

CHAPTER 332

COLLECTION AGENCIES; AIDS TO LIQUIDATION OF DEBTS

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PRORATING AGENCIES

332.12 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.

[1969 c 1120 s 1]

332.13 DEFINITIONS. Subdivision 1. Unless a different meaning is clearly indicated by the context, the following words, terms, and phrases, where used in sections 332.12 to 332.29, 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

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all other lending institutions duly authorized to transact business in the state of Minnesota, provided no fee is charged for such service;

(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 sections 332.12 to 332.29 and, where used in conjunction with an act or omission required or prohibited by sections 332.12 to 332.29, shall mean any person performing debt prorating services.

Subd. 7. The term "this act" means sections 332.12 to 332.29 as enacted and hereafter amended.

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

[1969 c 1120 s 2]

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 332.13 except as authorized by law without first having obtained a license as hereinafter provided.

[1969 c 1120 s 3]

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 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 to be determined by the commissioner but 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. The commissioner may, in his discretion, also require a fidelity bond in an appropriate amount covering employees of any applicant. Each branch office or additional place of business of an applicant shall be bonded as provided herein. In determining the bond amount necessary

for the maintenance of any office be it surety, fidelity or both the commissioner shall consider the financial responsibility, experience, character and general fitness of the agency and its operators and owners; the volume of business handled or proposed to be handled; the location of the office and the geographical area served or proposed to be served; and such other information the commissioner may deem pertinent based upon past performance, previous examinations, annual reports and manner of business conducted in other states.

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 sections 332.12 to 332.29 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 sections 332.12 to 332.29.

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 sections 332.12 to 332.29 and the contract between the 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 this section, 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.

[1969 c 1120 s 4; 1971 c 441 s 1]

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 sections 332.12 to 332.29, 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 sections 332.12 to 332.29 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 sections 332.12 to 332.29 at the location specified in the application. The license shall remain in full force and effect for one calendar year or until it is surrendered by the licensee or revoked or suspended by the commissioner pursuant hereto.

[1969 c 1120 s 5; 1971 c 441 s 2]

332.17 RENEWAL OF LICENSE. Each licensee under the provisions of sections 332.12 to 332.29 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

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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.

[1969 c 1120 s 6]

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.

[1969 c 1120 s 7]

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 sections 332.12 to 332.29 who are providing debt prorating services on July 1, 1969 shall submit their applications for licenses not later than September 1, 1969.

[1969 c 1120 s 8]

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 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 sections 332.12 to 332.29 or failed to comply with any order, decision or finding of the commissioner made pursuant to and within the authority of sections 332.12 to 332.29; or that

(b) The licensee has violated any provisions of sections 332.12 to 332.29 or any rule, regulation or direction lawfully made by the commissioner under and within the authority of sections 332.12 to 332.29; 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.

[1969 c 1120 s 9]

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 signed contract. Each such contract shall set forth

(1) the dollar charges agreed upon for the services of the licensee, clearly disclosing to such debtor the total amount which may be retained by licensee for services if the contract is fully performed, which maximum amount would be the origination fee together with 15 percent of the amount scheduled to be liquidated by such contract, (2) the terms upon which the debtor may cancel the contract as set out in section 332.23, (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.

[1969 c 1120 s 10; 1971 c 441 s 3]

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 sections 332.12 to 332.29 and of the rules, regulations, orders and directives promulgated by the commissioner pursuant to sections 332.12 to 332.29. Every licensee shall preserve such books, accounts and records for at least five years after making the final entry on any transaction recorded therein. Examinations of the books, records and method of operations as shall be conducted under the supervision of the commissioner herein shall be done at the cost of the licensee. The cost shall be assessed as determined pursuant to section 46.131, as amended from time to time.

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.

[1969 c 1120 s 11; 1971 c 441 s 4]

332.23 FEES, PAYMENTS, AND CANCELLATIONS. Subdivision 1. **Origination fee.** The licensee may charge an origination fee of not more than \$25. The costs to the debtor of said origination fee may be made from the originating amount paid by the debtor to the licensee.

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 for distribution. 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. Total payment to licensee for services rendered, excluding the origination fee, shall not exceed 15 percent of funds deposited with licensee by debtor for distribution.

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. Re-

current payments shall include current rent, house, utility, telephone, alimony, child support, insurance premium and such other payments as the commissioner 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 payments 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. 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 section shall be deemed to require the return of any origination fee and any fees earned by the licensee prior to cancellation or default.

Subd. 7. Excess charges. If a licensee contracts for, receives or makes any charge in excess of the maximum permitted by sections 332.12 to 332.29, 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.

