

CHAPTER 1120—H. F. No. 2367

[Coded]

An act relating to the regulation of debt prorating agencies, providing penalties for violations and appropriating money for the regulation thereof; repealing Minnesota Statutes 1967, Sections 332.04 to 332.10, and 332.11, Subdivision 2.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [332.12] Debt prorating agencies; declaration of policy. The business of rendering financial planning service by compromising, settling, adjusting, prorating or liquidating the indebtedness of a debtor is a matter of public interest and concern and is subject to regulations and control in the public interest.

Sec. 2. [332.13] Definitions. Subdivision 1. **Words, terms, and phrases.** Unless a different meaning is clearly indicated by the context, the following words, terms, and phrases, where used in sections 1 to 21, shall have the meanings ascribed to them in this section.

Subd. 2. “Debt prorating” means the performance of any one or more of the following:

(a) managing the financial affairs of an individual by distributing income or money to the creditors thereof;

(b) receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor; or

(c) settling, adjusting, prorating, pooling, or liquidating the indebtedness of a debtor. Any person so engaged or holding himself out as so engaged shall be deemed to be engaged in debt prorating regardless of whether or not a fee is charged for such services. This term shall not include services performed by the following when engaged in the regular course of their respective businesses and professions:

(1) Attorneys at law, escrow agents, accountants, broker-dealers in securities;

(2) Banks, state or national, trust companies, savings and loan associations, building and loan associations, title insurance companies, insurance companies and all other lending institutions duly authorized to transact business in the state of Minnesota, provided no fee is charged for such service;

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(3) Persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt prorating, perform credit services for their employer;

(4) Public officers acting in their official capacities and persons acting pursuant to court order;

(5) Nonprofit corporations, organized under Minnesota Statutes 1967, Chapter 317, giving debt prorating service, provided no fee is charged for such service;

(6) Any person while performing services incidental to the dissolution, winding up or liquidation of a partnership, corporation or other business enterprise;

(7) The state of Minnesota, its political subdivisions, public agencies and their employees;

(8) Credit unions, provided no fee is charged for such service.

Subd. 3. "Attorney general" means the attorney general of the state of Minnesota.

Subd. 4. "Debtor" means the person for whom the debt prorating service is performed.

Subd. 5. "Person" means any individual, firm, partnership, association or corporation.

Subd. 6. "Licensee" means any person licensed by the commissioner pursuant to this act and, where used in conjunction with an act or omission required or prohibited by this act, shall mean any person performing debt prorating services.

Subd. 7. The term "this act" means sections 1 to 21 hereof as enacted and hereafter amended.

Subd. 8. "Commissioner" means commissioner of banks.

Sec. 3. [332.14] **Requirement of license.** On or after January 1, 1970, it shall be unlawful for any person to operate a debt prorating service or engage in said activity as defined in section 2 except as authorized by law without first having obtained a license as hereinafter provided.

Sec. 4. [332.15] **License.** Subdivision 1. **Form.** Application for a license to operate a debt prorating service in this state shall be made in writing to the commissioner, under oath, in the form prescribed by the commissioner, and shall contain the full name and

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address of the applicant, the business to be conducted, and, if the applicant is a partnership or association, of every member thereof and, if a corporation, of each officer, director and shareholder owning more than five percent of outstanding common stock thereof and such other information and material as the commissioner may require.

Subd. 2. License for each location. Each person operating a debt prorating service shall obtain a license for each location and place of business, including each branch office. Such person shall submit a separate application for each place of business. The full license fee shall be payable *only for one such place of business*. For each additional place of business the license fee shall be \$25.

Subd. 3. Fees. Each applicant, at the time of making such application, shall pay to the commissioner the sum of \$50 as a fee for investigation of the applicant, and the additional sum of \$100 as a license fee. If the application is denied, said license fee shall be returned to the applicant.

Subd. 4. Bond. Every applicant shall submit to the commissioner at the time of the application for a license, a surety bond to be approved by the attorney general in which the applicant shall be the obligor, in a sum not less than \$5,000, and in which an insurance company, which is duly authorized by the state of Minnesota to transact the business of fidelity and surety insurance, shall be a surety; provided, however, the commissioner may accept a deposit in cash, or securities such as may legally be purchased by savings banks or for trust funds of an aggregate market value equal to the bond requirement, in lieu of the surety bond, such cash or securities to be deposited with the state treasurer. Each branch office or additional place of business of an applicant shall be bonded as provided herein.

