

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

The Department of Financial and Professional Regulation is posting these proposed amendments in an effort to make the public aware of possible changes that may have an impact on the profession.

The general public may submit written comments to the Department during the first 45 day public comment period. Any suggested changes will be considered by the Department and the appropriate Board.

These proposed amendments will be published in the July 30, 2010 Illinois Register. The 45 day comment period will end September 13, 2010.

Please submit written comments to Craig Cellini as stated in the attached notice.

THESE PROPOSED CHANGES ARE NOT IN EFFECT AT THIS TIME AND THE ADOPTED RULES MAY DIFFER FROM THOSE ORIGINALLY PUBLISHED.

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

<u>Section Numbers</u> :	<u>Proposed Action</u> :
1210.10	Amendment
1210.25	Amendment
1210.60	Amendment
1210.70	Amendment
1210.80	Repealed
1210.90	Repealed
1210.105	Amendment
1210.110	Amendment
1210.140	Amendment
1210.170	Amendment
1210.235	Amendment
1210.237	Amendment
1210.240	Amendment
1210.260	New Section
- 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)].

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- 5) A complete description of the subjects and issues involved: Section 1210.260, Unprofessional Conduct, is being added in an effort to clarify acts and practices that are unethical or unprofessional and for which the Division may undertake disciplinary proceedings. Included within this section is the incorporation of the Code of Ethics and Professional Responsibility of the Association of Credit and Collection Professionals. Also included is a determination that a reasonable collection fee shall not exceed 29% of the principle balance. The fee for restoration of a lapsed license has been added. Makes numerous non-substantive changes, including changing references throughout the entire Part from “Department” to “Division” to reflect the consolidation of agencies into the Department of Financial and Professional Regulation and the creation of the Division of Professional Regulation. Obsolete language is also being removed and other technical changes are being made, especially relating to branch offices.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 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 has no impact on local governments.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Craig Cellini, Rules Coordinator
Department of Financial and Professional Regulation
320 West Washington, 3rd Floor
Springfield, Illinois 62767-0001

(217) 785-0813
- 13) Initial Regulatory Flexibility Analysis:

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- 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: A potential licensee must have at least one year experience working in the credit field or a related area.
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2009

The full text of the Proposed Amendments begin on the next page:

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TITLE 68: PROFESSIONS AND OCCUPATIONS

CHAPTER VII: DEPARTMENT OF FINANCIAL PROFESSIONAL REGULATION

SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1210

COLLECTION AGENCY ACT

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 (<u>Repealed</u>)
1210.90	Additional Offices or Changes of Location of Offices (<u>Repealed</u>)
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)
<u>1210.260</u>	<u>Unprofessional Conduct</u>

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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 34 Ill. Reg. _____, effective _____.

Section 1210.10 Definitions

The following definitions shall apply to this Part:

"Act" means the Collection Agency Act [225 ILCS 425](~~Ill. Rev. Stat. 1991, ch. 111, par. 2001 et seq.~~).

"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~~which engages or retains the agency to collect debts due ~~thesuch~~ individual, sole proprietorship, partnership or corporation.

"Department" means the Department of Financial and Professional Regulation~~of the State of Illinois~~.

"Director" means Director of the Division~~Department~~ of Professional Regulation with the authority delegated by the Secretary of the State of Illinois.

"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~~ which all licensed collection agencies shall maintain in accordance with Section 8c of the Act.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1210.25 Application for Registration

a) All applications for registration as a collection agency shall be submitted to the ~~Division~~Department, on forms provided by the ~~Division~~Department, and include:

1)a) 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 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)b) Proof of a \$25,000 surety bond;

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E)e) The name of the bank, savings and loan association or other required depository in which the trust account shall be maintained; and

F)d) 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.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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~~~~Department~~ 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 ~~U.S.C.~~ 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 ~~communication in~~ written communication, and, in oral communication, the identity of the collector making the contact.

