

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF ADOPTED REPEALER

- 1) Heading of the Part: Collection Agency Act
- 2) Code Citation: 68 Ill. Adm. Code 1210
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
1210.10	Repealed
1210.20	Repealed
1210.25	Repealed
1210.60	Repealed
1210.70	Repealed
1210.105	Repealed
1210.110	Repealed
1210.140	Repealed
1210.150	Repealed
1210.160	Repealed
1210.170	Repealed
1210.180	Repealed
1210.190	Repealed
1210.235	Repealed
1210.237	Repealed
1210.240	Repealed
- 4) Statutory Authority: Implementing the Collection Agency Act [225 ILCS 425] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].
- 5) Effective Date of Repealer: November 20, 2023
- 6) Does this repealer contain an automatic repeal date? No
- 7) Does this repealer contain incorporations by reference? No
- 8) A copy of the Adopted Repealer, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in *Illinois Register*: 47 Ill. Reg. 11964; August 11, 2023
- 10) Has JCAR issued a Statement of Objections to this repealer? No

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- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this repealer replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Repealer: Public Act 102-975 effectively transferred the authority for regulation of collection agencies from the Division of Professional Regulation to the Division of Financial Institutions. As the Division of Financial Institutions intends to propose new rules that update and build upon these current rules for collection agencies (38 Ill. Adm. Code 150 – Collection Agency Act) in order to bring industry regulation into alignment with Division standards, these rules will be rendered unnecessary; therefore, the Division proposes their repeal entirely.
- 16) Information and questions regarding this adopted repealer shall be directed to:

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 2nd Floor
Springfield, Illinois 62786

(217) 785-0810
Fax: (217) 557-4451
Craig.cellini@illinois.gov

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- 1) Heading of the Part: Collection Agency Act
- 2) Code Citation: 68 Ill. Adm. Code 1210
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<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1210.10	Repealed
1210.20	Repealed
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1210.140	Repealed
1210.150	Repealed
1210.160	Repealed
1210.170	Repealed
1210.180	Repealed
1210.190	Repealed
1210.235	Repealed
1210.237	Repealed
1210.240	Repealed
- 4) Statutory Authority: Implementing the Collection Agency Act [225 ILCS 425] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].
- 5) A Complete Description of the Subjects and Issues Involved: PA 102-975 effectively transferred the authority for regulation of collection agencies from the Division of Professional Regulation to the Division of Financial Institutions. As the Division of Financial Institutions intends to propose new rules that update and build upon these current rules for collection agencies (38 Ill. Adm. Code 150 – Collection Agency Act) in order to bring industry regulation into alignment with Division standards, these rules will be rendered unnecessary; therefore, the Division proposes their repeal entirely.
- 6) Published studies or reports, and sources of underlying data, used when compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No

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- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 2nd Floor
Springfield, IL 62786

(217) 785-0810
Fax: (217) 557-4451
Craig.Cellini@illinois.gov

All written comments received within 45 days after this issue of the *Illinois Register* will be considered.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:

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B) Categories that the agency reasonably believes the rulemaking will impact, including:

ii. regulatory requirements

- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was summarized in the January 2023 Regulatory Agenda; however, it was indicated that it would be proposed as amendments to 68 Ill. Adm. Code 1210 as the Department was not yet aware that it would need to propose a new rulemaking and repeal the existing rules.