[1969 c 1120 s 12; 1971 c 441 s 5-8]

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 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 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;

(13) In any way charge or purport to charge or provide any debtor credit insurance in conjunction with any contract or agreement involved in the financial adjustment 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 332.20 and shall also constitute a violation of the provisions of sections 332.12 to 332.29 to which the penalties prescribed in section 332.26 shall attach. In addition to such penalties any person attempting to perform a debt prorating service in this state without maintaining an office in this state shall be subject to a fine not to exceed \$10,000, as determined by the commissioner.

[1969 c 1120 s 13; 1971 c 441 s 9]

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 sections 332.12 to 332.29.

[1969 c 1120 s 14]

332.26 PENALTIES. Any person willfully violating any of the provisions of sections 332.12 to 332.29 or of any rules or regulations promulgated pursuant hereto shall be guilty of a gross misdemeanor.

[1969 c 1120 s 15]

332.27 CONTRACTS VOID. Any contract for debt prorating service as defined in sections 332.12 to 332.29 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.

[1969 c 1120 s 16]

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 sections 332.12 to 332.29.

[1969 c 1120 s 17]

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 332.13. 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 sections 332.12 to 332.29 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 general or such county attorney may require the attendance and sworn testimony of witnesses and the production of documents.

[1969 c 1120 s 18]

COLLECTION AGENCIES

332.31 DEFINITIONS. Subdivision 1. **Terms.** The terms in this section for the purposes of sections 332.31 to 332.45 shall have the meanings given them.

Subd. 2. **Person.** "Person" means and includes individuals, partnerships, associations or corporations.

Subd. 3. **Collection agency.** "Collection agency" means and includes any person engaged in the business of collection for others any account, bill or other indebtedness except as hereinafter provided. It includes persons who furnish collection systems carrying a name which simulates the name of a collection agency and who supply forms or form letters to be used by the creditor, even though such forms direct the debtor to make payments directly to the creditor rather than to such fictitious agency.

Subd. 4. **Department.** "Department" means the department of labor and industry of the state of Minnesota.

Subd. 5. **Board.** "Board" means the collection agency advisory board.

[1969 c 766 s 1]

332.32 EXCLUSIONS. The term "collection agency" shall not include persons whose collection activities are confined to and are directly related to the operation of a business other than that of a collection agency such as, but not limited to banks when collecting accounts owed to the banks and when the bank will sustain any loss arising from uncollectible accounts, abstract companies doing an escrow business, real estate brokers, public officers, persons acting under order of a court, lawyers, trust companies, insurance companies, credit unions, building and loan associations, savings and loan associations, loan or finance companies unless they are engaged in asserting, enforcing or prosecuting unsecured claims which have been purchased from any person, firm, or association when there is recourse to the seller for all or part of the claim if the claim is not collected.

[1969 c 766 s 2]

332.33 LICENSES. Subdivision 1. Except as hereinafter provided, 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. Any person who shall carry on business as a collection agency without first having obtained a license pursuant to sections 332.31 to 332.45, or who shall carry on such business after the revocation, suspension, or expiration of any license shall be guilty of a misdemeanor.

Subd. 3. Licenses granted by the department 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 conspicuous place in the office where the business is transacted. The fee for each license and renewal shall be \$100. If the licensee desires to carry on business in more than one place within the state, he shall procure a license for each place where the business is to be conducted.

Subd. 4. The department may require such financial statements and references of all applicants for a license as it deems necessary; and 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 initial investigation, not to exceed \$100, and for that purpose may require such deposit against the cost thereof as it deems adequate. Such investigation may cover all managerial personnel employed by or associated with the applicant.

Subd. 5. Every application for a license or renewal shall be acted upon promptly by the department but in no event more than 45 days after receipt of said application. If the application shall comply in form and substance with the provisions of sections 332.31 to 332.45 and the rules and regulations promulgated thereunder and the department shall find that the applicant is qualified under the provisions of sections 332.31 to 332.45, the department shall issue a license forthwith. If the application shall not be sufficient in form or substance, the department shall reject it and notify the applicant of the manner in which it is deficient. Such rejection shall be without prejudice to the filing of a new application. If the department shall find that the applicant is not qualified under the provisions of sections 332.31 to 332.45, it shall reject the application and shall give the applicant written notice of such rejection and the reasons therefor.

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Subd. 6. All money received by the department shall be deposited in the general fund of the state treasury.

