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Illinois Administrative Code

Department of Financial and Professional Regulation

- Rule Adoption

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DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

- NOTICE OF ADOPTED RULES

1) Heading of the Part: Collection Agency Act

2) Code Citation: 38 Ill. Adm. Code 150

3) Section Numbers: Adopted Actions:

150.10	New Section
150.15	New Section
150.20	New Section
150.25	New Section
150.30	New Section
150.40	New Section
150.50	New Section
150.60	New Section
150.70	New Section
150.80	New Section
150.90	New Section
150.100	New Section

150.110	New Section
150.120	New Section
150.130	New Section
150.135	New Section
150.140	New Section
150.150	New Section
150.160	New Section

4) Statutory Authority: Implementing the Collection Agency Act [205 ILCS 740].

5) Effective Date of Rule: November 20, 2023

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the Adopted Rules, 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. 11949; August 11, 2023

10) Has JCAR issued a Statement of Objections to this rulemaking? No

11) Differences between proposal and final version: The adopted rules have some differences from the proposed version. The changes were not substantive but grammatical and/or technical. The changes below were made by JCAR for clarification purposes.

In Section 150.25 a) 2) B), "location" was changed to "branch office".

In Section 150.25 b), "or location" was stricken from the proposed version.

In Section 150.30 a), the last sentence excerpt, "except for skiptracing and envelopes as prohibited by 15 U.S.C. 1692b.(5)", was replaced with the following:

"Notwithstanding the foregoing, a different name may be used for skiptracing and envelopes if use of the agency name or tradestyle as it appears on the agency's license would violate other law (see 15 U.S.C. 1692b.(5))".

In Section 150.50, "one share" was stricken from the proposed version.

In Section 150.60 b) "when" was changed to "after".

In Section 150.60 d), after "licensees", "and posted on the Department's website" was added.

In Section 150.70 a) "location" was changed to "office".

In Section 150.135 c) 3), after "hearing.", the following was added:

"Factors used by the Division to determine whether to automatically terminate the license or deny the application include, but are not limited to, whether the licensee has presented good cause justifying the delay and whether the licensee has previously failed to submit necessary remittances."

Also, Section 150.135 c) 4) was rewritten to read, "Terminated or denied licenses may be restored or issued after the applicant pays 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 150.140 a) was rewritten to read, "The Director may grant variances from this Part in individual cases when the

Director finds that:".

Section 150.150 was rewritten to read, "When determined necessary by the Department, the Department may provide a licensee a 45-day notice, except in extraordinary circumstances determined by the Director which requires a response within a shorter time period, requiring a licensee to submit written reports specified within that notice."

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 rulemaking replace an Emergency Rule currently in effect? No

14) Are there any rulemakings pending on this Part? No

15) Summary and purpose of rulemaking: Public Act 102-975 transferred the authority for regulation of collection agencies from the Division of Professional Regulation to the Division of Financial Institutions, effective January 1, 2023. These new rules, proposed alongside the repeal of the previous rules regulating collection agencies (68 Ill. Adm. Code 1210), bring collection agencies into alignment with other industries regulated by the Division of Financial Institutions. These adopted rules adjusted Sections from the previous collection agency rules regarding definitions, officers, applications for or changes to licensure, communications, pseudonyms, changes in ownership, recordkeeping, fees, payments, and the granting of variances to better reflect the standards of the Division of Financial Institutions. There are also three additional Sections: one titled, Administration and Enforcement of the Act; another titled, Reports, which requires licensees to file written reports as the Department determines it to be necessary; and finally, Investigations and Examinations, which states that licensees may be investigated or examined by the Department in order to ensure compliance.

These new rules are intended to help the Division of Financial Institutions fulfill its newly-granted statutory responsibility and align these rules with regulatory requirements of the Act – as well as other Acts regulated by the Division –so that the Division is able to more efficiently administer the Act. Compliance with these new rules may result in de minimis increased costs for collection agencies, including some small businesses. These increased costs may be offset, completely or partially, by a move to online application renewal processing and significant decrease in paperwork and mailing requirements. No less intrusive or less costly alternatives to the methods described within these adopted rules were identified.

16) Information and questions regarding this adopted rulemaking 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

The full text of the Adopted Rules begins on the next page:

TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 150

COLLECTION AGENCY ACT

Section

150.10 Definitions

150.15 Administration and Enforcement of the Act

150.20 Officer

150.25 Application for License

150.30 Communication by Collection Agency

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150.50 Change of Ownership

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150.160 Investigations and Examinations

AUTHORITY: Implementing the Collection Agency Act [205 ILCS 740] and authorized by Section 6 and 6a of the Financial Institutions Code [20 ILCS 1205].

SOURCE: Adopted at 47 Ill. Reg. 17827, effective November 20, 2023.

Section 150.10 Definitions

The following definitions shall apply to this Part:

"Act" means the Collection Agency Act [205 ILCS 740].

"Agency" means a collection agency as defined in Section 2 of the Act.

"Board" means the *Collection Agency Licensing and Disciplinary Board*. (Section 2 of the Act)

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

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

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

"Director" means Director of the Division of Financial Institutions and any authorized representative of the Director.

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

"License" means any authorization issued to any licensee.

"Licensee" means any person or entity who is or comes to be licensed pursuant to the Act.

"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 and any authorized representative of the Secretary. (Section 2 of the Act)

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

Section 150.15 Administration and Enforcement of the Act

The Director and Division shall administer and enforce the Act on behalf of the Secretary. The provisions of the Financial Institutions Code [20 ILCS 1205] shall apply to licensees, applicants, and any person or entity engaged in an activity covered by the Act.

