

notify the eligible in writing of the reasons for the rejection and file the notice with the appropriate local personnel officer.

Sec. 30. LEGISLATIVE STUDY.

The Legislative Coordinating Commission shall study and report to the governmental operations and local government committees of both houses of the legislature by January 15, 2005, on the impacts of the political subdivision compensation limit on local units of government. The study must, at a minimum:

(1) examine local government compensation limits and comparative salary data in other states;

(2) assess the impacts of the local government compensation limit on salary structures, recruitment, and retention; and

(3) evaluate alternatives to the compensation limit, including elimination of the limit.

In developing this report, the commission must consult with the commissioner of employee relations and local government associations, including the Association of Metropolitan Municipalities, Association of Minnesota Counties, League of Minnesota Cities, Metropolitan Inter-County Association, Municipal Legislative Commission, and the Minnesota City/County Management Association.

Sec. 31. REPEALER.

(a) Minnesota Statutes 2002, sections 43A.02, subdivisions 7, 8, 15, 16, 19, 20, and 37; 43A.11, subdivisions 3 and 4; 43A.12; 43A.13, subdivisions 1, 2, 3, 4, 5, 6, and 8; and 43A.15, subdivisions 8, 9, and 11; and Minnesota Statutes 2003 Supplement, section 43A.13, subdivision 7, are repealed.

(b) Minnesota Rules, parts 3900.3300; 3900.6100; 3900.6300; 3900.6400; 3900.6500; 3900.6600; 3900.7100; 3900.7200; 3900.7300; 3900.7400; 3900.8500; 3900.8600; and 3900.8800, are repealed.

Presented to the governor May 14, 2004

Signed by the governor May 18, 2004, 3:20 p.m.

CHAPTER 208—H.F.No. 2187

An act relating to commerce; requiring debt collection agency employees to be registered instead of licensed; amending Minnesota Statutes 2002, sections 332.33; 332.335, subdivision 1; 332.35; 332.37; 332.395; 332.40; 332.41; 332.42; 332.43, subdivision 1.

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

New language is indicated by underline, deletions by ~~strikeout~~.

Section 1. Minnesota Statutes 2002, section 332.33, is amended to read:

332.33 LICENSES LICENSING AND REGISTRATION.

Subdivision 1. **REQUIREMENT.** Except as 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 collection agency license. A person acting under the authority of a collection agency, as a collector, must first obtain a Minnesota collector license register with the commissioner under this section. A licensed registered collector may use one additional assumed name only if the assumed name is registered with and approved by the commissioner.

Subd. 2. **PENALTY.** A person who carries on business as a collection agency or acts as a collector without first having obtained a license or acts as a collector without first having registered with the commissioner pursuant to sections 332.31 to 332.45, or who carries on this business after the revocation, suspension, or expiration of a license or registration is guilty of a misdemeanor.

Subd. 3. **TERM.** Licenses issued or renewed and registrations received by the commissioner of commerce under sections 332.31 to 332.45 shall expire on June 30. Each collection agency license shall plainly state the name and business address of the licensee, and shall be posted in a conspicuous place in the office where the business is transacted. The fee for each collection agency license is \$500, and renewal as collection agency is \$400. The fee for each license collector registration and renewal as collector shall be is \$10. A collection agency licensee who desires to carry on business in more than one place shall procure a license for each place where the business is to be conducted.

Subd. 4. **INVESTIGATIONS.** The commissioner may require financial statements and references of all applicants for a license or registration as the commissioner considers necessary. 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 the initial investigation, not to exceed \$500, and for that purpose may require a deposit against the cost of the investigation as the commissioner considers adequate. The investigation may cover all managerial personnel employed by or associated with the applicant.

Subd. 5. **COLLECTION AGENCY LICENSE 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 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 complies in form and substance with sections 332.31 to 332.45 and the rules adopted under those sections and the commissioner finds that the applicant is qualified under sections 332.31 to 332.45, the commissioner shall issue a license immediately. If the application is not sufficient in form or substance, the commissioner shall reject it and

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notify the applicant of the manner in which it is deficient. The rejection is without prejudice to the filing of a new application. On finding that the applicant is not qualified under sections 332.31 to 332.45, the commissioner shall reject the application and shall give the applicant written notice of the rejection and the reasons for the rejection.