[1969 c 399 s 1; 1969 c 766 s 3; 1971 c 23 s 22; 1971 c 576 s 1]

332.34 BOND. The department shall require each licensee to file and maintain in force a corporate surety bond, in a form to be prescribed by the department and acceptable to it, and in the sum of \$5,000.

[1969 c 766 s 4]

332.35 PRIOR CONVICTION OR JUDGMENT AS DISQUALIFICATION. 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 license shall be issued to any 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.

[1969 c 766 s 5]

332.36 ADVISORY BOARD CREATED. Subdivision 1. There is created a board to be known as the collection agency advisory board whose duties shall be to advise the department as to the administration of the provisions of sections 332.31 to 332.45 and in the making of any rules and regulations in accordance with the provisions of section 332.44. Such board shall consist of three members appointed by the governor. Two of these members shall have been residents of the state for not less than five years immediately prior to their appointment and shall have been engaged in the collection business for not less than five years and be so engaged at the time of their appointment; the third member shall have been a resident of the state for not less than five years immediately prior to his appointment and shall not be engaged in the collection business at the time of his appointment and shall be over the age of 21 years.

Subd. 2. Within 30 days after July 1, 1969, the governor shall appoint the three members of the board who shall hold office for the following periods of time from July 1, 1969: one for one year; one for two years; and one for three years. On the expiration of the term of any member of the board, the governor shall appoint a successor for a term of three years. In the event of a vacancy on the board, the governor shall fill the vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. A member of the board may be removed by the governor after an opportunity to be heard, for malfeasance, misfeasance or neglect in office.

Subd. 3. The board shall meet at least three times each year. Special meetings shall be called at the request of the department or upon the written request of a majority of the members of the board. All recommendations by the board to the department shall require the affirmative vote of a majority of the members of the board.

Subd. 4. Membership on the board shall not constitute the holding of a public office, and members of the board shall not be required to take and file oaths of office or submit a public official's bond before serving on the board.

Subd. 5. The members of the board shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties, including, but not limited to, lodging, meals and travel expenses.

Subd. 6. No member of the board shall be disqualified from holding any public office or employment, by reason of his appointment to the board, nor shall he forfeit any such office or employment notwithstanding any general, special, or local restriction, or ordinance, or city charter to the contrary.

[1969 c 766 s 6]

332.37 PROHIBITED PRACTICES. No collection agency 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 such lawyer;

(2) use or employ justices of the peace, 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;

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(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 such amounts due and owing to the agency within 30 days after such 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 such claimant or forwarder;

(9) operate under a name or in a manner which implies that such 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 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 creditors committee.

[1969 c 766 s 7]

332.38 APPLICATION IN CASE OF PRETENDED PURCHASE, ASSIGNMENT OR USE OF A FICTITIOUS NAME. The provisions of sections 332.31 to 332.45 shall apply to any person who, by any device, subterfuge or pretense, makes a pretended purchase or takes a pretended assignment of accounts from any other person for the purpose of evading provisions of sections 332.31 to 332.45, or, uses a fictitious name or any name other than his or its own name which would indicate to the debtor that a third person is collecting or attempting to collect such account or claim.

[1969 c 766 s 8]

332.39 INJUNCTIONS. The attorney general or the county attorney of any county may apply for an injunction in district court to enjoin any violations of sections 332.31 to 332.45, or any practices prohibited in section 332.37, and any such court may issue temporary or permanent injunctions as the circumstances shall require. Such injunctive proceedings shall be in addition to and not in lieu of penalties and remedies otherwise provided in sections 332.31 to 332.45.

[1969 c 766 s 9]

332.40 INVESTIGATION, SUSPENSION AND REVOCATION OF LICENSES. The department may investigate the collection records of a licensee and for that purpose the department shall have free access to the books and records of a licensee relating thereto. If a licensee 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 on an original application, or, fails to maintain its registration or comply with all of the requirements of Minnesota Statutes 1967, Chapter 303, the department 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 suspend such license for such period as he may deem proper.

[1969 c 766 s 10]

332.41 APPEALS. Subdivision 1. In the rejection of an application for a license or the renewal thereof filed under sections 332.31 to 332.45 or of the suspension or revocation of a license granted under sections 332.31 to 332.45 the applicant or licensee may within 90 days after receipt of notice of such rejection, suspension, or revocation, file an appeal and thereafter prosecute the appeal in accordance with the pro-

visions of the statutes governing appeal from, or review of, decisions of administrative agencies in this state.

