions or arrangements conditioning the consent, and the date at which the required consents were secured. ~~The record shall also contain a certification by an officer, partner, sole proprietor, or office manager that consents required by section 13(1) of the act have been obtained, the date that the requirement was satisfied, and an identification of the creditors constituting the acceptance base.~~

(d) A complaint file containing copies of all written complaints made to the firm by debtors.

(e) Personnel files for all employees, listing name, current home address, home phone number, social security number, and a record of all compensation.

~~R 451.1228 Financial reports; audit.~~

~~Rule 8. (1) Each firm shall submit a detailed balance sheet and income statement within 4 months after the end of its fiscal year. The bureau may modify or waive the income statement requirement. These statements, if not pursuant to audit, shall be certified as to correctness by an officer, partner, or proprietor of the firm. If the firm is a sole proprietorship a personal balance sheet of the proprietor shall be submitted with, and as of the same date as, the balance sheet of the firm.~~

(2) The **bureau department** may at any time require the filing of special financial or other operational reports if it finds that such filing is in the public interest and for the protection of debtors.

(3) If a firm services more than 100 debtors, an audit shall be required of the firm annually. The audit shall be done pursuant to an approved audit plan submitted by an independent accountant and accepted by the **bureau department** in writing.

R 451.1229 ~~Incomplete applications.~~ **Rescinded.**

~~Rule 9. If an applicant fails to complete, or, if an applicant withdraws, an application within 6 months from the date of filing, the administrator may summarily deny the application as an inactive filing without prejudice to reapplication.~~

R 451.1231 ~~Qualifications of applicant; examination; trainees; fee; terms of qualified person; termination of employment.~~ **Rescinded.**

~~Rule 11. (1) An applicant for a license or exemption order shall demonstrate education or experience sufficient to provide understanding of laws governing debtor creditor relationships, business transactions, the debt management act, the rules promulgated pursuant thereto, and an understanding of accounting procedures by the successful completion of an examination administered by the bureau or its designee.~~

~~(2) Each officer, partner, or proprietor of an applicant, each person serving in a managerial capacity involving counseling, and each individual counselor to be employed by an applicant shall take and pass an examination administered by the bureau or its designee pursuant to section 6(e) of the act.~~

~~(3) Trainees may not serve as office managers, and shall be under the complete supervision of a person who has successfully completed the examination or a person exempted by section 7 of the act.~~

~~(4) All persons not exempted from the examination provisions of the act pursuant to section 7 shall successfully complete the examination not later than January 1, 1978.~~

~~(5) A nonrefundable fee of \$25.00 shall be assessed for each examination.~~

~~(6) A qualified person may be transferred from one firm to another, if both of the following apply:~~

~~(a) Prior to transfer, the qualified person terminates the employment with the original firm, and that firm and the person file a notice of termination on the form prescribed by the bureau.~~

~~(b) The new firm and the person transferring file a notice of employment on the form prescribed by the bureau.~~

~~(7) A firm or person shall not refuse to sign a termination form when requested.~~

~~(8) If a qualified person's employment is terminated, the employing firm and the person shall file a notice of termination on the form prescribed by the bureau within 7 days of the termination.~~

~~(9) If a qualified person has not been employed by a firm for the past 12 months, that person must retake and successfully complete the examination prior to conducting a scheduling, counseling, or budget analysis function, except as a trainee under the direct supervision of a qualified person.~~

R 451.1232 ~~Change in business form not requiring examination.~~ **Rescinded.**

~~Rule 12. A person exempt from the examination requirement of section 6(3) of the act by section 7 of the act shall not be required to complete an examination because of a change in the business form of the firm if there is no interruption of the services provided by the firm.~~

R 451.1233 Renewal applications.

Rule 13. Renewal applications shall be filed ~~at~~ **with** the ~~central—bureau office~~ **department** by December 1 of each year. Failure to file by that date ~~may will~~ result in ~~summary suspension until the application is received~~ **the expiration of the license or order.**

R 451.1234 Dishonest or unethical business conduct.

Rule 14. Dishonest or unethical business conduct, as provided in section 9 of the act, includes, but is not limited to, the following:

(a) Failure to promptly refund a debtor's money upon written cancellation of a contract.

(b) Borrowing money from a debtor.

(c) Giving preference to creditors for the convenience or benefit of the firm rather than the primary benefit of the debtor.