Subd. 5. Condition of bond. The applicant shall be the obligor. The bond shall run to the state of Minnesota for the use of the state and of any person or persons who may have a cause of action against the obligor arising out of his activities as a debt prorater. Such bond shall be conditioned that said obligor will not commit any fraudulent act and will faithfully conform to and abide by the provisions of this act and of all rules and regulations lawfully made by the commissioner hereunder and pay to the state and to any such person or persons any and all money that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this act.

Subd. 6. Right of action on bond. If the licensee has failed to account to a debtor or distribute to the debtor's creditors such amounts as are required by this act and the contract between the

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debtor and licensee, the debtor his legal representative or receiver, the commissioner or the attorney general, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given pursuant to the provisions of section 4, for loss suffered by the debtor, not exceeding the face of the bond or security, and without the necessity of joining the licensee in such suit or action.

Sec. 5. [332.16] **Qualifications for license.** Upon the filing of the application, approval of the bond and payment of the *specified fees, the commissioner shall conduct an investigation.* The commissioner shall thereafter issue a license to the applicant if he shall find:

(a) That the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof, if the applicant be a partnership or association, and of the officers, directors and each of the stockholders who own more than five percent of outstanding stock thereof, if the applicant be a corporation, are such as to indicate that the business will be operated fairly and honestly within the purposes of this act, and that any other business or profession engaged in by the applicant or such persons does not create a conflict of interest with respect to the ability to represent an individual fairly;

(b) That neither the applicant, nor any of such persons has been convicted of any crime or ordinance involving moral turpitude within the past ten years;

(c) That neither the applicant nor any of such persons has had a record of having defaulted in the payment of money collected for others, including the discharge of debts through bankruptcy proceedings;

(d) That neither the applicant nor any of such persons has had a license to engage in debt prorating revoked or removed in this or any other state;

(e) That neither the applicant nor any of such persons operates or is an employee or owner of a collection agency or process serving business; and

(f) That such person or the applicant and all of such persons have fully complied with the requirements of this act and all valid rules, regulations and orders of the commissioner. Said license shall permit the applicant to engage in the debt prorating service business in accordance with the provisions of this act at the location specified

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in the application. The license shall remain in full force and effect for one calendar year from the date of its issuance or until it is surrendered by the licensee or revoked or suspended by the commissioner pursuant hereto.

Sec. 6. **[332.17] Renewal of license.** Each licensee under the provisions of this act shall, not more than 60 nor less than 30 days before its license is to expire, make application to the commissioner for renewal of its license. Such application for renewal shall be on a form prescribed by the commissioner and shall be accompanied by payment of the sum of \$25 as a fee for investigation of the renewal applicant, the additional sum of \$100 as a license fee, and a bond as required in the case of an original application. The commissioner may investigate the licensee and determine its continued fitness as in the case of an original application. If the commissioner shall renew the license, said renewal shall be effective for one year from the date on which the previous license expired.

Sec. 7. **[332.18] License display and transferability; change of address.** Each license issued hereunder shall be kept conspicuously posted in the place of business of the licensee. The business address may be changed by any licensee upon ten days' prior written notice thereof to the commissioner. No license shall be transferable or assignable without the consent of the commissioner and the licensee shall be limited solely to the business of debt prorating service.

Sec. 8. **[332.19] Denial of license.** After January 1, 1970, all applications for an initial license hereunder shall be approved or denied within 60 days of their filing with the commissioner. The applicant shall be so notified of any denial of his application by registered mail directed to him at the address shown on the application. The applicant shall be given an opportunity to be heard thereon before the commissioner within 30 days after such notice is served. Such notice and hearing shall comply with the Minnesota administrative procedure act, Minnesota Statutes Sections 15.0418 to 15.0426. Persons subject to the terms of this act who are providing debt prorating services on the effective date of this act shall submit their applications for licenses not later than September 1, 1969.

