

IC 28-1-29

Chapter 29. Debt Management Companies

IC 28-1-29-0.5

Inapplicability to attorneys, depository financial institutions, third-party bill paying services

Sec. 0.5. (a) This chapter does not apply to an attorney at law authorized to practice in Indiana or to a depository financial institution (as defined in IC 28-1-1-6).

(b) This chapter does not apply to a third-party bill paying service with which the customer contracts solely for the customer's convenience of paying routine bills, in an arrangement in which the customer retains full control over all funds deposited. The types of payments made by a bill paying service are exempt from this chapter as long as the company's actions are not an attempt, as determined by the director, to circumvent limitations under this chapter.

As added by P.L.35-2010, SEC.118.

IC 28-1-29-1

Definitions

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 finances and 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 shall not apply to persons whose principal indebtedness arises out of business purpose transactions.

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

(9) "Finances" means a savings deposit that is:

(A) made on behalf of a contract debtor;

(B) owned and controlled exclusively by the contract debtor and not a licensee who has a power of attorney of the contract debtor; and

(C) placed in a bank or savings institution chartered by the state or federal government.

(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) designated as a trust account or other account designated to indicate that the money in the account is not the money of the licensee; and

(D) used to hold money of one (1) or more contract debtors for disbursement to creditors of the 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 the 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.

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by P.L.14-1992, SEC.107; P.L.42-1993, SEC.46;
P.L.196-1996, SEC.1; P.L.90-2008, SEC.27; P.L.35-2010, SEC.119;
P.L.89-2011, SEC.36.*

IC 28-1-29-2

Administration of chapter

Sec. 2. The department shall adopt such rules and regulations as it deems advisable for the administration of this chapter, and to provide such forms and procedures as it determines to be necessary to carry out the provisions of such chapter.

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by P.L.42-1993, SEC.47.*

IC 28-1-29-3 Version a

License required; persons operating in Indiana; evidence of compliance; fees; violations; renewal

Note: This version of section effective until 1-1-2012. See also following version of this section, effective 1-1-2012.

Sec. 3. (a) No person shall operate a debt management company in Indiana without having obtained a license from the department. For purposes of this section, a person is operating in Indiana if:

- (1) the person or any of the person's employees or agents are located in Indiana; or
- (2) the person:
 - (A) contracts with debtors who are residents of Indiana; or
 - (B) solicits business from residents of Indiana by advertisements or other communications sent or delivered through any of the following means:
 - (i) Mail.

- (ii) Personal delivery.
- (iii) Telephone.
- (iv) Radio.
- (v) Television.
- (vi) The Internet or other electronic communications.
- (vii) Any other means of communication.

(b) The director may request evidence of compliance with this section at:

- (1) the time of application;
- (2) the time of renewal of a license; or
- (3) any other time considered necessary by the director.

(c) For purposes of subsection (b), evidence of compliance with this section may include:

- (1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in section 5(b)(2) or 5(b)(3) of this chapter;
- (2) credit histories; and
- (3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (b). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(d) The fee for a license or renewal of a license shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. The department may impose a fee under IC 28-11-3-5 for each day that a renewal fee and any related documents that are required to be submitted with a renewal application are delinquent.

(e) If a person knowingly acts as a debt management company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

(f) A license issued under this section:

- (1) except in a transaction approved under section 3.1 of this chapter, is not assignable or transferable; and
- (2) in order to remain in force, must be renewed every year in the manner prescribed by the director of the department.

The director of the department shall prescribe the form of the renewal application. In order to be accepted for processing, a renewal

application must be accompanied by the license renewal fee imposed under subsection (d) and all information and documents requested by the director of the department.

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by P.L.42-1993, SEC.48; P.L.172-1997, SEC.18;
P.L.63-2001, SEC.12 and P.L.134-2001, SEC.13; P.L.10-2006,
SEC.33 and P.L.57-2006, SEC.33; P.L.213-2007, SEC.44;
P.L.217-2007, SEC.42; P.L.90-2008, SEC.28; P.L.35-2010,
SEC.120; P.L.89-2011, SEC.37.*

IC 28-1-29-3 Version b

License required; persons operating in Indiana; evidence of compliance; fees; violations; renewal; tax warrant list

Note: This version of section effective 1-1-2012. See also preceding version of this section, effective until 1-1-2012.

Sec. 3. (a) No person shall operate a debt management company in Indiana without having obtained a license from the department. For purposes of this section, a person is operating in Indiana if:

- (1) the person or any of the person's employees or agents are located in Indiana; or
- (2) the person:
 - (A) contracts with debtors who are residents of Indiana; or
 - (B) solicits business from residents of Indiana by advertisements or other communications sent or delivered through any of the following means:
 - (i) Mail.
 - (ii) Personal delivery.
 - (iii) Telephone.
 - (iv) Radio.
 - (v) Television.
 - (vi) The Internet or other electronic communications.
 - (vii) Any other means of communication.

