

CHAPTER 332

COLLECTION, CREDIT SERVICES, DEBT PRORATING

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 [Repealed, 1969 c 766 s 17]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 [Repealed, 1969 c 766 s 17]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 [Repealed, 1969 c 766 s 17]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 [Repealed, 1969 c 766 s 17; 1971 c 25 s 103]

332.02 [Repealed, 1969 c 766 s 17]**332.03** [Repealed, 1969 c 766 s 17]**332.04** [Repealed, 1969 c 1120 s 21]**332.05** [Repealed, 1969 c 1120 s 21]**332.06** [Repealed, 1969 c 1120 s 21]**332.07** [Repealed, 1969 c 1120 s 21]**332.08** [Repealed, 1969 c 1120 s 21]**332.09** [Repealed, 1969 c 1120 s 21]**332.10** [Repealed, 1969 c 1120 s 21]**332.11** Subdivision 1. [Repealed, 1971 c 25 s 62]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 [Repealed, 1969 c 1120 s 21]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. **Scope.** 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.** "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 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;

(9) "Qualified organizations" designated as representative payees for purposes of the Social Security and Supplemental Security Income representative payee system and the federal Omnibus Budget Reconciliation Act of 1990, Public Law Number 101-508; and

(10) Accelerated mortgage payment providers. "Accelerated mortgage payment providers" are persons who, after satisfying the requirements of sections 332.30 to 332.303, receive funds to make mortgage payments to a lender or lenders, on behalf of mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. The term does not include: (i) persons or entities described in clauses (1) to (9); (ii) mortgage lenders or servicers, industrial loan and thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to make loans under section 47.20, subdivision 1.

For purposes of this clause and sections 332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever is the current mortgage holder.

Subd. 3. **Attorney general.** "Attorney general" means the attorney general of the state of Minnesota.

Subd. 4. **Debtor.** "Debtor" means the person for whom the debt prorating service is performed.

Subd. 5. **Person.** "Person" means any individual, firm, partnership, association or corporation.

Subd. 6. **Licensee.** "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. **This act.** The term "this act" means sections 332.12 to 332.29 as enacted and hereafter amended.

Subd. 8. **Commissioner.** "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; 1992 c 587 art 1 s 28; 1994 c 638 s 1; 1995 c 202 art 1 s 25

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 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 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; 1992 c 564 art 4 s 15

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 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 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.

(a) 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. This disclosure must state that if the amount of debt owed is increased by interest, late fees, over the limit fees, and other amounts imposed by the creditor or by reason of the events under paragraph (c), the length of the contract would be extended and remain in force and that the total dollar charges agreed upon may increase at the rate agreed upon in the original 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.

(b) 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.

(c) Total fees contained in the contract may be exceeded in relation to creditors under open-end agreements if it is agreed to in the contract and the additional debts so contracted to be prorated do not exceed ten percent of the original debts in the contract or written revisions to the original contract.

History: 1969 c 1120 s 10; 1971 c 441 s 3; 1985 c 248 s 70; 1996 c 414 art 1 s 40; 1997 c 157 s 61

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, credit background report cost. The licensee may charge an origination fee of not more than \$25 and collect from the debtor the actual cost of a credit background report obtained from a credit reporting agency not related to or affiliated with the licensee or if affiliated, the total cost of the report may not exceed \$8. The costs to the debtor of said origination fee and credit background report may be made from the originating

amount paid by the debtor to the licensee. The cost of only one credit background report may be collected from the debtor in any 12-month period.

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 unless the reasonable payment of one or more of the debtor's obligations requires that the funds be held for a longer period so as to accumulate a sum certain or where the debtor's payment is returned for nonsufficient funds, then no longer than 42 days. Total payment to licensee for services rendered, excluding the origination fee and any credit background report, 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) 42 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 main-

tain 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; 1995 c 202 art 2 s 30,31; 1997 c 157 s 62-64

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 317A;
- (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; 1989 c 304 s 137

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 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. Examination; audit. 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. Duties of attorney general and county attorney. 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

332.30 ACCELERATED MORTGAGE PAYMENT PROVIDER; BOND REQUIREMENTS.

(a) Before beginning business in this state, an accelerated mortgage payment provider, as defined in section 332.13, subdivision 2, clause (10), shall submit to the commissioner of commerce either:

(1) a surety bond in which the accelerated mortgage payment provider is the obligor, in an amount determined by the commissioner; or

(2) if the commissioner agrees to accept it, a deposit:

(i) in cash in an amount equivalent to the bond amount; or

(ii) of authorized securities, as defined in section 50.14, with an aggregate market value equal to the bond amount. The cash or securities must be deposited with the state treasurer.

(b) The amount of the bond required by the commissioner shall vary with the amount of Minnesota client funds held or to be held by the obligor. For new businesses, the bond must be no less than \$100,000, except as provided in section 332.301. The commissioner may increase the required bond amount upon 30 days' notice to the accelerated mortgage payment provider.

(c) If a bond is submitted, it must name as surety an insurance company authorized to transact fidelity and surety business in this state. The bond must run to the state of Minnesota for the use of the state and of any person who may have a claim against the obligor arising out of the obligor's activities as an accelerated mortgage payment provider. The bond must be conditioned that the obligor will not commit any fraudulent act and will faithfully conform to and abide by the provisions of accelerated mortgage payment agreements with Minnesota residents.