The full text of the Proposed Repealer begins on the next page:

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TITLE 68: PROFESSIONS AND OCCUPATIONS

CHAPTER VII: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1210

COLLECTION AGENCY ACT (REPEALED)

Section

1210.10	Definitions
1210.20	Officer
1210.25	Application for Registration
1210.30	Harassment Defined (Repealed)
1210.40	Section 9.21 of Act Defined (Repealed)
1210.50	Posing as an Attorney (Repealed)
1210.60	Communication by Agency
1210.70	Use of Pseudonyms
1210.80	Doing Business at More Than One Office or Location (Repealed)
1210.90	Additional Offices or Changes of Location of Office (Repealed)
1210.100	Notices (Repealed)
1210.105	Change of Ownership
1210.110	Termination or Change in Registration
1210.120	Address for Notice (Repealed)
1210.130	Use of Street Addresses (Repealed)
1210.140	Records and Documents to be Kept by Collection Agency
1210.150	Recording of Payments
1210.160	Multiple Creditors
1210.170	Availability of Books, Records, Forms and Stationery
1210.180	Accounting and Remitting Collected Funds
1210.190	Creditor Accounts
1210.200	Trust Accounts (Repealed)
1210.210	Notice for Hearing (Repealed)
1210.220	Procedures for Hearing (Repealed)
1210.230	Default Disposition of a Hearing (Repealed)
1210.235	Renewals
1210.237	Fees
1210.240	Granting Variances
1210.250	Construction of Rules and Regulations (Repealed)

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AUTHORITY: Implementing the Collection Agency Act [225 ILCS 425] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].

SOURCE: Rules and Regulations Promulgated for the Administration of the Illinois Collection Agency Act, effective December 3, 1976; codified at 5 Ill. Reg. 11025; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; transferred from Chapter I, 68 Ill. Adm. Code 210 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1210 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2919; amended at 17 Ill. Reg. 1535, effective January 25, 1993; amended at 22 Ill. Reg. 16479, effective September 4, 1998; amended at 24 Ill. Reg. 508, effective December 31, 1999; amended at 35 Ill. Reg. 12872, effective July 20, 2011; repealed at 47 Ill. Reg. _____, effective _____.

Section 1210.10 Definitions

The following definitions shall apply to this Part:

"Act" means the Collection Agency Act [225 ILCS 425].

"Agency" means a collection agency as defined in Section 2.02 of the Act.

"Board" means the Collection Agency Licensing and Disciplinary Board.

"Branch Office" means another location with the same name and ownership as the main collection agency license.

"Creditor" means individual, sole proprietorship, partnership or corporation that engages or retains the agency to collect debts due the individual, sole proprietorship, partnership or corporation.

"Department" means the Department of Financial and Professional Regulation.

"Director" means Director of the Division of Professional Regulation with the authority delegated by the Secretary.

"Division" means the Department of Financial and Professional Regulation-Division of Professional Regulation.

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"Managerial or Administrative Control" means having authority to conduct the affairs of the agency and direct others in the conduct of the affairs or business of the agency.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation.

"Trust Account" means the special account that all licensed collection agencies shall maintain in accordance with Section 8c of the Act.

Section 1210.20 Officer

- a) If the agency is an association or a sole proprietorship, the owner of the agency or any person exercising managerial control shall be considered an officer.
- b) If the agency is a partnership, any partner who has at least 10% ownership interest or any partner who exercises managerial control shall be considered an officer.
- c) If the agency is a corporation, any officer of the corporation or director or any person who has at least 10% ownership interest in such corporation or who exercises managerial control shall be considered an officer.

Section 1210.25 Application for Registration

- a) All applications for registration as a collection agency shall be submitted to the Division, on forms provided by the Division, and include:
 - 1) Collection Agency Application
 - A) The name and address of all officers of the collection agency (as defined in Section 1210.20). The address shall be an actual street address and shall include the city, state and zip code. A post office box number is not acceptable as an address;
 - B) A copy of the Articles of Incorporation bearing the seal of the office, in the jurisdiction in which the corporation is organized, whose duty it is to register corporations under the laws of that jurisdiction. If it is a foreign corporation, a copy of the certificate

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of authority to transact business in this State issued by the Secretary of State is also required;