(b) The director may request evidence of compliance with this section at:

- (1) the time of application;
- (2) the time of renewal of a license; or
- (3) any other time considered necessary by the director.

(c) For purposes of subsection (b), evidence of compliance with this section may include:

- (1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in section 5(b)(2) or 5(b)(3) of this chapter;
- (2) credit histories; and
- (3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the

time evidence of compliance is requested under subsection (b). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(d) The fee for a license or renewal of a license shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. The department may impose a fee under IC 28-11-3-5 for each day that a renewal fee and any related documents that are required to be submitted with a renewal application are delinquent.

(e) If a person knowingly acts as a debt management company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

(f) A license issued under this section:

(1) except in a transaction approved under section 3.1 of this chapter, is not assignable or transferable; and

(2) in order to remain in force, must be renewed every year in the manner prescribed by the director of the department.

The director of the department shall prescribe the form of the renewal application. In order to be accepted for processing, a renewal application must be accompanied by the license renewal fee imposed under subsection (d) and all information and documents requested by the director of the department.

(g) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:

(1) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or

(2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by P.L.42-1993, SEC.48; P.L.172-1997, SEC.18;
P.L.63-2001, SEC.12 and P.L.134-2001, SEC.13; P.L.10-2006,
SEC.33 and P.L.57-2006, SEC.33; P.L.213-2007, SEC.44;
P.L.217-2007, SEC.42; P.L.90-2008, SEC.28; P.L.35-2010,
SEC.120; P.L.89-2011, SEC.37; P.L.172-2011, SEC.132.*

IC 28-1-29-3.1

Change in control of licensee; application to department; timeframe for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license

Sec. 3.1. (a) As used in this section, "control" means possession

of the power directly or indirectly to:

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

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(c) The period for approval under subsection (b) may be extended:

- (1) in the discretion of the director for an additional thirty (30) days; and
- (2) not more than two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);

(B) the director determines that any material information submitted is substantially inaccurate; or

(C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an

affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this section must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 3 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.38.

IC 28-1-29-4

Denial, suspension, or revocation of license; grounds; procedure

Sec. 4. (a) The department may revoke or suspend any license issued under this chapter for the following causes:

- (1) Conviction of or a plea of guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.
- (2) Violation of any of the provisions of this chapter.
- (3) Fraud or deceit in procuring the issuance of a license or renewal under this chapter.
- (4) Indulging in a continuous course of unfair conduct.
- (5) Insolvency, bankruptcy, receivership, or assignment for the benefit of creditors by a licensee.
- (6) Licensee lending money to any contract debtor that has subscribed to the licensee's services.
- (7) Except as provided in subsection (c), offering to pay or give any cash, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the licensee.
- (8) Except as provided in subsection (d), receiving any cash, gift, bonus, premium, reward, or other compensation from any person other than the contract debtor in connection with the licensee's activities as a licensee.
- (9) Licensee requiring a debtor to purchase or agree to purchase a policy of insurance from which licensee receives a fee or other remuneration.
- (10) If the licensee violates any reasonable rule or regulation made by the department under and within the authority of this chapter.
- (11) Misleading advertising or representing that the licensee can provide protection from legal recourse or suits of creditors.
- (12) Engaging in an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.
- (13) Providing a contract debtor less than the full benefit of a compromise of a debt arranged by the licensee.
- (14) Furnishing legal advice or performing legal services, unless the person furnishing the advice or performing the services:
 - (A) is licensed to practice law; and

(B) has been engaged by a debtor to provide legal services to the debtor.

(15) A fact or condition exists that, if the fact or condition had existed when the licensee applied for licensure as a debt management company, would have been a reason for denying the license.

(b) Except as provided in section 4.1 of this chapter, the denial, revocation, or suspension shall be made only after specific charges have been filed in writing, under oath, with the department or by the department, whereupon a hearing shall be had as to the reasons for such denial, revocation, or suspension and a certified copy of the charges shall be served on the licensee or the applicant for license not less than ten (10) days prior to the hearing.

(c) Notwithstanding subsection (a)(7), a licensee may reduce the fees of a contract debtor who is a client of the licensee if the contract debtor refers a prospective customer to the licensee.

(d) Notwithstanding subsection (a)(8), a licensee may receive a fair share creditor fee, based on disbursements made to the creditor, from a contract debtor's creditors. If any creditor refuses to pay the fair share creditor fee, the creditor must still be included in the contract debtor's payment plan.

(e) If the director of the department:

(1) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or

(2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6.