Subd. 5a. **INDIVIDUAL COLLECTOR REGISTRATION.** A licensed collection agency, on behalf of an individual collector, must register with the state all individuals in the collection agency's employ who are performing the duties of a collector as defined in sections 332.31 to 332.45. The collection agency must apply for an individual collection registration on a form provided by the commissioner, or electronically when available. The collection agency shall verify on the form that the applicant has confirmed that the applicant meets the requirements to perform the duties of a collector as defined in sections 332.31 to 332.45. Upon submission of the form to the department, the individual may begin to perform the duties of a collector and may continue to do so unless the licensed collection agency is informed by the commissioner that the individual is ineligible.

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

Subd. 7. **NOTICE.** A licensed collection agency or registered individual collector must give the commissioner written notice of a change in personal name, company name, address, or ownership not later than 15 days after the change occurs.

Subd. 8. **SCREENING PROCESS REQUIREMENT.** Each licensed collection agency must establish procedures to follow when screening an individual collector applicant prior to submitting an applicant to the commissioner for registration. The commissioner may review the procedures to ensure the integrity of the screening process. Failure to establish these procedures is subject to action under section 332.40.

Sec. 2. Minnesota Statutes 2002, section 332.335, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS.** An exempt out-of-state collection agency, as defined by section 332.31, subdivision 7, that has obtained a certificate of exemption under subdivision 2 is exempt from the collector registration requirements and collection agency licensing requirements of this chapter, but is subject to all other provisions of sections 45.027 and 332.31 to 332.45.

Sec. 3. Minnesota Statutes 2002, section 332.35, is amended to read:

332.35 PRIOR CONVICTION OR JUDGMENT AS DISQUALIFICATION.

No registration shall be accepted for, and no license shall be issued to, any person, firm, corporation or association who or which, or any of the officers of which have, within the past five years, been convicted in any court of fraud or any felony or have been convicted of or had judgment entered against them in any court for failure to account to a client or customer for money or property collected by them for the client or customer. No registration shall be accepted for, and no license shall be issued to, any

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attorney whose license to practice law has been suspended or revoked, for a period of five years after the date of such suspension or revocation.

Sec. 4. Minnesota Statutes 2002, section 332.37, is amended to read:

332.37 PROHIBITED PRACTICES.

No collection agency or ~~collectors~~ collector 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;

(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

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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;

(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;

(14) in collection letters or publications, or in any communication, oral or written, imply or suggest that health care services will be withheld in an emergency situation;

(15) when a debtor has a listed telephone number, enlist the aid of a neighbor or third party to request that the debtor contact the licensee or collector, except a person who resides with the debtor or a third party with whom the debtor has authorized the licensee or collector to place the request. This clause does not apply to a call back message left at the debtor's place of employment which is limited to the licensee's or collector's telephone number and the collector's name;

(16) when attempting to collect a debt, fail to provide the debtor with the full name of the collection agency as it appears on its license;

(17) collect any money from a debtor that is not reported to a creditor or fail to return any amount of overpayment from a debtor to the debtor or to the state of Minnesota pursuant to the requirements of chapter 345;

(18) accept currency or coin as payment for a debt without issuing an original receipt to the debtor and ~~maintain~~ maintaining a duplicate receipt in the debtor's payment records;

(19) attempt to collect any amount of money from a debtor or charge a fee to a creditor that is not authorized by agreement with the client;

(20) falsify any collection agency documents with the intent to deceive a debtor, creditor, or governmental agency; or

(21) when initially contacting a Minnesota debtor by mail, fail to include a disclosure on the contact notice, in a type size or font which is equal to or larger than the largest other type of type size or font used in the text of the notice. The disclosure must state: "This collection agency is licensed by the Minnesota Department of Commerce."

Sec. 5. Minnesota Statutes 2002, section 332.395, is amended to read:

332.395 COMMISSIONER'S POWER OVER INEFFECTIVE LICENSES AND REGISTRATIONS.

If a license or registration lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner of commerce may do either or both

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of the following: (1) institute a proceeding under section 45.027 within two years after the license or registration was last effective and enter a revocation or suspension order as of the last date on which the license or registration was in effect; (2) impose a civil penalty as provided for in section 45.027, subdivision 6.

Sec. 6. Minnesota Statutes 2002, section 332.40, is amended to read:

332.40 INVESTIGATION, SUSPENSION, AND REVOCATION OF LICENSES OR REGISTRATIONS.

Subdivision 1. EXAMINATION OF LICENSEE'S OR REGISTERED INDIVIDUAL COLLECTOR'S RECORDS. The commissioner of commerce may make examinations of the collection records of a licensee or registered individual collector at a reasonable time and in a scope as is necessary to enforce the provisions of sections 332.31 to 332.45, and for that purpose the commissioner shall have free access to the books and records of a licensee or registered individual collector relating thereto. If a licensee or registered individual collector violates any provision of sections 332.31 to 332.45, or any administrative rules issued pursuant to sections 332.31 to 332.45, fails to maintain its financial condition sufficient to qualify for a license licensure or registration on an original application, or, fails to maintain its registration or comply with all of the requirements of Minnesota Statutes 1967, chapter 303, the commissioner may, after notice and hearing in accordance with the provisions of the laws of this state governing proceedings before administrative agencies, revoke a license or registration, or suspend a license or registration for a period as the commissioner may deem deems proper.

