

CHAPTER 332

COLLECTION AGENCIES AND PRACTICES

332.50	Civil liability for issuance of worthless check.	332.56	Prohibited acts.
332.52	Definitions.	332.57	Disclosure statement.
332.53	Waiver of rights.	332.58	Contract.
332.54	Registration; fees.	332.59	Violations.
332.55	Bond.	332.60	Damages.

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.

"Dishonor" has the meaning given in section 336.3-507, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check.

Subd. 2. **Acts constituting.** (a) 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: (1) the amount of the check plus a civil penalty of up to \$100 or up to 100 percent of the value of the check, whichever is greater; (2) 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 (3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(b) If the amount of the dishonored check plus any service charges that have been incurred under paragraph (d) or (e) have not been paid within 30 days after having mailed a notice of dishonor in compliance with subdivision 3 but before bringing an action, a payee may make a written demand for payment for the liability imposed by paragraph (a) by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address.

(c) After notice has been sent but before an action under this section is heard by the court, the plaintiff shall settle the claim if the defendant gives the plaintiff the amount of the check plus court costs, any service charge owed under paragraph (d), and reasonable attorney fees if provided for under paragraph (a), clause (3).

(d) A service charge 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. The service charge may not exceed \$20, except that if the payee uses the services of a law enforcement agency to obtain payment of a dishonored check, a service charge of up to \$25 may be imposed if the service charge is used to reimburse the law enforcement agency for its expenses. A payee may impose only one service charge under this paragraph for each dishonored check.

(e) 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 the charges in paragraph (d) 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.

[For text of subs 3 to 5, see M.S.1990]

History: 1991 c 256 s 8,9

CREDIT SERVICES ORGANIZATIONS**332.52 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 332.52 to 332.60.

Subd. 2. **Buyer.** "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

Subd. 3. **Credit services organization.** (a) "Credit services organization" means any person that, with respect to the extension of credit by others, sells, provides, performs, or represents that the person will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

- (1) improve a buyer's credit record, history, or rating;
- (2) obtain an extension of credit for a buyer; or
- (3) provide advice or assistance to a buyer with regard to either clause (1) or (2).

(b) "Credit services organization" does not include:

(1) any person authorized to make loans or extensions of credit under the laws of this state or the United States, if the person is subject to regulation and supervision by this state or the United States or a lender approved by the United States Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(2) any bank, savings bank, or savings and loan institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or a subsidiary of the bank, savings bank, or savings and loan institution;

(3) any credit union, federal credit union, or out-of-state credit union doing business in this state;

(4) any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1990;

(5) any person licensed as a prorating agency under the laws of this state if the person is acting within the course and scope of that license;

(6) any person licensed as a real estate broker by this state if the person is acting within the course and scope of that license;

(7) any person licensed as a collection agency under the laws of this state if the person is acting within the course and scope of that license;

(8) any person licensed to practice law in this state if the person renders services within the course and scope of practice as an attorney;

(9) any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation; or

(10) any consumer reporting agency as defined in the federal Fair Credit Reporting Act, United States Code, title 15, sections 1681 to 1681t, as amended through December 31, 1990.

Subd. 4. **Extension of credit.** "Extension of credit" means the right, offered or granted primarily for personal, family, or household purposes, to defer payment of debt or to incur debt and defer its payment.

History: 1991 c 314 s 1

332.53 WAIVER OF RIGHTS.

Any waiver by a buyer of sections 332.52 to 332.60 is void. Any attempt by a credit services organization to have a buyer waive rights provided under sections 332.52 to 332.60 is a violation of sections 332.52 to 332.60. In any proceeding involving sections 332.52 to 332.60, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: 1991 c 314 s 2

332.54 REGISTRATION; FEES.

Subdivision 1. Filing. It is unlawful for any credit services organization to offer, advertise, or execute or cause to be executed by a consumer any contract in this state unless the credit services organization at the time of the offer, advertisement, sale, or execution of a contract has been properly registered with the commissioner. The commissioner may charge the credit services organization a reasonable fee not exceeding \$100 to cover the costs of filing.

Subd. 2. Disclosure. The registration must contain the following information:

- (1) the name and address of the credit services organization;
- (2) the name and address of the registered agent authorized to accept service of process on behalf of the credit services organization;
- (3) the name and address of any person who directly or indirectly owns or controls a ten percent or greater interest in the credit services organization;
- (4) the name and address of the surety company that issued the bond required under section 332.55; and
- (5) full disclosure of any litigation or unresolved complaint filed within the preceding five years with the state, any other state, or the United States relating to the operation of the credit services organization, or a notarized statement that there has been no litigation or unresolved complaint filed within the preceding five years with the state, any other state, or the United States relating to the operation of the credit services organization.

Subd. 3. Additional information. The credit services organization must attach to the registration statement a copy of the contract which the credit services organization intends to execute with its consumers and evidence of the required bond.

Subd. 4. Update of information. The credit services organization must update the registration statement required under this section not later than 90 days after the date from which a change in the information required in the statement occurs.