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by P.L.42-1993, SEC.49; P.L.176-1996, SEC.15;
P.L.196-1996, SEC.2; P.L.80-1998, SEC.10; P.L.213-2007, SEC.45;
P.L.217-2007, SEC.43; P.L.35-2010, SEC.121.*

IC 28-1-29-4.1

Failure to file renewal application or pay renewal fee; revocation or suspension of license

Sec. 4.1. (a) A license issued by the department under this chapter shall be revoked or suspended by the department if the licensee fails to:

- (1) file any renewal application prescribed by the director; or
- (2) pay any license renewal fee described under section 3 of this chapter;

within sixty (60) days after the date the renewal is due.

(b) A person whose license is revoked or suspended under this section may:

(1) pay all delinquent fees and apply for reinstatement of the license; or

(2) appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from a hearing under IC 4-21.5-3

concerning a license revocation or suspension, the license remains in force.

As added by P.L.176-1996, SEC.16. Amended by P.L.35-2010, SEC.122; P.L.89-2011, SEC.39.

IC 28-1-29-4.5

Collection agencies or process servers; licenses; restriction

Sec. 4.5. After August 31, 1981, the department may not issue a license to any person who is an employee of, owner of, or affiliated in any way with a collection agency or a process serving business. Any person who was granted a license before September 1, 1981, is not affected by the restriction imposed in this section.

As added by Acts 1981, P.L.256, SEC.1. Amended by P.L.42-1993, SEC.50.

IC 28-1-29-4.6

Repealed

(Repealed by P.L.196-1996, SEC.5.)

IC 28-1-29-5

License application; findings by the department; felonies; denial; hearing

Sec. 5. (a) Every person doing business as a debt management company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the department and shall contain such information as the department may require.

(b) The department may not issue a license unless the department finds that the financial responsibility, character, and fitness of:

- (1) the applicant and any significant affiliate of the applicant;
- (2) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

warrant belief that the business will be operated honestly and fairly under this chapter. The department is entitled to request evidence of an applicant's financial responsibility, character, and fitness.

(c) An application submitted under this section must indicate whether any individuals described in subsection (b)(2) or (b)(3):

- (1) are, at the time of the application, under indictment for a felony under the laws of Indiana or any other jurisdiction; or
- (2) have been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.

(d) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(e) Upon written request, an applicant is entitled to a hearing under IC 4-21.5 on the question of the qualifications of the applicant for a license.

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by P.L.42-1993, SEC.52; P.L.80-1998, SEC.11;
P.L.10-2006, SEC.34 and P.L.57-2006, SEC.34; P.L.213-2007,
SEC.46; P.L.217-2007, SEC.44; P.L.90-2008, SEC.29; P.L.35-2010,
SEC.123.*

IC 28-1-29-6

Bond

Sec. 6. Each application for a license shall be accompanied by proof that the applicant has executed a bond, payable to the department, in an amount determined by the director and in accordance with the standards adopted by the director. Said bond shall also indemnify any person damaged by failure on the part of the licensee to conduct the business in accordance with the provisions of this chapter.

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by Acts 1981, P.L.256, SEC.3; P.L.42-1993, SEC.53;
P.L.35-2010, SEC.124.*

IC 28-1-29-7

Repealed

(Repealed by P.L.35-2010, SEC.209.)

IC 28-1-29-7.5

Felonies; civil actions; notice to department

Sec. 7.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any individuals described in section 5(b)(2) or 5(b)(3) of this chapter have been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 5(c) of this chapter:

(1) not later than thirty (30) days after any person described in subsection (a) has been convicted of or pleaded guilty or nolo contendere to the felony; or

(2) if the licensee's next license renewal fee under section 3(d) of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 3(d) of this chapter.

(c) Not later than thirty (30) days after a licensee has been served with notice of a civil action for violation of this chapter by or on behalf of a debtor who resides or resided in Indiana on:

(1) the date an agreement that is the subject of the civil action was entered into; or

(2) the date the civil action is filed;

the licensee shall provide written notice of the civil action to the

department.

*As added by P.L.213-2007, SEC.47; P.L.217-2007, SEC.45.
Amended by P.L.90-2008, SEC.30; P.L.35-2010, SEC.125;
P.L.42-2011, SEC.62.*

IC 28-1-29-7.7

Budget analysis and plan; written statement; disclosures

Sec. 7.7. (a) A licensee may not furnish debt management services to a debtor unless:

- (1) the licensee has prepared a budget analysis; and
- (2) if the debtor is to make regular, periodic payments, the licensee:
 - (A) has prepared a plan for the debtor;
 - (B) has made a determination, based on the licensee's analysis of the information provided by the debtor and otherwise available to the licensee, that the plan is suitable for the debtor and the debtor will be able to meet the payment obligations under the plan; and
 - (C) believes that each creditor of the debtor listed as a participating creditor in the plan will accept payment of the debtor's debts as provided in the plan.

