

CHAPTER 332

COLLECTION AGENCIES; AIDS TO LIQUIDATION OF DEBTS; CIVIL LIABILITY

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332.01 Subdivision 1. [Repealed, 1969 c 766 s 17]

Subd. 2. [Repealed, 1969 c 766 s 17]

Subd. 3. [Repealed, 1969 c 766 s 17]

Subd. 4. [Repealed, 1969 c 766 s 17; 1971 c 25 s 103]

332.02 [Repealed, 1969 c 766 s 17]

332.03 [Repealed, 1969 c 766 s 17]

332.04 [Repealed, 1969 c 1120 s 21]

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332.07 [Repealed, 1969 c 1120 s 21]

332.08 [Repealed, 1969 c 1120 s 21]

332.09 [Repealed, 1969 c 1120 s 21]

332.10 [Repealed, 1969 c 1120 s 21]

332.11 Subdivision 1. [Repealed, 1971 c 25 s 62]

Subd. 2. [Repealed, 1969 c 1120 s 21]

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 rules and control in the public interest.

History: 1969 c 1120 s 1; 1985 c 248 s 70

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 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;

(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 commerce.

History: 1969 c 1120 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

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.

History: 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

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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 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 the obligor's 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 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 or the debtor's 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.

History: 1969 c 1120 s 4; 1971 c 441 s 1; 1985 c 248 s 70; 1986 c 444

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 on finding:

(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 associa-

tion, 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 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.

History: 1969 c 1120 s 5; 1971 c 441 s 2; 1985 c 248 s 70; 1986 c 444

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 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.

History: 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.

History: 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 the application by certified mail directed to the applicant 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 14.57 to 14.69. 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.

History: 1969 c 1120 s 8; 1978 c 674 s 60; 1982 c 424 s 130; 1986 c 444; 1987 c 384 art 2 s 1

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 14.57 to 14.69. 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 on finding 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 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.

History: 1969 c 1120 s 9; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444; 1987 c 384 art 2 s 1

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. 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.

History: 1969 c 1120 s 10; 1971 c 441 s 3; 1985 c 248 s 70

332.22 BOOKS, RECORDS, AND INFORMATION.

Subdivision 1. Records retention. Every licensee shall keep, and use in the licensee's 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, 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 the creditor 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 the debtor's 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.

History: 1969 c 1120 s 11; 1971 c 441 s 4; 1985 c 248 s 70; 1986 c 444

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 the licensee's 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. Recurrent payments shall include current rent, house, utility, telephone, maintenance as defined in section 518.27, child support, insurance premium and such other payments as the commissioner may by rule 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 the debtor's 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 the licensee's 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.

History: 1969 c 1120 s 12; 1971 c 441 s 5-8; 1978 c 772 s 62; 1985 c 248 s 70; 1986 c 444

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 activities as a licensee; provided, however, that this paragraph shall not apply to a licensee which is a bona fide nonprofit 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.

History: 1969 c 1120 s 13; 1971 c 441 s 9; 1986 c 444

332.25 RULES.

The commissioner shall make and file in accordance with the provisions of chapter 14, such reasonable rules as shall be necessary for the administration of sections 332.12 to 332.29.

History: 1969 c 1120 s 14; 1982 c 424 s 130; 1985 c 248 s 70

332.26 PENALTIES.

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

History: 1969 c 1120 s 15; 1985 c 248 s 70

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.

History: 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

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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.

History: 1969 c 1120 s 17

332.29 INVESTIGATION.

Subdivision 1. The commissioner shall 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 at least once every 18 calendar months. 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.

History: 1969 c 1120 s 18; 1987 c 349 art 1 s 39

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. [Repealed, 1979 c 144 s 7]

Subd. 5. [Repealed, 1979 c 144 s 7]

Subd. 6. **Collector.** "Collector" is a person acting under the authority of a collection agency under 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.

History: 1969 c 766 s 1; 1973 c 720 s 54 subd 2; 1987 c 37 s 1

332.311 TRANSFER OF ADMINISTRATIVE FUNCTIONS.

The powers, duties, and responsibilities of the consumer services section under sections 332.31 to 332.45 relating to collection agencies are hereby transferred to and imposed upon the commissioner of commerce.

History: 1973 c 720 s 54 subd 1; 1979 c 144 s 4; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

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.

History: 1969 c 766 s 2

332.33 LICENSES.

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 license.

Subd. 2. Penalty. A person who 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 carries on this business after the revocation, suspension, or expiration of a license is guilty of a misdemeanor.

Subd. 3. Term. Licenses issued or renewed by the commissioner of commerce under sections 332.31 to 332.45 shall 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 is \$500 and renewal as collection agency is \$400. 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 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 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. 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 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. 6. Deposit of fees. All money received by the commissioner shall be deposited in the general fund of the state treasury.

History: 1969 c 399 s 1; 1969 c 766 s 3; 1971 c 23 s 22; 1971 c 576 s 1; 1973 c 720 s 54 subd 2; 1979 c 144 s 6; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444; 1987 c 37 s 2; 1987 c 358 s 118,119

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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 \$20,000. An applicant for a new or renewal license may request that the amount of the bond be reduced to an amount not less than \$5,000. This request may be 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.