Sec. 9. **[332.20] Suspending, revoking, or refusing to renew license.** Subdivision 1. **Procedure.** The commissioner may revoke, suspend or refuse to renew any license issued hereunder, for cause as defined in this section. Revocation or refusal to renew shall be upon notice and hearing as prescribed in the Minnesota administrative procedure act, Minnesota Statutes Sections 15.0418 to

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15.0426. Said notice shall set a time for hearing before the commissioner not less than 20 nor more than 30 days after service of such notice, provided, the licensee may waive such 20 day minimum. The commissioner may, in such notice, suspend the license for a period not to exceed 60 days. Unless the notice states that the license is suspended, pending the determination of the main issue, the licensee may continue to transact business until the final decision of the commissioner. If the license is so suspended, the commissioner shall hold a hearing and render a final determination within 10 days of a request by the licensee. If the commissioner fails to do so, the suspension shall terminate and be of no force or effect.

Subd. 2. **Cause.** The commissioner may revoke, suspend and refuse to renew any license hereunder if he shall find that:

(a) Any licensee has failed to pay any fee required herein, or to maintain in effect the bond required under the provisions of this act or failed to comply with any order, decision or finding of the commissioner made pursuant to and within the authority of this act; or that

(b) The licensee has violated any provisions of this act or any rule, regulation or direction lawfully made by the commissioner under and within the authority of this act; or that

(c) Any material fact or condition exists which, if it had existed at the time of the original application for a license, would have warranted the commissioner in refusing its issuance; or that

(d) Any applicant or party to an application has made any false statement or representation to the commissioner in applying for a license hereunder.

Subd. 3. **Notification of interested persons.** After the notice and hearing required in subdivision 1 hereof, upon issuing an order revoking a license, the commissioner may notify all individuals who have contracts with the affected licensee and all creditors who have agreed to a plan of forbearance that such license has been revoked and that said order is subject to appeal.

Subd. 4. **Receive funds of licensee.** When an order is issued revoking or refusing to renew a license, the commissioner shall apply to the district court for appointment of a receiver to receive the assets of the licensee pending a final determination of the validity of said order.

Sec. 10. [332.21] **Contracts.** Each contract entered into by the licensee and the debtor shall be in writing and signed by both parties. The licensee shall furnish the debtor with a copy of the

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signed contract. Each such contract shall set forth (1) the dollar charges agreed upon for the services of the licensee, (2) the terms upon which the debtor may cancel the contract as set out in section 12 hereof, (3) all debts which are to be managed by the licensee, including the name of the creditor and the amount of the debt, and (4) such other matter as the commissioner may require by rule and regulation. A contract shall not be effective until a payment has been made to the licensee for distribution to creditors or until three business days after the signing thereof, whichever is later. Within such period an individual may disaffirm said contract and upon such disaffirmance said contract shall be null and void.

Sec. 11. [332.22] Books, records, and information. Subdivision 1. **Records retention.** Every licensee shall keep, and use in his business, such books, accounts, and records as will enable the commissioner to determine whether such licensee is complying with the provisions of this act and of the rules, regulations, orders and directives promulgated by the commissioner pursuant to this act. Every licensee shall preserve such books, accounts and records for at least five years after making the final entry on any transaction recorded therein.

Subd. 2. **Statements to debtors.** Each licensee shall maintain and shall make available records and accounts which will enable each debtor to ascertain the amounts paid to the creditors of said debtor. A statement showing amounts received from the debtor, disbursements to each creditor, amounts which any creditor has agreed to accept as payment in full for any debt owed him by the debtor, charges deducted by the licensee and such other information as the commissioner may prescribe shall be furnished by the licensee to the debtor at least once every three months and, in addition, upon any cancellation or termination of the contract. In addition to the statements required by this subdivision, each debtor shall have reasonable access, without cost, to information in the licensee's files applicable to such debtor. Such statements, records and accounts shall otherwise remain confidential except for duly authorized state and government officials, the commissioner, the attorney general, the debtor and his representative and designees. Each licensee shall prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practical.

Sec. 12. [332.23] Fees, payments, and cancellations. Subdivision 1. **Origination fee.** The licensee may charge an origination fee of not more than five percent of the agreed total fees and charges for the entire term of the contract, but in no

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event more than \$25. Fees or charges withdrawn by the licensee from payments by the debtor during the first 60 days after execution of the contract shall be reduced pro rata to cover the costs to the debtor of said origination fee. It is the intention of this subdivision to limit the total fees and charges, including any origination fee, to 15 percent of the debts actually liquidated pursuant to the contract.