(b) Before a debtor enters into an agreement with a licensee to engage in a plan, the licensee shall:

- (1) provide the debtor with a copy of the budget analysis and plan required by subsection (a) in a form that identifies the licensee and that the debtor may keep whether or not the debtor enters into the agreement;
- (2) inform the debtor of the availability, at the debtor's option, of assistance provided through a toll free communication system or in person, where reasonably available to residents in Indiana, regarding the budget analysis and plan required by subsection (a); and
- (3) with respect to all creditors identified by the debtor or otherwise known by the licensee to be creditors of the debtor, provide the debtor with a list of:
 - (A) creditors that the licensee expects to participate in the plan and grant concessions;
 - (B) creditors that the licensee expects to participate in the plan but not grant concessions;
 - (C) creditors that the licensee expects not to participate in the plan; and
 - (D) all other creditors.

(c) Before a debtor enters into an agreement with a licensee, the licensee shall, in a written form that is provided to the debtor separately, that contains no other information, and that the debtor may keep whether or not the debtor enters into the agreement, provide the following information to the debtor:

- (1) The licensee's name and business address of the licensee.
- (2) The following disclosure in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

(Name and business address of licensee)".

As added by P.L.35-2010, SEC.126. Amended by P.L.89-2011, SEC.40.

IC 28-1-29-8

Agreement between licensee and debtor; contents; delivery; notice to creditors; payments; cancellation by contract debtor; budget analysis; periodic reviews; operation of other businesses or sale of other products and services; out-of-state licensees; toll free communication system; good faith required

- Sec. 8. (a) An agreement between a licensee and a debtor must:
- (1) be in a written form;
 - (2) be dated and signed by the licensee and the debtor;
 - (3) include the name of the debtor and the address where the debtor resides;
 - (4) include the name, business address, and telephone number of the licensee;
 - (5) be delivered to the debtor immediately upon formation of the agreement; and
 - (6) disclose the following:
 - (A) The services to be provided.
 - (B) The amount or method of determining the amount of all fees, individually itemized, to be paid by the debtor.
 - (C) The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment.
 - (D) If a plan provides for regular periodic payments to creditors:
 - (i) each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the licensee reasonably believes each creditor will offer; and
 - (ii) the schedule of expected payments to each creditor,

including the amount of each payment and the date on which the payment will be made.

(E) Each creditor that the licensee believes will not participate in the plan and to which the licensee will not direct payment.

(F) The manner in which the licensee will comply with the licensee's obligations under section 9(j) of this chapter.

(G) A statement that:

(i) the licensee may terminate the agreement for good cause, upon return of unexpended money of the debtor;

(ii) the debtor may cancel the agreement as provided in section 8.6 of this chapter; and

(iii) the debtor may contact the department with any questions or complaints regarding the licensee.

(H) The address, telephone number, and Internet address or web site of the department.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when:

(1) the record is made available in a format in which the debtor may retrieve, save, and print the record; and

(2) the debtor is notified that the record is available.

(c) An agreement must provide that:

(1) the debtor has a right to terminate the agreement at any time without penalty, notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter, or obligation, by giving the licensee written or electronic notice, in which event:

(A) the licensee shall refund all unexpended money that the licensee or the licensee's agent has received from or on behalf of the debtor for the reduction or satisfaction of the debtor's debt; and

(B) all powers of attorney granted by the debtor to the licensee are revoked and ineffective;

(2) the debtor authorizes any bank insured by the Federal Deposit Insurance Corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account;

(3) the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement; and

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

(A) the identity of the creditor; and

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

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

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

(f) A licensee shall, upon cancellation by a contract debtor of the

agreement, notify immediately in writing all creditors in the debt management plan of the cancellation by the contract debtor.

(g) A licensee may not enter into an agreement with a debtor unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required under a proposed plan. The following must be included in the budget analysis:

- (1) Documentation and verification of all income considered. All income verification must be dated not more than sixty (60) days before the completion of the budget analysis.
- (2) Monthly living expense figures, which must be reasonable for the particular family size and part of the state.
- (3) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of monthly debt payments and balances to be paid outside the plan.
- (4) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of the monthly debt payments and current balances to be paid through the plan.
- (5) The date of the budget analysis and the signature of the debtor.

(h) A licensee may not enter into an agreement with a contract debtor for a period longer than sixty (60) months. Every thirty (30) months, the licensee shall complete a thorough, written budget analysis of the contract debtor to ensure the debt management plan is still suitable for the contract debtor and the contract debtor will be able to meet the payment obligations under the plan. When adjustments are needed to change the indebtedness listed in the agreement, the licensee may execute a new agreement using the revised figures. A licensee:

- (1) may not increase the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter; and
- (2) must decrease the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter if applying the percentage specified in section 8.3(c)(2)(A) of this chapter to the new monthly amount of indebtedness to be paid through the licensee (as of the date of the review under this subsection) would result in an amount that is less than seventy-five dollars (\$75) in any month;

during the term of the original debt management plan agreement.

