

Subd. 7. DELEGATION OF CONTRACT AUTHORITY. The adjutant general may delegate to subordinate employees the exercise of contract execution and administration authority which the adjutant general holds under a delegation by the commissioner of administration pursuant to section 16B.05, subdivision 1. A delegation by the adjutant general must be made by written order, filed with the secretary of state.

Approved April 16, 1987

### CHAPTER 37—S.F.No. 457

*An act relating to commerce; regulating collection agencies and those acting under the authority of a collection agency; providing cash deposits in lieu of the required bond; establishing prohibited practices; prescribing the enforcement powers of the commissioner; amending Minnesota Statutes 1986, sections 332.31, by adding a subdivision; 332.33; 332.34; 332.37; and 332.40, subdivision 3.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 332.31, is amended by adding a subdivision to read:

Subd. 6. COLLECTOR. "Collector" is a person acting under the authority of a collection agency under section 332.31, subdivision 3, and on its behalf in the business of collection for others an account, bill, or other indebtedness except as otherwise provided in this chapter.

Sec. 2. Minnesota Statutes 1986, section 332.33, is amended to read:

#### 332.33 LICENSES.

Subdivision 1. **REQUIREMENT.** Except as ~~hereinafter~~ otherwise provided in this chapter, no person shall conduct within this state a collection agency or engage within this state in the business of collecting claims for others as defined in sections 332.31 to 332.45, without having first applied for and obtained a license.

Subd. 2. **PENALTY.** ~~Any~~ A person who ~~shall carry~~ carries on business as a collection agency or acts as a collector without first having obtained a license pursuant to sections 332.31 to 332.45, or who ~~shall carry~~ carries on ~~such~~ this business after the revocation, suspension, or expiration of ~~any~~ a license ~~shall be~~ is guilty of a misdemeanor.

Subd. 3. **TERM.** Licenses ~~granted~~ issued or renewed by the commissioner of commerce under sections 332.31 to 332.45 shall expire on June 30. ~~All renewals of licenses shall likewise expire on June 30.~~ Each license shall plainly state the name and business address of the licensee, and shall be posted in a

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conspicuous place in the office where the business is transacted. The fee for each license and renewal as collection agency shall be \$100. The fee for each license and renewal as collector shall be \$10. A licensee who desires to carry on business in more than one place ~~within the state~~ shall procure a license for each place where the business is to be conducted.

Subd. 4. **INVESTIGATIONS.** The commissioner may require ~~such~~ financial statements and references of all applicants for a license as the commissioner ~~deems~~ considers necessary; ~~and. The commissioner~~ may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence, and net worth, at the expense of the applicant for ~~such~~ the initial investigation, not to exceed \$100, and for that purpose may require ~~such~~ a deposit against the cost ~~thereof~~ of the investigation as the commissioner ~~deems~~ considers adequate. ~~Such~~ The investigation may cover all managerial personnel employed by or associated with the applicant.

Subd. 5. **ISSUANCE.** Every application for a collection agency license or renewal shall be acted upon promptly by the commissioner but in no event more than 45 days after receipt of ~~said~~ the application. Every application for a collector's license or renewal shall be acted upon promptly by the commissioner but in no event more than 15 days after receipt of the completed application. Each applicant may be issued a temporary license after submitting a complete application which meets all requirements for licensure. This license shall be effective until a permanent license is issued by the commissioner. If the application ~~shall comply~~ complies in form and substance with the provisions of sections 332.31 to 332.45 and the rules promulgated thereunder adopted under those sections and the commissioner ~~shall find~~ finds that the applicant is qualified under ~~the provisions~~ of sections 332.31 to 332.45, the commissioner shall issue a license ~~forthwith~~ immediately. If the application ~~shall~~ is not be sufficient in form or substance, the commissioner shall reject it and notify the applicant of the manner in which it is deficient. ~~Such~~ The rejection ~~shall be~~ is without prejudice to the filing of a new application. On finding that the applicant is not qualified under the provisions of sections 332.31 to 332.45, the commissioner shall reject the application and shall give the applicant written notice of ~~such~~ the rejection and the reasons ~~therefor~~ for the rejection.

