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# SENATE BILL No. 328

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 28-1-29.

**Synopsis:** Nonprofit debt management companies. Defines "bona fide nonprofit organization" (bona fide nonprofit) for purposes of the statute governing licensed debt management companies (licensees). Requires the department of financial institutions (DFI) to: (1) adopt separate rules for the licensure and regulation of bona fide nonprofits under the statute; and (2) consider certain factors in adopting the rules. Prohibits the DFI from requiring a bona fide nonprofit that maintains a bond with the Executive Office for United States Trustees (EOUST) to execute a bond under the statute. For a bona fide nonprofit that does not maintain a bond with the EOUST, provides that the DFI must: (1) consider the financial ability of the bona fide nonprofit to execute the bond required under the statute; and (2) base the amount of the bond on the bona fide nonprofit's revenue and capital. Removes provisions allowing licensees to charge a close-out fee upon termination of a debt management agreement (agreement) with a debtor. Changes the time frames in which a licensee must do the following: (1) Notify a debtor of a creditor's decision to reject or withdraw from a debt management plan (plan). (2) Notify all creditors in a plan about a cancellation by the debtor of the agreement. (3) Upon termination of an agreement, return to the debtor any money held in trust for the debtor. Changes the time after which an agreement is considered canceled by a debtor for nonpayment from 60 days to 90 days after the date a payment is due and not paid. Provides that a bona fide nonprofit is not required to prepare a written budget analysis before entering into an agreement with a debtor if certain conditions are met. Provides that a licensee may charge a debtor the authorized set up fee before a payment has been  
(Continued next page)

**Effective:** Upon passage; July 1, 2013.

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## Kruse

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January 8, 2013, read first time and referred to Committee on Tax and Fiscal Policy.

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Digest Continued

made to a creditor under the debtor's plan. Provides that a bona fide nonprofit may charge and adjust a monthly service fee in a manner that does not comply with the limitations set forth in the statute if the fee as charged or adjusted complies with any fee limitations that the bona fide nonprofit must comply with to maintain its accreditation or its membership in a nationally recognized nonprofit credit counseling organization. Provides that the prohibition against a licensee's soliciting or accepting a voluntary contribution from a debtor does not apply to a bona fide nonprofit.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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**SENATE BILL No. 328**



A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

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

1 SECTION 1. IC 28-1-29-1, AS AMENDED BY P.L.89-2011,  
2 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 1. The following words, when used in this  
4 chapter, shall have the meaning ascribed to them unless the context  
5 clearly requires a different meaning:  
6 (1) "Person" includes individuals, sole proprietorships,  
7 partnerships, limited liability companies, trusts, joint ventures,  
8 corporations, unincorporated organizations, other entities, and  
9 their affiliates, however organized.  
10 (2) "Debt management company" is any person doing business as  
11 a budget counseling, credit counseling, debt management, or debt  
12 pooling service or holding the person out, by words of similar  
13 import, as providing services to debtors in the management of  
14 their finances and debts, and having a written agreement with the  
15 debtor to disburse money or anything of value. The term includes



- 1 the following:
- 2 (A) A person that simply holds any money, funds, check,
- 3 personal check, money order, personal money order, draft, or
- 4 any other instrument for the transmission of money.
- 5 (B) A person or an entity known as a "budget service
- 6 company".
- 7 The term does not include a person that provides debt settlement
- 8 services (as defined in IC 24-5-15-2.5).
- 9 (3) "License" means a license issued under the provisions of this
- 10 chapter.
- 11 (4) "Licensee" means any person to whom a license has been
- 12 issued pursuant to the provisions of this chapter.
- 13 (5) "Contract debtor" means a debtor who has entered into a
- 14 written agreement with a licensee.
- 15 (6) "Debt" means an obligation arising out of personal, family, or
- 16 household use.
- 17 (7) "Debtor" means an individual whose principal debts and
- 18 obligations arise out of personal, family, or household use and
- 19 shall not apply to persons whose principal indebtedness arises out
- 20 of business purpose transactions.
- 21 (8) "Department" means the members of the department of
- 22 financial institutions.
- 23 (9) "Finances" means a savings deposit that is:
- 24 (A) made on behalf of a contract debtor;
- 25 (B) owned and controlled exclusively by the contract debtor
- 26 and not a licensee who has a power of attorney of the contract
- 27 debtor; and
- 28 (C) placed in a bank or savings institution chartered by the
- 29 state or federal government.
- 30 (10) "Affiliate" means a person that, directly or indirectly, through
- 31 one (1) or more intermediaries:
- 32 (A) controls;
- 33 (B) is controlled by; or
- 34 (C) is under common control with;
- 35 a person subject to this chapter.
- 36 (11) "Fee" means the total amount of money charged to a contract
- 37 debtor by a debt management company for the administration of
- 38 a debt management plan.
- 39 (12) "Plan" means a written debt repayment program in which a
- 40 debt management company furnishes debt management services
- 41 to a contract debtor and that includes a schedule of payments to
- 42 be made by or on behalf of the contract debtor and used to pay