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

- (1) the operation of the other business; or
- (2) the sale of other products and services;

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

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

- (1) solicit sales of; and
- (2) sell;

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

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

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

*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by Acts 1981, P.L.256, SEC.4; P.L.42-1993, SEC.54;
P.L.196-1996, SEC.3; P.L.63-2001, SEC.13 and P.L.134-2001,
SEC.14; P.L.213-2007, SEC.48; P.L.217-2007, SEC.46; P.L.3-2008,
SEC.220; P.L.90-2008, SEC.31; P.L.1-2009, SEC.148; P.L.35-2010,
SEC.127; P.L.89-2011, SEC.41.*

IC 28-1-29-8.3

Fees and charges; plan, written agreement, and payment to creditor required; set up fee; monthly service fee; close-out fee; department approval for additional charges; fees not considered debt

Sec. 8.3. (a) Except as otherwise permitted by this section, a licensee may not:

- (1) impose, directly or indirectly, a fee or other charge on a debtor; or
- (2) receive money from or on behalf of a debtor for debt management services.

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

- (1) the licensee and the debtor have agreed upon a plan and have signed an agreement that complies with sections 8, 8.6, and 9.5 of this chapter; and
- (2) at least one (1) payment has been made to a creditor under the plan.

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

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

- (1) A set up fee of not more than fifty dollars (\$50) for consultation, obtaining a credit report, and setting up an account. Acceptance of a plan payment constitutes agreement by the creditor to the plan. A set up fee under this subdivision may not be collected until the debtor, or the licensee on behalf of the debtor, has made at least one (1) payment to a creditor under the plan.
- (2) A monthly service fee of the lesser of:
 - (A) not more than fifteen percent (15%) of the amount the contract debtor agrees to pay through the licensee, divided

into equal monthly payments over the term of the agreement;
or

(B) not more than seventy-five dollars (\$75) in any month. 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) Upon cancellation by a contract debtor or termination of payments by a contract debtor, a licensee may not withhold for the licensee's own benefit more than one hundred dollars (\$100), which may be accrued as a close-out fee.

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

(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.

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

(h) A licensee may assess a charge of not more than twenty-five dollars (\$25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the contract debtor.

(i) Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, other than the fees described under subsection (e), is not considered a debt owed by the debtor to the licensee.

As added by P.L.35-2010, SEC.128. Amended by P.L.89-2011, SEC.42.

IC 28-1-29-8.6

Debtor's right to cancel agreement; notice; waiver of right

Sec. 8.6. (a) A debtor may cancel an agreement before midnight of the third business day after the debtor enters into the agreement unless the agreement does not comply with subsection (b) or section 8 or 9.5 of this chapter, in which event the debtor may cancel the agreement at any time after the debtor enters into the agreement and all fees paid by the debtor shall be refunded to the debtor. To exercise the right to cancel, the debtor must give written notice to the licensee. Notice by mail is given when mailed.

(b) An agreement must be accompanied by a form that contains

in clear and conspicuous type, surrounded by bold black lines:

"NOTICE OF RIGHT TO CANCEL

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

To cancel this agreement during this period, send an electronic mail message to

_____ or mail or deliver a signed, Electronic mail address of licensee dated copy of this notice, or any other written notice to

Name of licensee

at _____ before midnight on
Address of licensee

Date

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

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

I cancel this agreement,

Print your name

Signature

Date".

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

As added by P.L.35-2010, SEC.129.

IC 28-1-29-8.8

Debtor's failure to make payment; cancellation of agreement; letter of continuation; return of money to contract debtor

Sec. 8.8. (a) If a contract debtor fails to make a payment to a licensee within sixty (60) days after the date a payment is due under an agreement, the agreement is considered canceled by the contract debtor. A contract debtor may file a letter of continuation of an agreement even if the contract debtor did not make a payment within sixty (60) days after a payment was due. All of the following apply to a letter of continuation of an agreement:

(1) A contract debtor may file only one (1) letter of continuation with a licensee for any agreement.

(2) A letter of continuation must contain a detailed explanation of the reason or reasons for the missed payment.

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

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

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

(b) If a licensee or a contract debtor terminates an agreement, the licensee shall immediately return to the contract debtor any money of the contract debtor held in trust for the benefit of the contract debtor.

As added by P.L.35-2010, SEC.130.

IC 28-1-29-9

Trust accounts; requirements and restrictions; quarterly accountings; statement upon completion or termination of contract

Sec. 9. (a) All money paid to a licensee by or on behalf of a contract debtor for distribution to creditors under a plan is held in trust. On or before the close of the same banking day the funds are received, the licensee shall deposit the money in a trust account established for the benefit of the contract debtor to whom the licensee is furnishing debt management services.