Subd. 5. Buyer inspection. Each credit services organization registering under this section must maintain a copy of the registration statement in its files. The credit services organization must allow a buyer to inspect the registration statement on request.

History: 1991 c 314 s 3

332.55 BOND.

A credit services organization must submit to the commissioner at the time of registration, a surety bond of \$10,000 to be approved by the attorney general and in which an insurance company, which is authorized by the state of Minnesota to transact the business of fidelity and surety insurance, is a surety. The credit services organization must be the obligor. The bond must benefit the state of Minnesota and any person who may have a cause of action against the obligor arising out of the obligor's activities as a credit services organization. The commissioner may accept a deposit in cash, or securities that may be legally purchased by savings banks or for trust funds of an aggregate market value equal to the bond requirement, in lieu of the surety bond. The cash or securities must be deposited with the state treasurer.

History: 1991 c 314 s 4

332.56 PROHIBITED ACTS.

Subdivision 1. Requirements; prohibitions. A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:

- (1) charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer;
- (2) charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit

that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;

(3) make, counsel, or advise any buyer to make, any statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is untrue or misleading or that should be known by the exercise of reasonable care to be untrue or misleading to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit; or

(4) make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization.

Subd. 2. **Salespersons; agents.** If a credit services organization is in compliance with subdivision 1, clause (1), the salesperson, agent, or representative who sells the services of that organization is not required to obtain a surety bond.

History: 1991 c 314 s 5

332.57 DISCLOSURE STATEMENT.

Subdivision 1. **Requirement.** Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing containing all of the information required by subdivision 2. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

Subd. 2. **Contents.** The disclosure statement required under subdivision 1 must be printed in boldface and in at least ten-point type and must include the following statement:

"CONSUMER CREDIT FILE RIGHTS UNDER MINNESOTA AND FEDERAL LAW

You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 30 days. The credit bureau must provide someone to help you interpret the information in your credit file.

You have a right to dispute inaccurate information by contacting the credit bureau directly. However, neither you nor any "credit repair" company or credit services organization has the right to have accurate, current, and verifiable information removed from your credit bureau report. Under the federal Fair Credit Reporting Act, the credit bureau must remove accurate, negative information from your report only if it is over seven years old. Bankruptcy can be reported for ten years.

You have a right to sue a credit repair company that violates Minnesota's credit services organization act. This law prohibits deceptive practices by credit repair companies and gives you a right to cancel your contract for any reason within five working days from the date you signed it.

Credit bureaus are required to follow reasonable procedures to ensure that creditors report information accurately. However, mistakes may occur.

You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of any documents you have concerning an error should be given to the credit bureau.

If reinvestigation does not resolve the dispute to your satisfaction, you may send

a brief statement to the credit bureau to keep in your file, explaining why you think the record is inaccurate. The credit bureau must include your statement about disputed information with any reports it issues about you."

History: 1991 c 314 s 6

332.58 CONTRACT.

Subdivision 1. Requirements. Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, and signed by the buyer and must include the following:

(1) a conspicuous statement in boldface type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "If you, the buyer, have been denied credit within the last 30 days, you may obtain a free copy of the consumer credit report from the consumer reporting agency. You also have the right to dispute inaccurate information in a report. You may cancel this contract at any time prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right";

(2) the terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(3) a full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or the estimated length of time for performing the services;

(4) the credit services organization's principal business address and the name and address of its agent in this state authorized to receive service of process; and

(5) with respect to the previous calendar year or the time period the credit services organization has been in business, whichever is shorter, the percentage of the credit services organization's customers for whom the credit services organization has fully and completely performed the services the credit services organization agreed to perform for the buyer.

Subd. 2. Notice of cancellation. The contract must be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" that must be attached to the contract, is easily detachable, and contains in boldface type the following statement written in the same language as used in the contract:

"Notice of Cancellation

You may cancel this contract without any penalty or obligation within five days from the date the contract is signed.

If you cancel this contract, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or any other written notice to(name of seller)..... at(address of seller).....,(place of business)..... not later than midnight(date).....

I hereby cancel this transaction,

.....(date).....

...(purchaser's signature)..."

Subd. 3. Buyer's copy. The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time that they are signed.

History: 1991 c 314 s 7

332.59 VIOLATIONS.

Any person who violates sections 332.52 to 332.58 is guilty of a misdemeanor. The commissioner of commerce may bring a civil action or proceeding against a person who

violates any provision of sections 332.52 to 332.58. A violation of sections 332.52 to 332.58 is a violation of section 325F.69, subdivision 1, and the provisions of section 8.31 apply. Sections 332.52 to 332.58 do not limit or restrict the right of any person to pursue any appropriate remedy for a violation of sections 332.52 to 332.58.

History: 1991 c 314 s 8

332.60 DAMAGES.

A buyer suffering damages as a result of a violation of sections 332.52 to 332.58 by a credit services organization may bring an action for recovery of damages. Judgment must be entered for actual damages, but in no case shall the amount be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney fees and costs. An award may also be entered for punitive damages. The remedies provided under sections 332.52 to 332.60 are in addition to any other procedures or remedies for any violation or conduct otherwise provided by law.

History: 1991 c 314 s 9