(d) Receiving money from the debtor, except as provided in the contract with the debtor, which contract has been accepted as to form and content by the ~~bureau~~ **department.**

(e) Failing to promptly record on the books of the firm any transaction involving funds of the debtor.

(f) Paying funds of a debtor to a fictitious creditor.

(g) Accepting a rebate, kickback, or other remuneration for payment of a debtor's obligations, except under a plan approved by the ~~bureau~~ **department** and fully disclosed to the debtor.

(h) Using debtors' funds as compensating balances for loans.

(i) Making erasures or changes on the portion of the client account card used for recording payments received from the debtor, on checks issued to creditors, on fees taken, or on the dates of such entries. If a correction is needed, the error shall have 1 line drawn through it and be initialed by a

~~qualified person~~ **an individual authorized by the licensee** who did not make the correction or change. All entries should be made with ink, shall be typewritten, or shall be made by other machine entry.

R 451.1235 Posting statutory provision, address, and phone number; filing fee schedule and amendments thereto.

Rule 15. (1) The firm shall prominently post at ~~all offices, in not less than 8 point type,~~ **each business location and website** the provisions of sections ~~13(1), 14(1), and 18~~ **13(1), 13(2), 14(1), and 18** of the act, as well as the address and phone number of the ~~bureau~~ **department.**

(2) The firm shall annually file with the ~~bureau~~ **department** its fee schedule or a schedule of its range of fees, ~~and shall file amendments to that schedule 5 days prior to any change in fees charged to the debtor.~~

R 451.1236 Employment qualifications.

Rule 16. A firm shall not knowingly employ a person, except as approved by the administrator, as an office manager or counselor who has:

(a) Been convicted of a crime involving moral turpitude, which shall include forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other like offense.

(b) Violated or failed to comply with a provision of the act, or a rule or order promulgated or issued pursuant to the act.

(c) Had a license to engage in the business of debt management revoked or suspended in this state or another state for any reason other than failure to pay licensing fees.

(d) Defaulted in the payment of money collected for others, including the discharge of debts, because of bankruptcy proceedings. The director **of the department** may, at his **or her** discretion, waive this restriction if provided with evidence of justifiable cause for the bankruptcy, plus convincing evidence of the fitness of the bankrupt party to carry out his or her functions under the act.

R 451.1237 Procedures; review; ~~verification of receipts and disbursements.~~

Rule 17. (1) Each firm shall prepare and maintain a manual detailing the procedures for compliance with the act.

(2) Each ~~qualified person~~ **certified counselor** ~~or trainee~~ of the firm shall be provided with the manual.

~~(3) An officer, partner, or sole proprietor, or a person under the direct supervision of such a person, shall review the following at least quarterly:~~

~~(a) Debtors' accounts.~~

~~(b) Checks paid by the firm.~~

~~(c) Procedures for handling cash and checks of the firm.~~

~~(d) The firm complaint file.~~

~~(e) Selected creditor accounts to verify payment.~~

~~(f) Selected counselor records and work papers of each counselor to verify the accuracy of counselor guidance to the debtor.~~

~~(4) At least annually, the firm or its accountant shall verify the receipts and disbursements with the debtor.~~

R 451.1238 License.

Rule 18. (1) A license shall be issued for each main office and branch office rendering debt management service.

(2) Whenever a licensee or exempt person discontinues the business of debt management, whether totally or at a specific location, the license certificate, or exemption order, shall be mailed to the ~~bureau's central office~~ **department** within 5 days. An explanation of the reason for discontinuance, a statement of any amounts remaining in the client trust account, and the plan and timetable for disbursement shall accompany the license certificate, or exemption order, unless all accounts are transferred, without interruption in service, to another of the firm's branches.

(3) A license shall not be terminated for a firm unless it is revoked or unless all payments due creditors or debtors have been made, and the ~~bureau~~ **department** issues an order terminating the license.

R 451.1239 Budget analysis.

Rule 19. (1) A copy of the budget analysis shall be retained in the debtor's file for a period of 6 years after the last transaction.

(2) The budget analysis shall be signed by a ~~qualified person~~ **certified counselor** of the firm who participated in the preparation of the analysis.

R 451.1240 Certification of compliance.

