

CHAPTER 332

COLLECTION, CREDIT SERVICES, DEBT
PRORATING

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332.15 LICENSE.

[For text of subd 1, see M.S.1998]

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 \$100.

Subd. 3. **Fees.** Each applicant, at the time of making such application, shall pay to the commissioner the sum of \$100 as a fee for investigation of the applicant, and the additional sum of \$250 as a license fee. If the application is denied, said license fee shall be returned to the applicant.

[For text of subds 4 to 6, see M.S.1998]

History: 1999 c 151 s 43,44

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 \$250 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: 1999 c 151 s 45

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 an authorization fee of \$250 and 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: 1999 c 151 s 46

332.37 PROHIBITED PRACTICES.

No collection agency or collector 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 proratee, 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;

(19) attempt to collect any amount of money from a debtor or charge a fee to a creditor that is not authorized by agreement with the client;

(20) falsify any collection agency documents with the intent to deceive a debtor, creditor, or governmental agency; or

(21) 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: 1999 c 137 s 10

332.50 CIVIL LIABILITY FOR ISSUANCE OF WORTHLESS CHECK.

[For text of subd 1, see M.S.1998]

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.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

[For text of subs 3 to 5, see M.S.1998]

History: 1999 c 218 s 1