Subd. 6. **DEPOSIT OF FEES.** All money received by the commissioner shall be deposited in the general fund of the state treasury.

Sec. 3. Minnesota Statutes 1986, section 332.34, is amended to read:

**332.34 BOND.**

The commissioner of commerce shall require each collection agency licensee to file and maintain in force a corporate surety bond, in a form to be prescribed by, and acceptable to, the commissioner, and in the sum of ~~\$10,000 effective July 1, 1982~~ \$20,000 effective July 1, 1983. An applicant for a new or renewal license may request that the amount of the bond ~~hereby~~ required be reduced to an amount ~~which shall be~~ not less than \$5,000. This request may be

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granted upon a showing that the total dollar amount received from debtors by the collection agency in the preceding fiscal year did not exceed \$30,000. A collection agency may deposit cash in and with a depository acceptable to the commissioner in an amount and in the manner prescribed and approved by the commissioner in lieu of a bond.

Sec. 4. Minnesota Statutes 1986, section 332.37, is amended to read:

**332.37 PROHIBITED PRACTICES.**

No collection agency or collectors shall: (1) in collection letters or publications, or in any communication, oral or written threaten wage garnishment or legal suit by a particular lawyer, unless it has actually retained the lawyer;

(2) use or employ constables, sheriffs or any other officer authorized to serve legal papers in connection with the collection of a claim, except when performing their legally authorized duties;

(3) use or threaten to use methods of collection which violate Minnesota law;

(4) furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so;

(5) communicate with debtors in a misleading or deceptive manner by using the stationery of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process;

(6) exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so and the agency's course of conduct is at all times consistent with a true relationship of attorney and client between the lawyer and the creditor;

(7) publish or cause to be published any list of debtors except for credit reporting purposes, use shame cards or shame automobiles, advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, or use similar devices or methods of intimidation;

(8) refuse to return any claim or claims and all valuable papers deposited with a claim or claims upon written request of the creditor, claimant or forwarder after tender of the amounts due and owing to the agency within 30 days after the request; refuse or intentionally fail to account to its clients for all money collected within 30 days from the last day of the month in which the same is collected; or, refuse or fail to furnish at intervals of not less than 90 days upon written request of the claimant or forwarder, a written report upon claims received from the claimant or forwarder;

(9) operate under a name or in a manner which implies that the agency is a branch of or associated with any department of federal, state, county or local government or an agency thereof;

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(10) commingle money collected for a customer with the agency's operating funds or use any part of a customer's money in the conduct of the agency's business;

(11) transact business or hold itself out as a debt prorater, debt adjuster, or any person who settles, adjusts, prorates, pools, liquidates or pays the indebtedness of a debtor, unless there is no charge to the debtor, or the pooling or liquidation is done pursuant to court order or under the supervision of a creditor's committee;

(12) violate any of the provisions of the Fair Debt Collection Practices Act of 1977 while attempting to collect on any account, bill or other indebtedness; or

(13) communicate with a debtor by use of a recorded message utilizing an automatic dialing announcing device unless the recorded message is immediately preceded by a live operator who discloses prior to the message the name of the collection agency and the fact the message intends to solicit payment and the operator obtains the consent of the debtor to hearing the message.

Sec. 5. Minnesota Statutes 1986, section 332.40, subdivision 3, is amended to read:

Subd. 3. **COMMISSIONER'S POWERS.** For the purpose of any investigation or proceeding under sections 332.31 to 332.45, the commissioner or any person designated by the commissioner may administer oaths and affirmations, subpoena collection agencies or collectors and compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry. The subpoena shall contain a written statement setting forth the circumstances which have reasonably caused the commissioner to believe that a violation of sections 332.31 to 332.45 may have occurred.

In the event that the collection agency or collector refuses to obey the subpoena, or should the commissioner, upon completion of the examination of the collection agency or collector, reasonably conclude that a violation has occurred, the commissioner may examine additional witnesses, including third parties, as may be necessary to complete the investigation.

Any subpoena issued pursuant to this section shall be served by certified mail or by personal service. Service shall be made at least 15 days prior to the date of appearance.

Approved April 20, 1987

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