Rule 20. ~~(1) Every contract between a licensee or exempted person and the debtor shall be signed by both parties, and the debtor's copy shall also be manually executed. The copy retained by the licensee or exempted person shall be kept in the debtor's file for 6 years after the date of the last transaction.~~

~~(2) Every contract shall specify in detail the amount and method of taking any fees or charges which the debtor shall be assessed during the life of the contract.~~

~~(31)~~ Every contract shall set forth, in bold type, the set-up and cancellation fee provisions and amounts, and advise the prospective client to note these carefully before signing the contract.

~~(42)~~ The ~~bureau~~ **department** may approve the accumulation of debtor's funds in payment of obligations which are required to be paid in large lump sums, such as income and property taxes, insurance premiums, and house payments. All such accumulations, however, shall be designated for a specific purpose and shall not be used to pay for fees and charges, including the close out fee of the firm.

R 451.1241 Reconciliation.

Rule 21. (1) The trust account reconciliation shall contain provisions for recording and identifying the balance in each debtor's account, the balance from the bank statement, the check number and amount of each outstanding check, the date and amount of deposits not yet credited by the bank, the reconciled bank balance, the balance from the checkbook, and a detailed breakdown of any differences.

(2) Remedial action, as provided in section 15~~(45)~~ of the act, shall be either an immediate replacement of funds, or an immediate cessation of business until sufficient funds are placed in the account.

R 451.1242 ~~Receipt; statement~~ **Statement** of disbursements.

Rule 22. ~~(1) A receipt, as provided in section 16(e) of the act, shall not be required for payments by check or money order made payable to the firm.~~

~~(21)~~ The statement prepared in compliance with section 16(e) of the act shall be prepared as of a date no earlier than the date of the first full distribution to creditors under the contract.

R 451.1243 Separate remuneration prohibition; waiver or modification.

Rule 23. All requests for waiver or modification of the separate remuneration prohibition of section 19(h) of the act shall be made in writing to the ~~central office of the~~

~~bureau~~ **department**, setting forth in detail the need for such waiver or modification; the persons or entities from which the benefit will be solicited or sought; the amount or percentage of contribution solicited from donors in the capacity of creditor for a debtor; any relationship, affiliation, or connection creating an actual or potential conflict of interest between the parties involved; and any reciprocal arrangements made or to be made. The ~~bureau~~ **department** shall examine the proposal promptly and shall, within 15 days, notify the licensee or exempted person of its decision, or of the necessity for additional information. All such decisions shall be in writing and shall give the effective date of the declaratory ruling.

R 451.1244 Advertising. **Rescinded.**

~~Rule 24. (1) Tombstone advertisements which contain only the information provided below shall be exempt from the filing provisions of section 20(1) of the act, unless the bureau, by order, revokes the exemption as to a firm or individual:~~

~~-(a) Name of the firm.~~

~~-(b) Address.~~

~~-(c) Phone number.~~

~~-(d) Brief description of the service.~~

~~-(e) Name of the officer, partner, sole proprietor, or office manager, if desired.~~

~~-(f) Logotype or similar symbol, if desired.~~

~~-(2) Advertisements filed pursuant to section 20(1) of the act shall be filed in duplicate.~~

~~-(3) The following items include, but are not limited to, actions which constitute false, misleading, or deceptive advertising:~~

~~-(a) Failure to clearly identify the firm in all advertising.~~

~~-(b) Publication or dissemination of advertising which confuses, or tends to confuse, the public as to the actual identity of the firm or service to be performed.~~

~~-(c) Statement guaranteeing, or otherwise stating or excessively implying, the success of a debt management program for a prospective client.~~

~~-(d) Representation that services are offered at a reduction from normal or competitive fees, if the statement is not true.~~

~~-(e) Representation that the fees or charges are otherwise than in the contract and fee schedules on file with the bureau.~~

~~-(f) Representation that services offered to the prospective client are other than debt management services.~~

~~-(g) Representation that the firm is sponsored, endorsed, or approved by any organization or governmental agency when, in fact, a written document to that effect, acceptable to the bureau, is not on file with the bureau.~~

R 451.1245 Charges for other services.

Rule 25. (1) A firm or affiliate thereof shall not charge a debtor for any services or goods, or make other charges, unless the firm or affiliate has filed with the ~~bureau~~ **department** a plan setting forth the basis of charges, and the ~~bureau~~ **department** has determined that such charges in the future do not result in an excessive fee in violation of section 18 of the act.

(2) If a firm or affiliate thereof proposes to alter its plan of charges, the amended plan shall be filed with the ~~bureau~~ **department** and approved prior to use.