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- 1 debts owed by the contract debtor.
- 2 (13) "Principal amount of the debt" means the total amount of a
- 3 debt at the time the contract debtor enters into an agreement.
- 4 (14) "Agreement" means an agreement between a debt
- 5 management company and a debtor for the performance of debt
- 6 management services.
- 7 (15) "Trust account" means an account held by a licensee that is:
- 8 (A) established in a bank insured by the Federal Deposit
- 9 Insurance Corporation;
- 10 (B) separate from other accounts held by the licensee;
- 11 (C) designated as a trust account or other account designated
- 12 to indicate that the money in the account is not the money of
- 13 the licensee; and
- 14 (D) used to hold money of one (1) or more contract debtors for
- 15 disbursement to creditors of the contract debtors.
- 16 (16) "Month" means a calendar month.
- 17 (17) "Day" means a calendar day.
- 18 (18) "Concessions" means assent to repayment of a debt on terms
- 19 more favorable to a contract debtor than the terms of the contract
- 20 between the debtor and a creditor.
- 21 (19) "Good faith" means honesty in fact and the observance of
- 22 reasonable standards of fair dealing.
- 23 (20) "Control of a related interest" refers to a situation in which
- 24 a person, directly or indirectly, or through or in concert with one
- 25 (1) or more other persons, possesses any of the following:
- 26 (A) The ownership of, control of, or power to vote at least
- 27 twenty-five percent (25%) of the voting securities of a related
- 28 interest.
- 29 (B) The control in any manner of the election of a majority of
- 30 the directors of a related interest.
- 31 (C) The power to exercise a controlling influence over the
- 32 management or policies of a related interest. For purposes of
- 33 this clause, a person is presumed to have control, including the
- 34 power to exercise a controlling influence over the management
- 35 or policies of the related interest, if the person:
- 36 (i) is an executive officer or a director of the related interest
- 37 and directly or indirectly owns, controls, or has the power to
- 38 vote more than ten percent (10%) of any class of voting
- 39 securities of the related interest; or
- 40 (ii) directly or indirectly owns, controls, or has the power to
- 41 vote more than ten percent (10%) of any class of voting
- 42 securities of the related interest and no other person owns,

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controls, or has the power to vote a greater percentage of that class of voting securities.

**(21) "Bona fide nonprofit organization" means a person that does the following:**

**(A) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.**

**(B) Provides financial counseling services, including any of the following:**

**(i) Budget counseling, credit counseling, debt management services, or any other services described in subdivision (2).**

**(ii) Mortgage delinquency counseling, foreclosure prevention counseling, or reverse mortgage counseling for seniors.**

**(iii) Financial education programs, including prebankruptcy counseling or predischarge bankruptcy education.**

**(C) Employs as financial counselors only individuals who are certified by:**

**(i) the National Foundation for Credit Counseling, or its successor; or**

**(ii) any other nationally recognized nonprofit credit counseling organization.**

**(D) Compensates the organization's employees in a manner that:**

**(i) is not based on the outcome of the financial counseling services provided by the employees; and**

**(ii) does not encourage employees to act other than in the best interests of the organization's clients.**

**(E) Maintains membership in:**

**(i) the Association of Independent Consumer Credit Counseling Agencies, or its successor;**

**(ii) the National Foundation for Credit Counseling, or its successor; or**

**(iii) any other nationally recognized nonprofit credit counseling organization.**

**(F) Maintains accreditation by:**

**(i) the Council on Accreditation of Services for Families and Children, or its successor;**

**(ii) the Commission on Accreditation of Rehabilitation Facilities (CARF), or its successor; or**

**(iii) another accreditation organization approved by the**

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1           **Association of Independent Consumer Credit Counseling**  
 2           **Agencies, the National Foundation for Credit**  
 3           **Counseling, or any other nationally recognized nonprofit**  
 4           **credit counseling organization.**

5           SECTION 2. IC 28-1-29-2 IS AMENDED TO READ AS  
 6           FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **Except as**  
 7           **provided in subsection (b)**, the department shall adopt such rules and  
 8           regulations as it deems advisable for the administration of this chapter,  
 9           and to provide such forms and procedures as it determines to be  
 10          necessary to carry out the provisions of such chapter.

