

May 12, 2010

**2010 Legislative Amendments to the Indiana Code Relating to Debt Management Companies (the “Act”)**

**Effective July 1, 2010 (except as otherwise indicated)**

**Questions, Answers, and Administrative Interpretations** This document contains a Q&A relating new provisions in the Debt Management Act. Careful review of the entire Act is recommended. The new provisions of the Debt Management Act can be found in Senate Bill 328 beginning at Section 118 (page 132) at the following link: <http://www.in.gov/dfi/SB0328.PDF>.

**1. What is a debt management company and how has the law changed as it applies to who is required to obtain a license under the Act?**

Answer – IC 28-1-29-1(2) defines a “debt management company” as:

- 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".
- Under prior law, the definition of a “debt management company” included a requirement that the debt management company contract with “the debtor for a fee to receive from the debtor.”
  - The language relating to contracting for a fee has been removed from the definition.
- Under the new law, if a person otherwise meets the definition of a “debt management company” a license will be required whether or not the debtor is charged a fee for its services.

**2. What activities are excluded from the Act?**

Answer - IC 28-1-29-0.5 provides that the Act does not apply to:

- an attorney at law authorized to practice in Indiana
- a depository financial institution (as defined in IC 28-1-1-6)
- 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 as long as the company's actions are not an attempt, as determined by the director, to circumvent limitations under this chapter.)

**3. What must a licensee do prior to providing debt management services to, and entering into a debt management contract with, a contract debtor?**

Answer – IC 28-1-29-7.7 (a) provides:

- 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.

Answer – IC 28-1-29-7.7(b) provides:

- 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 IC 28-1-29-7.7(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 IC 28-1-29-7.7(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.

#### 4. What disclosures are required to be given to a debtor prior to entering into a debt management agreement?

Answer – IC 28-1-29-7.7 provides for certain disclosures under the following circumstances:

- If a licensee may receive payments from a debtor's creditors and the plan contemplates that the debtor's creditors will reduce finance charges or fees for late payment, default, or delinquency, the following written disclosure in clear and conspicuous type, surrounded by black lines is to be given to the debtor:

"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.

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Name and business address of licensee".

IC 28-1-29-7.7(d)

- If a licensee will not receive payments from a debtor's creditors and the plan contemplates that the debtor's creditors will reduce finance charges or fees for late payment, default, or delinquency, the following written disclosure in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

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.

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Name and business address of licensee".

IC 28-1-29-7.7(e)

- If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, the following disclosure in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

  - (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
  - (2) 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.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

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Name and business address of licensee".

IC 28-1-29-7.7(f)

- In all other circumstances not previously covered in this item the following disclosure is required to be provided to the debtor separately, in a written form that contains no other information, and that the debtor may keep whether or not the debtor enters into the agreement:
  - (1) The licensee's name and business address of the licensee.
  - (2) A statement that:
    - (A) the licensee's plans are not suitable for all debtors and the debtor may ask the licensee about other ways, including bankruptcy, to deal with indebtedness;
    - (B) nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;
    - (C) unless the statement would be untrue, the licensee may receive compensation from the creditors of the debtor; and
    - (D) unless the debtor is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the debtor, even though the debtor does not receive any money.

IC 28-1-29-7.7(c)

#### 5. What terms must be included in a debt management agreement?

Answer –IC 28-1-29-8(a) and (c) provide:

- 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 IC 28-1-29-9(j).
    - (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 IC 28-1-29-8.6; 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.

- An agreement must also 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 IC 28-1-29-8.3(d), 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.
- 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 may not increase the monthly fee percentage under IC 28-1-29-8.3(c)(2)(A) during the term of the original debt management plan agreement.

IC 28-1-29-8(h)

**6. How does the licensee comply with the delivery requirements of IC 28-1-29-8(a)(5) if using electronic means of delivery?**

Answer – IC 28-1-29-8 (b) provides that for purposes of IC 28-1-29-8.6 (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.

**7. Before a debt management agreement can be entered into a budget analysis must be prepared. What must be included in a budget analysis?**

Answer - An IC 28-1-29-8 (g) provides:

- 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 shall be dated not more than sixty (60) days before the completion of the budget analysis.
  - (2) Monthly living expense figures must be reasonable for the particular family size and part of the state.
  - (3) Documentation and verification, either 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, either 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.

**8. What other staffing requirements are there?**

Answer - IC 28-1-29-8 (k) provides:

- 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.

**9. What are the provisions relating to fees and other charges for debt management services?**

Answer – IC 28-1-29-8.3 provides:

- Except as otherwise permitted in IC 28-1-29-8.3, 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.
- A licensee may not impose charges or receive payment for debt management services until the licensee and the debtor have agreed upon a plan and have signed an agreement that complies with IC 28-1-29-8, 8.6, and 9.5. All creditors must be notified of the debtor's and licensee's relationship.
- 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.  
(2) A monthly service fee of the lesser of:  
(A) not more than fifteen percent (15%) of the monthly 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.
- 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.
- 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.
- 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 to the contract debtor. Supporting documents may be required by the department. The department shall determine whether the charge:  
(1) would be of benefit to the consumer; and  
(2) is reasonable in relation to the benefits.  
An additional charge is not permitted unless approved by the department.
- For purposes of the Act, the terms of an agreement commence on the date on which the agreement is made.
- 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.
- Any fee charged by the licensee to the debtor for services rendered by the licensee, other than the fees described under IC 29-1-29-8.3(e), is not considered a debt owed by the debtor to the licensee.