(b) A licensee shall do the following:

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

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

(3) Make remittances not later than thirty (30) days after initial receipt of funds. After the initial receipt of funds, remittances shall be made not later than thirty (30) days after receipt of funds, less fees and costs, unless the reasonable payment of one

(1) or more of the contract debtor's obligations requires that the funds be held for a longer period to accumulate a sum certain. For purposes of this section, the close-out fee set forth in section 8.3(d) of this chapter is not considered an obligation of the contract debtor.

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

(5) Promptly:

(A) correct any payments that are not made or that are misdirected as a result of an error by the licensee or other person in control of the trust account; and

(B) reimburse the contract debtor for any costs or fees

imposed by a creditor as a result of the failure to pay or misdirection.

(c) A licensee may not commingle money in a trust account established for the benefit of a contract debtors to whom the licensee is furnishing debt management services with money of other persons.

(d) A trust account must at all times have a cash balance equal to the sum of the balances of each contract debtor's account.

(e) If a licensee has established a trust account under subsection (a), the licensee shall reconcile the trust account at least every thirty (30) days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each contract debtor's account. If the licensee or the licensee's designee has more than one (1) trust account, each trust account must be individually reconciled.

(f) If a licensee or a licensee's employee discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the licensee or the licensee's employee shall:

- (1) immediately notify the department in writing; and
- (2) unless the department by rule provides otherwise, give notice to the department describing the remedial action taken or to be taken not later than five (5) days after the licensee or the licensee's employee discovers, or has a reasonable suspicion of, the embezzlement or other unlawful appropriation.

(g) If a contract debtor terminates an agreement or it becomes reasonably apparent to a licensee that a plan has failed, the licensee shall promptly refund to the contract debtor all money paid by or on behalf of the contract debtor that has not been paid to creditors less the fee that is payable to the licensee under section 8.3(e) of this chapter.

(h) Before relocating a trust account from one (1) bank to another, a licensee shall inform the department of the name, business address, and telephone number of the new bank. As soon as practicable, the licensee shall inform the department of the account number of the trust account at the new bank.

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

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

- (1) indicating that the licensee no longer holds funds in trust for the contract debtor; and
- (2) listing the name and address of:
 - (A) each creditor paid in full; and

(B) any creditors remaining unpaid.
*(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)
As amended by P.L.196-1996, SEC.4; P.L.213-2007, SEC.49;
P.L.217-2007, SEC.47; P.L.35-2010, SEC.131; P.L.89-2011,
SEC.43.*

IC 28-1-29-9.5

Prohibited acts; unauthorized practice of law; compensation prohibited

Sec. 9.5. (a) A licensee may not, directly or indirectly, do any of the following:

- (1) Misappropriate or misapply money held in trust.
- (2) Exercise or attempt to exercise a power of attorney after a contract debtor has terminated an agreement.
- (3) Initiate a transfer from a contract debtor's account at a bank or with another person unless the transfer is:
 - (A) a return of money to the contract debtor; or
 - (B) before the termination of an agreement, properly authorized by the agreement and this chapter, and for:
 - (i) payment to one (1) or more creditors under an agreement; or
 - (ii) payment of a fee.
- (4) Offer a gift or bonus, premium, reward, or other compensation to a debtor for executing an agreement.
- (5) Offer, pay, or give:
 - (A) a gift or bonus;
 - (B) a premium;
 - (C) a reward; or
 - (D) other compensation;to a person for referring a prospective customer if the person making the referral has a financial interest in the outcome of debt management services provided to the customer.
- (6) Receive a bonus, a commission, or other benefit for referring a debtor to a person.
- (7) Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt.
- (8) Compensate the licensee's employees on the basis of a formula that incorporates the number of debtors the employee induces to enter into agreements. It is not a violation of this subsection for a licensee to use the number of successfully completed debt management plans as a criterion for compensation for the licensee's employees.
- (9) Settle a debt or lead a contract debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the contract debtor receives a certification by the creditor that the payment is in full settlement of the debt.