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(Source: Amended at 34 Ill. Reg. _____, effective _____)

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~~Department~~.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1210.80 Doing Business at More Than One Office or Location (Repealed)

~~If a collection agency intends to do business at more than one office or location within the State of Illinois, the ownership and name used at each location shall be identical, otherwise a separate application and bond shall be required for each location at which the agency conducts or intends to conduct business.~~

(Source: Repealed at 34 Ill. Reg. _____, effective _____)

Section 1210.90 Additional Offices or Changes of Location of Offices (Repealed)

- ~~a) If an agency opens an additional office(s) or changes the location of an existing office(s) other than at the time of renewal, the agency shall notify the Department in writing of the new address at least 30 days prior to the opening of the office(s) or change of location(s).~~
- ~~b) If, prior to the issuance of a certificate of registration, an agency changes the location of an office or adds an additional office, the agency shall immediately notify the Department, in writing, of the new address.~~

(Source: Repealed at 34 Ill. Reg. _____, effective _____)

Section 1210.105 Change of Ownership

When one share more than 50% ~~51%~~ of the assets, stock or equity of a collection agency are transferred~~sold~~, a new collection agency application shall be filed with the Division~~Department~~ in accordance with Section 1210.25.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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Section 1210.110 Termination or Change in Registration

- a) The certificate of registration shall terminate:
 - 1) When the agency ceases operation;
 - 2) When the agency ceases to operate under the name on the certificate of registration; ~~3) When the bond is nonrenewed or cancelled; or~~
 - ~~3)4) When the certificate of registration is revoked.~~
- b) The agency shall notify the ~~Division~~Department 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~~may apply for a new certificate of registration in advance of the effective date of such change by filing an application and paying the appropriate fee as set forth in Section 1210.237. The application shall be handled as an original application.~~
- d) All notices required by this Section shall be sent to the Department of Financial and Professional Regulation~~Division of Professional Regulation~~, at 320 West Washington, 3rd Floor, Springfield, Illinois 62786.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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 \$100.00 being processed.

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- A) These records shall contain:
- i)A) Name, address and phone number, if available, of debtor and all individuals contacted, at any time concerning such collection account, including debtor, debtor's employer and relatives;
 - ii)B) Dates and record of contents of all communications mailed regarding debtor's account;
 - iii)C) Dates and record of contents of each telephone contact with all individuals regarding debtor's account, including identification of individual who made such contact and to whom that individual spoke;
 - iv)D) 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)E) Docket information pertaining to all court suits concerning account;
 - vi)F) The date and amount of each collection on each account; and
 - vii)G) 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 ~~Department~~.
- B)H) 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;

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- 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 boldly marked that the account is closed, and all records shall be kept for a period of ~~twelve~~ (12) months after ~~from~~ date on which the account was closed.
 - d) A collection agency may utilize an electronic data processing system that ~~which~~ includes the information set forth in this Section.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

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 ~~Department~~ 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.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1210.235 Renewals

- a) Every certificate of registration issued under the Act shall expire on May 31, 2000 and every ~~three~~ 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 ~~Department~~ of any change of address. Failure to receive a renewal form from the Division ~~Department~~ shall not constitute an excuse for failure to pay the renewal fee or to renew one's license.
- c) Practicing or offering to practice on a certificate of registration that ~~which~~ has expired shall be considered unlicensed activity and shall be grounds for discipline pursuant to Section 9 of the Act.

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(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1210.237 Fees

- a) The following fees shall be paid to the ~~Division~~Department 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~~Department records when no duplicate license is issued.
 - CB) The fee for a certification of a registrant's record for any purpose is \$20.