If an accelerated mortgage payment provider has failed to account to a mortgagor or distribute funds to the mortgagee as required by an accelerated mortgage payment agreement, the mortgagor or the mortgagor's legal representative or receiver or the commissioner shall have, in addition to any other legal remedies, a right of action in the name of the debtor on the bond or the security given pursuant to this section.

History: 1994 c 638 s 2

332.301 BOND; BACKGROUND CHECK.

The commissioner may accept an initial surety bond or deposit in an amount less than \$100,000 based upon the business plan of the accelerated mortgage payment provider, provided the commissioner obtains a third-party background check at the expense of the accelerated mortgage payment provider and from a source to be determined by the commissioner. The commissioner may require a third-party background check in connection with any accelerated mortgage payment provider at the expense of the accelerated mortgage payment provider, but no more often than annually.

History: 1994 c 638 s 3

332.302 CONTRACTS; NOTICE TO MORTGAGOR.

A contract entered into between an accelerated mortgage payment provider and a mortgagor shall be in writing and include all applicable terms and conditions including, but not limited to, all fees, costs, and charges. A conforming copy must be provided to the mortgagor before any fees in connection with the accelerated mortgage payment services are received by the accelerated mortgage payment provider. A contract shall provide that the arrangement between the accelerated mortgage payment provider and lender or lenders requires:

(1) that if the original terms of the mortgage, mortgage note, or escrow agreement are in default because of nonpayment by the accelerated mortgage payment provider, the lender or lenders mail or otherwise deliver to the mortgagor a written notice within 30 days of the default; and

(2) that a written summary of payments received by the accelerated mortgage payment provider by date and amount, payments made to the lender or lenders on behalf of the mortgagor by date and amount, and unremitted balance held by the accelerated mortgage payment provider be provided to the mortgagor at least annually or more frequently on a date or dates mutually agreed upon between the accelerated mortgage payment provider and mortgagor.

History: 1994 c 638 s 4

332.303 SEGREGATED ACCOUNTS.

A payment received by an accelerated mortgage payment provider from or on behalf of a client shall be held by the accelerated mortgage payment provider in a separate trust account clearly designated for client funds. The account shall be in a bank or other depository institution authorized or chartered under the laws of any state or of the United States. The accelerated mortgage payment provider shall not commingle funds held for payment to lenders with its own property or funds.

History: 1994 c 638 s 5

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, savings 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; 1995 c 202 art 1 s 25

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

Subd. 2. **Penalty.** A person who carries on business as a collection agency or acts as a collector without first having obtained a license 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 commis-

sioner 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.

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

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; 1997 c 222 s 50,51

332.34 BOND.

The commissioner of commerce shall require each collection agency licensee to annually file and maintain in force a corporate surety bond, in a form to be prescribed by, and acceptable to, the commissioner, and in a sum of at least \$20,000. 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; 1996 c 439 art 1 s 16; 1997 c 222 s 52

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;

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

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

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

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

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

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

History: 1969 c 766 s 7; 1981 c 229 s 2; 1987 c 37 s 4; 1988 c 592 s 12; 1993 c 295 s 1

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

332.385 NOTIFICATION TO COMMISSIONER.

The collection agency licensee shall notify the commissioner of any employee termination within ten days of the termination if it is in whole or in part based on a violation of this chapter.

History: 1993 c 295 s 2

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

332.395 COMMISSIONER'S POWER OVER INEFFECTIVE LICENSES.

If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner of commerce may do either or both of the following: (1) institute a proceeding under section 45.027 within two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect; (2) impose a civil penalty as provided for in section 45.027, subdivision 6.

History: 1996 c 439 art 1 s 17

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 of sections 332.31 to 332.45, or any rule or order thereunder; to determine whether a license should be issued, re-

newed, 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. Filing of appeal. 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. Supersedeas. 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. Verified financial statement. 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. Recordkeeping. 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

WORTHLESS CHECKS

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 336.3-502, 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. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.

Subd. 2. **Acts constituting.** Whoever issues any check that is dishonored is liable for the following penalties:

(a) A service charge of up to \$20, or actual costs of collection not to exceed \$30, may be imposed immediately on any dishonored check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check, a service

charge not to exceed \$25 may be imposed if the service charge is retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for nonpayment after 30 days;

(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.

(c) 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 (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

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; 1991 c 256 s 8,9; 1992 c 565 s 113; 1996 c 414 art 1 s 41; 1997 c 157 s 65,66

THEFT OF PERSONAL PROPERTY

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.** Section 540.18 applies to this section, except that recovery is not limited to special damages.

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; 1989 c 224 s 2; 1989 c 262 s 4

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.

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.

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.

Subd. 6. Term. Registration issued or renewed by the commissioner of commerce under sections 332.52 to 332.60 expires on June 30 of each year.

Subd. 7. Fees. The fee for a credit services organization's registration is \$100 for issuance or renewal for each location of business.

History: 1991 c 314 s 3; 1993 c 295 s 3-5

332.55 BOND.

A credit services organization must submit to the commissioner at the time of registration, an annual surety bond of \$10,000, expiring on June 30 of each year, by an insurance company which is authorized by the state of Minnesota to transact the business of fidelity and surety insurance. 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; 1992 c 564 art 4 s 16; 1993 c 295 s 6

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 10-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. 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. The provisions of section 45.027 apply to the enforcement of sections 332.52 to 332.58.

History: 1991 c 314 s 8; 1993 c 295 s 7

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