- (10) Make a representation that:
 - (A) the licensee will furnish money to pay bills or prevent attachments;
 - (B) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or
 - (C) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.
- (11) Misrepresent that the licensee is authorized or competent to furnish legal advice or perform legal services.
- (12) Represent in the licensee's agreements, disclosures required by this chapter, advertisements, or Internet web site that the licensee is:
 - (A) a nonprofit entity unless the licensee is organized and properly operating as a nonprofit entity under the law of the state in which entity was formed; or
 - (B) a tax exempt entity unless the entity has received certification of tax exempt status from the Internal Revenue Service and is properly operating as a nonprofit entity under the law of the state in which the entity was formed.
- (13) Take a confession of judgment or power of attorney to confess judgment against a contract debtor.
- (14) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.
- (b) If a licensee furnishes debt management services to a debtor, the licensee may not, directly or indirectly, do any of the following:
 - (1) Purchase a debt or obligation of the debtor.
 - (2) Receive from or on behalf of the debtor:
 - (A) a promissory note or other negotiable instrument other than a check or a demand draft; or
 - (B) a postdated check or demand draft.
 - (3) Lend money or provide credit to the debtor.
 - (4) Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor.
 - (5) Except as permitted by federal law, disclose the identity or identifying information of the debtor or the identity of the debtor's creditors, except:
 - (A) to the department, upon proper demand;
 - (B) to a creditor of the debtor, to the extent necessary to secure the cooperation of the creditor in a plan; or
 - (C) to the extent necessary to administer the plan.
 - (6) Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance.
 - (7) Furnish legal advice or perform legal services unless the person furnishing the advice or performing the services is licensed to practice law.

(c) This chapter does not authorize any person to engage in the practice of law.

(d) A licensee may not receive a gift, bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting a debtor in connection with obtaining an extension of credit or other service from a lender or service provider.

As added by P.L.35-2010, SEC.132.

IC 28-1-29-9.7

Advertising

Sec. 9.7. A licensee:

- (1) may not use false, misleading, or deceptive advertising; and
- (2) shall meet the following conditions in advertising:
 - (A) An advertisement may not include a statement that states or implies that no financial problem is too great for the licensee to solve.
 - (B) An advertisement may not include a statement that states or implies that the licensee will use the licensee's own cash to pay the debtor's accounts.
 - (C) All advertisements must contain the statement "We do not lend money."
 - (D) All advertisements must contain the true name and address of the licensee.

As added by P.L.35-2010, SEC.133.

IC 28-1-29-10

Repealed

(Repealed by P.L.35-2010, SEC.209.)

IC 28-1-29-10.5

Record keeping and retention; examinations and investigations; payment of costs; records outside Indiana; court order compelling compliance; confidentiality; department's authority to enter into cooperative regulatory agreements; examination of vendors

Sec. 10.5. (a) A licensee shall maintain in the licensee's business any books, accounts, and records that enable the department to determine whether the licensee is complying with this chapter. The books, accounts, and records shall be preserved for at least two (2) years after making the final entry of any agreement recorded in the books, accounts, and records. A licensee is subject to IC 28-1-2-30.5 with respect to any records maintained by the licensee.

(b) In administering this chapter and in order to determine whether this chapter is being complied with by a person engaging in acts subject to this chapter, the department may examine the records of a person and may make investigations of a person as necessary to determine compliance. Records subject to examination under this section include the following:

- (1) Training, operating, and policy manuals.
- (2) Minutes of:
 - (A) management meetings; and

(B) other meetings.

(3) Other records that the department determines are necessary to perform the department's investigation or examination.

(c) The department may also administer oaths or affirmations, subpoena witnesses, compel a witness's attendance, adduce evidence, and require the production of any matter that is relevant to the investigation. The department shall determine whether:

(1) the records maintained are sufficient; and

(2) the person has made the required information reasonably available.

(d) If the department:

(1) investigates; or

(2) examines the books and records of;

a person that is subject to this chapter, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

(e) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, at the discretion of the director, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where the records are maintained.

(f) If a person fails to:

(1) obey a subpoena without a lawful excuse; or

(2) give testimony;

the department may apply to a civil court for an order compelling compliance.

(g) The department shall not make public the name or identity of a person whose acts or conduct the department investigates under this section or the facts disclosed in the investigation. However, this subsection does not apply to disclosures of enforcement proceedings under this chapter.

(h) The department may:

(1) enter into a cooperative arrangement with another federal or state agency having authority over debt management companies; and

(2) exchange with the agency information about a person subject to this chapter, including information obtained during an examination of the person.

(i) If a person doing business as a debt management company contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the person doing business as

a debt management company and be subject to the department's routine examination procedures, the person that provides the service to the person doing business as a debt management company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any person doing business as a debt management company that receives services from the person refusing the examination to:

- (1) discontinue receiving one (1) or more services from the person refusing the examination; or
- (2) otherwise cease conducting business with the person refusing the examination.

As added by P.L.35-2010, SEC.134.

IC 28-1-29-11

Impounding books, records, and accounts

Sec. 11. Upon affidavit of any person, or other information that the licensee has failed to comply with the provisions of this chapter, and after a preliminary investigation indicates probable cause that a violation has occurred, the department shall have authority to impound such books, records, and accounts as it deems necessary. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)*
As amended by P.L.263-1985, SEC.108; P.L.42-1993, SEC.56.

IC 28-1-29-12

Repealed

(Repealed by P.L.35-2010, SEC.209.)