Subd. 2. Withdrawal of fee. The licensee may withdraw and retain as partial payment of his total fee not more than 15 percent of any sum deposited with the licensee by the debtor. The remaining 85 percent must be disbursed to listed creditors pursuant to and in accordance with the contract between the debtor and the licensee within 35 days after receipt.

Subd. 3. Cancellation. All contracts with debtors for debt prorating service shall contain on their face, in easily readable characters, a provision entitling either party to cancel the contract without cause upon 30 days' written notice. The contract shall automatically terminate upon the payment of all listed debts and fees. In the event of cancellation by either party, the licensee shall notify the debtor's creditors of such cancellation within ten days thereof.

Subd. 4. Additional contracts; recurring payments. Separate and additional contracts shall be entered into by the licensee and debtor for the management of any debt not listed in any other executory contract or for any increase in the size of any debt included in any other contract, provided, the licensee shall not charge any origination fee for any such additional contract. No fees or charges shall be received or retained by the licensee for any handling of recurrent payments. Recurrent payments shall include current rent, house, utility, telephone, alimony, child support, insurance premium and such other payments as the administrator may by rule and regulation prescribe.

Subd. 5. Advance payments. Notwithstanding anything herein to the contrary no fees or charges shall be received or retained for any payments by the debtor made more than the following number of days in advance of the date specified in the contract on which they are due: (a) 30 days in the case of contracts requiring monthly payments; (b) 15 days in the case of contracts requiring biweekly payments; or (c) seven days in the case of contracts requiring weekly payments. For those contracts which do not require payments in specified amounts, a payment shall be deemed an advance payment to the extent it exceeds twice the average regular payment theretofore made by the debtor pursuant to that contract. This subdivision shall not apply when it is the intention of the debtor to use such advance pay-

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ments to satisfy future payment of obligations due within 30 days under the contract.

Subd. 6. Consent of creditors. The licensee shall actively seek to obtain the consent of all creditors to the plan of distribution set forth in the contract. Failure to obtain such consent of all such creditors within 60 days of the date upon which the contract is executed shall entitle the debtor to cancel the contract within 120 days of the date of such execution without liability to pay any cancellation fee otherwise authorized in this section. Consent by a creditor may be express and in writing, or may be evidenced by acceptance of a payment made pursuant to the plan of distribution set forth in the contract. The licensee shall notify the debtor within ten days after the expiration of the 60 day period prescribed in this subdivision of any failure to obtain the required consent and of the debtor's right to cancel without penalty. Such notice shall be in such form as the commissioner shall prescribe. Nothing contained in this subdivision shall be deemed to require the return of any fees other than for cancellation earned by the licensee prior to cancellation pursuant to this subdivision.

Subd. 7. Excess charges. If a licensee contracts for, receives or makes any charge in excess of the maximum permitted by this act, except as the result of an accidental and bona fide error, the licensee's contract with the debtor shall be void and the licensee shall return to the debtor the amount of all moneys received from the debtor or on his behalf from the commencement of the contract which have not been distributed to creditors.

Subd. 8. Payments held in trust. Any payment received by a licensee from or on behalf of a debtor shall be held in trust by the licensee from the moment it is received. The licensee shall not commingle such payment with his own property or funds, but shall maintain a separate trust account and deposit in such account all such payments received. All disbursements, whether to the debtor or to the creditors of the debtor, or to the licensee, shall be made from such account.

Sec. 13. [332.24] Prohibitions. A licensee shall not:

- (1) Purchase from a creditor any obligation of a debtor;
- (2) Use, threaten to use, seek to have used or seek to have threatened the use of any legal process, including but not limited to garnishment and repossession of personal property, against any debtor while the contract between the licensee and the debtor remains executory;
- (3) Advertise or make any statement or representation with

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regard to the rates, terms, or conditions of debt prorating service which is false, misleading or deceptive;

(4) Require as a condition of performing debt prorating services nor shall the contract between the licensee and a debtor require the purchase of any services, stock, insurance, commodity or other property or any interest therein either by the debtor or the licensee;

(5) Compromise any debts unless the prior written approval of the debtor has been obtained to such compromise and unless such compromise shall inure solely to the benefit of the debtor;