History: 1969 c 766 s 4; 1973 c 720 s 54 subd 2; 1979 c 144 s 6; 1980 c 516 s 2; 1981 c 229 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 37 s 3

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.

History: 1969 c 766 s 5

332.36 [Repealed, 1975 c 61 s 26]

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;

(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;

(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; or

(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.

History: 1969 c 766 s 7; 1981 c 229 s 2; 1987 c 37 s 4; 1988 c 592 s 12

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 another for the purpose of evading provisions of sections 332.31 to 332.45, or, uses a fictitious name or any name other than the person's own name which would indicate to the debtor that a third person is collecting or attempting to collect such account or claim.

History: 1969 c 766 s 8; 1986 c 444

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.

History: 1969 c 766 s 9

332.40 INVESTIGATION, SUSPENSION AND REVOCATION OF LICENSES.

Subdivision 1. Examination of licensee's records. The commissioner of commerce may make examinations of the collection records of a licensee 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 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 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 suspend a license for a period as the commissioner may deem 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

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of sections 332.31 to 332.45, or any rule or order thereunder; to determine whether a license 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 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.

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.

History: 1969 c 766 s 10; 1973 c 720 s 54 subd 2; 1979 c 144 s 6; 1980 c 516 s 2; 1981 c 229 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 37 s 5

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 provisions 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 commissioner of commerce 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.

History: 1969 c 766 s 11; 1973 c 720 s 54 subd 2; 1979 c 144 s 6; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

332.42 REPORTS AND RECORDS.

Subdivision 1. The commissioner of commerce may at any time require a licensee to submit a verified financial statement for examination by the commissioner to 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 commissioner shall require the 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 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.

History: 1969 c 766 s 12; 1973 c 720 s 54 subd 2; 1979 c 144 s 6; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

332.43 DELINQUENT COLLECTION AGENCIES.

Subdivision 1. If the commissioner shall determine that a 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 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 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.

Subd. 2. [Repealed, 1979 c 144 s 7]

Subd. 3. [Repealed, 1979 c 144 s 7]

History: 1969 c 766 s 13; 1973 c 720 s 54 subd 2; 1979 c 144 s 5; 1986 c 444

332.44 RULEMAKING POWER.

The commissioner of commerce shall make and file in accordance with the provisions of chapter 14, all reasonable rules as shall be necessary for the administration of sections 332.31 to 332.45.

History: 1969 c 766 s 14; 1973 c 720 s 54 subd 2; 1979 c 144 s 6; 1980 c 516 s 2; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70

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 commissioner of commerce has approved that agency's bond as required by section 332.34.

History: 1969 c 766 s 15; 1973 c 720 s 54 subd 2; 1979 c 144 s 6; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

332.50 CIVIL LIABILITY FOR ISSUANCE OF WORTHLESS CHECK.

Subdivision 1. **Definitions.** "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

"Credit" means an arrangement or understanding with the drawee for the payment of the check.

Subd. 2. **Acts constituting.** Whoever issues any check that is dishonored and is not paid within 30 days after mailing a notice of dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, in compliance with subdivision 3, is liable to the holder for the amount of the check plus a civil penalty of up to \$100, interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor, and reasonable attorney fees if the amount of the check is over \$1,250.

A service charge not exceeding \$15 may be imposed immediately on any dishonored check, regardless of mailing a notice of dishonor, if written notice of the service charge was conspicuously displayed on the premises when the check was issued.

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This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed \$15 or the actual cost of collection but in no case more than \$30, or terms or conditions for imposing the charges which have been agreed to by the parties to an express contract.

Subd. 3. Notice of dishonor required. Notice of nonpayment or dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check. The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4. Proof of identity. The check is prima facie evidence of the identity of the drawer if the person receiving the check:

(a) records the following information about the drawer on the check, unless it is printed on the face of the check:

- (1) name;
- (2) home or work address;
- (3) home or work telephone number; and
- (4) identification number issued pursuant to section 171.07;

(b) compares the drawer's physical appearance, signature, and the personal information recorded on the check with the drawer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

Subd. 5. Defenses. Any defense otherwise available to the drawer also applies to liability under this section.

History: 1983 c 225 s 6; 1984 c 576 s 26; 1985 c 140 s 1,2

332.51 CIVIL LIABILITY FOR THEFT.

Subdivision 1. Liability for theft of property. A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either \$50 or up to 100 percent of its value when stolen, whichever is greater. If the property is merchandise stolen from a retail store, its value is the retail price of the merchandise in the store when the theft occurred.

Subd. 2. Notice. In order to recover under subdivision 1 for the theft of a shopping cart, a store must have posted at the time of the theft a conspicuous notice describing the liability under subdivision 1.

Subd. 3. Liability of parent or guardian. The provisions of section 540.18 apply to this section.

Subd. 4. Criminal action. The filing of a criminal complaint, conviction, or guilty plea is not a prerequisite to liability under this section. Payment or nonpayment may not be used as evidence in a criminal action.

Subd. 5. Recovery of property. The recovery of stolen property by a person does not affect liability under this section, other than liability for the value of the property.

Subd. 6. Right to demand payment. A person may make a written demand for payment for the liability imposed by this section before beginning an action, including a copy of this section and a description of the liability contained in this section.

History: 1988 c 481 s 1