11          **(b) The department shall adopt separate rules under IC 4-22-2**  
 12          **for the licensure and regulation of bona fide nonprofit**  
 13          **organizations under this chapter. In adopting rules under this**  
 14          **subsection, the department shall:**

15          **(1) consider the operating standards, best practices, and**  
 16          **counselor training and certification requirements that bona**  
 17          **fide nonprofit organizations must comply with in order to**  
 18          **maintain:**

19               **(A) membership in one (1) or more nationally recognized**  
 20               **nonprofit credit counseling organizations; and**

21               **(B) accreditation by an accreditation organization**  
 22               **approved by the Association of Independent Consumer**  
 23               **Credit Counseling Agencies, the National Foundation for**  
 24               **Credit Counseling, or any other nationally recognized**  
 25               **nonprofit credit counseling organization;**

26          **(2) consider:**

27               **(A) the financial and administrative burdens that the rules**  
 28               **would impose on bona fide nonprofit organizations; and**

29               **(B) the ability of bona fide nonprofit organizations to meet**  
 30               **those burdens; and**

31          **(3) consult with board members, officers, employees, and**  
 32          **clients of one (1) or more bona fide nonprofit organizations**  
 33          **operating in Indiana.**

34          **Any requirements, other than requirements necessary to obtain an**  
 35          **initial license under this chapter, that are imposed by the rules**  
 36          **adopted by the department under this subsection may apply to a**  
 37          **bona fide nonprofit organization only after the bona fide nonprofit**  
 38          **organization is issued a license under this chapter.**

39          **(c) The department may adopt emergency rules in the manner**  
 40          **provided under IC 4-22-2-37.1 to adopt the rules described in**  
 41          **subsection (b).**

42          SECTION 3. IC 28-1-29-6, AS AMENDED BY P.L.35-2010,

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1 SECTION 124, IS AMENDED TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2013]: Sec. 6. **(a) Subject to subsection (b),**  
 3 each application for a license shall be accompanied by proof that the  
 4 applicant has executed a bond, payable to the department, in an amount  
 5 determined by the director and in accordance with the standards  
 6 adopted by the director. Said bond shall also indemnify any person  
 7 damaged by failure on the part of the licensee to conduct the business  
 8 in accordance with the provisions of this chapter.

9 **(b) The department may not require a bona fide nonprofit**  
 10 **organization that maintains a bond with the Executive Office for**  
 11 **United States Trustees (EOUST) to execute a bond under this**  
 12 **chapter. With respect to a bona fide nonprofit organization that**  
 13 **does not maintain a bond with the Executive Office for United**  
 14 **States Trustees (EOUST), the director must:**

15 **(1) consider the financial ability of the bona fide nonprofit**  
 16 **organization to execute the bond required under this chapter;**  
 17 **and**

18 **(2) base the amount of the bond required under this chapter**  
 19 **for the bona fide nonprofit organization on the bona fide**  
 20 **nonprofit organization's revenue and capital.**

21 SECTION 4. IC 28-1-29-8, AS AMENDED BY P.L.27-2012,  
 22 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2013]: Sec. 8. (a) An agreement between a licensee and a  
 24 debtor must:

25 (1) be in a written form;

26 (2) be dated and signed by the licensee and the debtor;

27 (3) include the name of the debtor and the address where the  
 28 debtor resides;

29 (4) include the name, business address, and telephone number of  
 30 the licensee;

31 (5) be delivered to the debtor immediately upon formation of the  
 32 agreement; and

33 (6) disclose the following:

34 (A) The services to be provided.

35 (B) The amount or method of determining the amount of all  
 36 fees, individually itemized, to be paid by the debtor.

37 (C) The schedule of payments to be made by or on behalf of  
 38 the debtor, including the amount of each payment, the date on  
 39 which each payment is due, and an estimate of the date of the  
 40 final payment.

41 (D) If a plan provides for regular periodic payments to  
 42 creditors:

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- 1 (i) each creditor of the debtor to which payment will be  
 2 made, the amount owed to each creditor, and any  
 3 concessions the licensee reasonably believes each creditor  
 4 will offer; and  
 5 (ii) the schedule of expected payments to each creditor,  
 6 including the amount of each payment and the date on which  
 7 the payment will be made.  
 8 (E) Each creditor that the licensee believes will not participate  
 9 in the plan and to which the licensee will not direct payment.  
 10 (F) The manner in which the licensee will comply with the  
 11 licensee's obligations under section 9(j) of this chapter.  
 12 (G) A statement that:  
 13 (i) the licensee may terminate the agreement for good cause,  
 14 upon return of unexpended money of the debtor;  
 15 (ii) the debtor may cancel the agreement as provided in  
 16 section 8.6 of this chapter; and  
 17 (iii) the debtor may contact the department with any  
 18 questions or complaints regarding the licensee.  
 19 (H) The address, telephone number, and Internet address or  
 20 web site of the department.  
 21 (b) For purposes of subsection (a)(5), delivery of an electronic  
 22 record occurs when:  
 23 (1) the record is made available in a format in which the debtor  
 24 may retrieve, save, and print the record; and  
 25 (2) the debtor is notified that the record is available.  
 26 (c) An agreement must provide that:  
 27 (1) the debtor has a right to terminate the agreement at any time  
 28 without penalty ~~notwithstanding the close-out fee as permitted by~~  
 29 ~~section 8.3(e) of this chapter~~; or obligation, by giving the licensee  
 30 written or electronic notice, in which event:  
 31 (A) the licensee shall refund all unexpended money that the  
 32 licensee or the licensee's agent has received from or on behalf  
 33 of the debtor for the reduction or satisfaction of the debtor's  
 34 debt; and  
 35 (B) all powers of attorney granted by the debtor to the licensee  
 36 are revoked and ineffective;  
 37 (2) the debtor authorizes any bank insured by the Federal Deposit  
 38 Insurance Corporation in which the licensee or the licensee's  
 39 agent has established a trust account to disclose to the department  
 40 any financial records relating to the trust account;  
 41 (3) the licensee shall notify the debtor within ~~five (5)~~ **seven (7)**  
 42 **business** days after learning of a creditor's final decision to reject

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1 or withdraw from a plan under the agreement; and

2 (4) the notice under subdivision (3) must include:

3 (A) the identity of the creditor; and

4 (B) a statement that the debtor has the right to modify or  
5 terminate the agreement.

6 (d) All creditors must be notified of the debtor's and licensee's  
7 relationship.

8 (e) A licensee shall give to the contract debtor a dated receipt for  
9 each payment, at the time of the payment, unless the payment is made  
10 by check, money order, or automated clearinghouse withdrawal as  
11 authorized by the contract debtor.

12 (f) A licensee shall, upon cancellation by a contract debtor of the  
13 agreement, notify **immediately** in writing, **and not later than thirty**  
14 **(30) days after the licensee receives notice of the cancellation**, all  
15 creditors in the debt management plan of the cancellation by the  
16 contract debtor.

17 (g) **Except as provided in subsection (m)**, a licensee may not enter  
18 into an agreement with a debtor unless a thorough, written budget  
19 analysis of the debtor indicates that the debtor can reasonably meet the  
20 payments required under a proposed plan. The following must be  
21 included in the budget analysis:

22 (1) Documentation and verification of all income considered. All  
23 income verification must be dated not more than sixty (60) days  
24 before the completion of the budget analysis.

25 (2) Monthly living expense figures, which must be reasonable for  
26 the particular family size and part of the state.

27 (3) Documentation and verification, by a current credit bureau  
28 report, current debtor account statements, or direct documentation  
29 from the creditor, of monthly debt payments and balances to be  
30 paid outside the plan.

31 (4) Documentation and verification, by a current credit bureau  
32 report, current debtor account statements, or direct documentation  
33 from the creditor, of the monthly debt payments and current  
34 balances to be paid through the plan.

35 (5) The date of the budget analysis and the signature of the debtor.

36 (h) A licensee may not enter into an agreement with a contract  
37 debtor for a period longer than sixty (60) months. **Except as provided**  
38 **in subsection (n)**, every thirty (30) months, the licensee shall complete  
39 a thorough, written budget analysis of the contract debtor to ensure the  
40 debt management plan is still suitable for the contract debtor and the  
41 contract debtor will be able to meet the payment obligations under the  
42 plan. If adjustments are needed to change the indebtedness listed in the

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1 agreement, the licensee shall execute a new agreement or modify, in  
 2 writing, the existing agreement, using the revised figures. **Except as**  
 3 **provided in subsection (n)**, if during the term of the original  
 4 agreement, the agreement is modified in writing or a new agreement is  
 5 executed, a licensee:

6 (1) may not increase the amount of the monthly fee as originally  
 7 calculated under section 8.3(c)(2) of this chapter; and

8 (2) must decrease the amount of the monthly fee as originally  
 9 calculated under section 8.3(c)(2) of this chapter if applying the  
 10 percentage specified in section 8.3(c)(2)(A) of this chapter to the  
 11 new monthly amount of indebtedness to be paid through the  
 12 licensee (as of the date of the review under this subsection) would  
 13 result in an amount that is less than seventy-five dollars (\$75) in  
 14 any month.