Subd. 2. The filing of an appeal from an order of the department rejecting an application for a license by a collection agency engaged in business as of July 1, 1969, or rejecting an application for the renewal of a license, or suspending or revoking a license within 60 days after the date of such order, shall operate as a supersedeas which shall continue pending final determination of such appeal.

[1969 c 766 s 11]

332.42 REPORTS AND RECORDS. Subdivision 1. The department may at any time require a licensee to submit to it a verified financial statement for examination by the department so that it may determine whether the 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. The department shall require the licensee to keep such books and records in his place of business in this state as will enable the department 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 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 licensee for collection or after any account has been returned to the claimant on which one or more payments have been made.

[1969 c 766 s 12]

332.43 DELINQUENT COLLECTION AGENCIES. Subdivision 1. If the department shall determine that a licensee is insolvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 60 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 whatsoever, the department, if it shall determine 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 an order authorizing it to take possession of the assets and the books and records of the 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 or forwarders may require. The court, after citing the licensee to show cause why the department should not be authorized to take possession of the assets and books of account and records for the purpose of liquidating or rehabilitating the business of the licensee, and after hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss the application, order the department to act as trustee for the rehabilitation of such agency, or, if it shall find such action necessary for the protection of the public, issue its order authorizing the department to take possession of the said books and records and or to liquidate the business and or granting such other relief as it may deem necessary under the circumstances.

Subd. 2. In every case where the court shall issue an order authorizing the department to take possession of the said books and records and to liquidate or rehabilitate the business of a licensee, the department shall be vested with all of the powers, duties, authority, and responsibility of a receiver, and without limiting the generality of the foregoing and subject to the approval of the court:

(1) The liquidation or rehabilitation of the business shall be made by and under the supervision of the department either in the name of the department or in the name of the licensee, and the department or its successor shall be vested with title to all of the assets including the proceeds of the bond or bonds which have been filed with the department and the proceeds of any and all money paid direct to the claimant or forwarder by any debtor prior to the date of the order. Money paid to the licensee or to the department after the date of the order shall be disposed of by the department.

(2) The department for the purpose of collection, liquidation or rehabilitation may sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of such collection agency under such terms and conditions as the department may deem best for the best interests of the collection agency or claimants of such collection agency.

(3) The department shall cause notice to be given by advertisement in such

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newspapers as it may direct weekly for four consecutive weeks after the issuance of the order authorizing it to take possession of the assets of the collection agency, calling on all persons who may have claims against such licensee to bring the same to the department and make legal proof thereof at a place and within a time to be therein specified. The department shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the department. Any claimant or forwarder whose portion of the collection or collections has not been properly remitted shall file a claim which shall be allowed for the amount actually due the claimant or forwarder after deducting any commission or fee that may be due and owing the licensee. If the department doubts the justice and validity of any claim, it may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of service of such notice which shall be prima facie evidence thereof shall be filed with the department. The claimant may within 30 days after receipt of notice of rejection file a petition in the court in which the proceedings are pending to establish his claim or claims. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation unless otherwise ordered by the court. The court may fix a date after which all claimants may be barred.

(4) Whenever the department shall have paid to each and every claimant or forwarder of such collection agency whose claims as such claimant or forwarder have been duly approved and allowed the full amount of such claims and shall have made proper provisions for unclaimed and unpaid collections and shall have paid all the expenses of the liquidation it shall distribute the remaining assets exclusive of the proceeds of the bond or bonds for the benefit of the general creditors. Any amount remaining after all claimants and forwarders and general creditors have been paid in full shall be turned over to the licensee.

(5) All accounts and valuable papers given to the agency by the claimant or forwarder in the possession of the department pertaining to accounts placed with the agency for collection shall be returned to the claimant or forwarder by the department within 30 days after verification of the claim he has made.

Subd. 3. Nothing herein contained shall preclude a creditor of a collection agency from prosecuting any and all legal actions and pursuing any and all remedies afforded him by the laws of this state for the collection of debts until such time as the department shall take possession of the collection agency under the provisions of sections 332.31 to 332.45.

[1969 c 766 s 13]

332.44 RULE MAKING POWER. The department shall make and file in accordance with the provisions of Minnesota Statutes 1967, Chapter 15, all reasonable rules and regulations as shall be necessary for the administration of sections 332.31 to 332.45.

[1969 c 766 s 14]

332.45 LIABILITY OF SURETIES. Sureties for collection agencies who have executed bonds pursuant to Minnesota Statutes 1967, Sections 332.01 to 332.03 shall not be liable for any new liabilities incurred by the collection agency after the department has approved that agency's bond as required by section 332.34.

[1969 c 766 s 15]