- C) A copy of the authority to transact business under the Assumed Business Name Act [805 ILCS 405], issued by the Secretary of State or county clerk's office, if required by law;
 - D) Proof of a \$25,000 surety bond;
 - E) The name of the bank, savings and loan association or other required depository in which the trust account shall be maintained; and
 - F) The required fee set forth in Section 1210.237.
- 2) Branch Office Application
- A) The name and license number of the main collection agency office;
 - B) Name of the manager at that location; and
 - C) The required fee set forth in Section 1210.237.
- b) If a collection agency intends to conduct business as a collection agency as defined in the Act at more than one office or location and the ownership and name used at each location are identical, the applicant shall file an application for a branch office as referenced in subsection (a)(2). If the ownership and name are not identical, a collection agency application shall be filed in accordance with subsection (a)(1).
- c) A licensed collection agency shall notify the Division in writing of a change in location of an existing office within 10 days after the change.

Section 1210.30 Harassment Defined (Repealed)**Section 1210.40 Section 9.21 of Act Defined (Repealed)****Section 1210.50 Posing as an Attorney (Repealed)**

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Section 1210.60 Communication by Agency

- a) A collection agency shall use only the agency name or tradestyle exactly as it appears on the agency's certificate of registration (the certificate) issued by the Division in all communications (e.g., ABC Collection Agency cannot use a name such as ABC Acceptance Company), except for skiptracing and envelopes as prohibited by 15 USC 1692b.(5).
- b) When an agency communicates with a debtor, the agency must state in a written or telephone communication the specific reason for the communication, the name of the creditor, the registered name of the agency, the date of written communication, and, in oral communication, the identity of the collector making the contact.

Section 1210.70 Use of Pseudonyms

The agency shall maintain a listing of all pseudonyms used by an office, employee, or agent of the collection agency in relation to collection agency activities. A listing of pseudonyms shall be maintained by the collection agency one year after termination of employment. This shall be available upon request by the Division.

Section 1210.80 Doing Business at More Than One Office or Location (Repealed)**Section 1210.90 Additional Offices or Changes of Location of Offices (Repealed)****Section 1210.100 Notices (Repealed)****Section 1210.105 Change of Ownership**

When one share more than 50% of the assets, stock or equity of a collection agency are transferred, a new collection agency application shall be filed with the Division in accordance with Section 1210.25.

Section 1210.110 Termination or Change in Registration

- a) The certificate of registration shall terminate:
 - 1) When the agency ceases operation;

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- 2) When the bond is nonrenewed or cancelled; or
- 3) When the certificate of registration is revoked.
- b) The agency shall notify the Division in writing by certified mail within 10 days when the agency ceases to operate or ceases to operate under the name on the certificate. Notice of bond termination is set forth in Section 8 of the Act.
- c) In the event of a change of the agency name, the registrant shall notify the Division, submit proof of the name change, return the original license and pay the fee required in Section 1210.237. A new license will be issued with the corrected name.
- d) All notices required by this Section shall be sent to the Department of Financial and Professional Regulation-Division of Professional Regulation, 320 West Washington, 3rd Floor, Springfield, Illinois 62786.

Section 1210.120 Address for Notice (Repealed)**Section 1210.130 Use of Street Addresses (Repealed)****Section 1210.140 Records and Documents to be Kept by Collection Agency**

- a) The current certificate of registration shall be prominently displayed at each location where the agency conducts business.
- b) At each office of a registered collection agency, for each individual debtor's account, the agency shall keep the following:
 - 1) Account records for each account in excess of \$100 being processed.
 - A) These records shall contain:
 - i) Name, address and phone number, if available, of debtor and all individuals contacted at any time concerning the collection account, including debtor, debtor's employer and relatives;
 - ii) Dates and record of contents of all communications mailed

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regarding debtor's account;

- iii) Dates and record of contents of each telephone contact with all individuals regarding debtor's account, including identification of individual who made the contact and to whom that individual spoke;
- iv) Name of the creditor, date account was opened with the agency and the amount of the account. The address of the creditor shall be maintained in the agency's records;
- v) Docket information pertaining to all court suits concerning account;
- vi) The date and amount of each collection on each account; and
- vii) Additional charges, which are fees authorized by contract or by court of law. These charges shall be documented by court records or other records available for inspection by the Division.