(6) Receive from any debtor as security or in payment of any fee a promissory note or other promise to pay or any mortgage or other security, whether as to real or personal property;

(7) Lend money or credit to any debtor if any interest or fee is charged;

(8) Take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceedings;

(9) Take, concurrent with the signing of the contract, or as a part of the contract or as part of the application for the contract, a release of any obligation required to be performed on the part of the licensee;

(10) Offer, pay or give any substantial cash fee, gift, bonus, premium, reward or other compensation to any person, other than an employee of the licensee for referring any prospective customer to the licensee;

(11) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person in the debtor's behalf in connection with his activities as a licensee; provided, however, that this paragraph shall not apply to a licensee which is a bona fide non-profit corporation, duly organized under Minnesota Statutes, Chapter 317;

(12) Enter into a contract with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and will be benefited by the plan.

Any violation of the prohibitions contained in this section shall be cause for the suspension, revocation or refusal to renew a license pursuant to section 9 hereof and shall also constitute a violation of the

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provisions of this act to which the penalties prescribed in section 15 hereof shall attach.

Sec. 14. [332.25] **Rules and regulations.** The commissioner shall make and file in accordance with the provisions of Minnesota Statutes 1967, Chapter 15, such reasonable rules and regulations as shall be necessary for the administration of this act.

Sec. 15. [332.26] **Penalties.** Any person willfully violating any of the provisions of this act or of any rules or regulations promulgated pursuant hereto shall be guilty of a gross misdemeanor.

Sec. 16. [332.27] **Contracts void.** Any contract for debt prorating service as defined in this act made by an unlicensed person shall be null and void and of no legal effect and all fees paid to such person pursuant to such contract shall be recoverable with reasonable attorney's fees.

Sec. 17. [332.28] **Injunction.** To engage in a debt prorating service business without a valid, existing license so to do is hereby declared to be inimical to the public welfare and constitutes a public nuisance. The attorney general or the county attorney of any county may apply for an injunction in district court to enjoin any person from engaging in said business and any such court may issue temporary or permanent injunctions as the circumstances shall require. Such injunction proceedings shall be in addition to and not in lieu of penalties and remedies otherwise provided in this act.

Sec. 18. [332.29] **Investigation.** Subdivision 1. The commissioner may from time to time examine the books and records of every licensee hereunder and of any person engaged in the business of debt prorating service as defined in section 2 of this act. The commissioner once during any calendar year, may require the submission of an audit prepared by a certified public accountant of the books and records of each licensee hereunder. If the licensee has, within one year previous to the commissioner's demand, had an audit prepared for some other purpose, this audit may be submitted to satisfy the requirement of this section. *The commissioner may investigate any complaint concerning violations of this act and may require the attendance and sworn testimony of witnesses and the production of documents.*

Subd. 2. Upon transmittal from the commissioner of a written complaint of any person feeling aggrieved, the attorney general may forward such complaint to the county attorney of the county wherein the business is situated, who shall investigate and report. The attorney

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general or such county attorney may require the attendance and sworn testimony of witnesses and the production of documents.

Sec. 19. Appropriation. There is hereby appropriated for the years ending June 30, 1970, and June 30, 1971, from any moneys in the state treasury not otherwise appropriated the sum of \$15,000 to the commissioner to be expended for the purposes and in accordance with the provisions of this act. Any unexpended balance remaining in the first year shall not cancel but shall be available for the second year of the biennium.

Sec. 20. Effective date. This act shall become effective on July 1, 1969.

Sec. 21. Repeal. Minnesota Statutes 1967, Sections 332.04; 332.05; 332.06; 332.07; 332.08; 332.09; 332.10; and 332.11, Subdivision 2, are hereby repealed.

Approved June 6, 1969.

CHAPTER 1121—H. F. No. 2957

[Coded]

An act relating to education; authorizing payments to school districts for vocational education pupils attending school in another state; amending Minnesota Statutes 1967, Section 121.21, by adding a subdivision.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1967, Section 121.21, is amended by adding a subdivision to read:

Subd. 10. Vocational education; tuition reimbursement. *The state board for vocational education may reimburse a district for pupils who are enrolled in a vocational-technical education school in another state for the tuition charges in such school and shall establish rules under which district boards may be eligible for tuition reimbursement under this subdivision.*

Approved June 6, 1969.

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