

CHAPTER 332

COLLECTION, CREDIT SERVICES, AND DEBT
PRORATING ORGANIZATIONS

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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: 1997 c 157 s 61

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.

[For text of subs 3 and 4, see M.S.1996]

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.

[For text of subds 6 to 8, see M.S.1996]

History: 1997 c 157 s 62–64

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.

[For text of subds 2 to 6, see M.S.1996]

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: 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: 1997 c 222 s 52

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 enforce-

ment 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.

[For text of subs 3 to 5, see M.S.1996]

History: 1997 c 157 s 65,66