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- De) The fee for a wall certificate showing registration shall be the actual cost of producing the certificate.
- ED) 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~~Department of Professional Regulation~~, as appropriated, for the ordinary and contingent expenses of the Division~~Department~~.
- c) Returned Checks~~Fees~~
- 1) Any person who delivers a check or other payment to the Division~~Department~~ that is returned to the Division~~Department~~ unpaid by the financial institution upon which it is drawn shall pay to the Division~~Department~~, in addition to the amount already owed to the Division~~Department~~, a fee of \$50.
 - 2) ~~If the check or other payment was for a renewal or issuance fee and that person practices without paying the renewal fee or issuance fee and the fee for the returned check, an additional fee of \$100 shall be imposed.~~ 3) The fees ~~fee~~ 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~~Department~~ 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)4) If, after the expiration of 30 days from the date of notification the person has failed to submit the necessary remittance, the Division~~Department~~ shall automatically terminate the license or certificate or deny the application, without hearing.
 - 4)5) If, after termination or denial, the person seeks a license or certificate, he or she shall apply to the Division~~Department~~ 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~~where~~ the Director finds the fees would be unreasonable or unnecessarily burdensome.

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(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1210.240 Granting Variances

- a) The Director may grant variances from this Part~~these rules~~ in individual cases when~~where~~ 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 such variance, and the reasons for granting the variance~~therefor~~, at the next meeting of the Board.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 1210.260 Unprofessional Conduct

- a) The Division may suspend or revoke a license, refuse to issue or renew a license or take other disciplinary action based upon its finding of dishonorable, unethical or unprofessional conduct within the meaning of Section 9(a)(31) of the Act, which is interpreted to include, but is not limited to, the following acts or practices:
- 1) Doing business under a designation or business name or identification that misleads creditors, consumers or the general public to believe that it is an entity other than a collection agency;
 - 2) Failure to provide information on a denial or forfeiture of a professional license or registration by any jurisdiction, or any disciplinary action in connection with a license or registration;
 - 3) Misrepresenting qualifications, capacity, experience and abilities of the collection agency and its personnel;

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- 4) Discriminating on the grounds of race, color, creed, sex or national origin in the selection of creditors or dealing with debtors.

- b) The Division hereby incorporates by reference "The Code of Ethics and Professional Responsibility" and the "Code of Operations" of ACA International, The Association of Credit and Collection Professionals, 4040 West 70th Street, P.O. Box 390106, Minneapolis MN 55439-0106, July 25, 2007 with no later amendments or editions.

- c) Reasonable Collection Fees
 - 1) Pursuant to Section 9(a) of the Act, the Division *may refuse to issue or renew, or may revoke, suspend, place on probation, reprimand or take other disciplinary action as the Division may deem proper, including fines not to exceed \$5,000 for a first violation and not to exceed \$10,000 for a second or subsequent violation, for any one or any combination of the following causes: Collecting or attempting to collect any interest or other charge or fee in excess of the actual debt or claim unless such interest or other charge or fee is expressly authorized by the agreement creating the debt or claim unless expressly authorized by law or unless in a commercial transaction such interest or other charge or fee is expressly authorized in a subsequent agreement. If a contingency or hourly fee arrangement is established under an agreement between a collection agency and a creditor to collect a debt and is paid by a debtor pursuant to a contract between the debtor and the creditor, then that fee arrangement does not violate this subsection(c)(1) unless the fee is unreasonable. The Division shall determine what constitutes a reasonable collection fee.*

 - 2) The Division has determined that a reasonable collection fee under an agreement between the debtor and the creditor shall not exceed 29% of the principal balance.

- d) Child Support Collection Fees
 - 1) Pursuant to Section 2.04(a-10) of the Act, the Division *shall determine a fee rate of not less than 25% but not greater than 35%, based upon presentation by the licensees as to costs to provide the service and a fair rate of return. This rate shall be established by administrative rule.*

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- 2) The Division has determined that a collection agency shall impose a rate not to exceed 29% of the amount of child support actually collected by the collection agency subject to the provisions of Section 2.04 (a)(5) of the Act.

(Source: Added at 34 Ill. Reg. _____, effective _____)