B) This subsection does not apply to the report status of the accounts.

2) Correspondence files for collection accounts, which shall contain:

- A) Copies of all correspondence between the agency and creditor concerning accounts;
- B) Copies of all correspondence between the agency and debtor, debtor's employer, debtor's family and debtor's attorney;
- C) Instructions from debtor on disbursement of funds among multiple accounts; and
- D) Copies of all correspondence concerning account between agency and agency's attorney.

c) When an account is closed by the agency, the account record shall be clearly and

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boldly marked that the account is closed, and all records shall be kept for a period of 12 months after date on which the account was closed.

- d) A collection agency may utilize an electronic data processing system that includes the information set forth in this Section.

Section 1210.150 Recording of Payments

All collections of any amount on any account processed by an agency shall be promptly entered on the debtor's account record.

Section 1210.160 Multiple Creditors

- a) When a debtor has multiple creditors, the agency shall maintain a separate account record for each creditor.
- b) Checks, money orders, or drafts received by an agency from a debtor or in behalf of a debtor made payable to a specific creditor shall be applied to the specified creditor's account record.
- c) When a collector is collecting two or more accounts from one consumer, the collector shall apply payments according to the consumer's directions.
- d) When the debtor overpays a specific creditor, money due the debtor for an overpayment of the creditor may not be offset by the agency against any other obligation owed by the debtor unless the debtor has authorized the agency to do so.

Section 1210.170 Availability of Books, Records, Forms and Stationery

All books, records, forms, and stationery kept or used by an agency at each office of the agency shall be made available to agents of the Division upon request. Failure or refusal to make these records available by the agency shall be grounds for denial, suspension, or revocation of the agency's registration under Section 12(a) of the Act in accordance with 68 Ill. Adm. Code 1110.

Section 1210.180 Accounting and Remitting Collected Funds

- a) Accounting and Remitting to Creditors

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- 1) Unless otherwise authorized in writing by creditor, an agency shall, within 60 days after any payment is received on any account, render an itemized statement of account to the creditor and remit all money then due the creditor. After court costs, if any, are recovered on any claim or group of claims by a creditor against a debtor, moneys shall be applied first to the reduction of principal, unless another priority has been authorized by the debtor's creditor.
- 2) If any creditor fails to advise the agency, in writing or orally, of all payments or credits paid directly to the creditor on any claim or account, within 30 days after receipt thereof, the agency may make written demand for a statement of the payments or credits, by certified mail with return receipt requested. The agency shall not be obliged to make any further remittance to the creditor until the creditor has rendered the statement. The failure or refusal of a creditor to render a statement of payments or credits shall not relieve the agency of the obligation to render an itemized statement of account.
- b) Accounting and Remitting to Debtors - Within 60 days after an overpayment of one dollar or more on any claim is received from a debtor or it is determined that a refund of one dollar or more is due to a debtor on any claim that has been paid, the agency shall remit to the debtor any money due the debtor.

Section 1210.190 Creditor Accounts

- a) Each licensed agency office which collects funds for creditors shall maintain a current accounting system which shall show the monies due and owing to creditors as well as the funds in the trust account from which appropriate remittance may be made by the agency to creditors.
- b) Accounts and records of each agency shall include:
 - 1) A cash receipts journal, showing each collection made, the allocation of the collection and the monthly total.
 - 2) A check register or record showing each check written on the trust account, as defined in Section 8c of the Act.
 - 3) A general journal reflecting all adjustments to the check register and cash

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receipts records.