15 (i) A licensee may provide services under this chapter in the same  
 16 place of business in which another business is operating, or from which  
 17 other products or services are sold, if the director issues a written  
 18 determination that:

19 (1) the operation of the other business; or

20 (2) the sale of other products and services;

21 from the location in question is not contrary to the best interests of the  
 22 licensee's contract debtors.

23 (j) A licensee without a physical location in Indiana may:

24 (1) solicit sales of; and

25 (2) sell;

26 additional products and services to Indiana residents if the director  
 27 issues a written determination that the proposed solicitation or sale is  
 28 not contrary to the best interests of contract debtors.

29 (k) A licensee shall maintain a toll free communication system,  
 30 staffed at a level that reasonably permits a contract debtor to speak to  
 31 a counselor, debt specialist, or customer service representative, as  
 32 appropriate, during ordinary business hours.

33 (l) A debt management company shall act in good faith in all  
 34 matters under this chapter.

35 **(m) A bona fide nonprofit organization that is licensed under**  
 36 **this chapter is not required to prepare a written budget analysis**  
 37 **under subsection (g) before entering into an agreement with a**  
 38 **debtor if all of the following apply:**

39 **(1) Before the bona fide nonprofit organization enters into an**  
 40 **agreement with the debtor, a financial counselor who is**  
 41 **certified as described in section 1(21)(C) of this chapter**  
 42 **verifies and obtains documentation of the following:**

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- (A) All income of the debtor.
  - (B) The debtor's monthly living expenses. In verifying the debtor's monthly living expenses under this clause, the financial counselor must consider whether those expenses are reasonable for the debtor's particular family size and for the part of the state in which the debtor resides.
  - (C) The debtor's monthly debt payments and balances to be paid outside the proposed plan.
  - (D) The debtor's monthly debt payments and balances to be paid through the proposed plan.
- (2) The documents or other sources used for the verifications described in subdivision (1):
- (A) are accessed or consulted with on a date that provides meaningful information in the context of the time frame of the proposed plan; and
  - (B) concern a period that provides meaningful information in the context of the time frame of the proposed plan.
- (3) The financial counselor who performs the verifications described in subdivision (1) obtains or prepares written or electronic documentation of the verifications and includes the documentation in the files or other records maintained for the debtor by the bona fide nonprofit organization.
- (n) After entering into an agreement with a debtor, a bona fide nonprofit organization shall perform the verifications described in subsection (m)(1) as often as necessary, but at least one (1) time, during the term of the agreement to ensure that debt management plan is still suitable for the contract debtor and that the contract debtor will be able to meet the payment obligations under the plan. If adjustments are needed to change the indebtedness listed in the agreement, the bona fide nonprofit organization shall execute a new agreement or modify, in a written or an electronic form, the existing agreement, using the revised figures. If during the term of the original agreement, the agreement is modified or a new agreement is executed, a bona fide nonprofit organization may adjust the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter to reflect either or both of the following (as of the date of the review and regardless of whether the adjustment results in an increase or decrease of the monthly fee), subject to any fee limitations that the bona fide nonprofit organization must comply with in order to maintain its accreditation or its membership in one (1) or more nationally recognized nonprofit credit counseling organizations:

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1 (1) **The new monthly total amount of indebtedness to be paid**  
2 **through the bona fide nonprofit organization on behalf of the**  
3 **contract debtor.**

4 (2) **The bona fide nonprofit organization's expenses in**  
5 **administering the plan on behalf of the contract debtor.**

6 SECTION 5. IC 28-1-29-8.3, AS AMENDED BY P.L.27-2012,  
7 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2013]: Sec. 8.3. (a) Except as otherwise permitted by this  
9 section, a licensee may not:

10 (1) impose, directly or indirectly, a fee or other charge on a  
11 debtor; or

12 (2) receive money from or on behalf of a debtor for debt  
13 management services.

14 (b) A licensee may not impose charges or receive payment for debt  
15 management services until:

16 (1) the licensee and the debtor have agreed upon a plan and have  
17 signed an agreement that complies with sections 8, 8.6, and 9.5 of  
18 this chapter; and

19 (2) **except as provided in subsection (c)(1)**, at least one (1)  
20 payment has been made to a creditor under the plan.