IC 28-1-29-13

Enforcement by the department; civil penalties; department's recovery of costs; factors for determining amount of civil penalty; violation a Class A misdemeanor

Sec. 13. (a) The department may enforce this chapter and rules adopted under this chapter by taking one (1) or more of the following actions:

- (1) Order a debt management company or a director, employee, or other agent of a debt management company to cease and desist from any violations.
- (2) Order a debt management company or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation.
- (3) Prosecute a civil action to:
 - (A) enforce an order;
 - (B) obtain restitution, an injunction, or other equitable relief;or
 - (C) accomplish both clauses (A) and (B).

(b) Subject to subsection (c), if the department determines, after notice and an opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

(c) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (a)(2), the department may impose a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.

(d) The department may maintain an action in any county to enforce this chapter.

(e) The department may recover the reasonable costs of enforcing this chapter under subsections (a) through (d), including attorney's fees.

(f) In determining the amount of a civil penalty to impose under subsection (b) or (c), the department shall consider:

- (1) the seriousness of the violation;
- (2) the good faith of the person who violated this chapter;
- (3) any previous violations by the person who violated this chapter;
- (4) the deleterious effect of the violation on the public;
- (5) the net worth of the person who violated this chapter; and
- (6) any other factor the department considers relevant to the determination of a civil penalty.

(g) In addition to the revocation provision of section 4 of this chapter, a person who violates section 3, 5, 6, 8, 8.3, 9, or 9.5 of this chapter commits a Class A misdemeanor, and the license of the licensee shall be revoked on the date of the conviction of an offense. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1978, P.L.2, SEC.2815; P.L.42-1993, SEC.58; P.L.35-2010, SEC.135; P.L.89-2011, SEC.44.*

IC 28-1-29-14

Review of department decisions; applicability of laws governing administrative orders and procedures; venue

Sec. 14. Any applicant for a license aggrieved by a decision of the department pursuant to this chapter may file a petition for review as prescribed in IC 4-21.5. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.7-1987, SEC.160; P.L.42-1993, SEC.59; P.L.35-2010, SEC.136.

IC 28-1-29-15

Providing materials and agreements electronically; consumer's consent required; disclosures through Internet web site; debtor's right to request written copy

Sec. 15. (a) As used in this section, "consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(b) As used in this section, "federal act" means the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq., as amended).

(c) A licensee may satisfy the requirements of section 7.7, 8, or 9 of this chapter by means of the Internet or other electronic means if the licensee obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

(d) The disclosures and materials required by section 7.7, 8, or 9 of this chapter shall be presented in a form that is capable of being accurately reproduced for later reference.

(e) With respect to disclosure by means of an Internet web site, the disclosure of the information required by section 7.7 of this chapter must appear on one (1) or more screens that:

- (1) contain no other information; and
- (2) the debtor must see before proceeding to assent to formation of an agreement.

(f) At the time of providing the materials and agreement required by sections 7.7, 8, and 9 of this chapter, a licensee shall inform the debtor that upon electronic, telephonic, or written request, the licensee shall:

- (1) send the debtor a written copy of the materials; and
- (2) comply with a request as provided in subsection (g).

(g) If a licensee is requested, after an agreement is completed or terminated, to send a written copy of the materials required by section 7.7, 8, or 9 of this chapter, the licensee shall send the materials at no charge to the debtor not later than three (3) business days after the request. However, the licensee is not required to comply with a request more than once per calendar month or if the licensee reasonably believes the request is made for purposes of harassment.

(h) A licensee that maintains an Internet web site shall disclose on the home page of the licensee's web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals the following:

- (1) The licensee's name and all names under which the licensee does business.
- (2) The licensee's principal business address, telephone number, and electronic mail address, if any.
- (3) The names of the licensee's principal officers.

(i) A licensee may not terminate the licensee's agreement because a consumer who has consented to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act.

As added by P.L.35-2010, SEC.137.

IC 28-1-29-16

Disclosures and documents to be in English; translation required

if another language used

Sec. 16. Unless the department provides otherwise in a rule, the disclosures and documents required by this chapter must be in English. If a licensee communicates with a debtor primarily in a language other than English, the licensee shall furnish a translation of the disclosures and documents required by this chapter from the other language into English.

As added by P.L.35-2010, SEC.138.

IC 28-1-29-17

Soliciting or accepting contributions from debtors prohibited

Sec. 17. Unless a fee is specifically authorized under the chapter, a licensee may not solicit or accept a voluntary contribution from a contract debtor for any service provided to the contract debtor.

As added by P.L.35-2010, SEC.139.

IC 28-1-29-18

Delegation of licensee's duties or obligations; liability

Sec. 18. If a licensee delegates any of the licensee's duties or obligations under an agreement or this chapter to another person, including an independent contractor, the licensee is liable for conduct of the person which, if done by the licensee, would violate the agreement or this chapter.

As added by P.L.35-2010, SEC.140.