- 4) A general ledger or record to which all payments handled by an agency are recorded.
- 5) A creditor's record setting forth the details of the contractual arrangement, whether written or oral, of the agency with each creditor, and shall reflect full details of all collections made on behalf of the creditor, whether paid to agency or directly to creditor, and full details on remittance made by the agency to the creditor.
- c) The trust account shall be reconciled each month with the balance shown in the Trust Account shown on agency records.
- d) All accounts and records of each account referred to in this Section shall be kept for a period of four years after the account is closed.
- e) A collection agency may employ an accounting system based on sound accounting principles which utilizes electronic data processing equipment that includes information set forth in Section 1210.190(b).

Section 1210.200 Trust Accounts (Repealed)**Section 1210.210 Notice for Hearing (Repealed)****Section 1210.220 Procedures for Hearing (Repealed)****Section 1210.230 Default Disposition of a Hearing (Repealed)****Section 1210.235 Renewals**

- a) Every certificate of registration issued under the Act shall expire on May 31, 2000 and every 3 years thereafter. The holder of a certificate of registration may renew the certificate during the month preceding the expiration date by paying the required fee.
- b) It is the responsibility of each registrant to notify the Division of any change of address. Failure to receive a renewal form from the Division shall not constitute an excuse for failure to pay the renewal fee or to renew one's license.

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- c) Practicing or offering to practice on a certificate of registration that has expired shall be considered unlicensed activity and shall be grounds for discipline pursuant to Section 9 of the Act.

Section 1210.237 Fees

- a) The following fees shall be paid to the Division and are not refundable:
 - 1) Application Fees
 - A) The fee for application for a certificate of registration as a collection agency is \$750.
 - B) The fee for application for a certificate of registration to operate as a branch office is \$250.
 - 2) Renewal Fees
 - A) The fee for the 3-year renewal of a certificate of registration as a collection agency is \$750.
 - B) The fee for the 3-year renewal of a certificate of registration for a branch office is \$150.
 - 3) General Fees
 - A) The fee for the restoration of a license is \$50 plus payment of all lapsed renewal fees.
 - B) The fee for the issuance of a duplicate certificate of registration, for the issuance of a replacement certificate for a certificate that has been lost or destroyed, or for the issuance of a certificate with a change of name or address other than during the renewal period is \$20. No fee is required for name and address changes on Division records when no duplicate license is issued.
 - C) The fee for a certification of a registrant's record for any purpose is \$20.

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- D) The fee for a wall certificate showing registration shall be the actual cost of producing the certificate.
- E) The fee for a roster of registrants shall be the actual cost of producing the roster.
- b) All fees collected under the Act and this Part shall be deposited into the General Professions Dedicated Fund. All monies in the fund shall be used by the Division, as appropriated, for the ordinary and contingent expenses of the Division.
- c) Returned Checks
 - 1) Any person who delivers a check or other payment to the Division that is returned to the Division unpaid by the financial institution upon which it is drawn shall pay to the Division, in addition to the amount already owed to the Division, a fee of \$50.
 - 2) The fees imposed by this Section are in addition to any other discipline provided under the Act for unlicensed practice or practice on a nonrenewed license. The Division shall notify the person that fees shall be paid to the Department by certified check or money order within 30 calendar days after the notification.
 - 3) If, after the expiration of 30 days from the date of notification the person has failed to submit the necessary remittance, the Division shall automatically terminate the license or certificate or deny the application, without hearing.
 - 4) If, after termination or denial, the person seeks a license or certificate, he or she shall apply to the Division for restoration or issuance of the license or certificate and pay all fees due to the Department. The Director may waive the fees due under this Section in individual cases when the Director finds the fees would be unreasonable or unnecessarily burdensome.

Section 1210.240 Granting Variances

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- a) The Director may grant variances from this Part in individual cases when he or she finds that:
 - 1) The provision from which the variance is granted is not statutorily mandated;
 - 2) No party will be injured by granting the variance; and
 - 3) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.
- b) The Director shall notify the Board in writing of the granting of a variance, and the reasons for granting the variance, at the next meeting of the Board.

Section 1210.250 Construction of Rules and Regulations (Repealed)