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

22 (c) If a debtor assents to a plan, the licensee may charge the  
23 following:

24 (1) A set up fee of not more than fifty dollars (\$50) for  
25 consultation, obtaining a credit report, and setting up an account.  
26 Acceptance of a plan payment by a creditor constitutes agreement  
27 by the creditor to the plan. ~~A set up fee under this subdivision~~  
28 ~~may not be collected until the debtor, or the licensee on behalf of~~  
29 ~~the debtor, has made at least one (1) payment to a creditor under~~  
30 ~~the plan. **Notwithstanding subsection (b)(2), the licensee may**~~  
31 ~~**charge the set up fee authorized by this subdivision before a**~~  
32 ~~**payment has been made to a creditor under the plan.**~~

33 (2) Subject to subsection (d), a monthly service fee of the lesser  
34 of:

35 (A) not more than fifteen percent (15%) of the amount the  
36 contract debtor agrees to pay through the licensee, divided into  
37 equal monthly payments over the term of the agreement; or

38 (B) not more than seventy-five dollars (\$75) in any month.

39 **However, a bona fide nonprofit organization that is licensed**  
40 **under this chapter may charge a monthly service fee that does**  
41 **not comply with the limitations set forth in clauses (A) and (B)**  
42 **if the monthly service fee charged by the bona fide nonprofit**

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**organization complies with any fee limitations that the bona fide nonprofit organization must comply with in order to maintain its accreditation or its membership in one (1) or more nationally recognized nonprofit credit counseling organizations.** The monthly service fee under this subdivision may be charged for any one (1) month or part of a month. The amount of a set up fee under subdivision (1) may not be included in the calculation of the monthly service fee.

(d) **Except as provided in subsection (j),** if during the term of the original agreement, the agreement is modified in writing or a new agreement is executed, a licensee:

- (1) may not increase the amount of the monthly fee as originally calculated under subsection (c)(2); and
- (2) must decrease the amount of the monthly fee as originally calculated under subsection (c)(2) if applying the percentage specified in subsection (c)(2)(A) to the monthly amount of indebtedness to be paid through the licensee as of the date of the modification of the original agreement or the execution of the new agreement, as applicable, would result in an amount that is less than seventy-five dollars (\$75) in any month.

~~(e) Upon cancellation by a contract debtor or termination of payments by a contract debtor, a licensee may withhold for the licensee's own benefit not more than one hundred dollars (\$100), which may be accrued as a close-out fee.~~

~~(f) (e)~~ A licensee may not charge a contract debtor more than one (1) set up fee ~~or one (1) close-out fee~~ unless the contract debtor leaves the services of the licensee for more than six (6) months.

~~(g) (f)~~ With respect to any additional charge not specifically provided for in this section, the licensee must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit conferred on the contract debtor in connection with the charge. Supporting documents may be required by the department. The department shall determine whether the charge:

- (1) would be imposed in relation to some benefit conferred on the consumer; and
- (2) is reasonable in relation to the benefit conferred.

An additional charge is not permitted unless approved by the department.

~~(h) (g)~~ For purposes of this chapter, the terms of an agreement commence on the date on which the agreement is made.

~~(i) (h)~~ A licensee may assess a charge of not more than twenty-five

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1 dollars (\$25) for each return by a bank or other depository institution  
 2 of a dishonored check, negotiable order of withdrawal, or share draft  
 3 issued by the contract debtor.

4 ~~(f)~~ **(i)** Any fee charged by the licensee to the debtor under this  
 5 section for services rendered by the licensee, other than the **fees set up**  
 6 **fee** described under subsection ~~(f)~~; **(c)(1)**, is not considered a debt  
 7 owed by the debtor to the licensee.

8 **(j) This subsection applies to an agreement between a bona fide**  
 9 **nonprofit organization and contract debtor. If during the term of**  
 10 **the original agreement, the agreement is modified or a new**  
 11 **agreement is executed, a bona fide nonprofit organization may**  
 12 **adjust the amount of the monthly fee as originally calculated under**  
 13 **subsection (c)(2) to reflect either or both of the following (as of the**  
 14 **date of the modification or execution, and regardless of whether**  
 15 **the adjustment results in an increase or decrease of the monthly**  
 16 **fee), subject to any fee limitations that the bona fide nonprofit**  
 17 **organization must comply with in order to maintain its**  
 18 **accreditation or its membership in one (1) or more nationally**  
 19 **recognized nonprofit credit counseling organizations:**

20 **(1) The new monthly total amount of indebtedness to be paid**  
 21 **through the bona fide nonprofit organization on behalf of the**  
 22 **contract debtor.**

23 **(2) The bona fide nonprofit organization's expenses in**  
 24 **administering the plan on behalf of the contract debtor.**

25 SECTION 6. IC 28-1-29-8.6, AS ADDED BY P.L.35-2010,  
 26 SECTION 129, IS AMENDED TO READ AS FOLLOWS  
 27 [EFFECTIVE JULY 1, 2013]: Sec. 8.6. (a) A debtor may cancel an  
 28 agreement before midnight of the third business day after the debtor  
 29 enters into the agreement unless the agreement does not comply with  
 30 subsection (b) or section 8 or 9.5 of this chapter, in which event the  
 31 debtor may cancel the agreement at any time after the debtor enters into  
 32 the agreement and all fees paid by the debtor shall be refunded to the  
 33 debtor. To exercise the right to cancel, the debtor must give written  
 34 notice to the licensee. Notice by mail is given when mailed.