Subd. 2. OTHER EXAMINATIONS. The commissioner may investigate within or without this state as the commissioner deems necessary to determine whether any person has violated any provision of the Fair Debt Collection Practices Act of 1977, or of sections 332.31 to 332.45, or any rule or order thereunder; to determine whether a license or registration should be issued, renewed, or revoked; to aid in the enforcement of sections 332.31 to 332.45; or in prescribing rules and forms thereunder. The commissioner may publish information concerning any violation of sections 332.31 to 332.45 or any rule or order thereunder.

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 commis-

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sioner 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.

Subd. 4. **COURT ORDER TO COMPEL DISCLOSURES.** In case of contumacy by or refusal to obey a subpoena by any person the district court upon application by the commissioner may issue to the person an order directing the person to appear before the commissioner or commissioner's designee to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Sec. 7. Minnesota Statutes 2002, section 332.41, is amended to read:

332.41 APPEALS.

Appeal from a denial, suspension, revocation, or censure of a license or registration must be made according to chapter 14.

Sec. 8. Minnesota Statutes 2002, section 332.42, is amended to read:

332.42 REPORTS AND RECORDS.

Subdivision 1. **VERIFIED FINANCIAL STATEMENT.** The commissioner of commerce may at any time require a collection agency licensee to submit a verified financial statement for examination by the commissioner to determine whether the collection agency licensee is financially responsible to carry on a collection agency business within the intents and purposes of sections 332.31 to 332.45.

Subd. 2. **RECORD KEEPING.** The commissioner shall require the collection agency licensee to keep such books and records in the licensee's place of business in this state as will enable the commissioner to determine whether there has been compliance with the provisions of sections 332.31 to 332.45, unless the agency is a foreign corporation duly authorized, admitted, and licensed to do business in this state and complies with all the requirements of Minnesota Statutes 1967, chapter 303 and with all other requirements of sections 332.31 to 332.45. Every collection agency licensee shall preserve the records of final entry used in such business for a period of five years after final remittance is made on any amount placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been made.

Sec. 9. Minnesota Statutes 2002, section 332.43, subdivision 1, is amended to read:

Subdivision 1. If the commissioner shall determine that a collection agency licensee is insolvent or has collected accounts but has failed to remit money due to any claimant within 45 days from the end of the month in which collection was made, or when the license of a collection agency has expired or terminated for any reason

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whatsoever, the commissioner, on determining such action necessary to protect the public interest, may apply to the district court for the county in which the main office of such agency is located for appointment of a receiver to receive the assets of the collection agency licensee for the purpose of liquidating or rehabilitating its business and or for such other relief as the nature of the case and the interest of the claimants may require. The reasonable and necessary expenses of the receivership shall constitute the first claim on the bond.

Sec. 10. EFFECTIVE DATE.

Sections 1 to 9 are effective January 1, 2005.

Presented to the governor May 14, 2004

Signed by the governor May 18, 2004, 3:55 p.m.

CHAPTER 209—H.F.No. 1691

An act relating to highways; modifying provisions relating to local government road construction and improvement contracts; amending Minnesota Statutes 2002, section 160.17, subdivision 3; repealing Minnesota Statutes 2002, section 160.17, subdivision 4.

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

Section 1. Minnesota Statutes 2002, section 160.17, subdivision 3, is amended to read:

Subd. 3. **FINAL PAYMENT.** A county or town board shall not make final payment shall not be made on any road construction or improvement contract for road work by any county or town board, the amount for which sealed bids are required under section 471.345, until the engineer or person in charge of the work has certified to the county board or the town board, as the case may be, that the work has been done and performed according to contract and the certificate shall have been filed in the office of the county auditor or town clerk.

Sec. 2. REPEALER.

Minnesota Statutes 2002, section 160.17, subdivision 4, is repealed.

Presented to the governor May 14, 2004

Signed by the governor May 18, 2004, 4:05 p.m.

CHAPTER 210—H.F.No. 1941

An act relating to Anoka County; authorizing the county to establish a Personnel Board of Appeals.

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