

CHAPTER 229 — H.F.No. 673

An act relating to commerce; increasing the amount of the surety bond required of collection agencies; authorizing the commissioner of securities and real estate to investigate and examine certain collection agencies; broadening the classification of prohibited practices; amending Minnesota Statutes 1980, Sections 332.34; 332.37; and 332.40.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1980, Section 332.34, is amended to read:

332.34 BOND.

The commissioner of securities and real estate shall require each licensee to file and maintain in force a corporate surety bond, in a form to be prescribed by the commissioner and acceptable to him, and in the sum of ~~\$5,000~~ \$10,000 effective July 1, 1982 and \$20,000 effective July 1, 1983. An applicant for a new or renewal license may request that the amount of the bond hereby required be reduced to an amount which shall be not less than \$5,000. This request may be granted upon a showing that the total dollar amount received from debtors by the collection agency in the preceding fiscal year did not exceed \$30,000.

Sec. 2. Minnesota Statutes 1980, Section 332.37, is amended to read:

332.37 PROHIBITED PRACTICES.

No collection agency 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 ~~such~~ the lawyer;

(2) use or employ ~~justices of the peace~~, 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;

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(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 ~~such~~ the amounts due and owing to the agency within 30 days after ~~such~~ 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 ~~such~~ the claimant or forwarder;

(9) operate under a name or in a manner which implies that ~~such~~ 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.

Sec. 3. Minnesota Statutes 1980, Section 332.40, is amended to read:

332.40 INVESTIGATION, SUSPENSION AND REVOCATION OF LICENSES.

Subdivision 1. EXAMINATION OF LICENSEE'S RECORDS. The commissioner of securities and real estate may ~~investigate~~ 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 ~~such~~ a license for ~~such~~ a period as ~~he~~ the commissioner may deem proper.

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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, renewed, or revoked; to aid in the enforcement of sections 332.31 to 332.45; or in prescribing rules and forms thereunder. The commissioner may publish information concerning any violation of sections 332.31 to 332.45 or any rule or order thereunder.

Subd. 3. COMMISSIONER'S POWERS. For the purpose of any investigation or proceeding under sections 332.31 to 332.45, the commissioner or any person designated by him may administer oaths and affirmations, subpoena collection agencies 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 refuses to obey the subpoena, or should the commissioner, upon completion of the examination of the collection agency, 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. 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.

Approved May 19, 1981

CHAPTER 230 — H.F.No. 1190

An act relating to counties; providing that the compensation of members of the St. Louis county board of commissioners be set pursuant to general law; providing for a seven-member board of commissioners in certain counties; amending Minnesota Statutes 1980, Section 375.055, Subdivision 1; proposing new law coded in Minnesota Statutes, Chapter 375; repealing Laws 1965, Chapter 843.

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