35 (b) An agreement must be accompanied by a form that contains in  
 36 clear and conspicuous type, surrounded by bold black lines:

37 "NOTICE OF RIGHT TO CANCEL

38 You may cancel this agreement, without any penalty or  
 39 obligation, at any time before midnight of the third business day  
 40 that begins the day after you agree to it by electronic  
 41 communication or by signing it.

42 To cancel this agreement during this period, send an electronic

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1 mail message to  
 2 \_\_\_\_\_ or mail or deliver a signed,  
 3 Electronic mail address of licensee  
 4 dated copy of this notice, or any other written notice to  
 5 \_\_\_\_\_  
 6 Name of licensee  
 7 at \_\_\_\_\_ before midnight on  
 8 Address of licensee  
 9 \_\_\_\_\_.  
 10 Date

11 If you cancel this agreement within the 3 day period, we will refund  
 12 all the money you have already paid us.

13 You also may terminate this agreement at any later time, but we ~~may~~  
 14 **are** not ~~be~~ required to refund fees you have paid us.

15 I cancel this agreement,

16 \_\_\_\_\_  
 17 Print your name

18 \_\_\_\_\_  
 19 Signature

20 \_\_\_\_\_  
 21 Date".

22 (c) If a personal financial emergency necessitates the disbursement  
 23 of a debtor's money to one (1) or more of the debtor's creditors before  
 24 the expiration of the third business day after the date an agreement is  
 25 signed, a debtor may waive the right to cancel. To waive the right, the  
 26 individual must send or deliver a signed, dated statement in the debtor's  
 27 own words describing the circumstances that necessitate a waiver. The  
 28 waiver must explicitly waive the right to cancel. A waiver by means of  
 29 a standard form record is void.

30 SECTION 7. IC 28-1-29-8.8, AS ADDED BY P.L.35-2010,  
 31 SECTION 130, IS AMENDED TO READ AS FOLLOWS  
 32 [EFFECTIVE JULY 1, 2013]: Sec. 8.8. (a) If a contract debtor fails to  
 33 make a payment to a licensee within ~~sixty (60)~~ **ninety (90)** days after  
 34 the date a payment is due under an agreement, the agreement is  
 35 considered canceled by the contract debtor. A contract debtor may file  
 36 a letter of continuation of an agreement even if the contract debtor did  
 37 not make a payment within ~~sixty (60)~~ **ninety (90)** days after a payment  
 38 was due. All of the following apply to a letter of continuation of an  
 39 agreement:

- 40 (1) A contract debtor may file only one (1) letter of continuation
- 41 with a licensee for any agreement.
- 42 (2) A letter of continuation must contain a detailed explanation of

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1 the reason or reasons for the missed payment.

2 (3) If an agreement for which a letter of continuation that meets  
3 the requirements of this subsection is filed, the agreement remains  
4 in effect and subject to cancellation for any future failure to make  
5 a payment as described in this subsection.

6 (4) An agreement between a licensee and a contract debtor must  
7 clearly provide for one (1) letter of continuation by a contract  
8 debtor.

9 (5) A contract debtor may not file a letter of continuation with a  
10 licensee at the beginning of an agreement.

11 (b) If a licensee or a contract debtor terminates an agreement, the  
12 licensee shall, **immediately not later than fifteen (15) days after the**  
13 **effective date of the termination**, return to the contract debtor any  
14 money of the contract debtor held in trust for the benefit of the contract  
15 debtor.

16 SECTION 8. IC 28-1-29-9, AS AMENDED BY P.L.27-2012,  
17 SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 2013]: Sec. 9. (a) All money paid to a licensee by or on behalf  
19 of a contract debtor for distribution to creditors under a plan is held in  
20 trust. Before the close of the same banking day the funds are received,  
21 the licensee shall deposit the money in a trust account established for  
22 the benefit of the contract debtor to whom the licensee is furnishing  
23 debt management services.

24 (b) A licensee shall do the following:

25 (1) Maintain separate records of account for each individual to  
26 whom the licensee is furnishing debt management services.

27 (2) Disburse money paid by or on behalf of the contract debtor to  
28 creditors of the contract debtor as disclosed in the agreement.