**10. Under what circumstances can a debtor cancel an agreement for debt management services?**

Answer – IC 28-1-29-8.6 provides:

- 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 IC 28-1-29-8.6 (b), IC 28-1-29-8 or IC 28-1-29-9.5, 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.

**11. What form relating to cancelation must accompany the debt management agreement?**

Answer – IC 28-1-29-8.6(b) provides:

- 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"

**12. Under what circumstances can a debtor waive the right to cancel?**

Answer – IC 28-1-29-8.6(c) provides:

- 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.

**13. What happens if a contract debtor fails to make a payment required by the agreement?**

Answer – IC 28-1-29-8.8 (a) provides:

- 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.

**14. How can a contract debt reinstate the agreement through the use of a letter of continuation?**

Answer – IC 28-1-29-8.8 (a) further provides:

- 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.

**15. What obligation is imposed on the licensee if either the licensee or the contract debtor terminates the agreement?**

Answer – IC 28-1-29-8.8 (b) provides:

- 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.

**16. What requirements are imposed upon the licensee relating to money held on behalf of contract debtors?**

Answer - IC 28-1-29-9 provides:

- 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 following receipt, 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.
- 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 fifteen (15) 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 IC 28-1-29-8.3(d) 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 IC 28-1-29-8.3(c)(2) plus the close-out fee as permitted by IC 28-1-29-8.3(d), 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.
- A licensee may not commingle money in a trust account established for the benefit of contract debtors to whom the licensee is furnishing debt management services with money of other persons.

- A trust account must at all times have a cash balance equal to the sum of the balances of each contract debtor's account.
- If a licensee has established a trust account, 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.
- If a licensee discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the licensee 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 discovers, or has a reasonable suspicion of, the embezzlement or other unlawful appropriation.
- 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 fees that are payable to the licensee under section IC 28-1-29-8.3(e).
- 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.
- 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, the amount of fair share fees received or withheld by the licensee from each of the contract debtor's creditors, and any amount held in reserve. A licensee shall, in addition thereto, render such an accounting to a contract debtor within seven (7) days after written demand, but not more than three (3) per six (6) month period.
- Upon the completion or termination of a contract between a licensee and a contract debtor, the licensee shall mail 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.

#### **17. What conduct is prohibited by the Act?**

Answer - IC 28-1-29-9.5 provides:

- 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.

- 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.

- The Act does not authorize any person to engage in the practice of law.

- 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.

### **18. What restrictions are imposed on advertising?**

Answer - IC 28-1-29-9.7 provides:

- 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.

### **19. What recordkeeping requirements are imposed by the Act?**

Answer - IC 28-1-29-10.5(a) provides:

- 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.

### **20. What enforcement authority does the department have for violations of the Act?**

Answer - IC 28-1-29-13 provides:

- The department may enforce the Act and rules adopted under the Act 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) Impose on a debt management company or a person that causes a violation of this chapter a civil penalty of not more than ten thousand dollars (\$10,000) for each violation.
  - (4) 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).
- If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under IC 28-1-29-13 (a)(1) or (a)(2), the department may impose a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.
- The department may maintain an action in any county to enforce the Act.
- The department may recover the reasonable costs of enforcing the Act, including attorney's fees.
- In determining the amount of a civil penalty to impose, 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.
- In addition to the revocation provision of IC 29-1-29-4, a person who violates IC 29-1-29- 3, 5, 6, 8, 8.3, 9, or 9.5 commits a Class A misdemeanor, and the license of the licensee shall be revoked on the date of the conviction of an offense.

**21. What rights to a review does an aggrieved applicant for a license have?**

Answer - IC 28-1-29-14 provides:

- Any applicant for a license aggrieved by a decision of the department 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.

**22. What alternative method is available to provide the disclosures and materials required by IC 29-1-29-7.7, 8 or 9?**

Answer - IC 28-1-29-15(c) provides:

- A licensee may satisfy the requirements of IC 29-1-29-7.7, 8, or 9 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 Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq., as amended of the federal act.

**23. What are the language requirements relating to disclosures and documents required by the Act?**

Answer - IC 28-1-29-16 provides:

- Unless the department provides otherwise in a rule, the disclosures and documents required by the Act 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 the Act from the other language into English.

**24. What changes are being made to the surety bond requirements?**

Answer – Effective July 1, 2010 the amount of the surety required to be posted by all licensees will increase from \$25,000 to \$50,000. (This change is consistent with the amount of surety bonds required from other consumer credit licensees.)

**25. What are the consequences of failing to renew a license?**

Answer - IC 28-1-29-4.1 provides:

- A license issued by the department shall be revoked by the department if the person fails to file any renewal application prescribed by the director or pay any license renewal fee within sixty (60) days after the date the renewal is due.