29 (3) Make remittances not later than thirty (30) days after initial  
30 receipt of funds. After the initial receipt of funds, remittances  
31 shall be made not later than thirty (30) days after receipt of funds,  
32 less fees and costs, unless the reasonable payment of one (1) or  
33 more of the contract debtor's obligations requires that the funds be  
34 held for a longer period to accumulate a sum certain. ~~For purposes~~  
35 ~~of this section, the close-out fee set forth in section 8.3(e) of this~~  
36 ~~chapter is not considered an obligation of the contract debtor.~~

37 (4) Retain in the contract debtor's trust account, for charges, an  
38 amount less than or equal to the sum of one (1) month's fee as  
39 permitted by section 8.3(c)(2) of this chapter, ~~plus the close-out~~  
40 ~~fee as permitted by section 8.3(e) of this chapter~~, unless a greater  
41 amount is approved in writing by the department.

42 (5) Promptly:

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- 1 (A) correct any payments that are not made or that are
- 2 misdirected as a result of an error by the licensee or other
- 3 person in control of the trust account; and
- 4 (B) reimburse the contract debtor for any costs or fees imposed
- 5 by a creditor as a result of the failure to pay or misdirection.
- 6 (c) A licensee may not commingle money in a trust account
- 7 established for the benefit of a contract debtor to whom the licensee is
- 8 furnishing debt management services with money of other persons.
- 9 (d) A trust account must at all times have a cash balance equal to the
- 10 sum of the balances of each contract debtor's account.
- 11 (e) If a licensee has established a trust account under subsection (a),
- 12 the licensee shall reconcile the trust account at least every thirty (30)
- 13 days after receipt of the bank statement. The reconciliation must
- 14 compare the cash balance in the trust account with the sum of the
- 15 balances in each contract debtor's account. If the licensee or the
- 16 licensee's designee has more than one (1) trust account, each trust
- 17 account must be individually reconciled.
- 18 (f) If a licensee or a licensee's employee discovers, or has a
- 19 reasonable suspicion of, embezzlement or other unlawful appropriation
- 20 of money held in trust, the licensee or the licensee's employee shall
- 21 immediately notify the department in writing. Unless the department
- 22 by regulation, rule, policy, or guidance provides otherwise, the licensee
- 23 shall give notice to the department describing the remedial action taken
- 24 or to be taken not later than five (5) days after the licensee or the
- 25 licensee's employee discovers, or has a reasonable suspicion of, the
- 26 embezzlement or other unlawful appropriation.
- 27 (g) If a contract debtor terminates an agreement or it becomes
- 28 reasonably apparent to a licensee that a plan has failed, the licensee
- 29 shall, **promptly not later than fifteen (15) days after:**
- 30 **(1) the effective date of the termination; or**
- 31 **(2) the date on which it becomes reasonably apparent to the**
- 32 **licensee that the plan has failed;**
- 33 **whichever applies,** refund to the contract debtor all money paid by or
- 34 on behalf of the contract debtor that has not been paid to creditors. ~~less~~
- 35 ~~the fee that is payable to the licensee under section 8.3(e) of this~~
- 36 ~~chapter.~~
- 37 (h) Before relocating a trust account from one (1) bank to another,
- 38 a licensee shall inform the department of the name, business address,
- 39 and telephone number of the new bank. As soon as practicable, the
- 40 licensee shall inform the department of the account number of the trust
- 41 account at the new bank.
- 42 (i) At least once every ~~three (3) months~~ **month** the licensee shall

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1 render an accounting to the contract debtor which must itemize the  
 2 total amount received from the contract debtor, the total amount paid  
 3 each creditor, the amount of charges deducted, and any amount held in  
 4 reserve. A licensee shall provide such an accounting to a contract  
 5 debtor not later than seven (7) days after written demand, but is not  
 6 required to provide more than three (3) such accountings per six (6)  
 7 month period.

8 (j) Upon the completion or termination of a contract between a  
 9 licensee and a contract debtor, the licensee shall provide to the contract  
 10 debtor a statement:

11 (1) indicating that the licensee no longer holds funds in trust for  
 12 the contract debtor; and

13 (2) listing the name and address of:

14 (A) each creditor paid in full; and

15 (B) any creditors remaining unpaid.

16 SECTION 9. IC 28-1-29-17, AS ADDED BY P.L.35-2010,  
 17 SECTION 139, IS AMENDED TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2013]: Sec. 17. **(a) This section does not apply**  
 19 **to a bona fide nonprofit organization licensed under this chapter.**

20 **(b)** Unless a fee is specifically authorized under the chapter, a  
 21 licensee may not solicit or accept a voluntary contribution from a  
 22 contract debtor for any service provided to the contract debtor.

23 SECTION 10. **An emergency is declared for this act.**

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