Section 150.20 Officer

- a) If the collection 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 collection 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 collection agency is a corporation, any officer of the corporation or director or any person who has at least 10% direct or indirect ownership interest in such corporation or who exercises managerial control shall be considered an officer.
- d) If the collection agency is a limited liability company, any manager of the limited liability company or any person who has at least 10% direct or indirect ownership interest in such limited liability company shall be considered an officer.

Section 150.25 Application for License

a) All applications for license as a collection agency shall be submitted to the Division, on forms provided by the Division electronically or physically, and include:

1) Collection Agency Application

A) The name and address of all officers of the collection agency (as defined in Section 150.20). 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) 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;

F) The required fee set forth in Section 150.130; and

G) Any additional information required by the Director to evaluate the application.

2) Branch Office Application

A) The name and license number of the main collection agency office;

B) Name of the manager at that branch office;

C) The required fee set forth in Section 150.130; and

D) Any additional information required by the Director to evaluate the application.

b) If a collection agency intends to conduct business as a collection agency as defined in the Act at more than one office, the applicant shall also file an application for a branch office as referenced in subsection (a)(2).

c) A licensed collection agency shall notify the Division in the form required by the Division of a change in location of an existing office within 10 days after the change.

Section 150.30 Communication by Collection Agency

a) A collection agency shall use only the agency name or tradestyle exactly as it appears on the agency's license issued by the Division in all communication (e.g., ABC Collection Agency cannot use a name such as ABC Acceptance Company). Notwithstanding the foregoing, a different name may be used for skiptracing and envelopes if use of the agency name or tradestyle as it appears on the agency's license would violate other law (see 15 U.S.C. 1692b.(5)).

b) When a collection agency communicates with a debtor, the collection agency must state in a written or telephone communication the specific reason for the communication, the name of the current creditor, the name of the original creditor (if applicable), the registered name of the collection agency, the date of written communication, and, in oral communication, the identity of the individual making the contact.

Section 150.40 Use of Pseudonyms

The collection 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.

Section 150.50 Change of Ownership

When 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 150.25.

Section 150.60 Expiration or Change in Licensure

a) The license shall expire:

1) When the collection agency ceases operation;

2) When the bond is nonrenewed or cancelled;

- 3) When the license is nonrenewed or surrendered; or
 - 4) When the license is revoked.
- b) The collection agency shall notify the Division in writing by certified mail or email within 10 days after the collection agency ceases to operate or ceases to operate under the name on the license. Notice of bond termination is set forth in Section 8 of the Act.
 - c) In the event of a change of the collection agency name, the licensee shall notify the Division, submit proof of the name change, and pay the fee required in Section 150.135.
 - d) All notices required by this Section shall be sent to the address designated by the Director on the notice. Any change of Department address shall be emailed to all licensees and posted on the Department's website.

Section 150.70 Records and Documents to be Kept by Collection Agency

- a) The current license shall be prominently displayed at each office where the collection agency conducts business.
- b) At each office of a licensed collection agency, for each individual debtor's account, the collection 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, email 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 sent regarding debtor's account;
 - iii) Dates and accurate summary 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 original creditor, current creditor, date account was opened with the collection agency, the original amount of the account referred to the collection agency, and the current outstanding amount of the account. The address of the current creditor shall be maintained in the collection agency's records;
 - v) Docket information pertaining to all court suits concerning account;
 - vi) The date and amount of each payment received on each account; and vii) Any additional charges assessed on the account, 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 each collection account, which shall contain:
 - A) Copies of all correspondence between the collection agency and creditor concerning accounts;
 - B) Copies of all correspondence between the collection 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 collection agency and collection agency's attorney.
 - c) When an account is closed by the collection 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 36 months after the collection agency's last activity on the

debt.

d) A collection agency may utilize an electronic data processing system that includes the information set forth in this Section in a format reviewable by the Department.

Section 150.80 Recording of Payments

All payments of any amount on any account processed by a collection agency shall be promptly entered on the debtor's account record.

Section 150.90 Multiple Creditors

- a) When a debtor has multiple creditors, the collection agency shall maintain a separate account record for each creditor.
- b) Checks, money orders, or drafts received by a collection agency from a debtor or on behalf of a debtor made payable to a specified creditor shall be applied to the specified creditor's account record.
- c) When a collection agency is collecting two or more accounts from one debtor, the collection agency shall apply any payments received from the debtor according to the debtor's directions.
- d) When the debtor overpays the total amount outstanding to a specific creditor, money due to the debtor for an overpayment to the specific creditor may not be applied by the collection agency against any other obligation owed by the debtor and must be refunded to the debtor unless the debtor has authorized the collection agency, in writing or by lawfully recorded verbal statement, to apply the money to another obligation owed by the debtor.

Section 150.100 Availability of Books, Records, Forms and Stationery

All books, records, forms, and stationery, whether kept physically or electronically, kept or used by a collection agency at each office of the collection agency shall be made available to agents of the Division upon request. Failure or refusal to make these records available by the collection agency shall be grounds for denial, suspension, fine, or revocation of the collection agency's license under Section 9 of the Act in accordance with 38 Ill. Adm. Code 100.

Section 150.110 Accounting and Remitting Collected Funds

a) Accounting and Remitting to Creditors

- 1) Unless otherwise authorized in writing by a creditor, a collection 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 to the creditor. After court costs, if any, are recovered on any claim or group of claims by a creditor against a debtor, payments shall be applied first to the reduction of principal, unless another priority has been authorized by the creditor.
- 2) If any creditor fails to advise the collection 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 collection agency may make written demand for a statement of the payments or credits, by certified mail with return receipt requested. The collection 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 collection agency of the obligation to render and itemized statement of account.

b) Account and Remitting to Debtors. Within 45 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 collection agency shall remit to the debtor any money due the debtor.

Section 150.120 Creditor Accounts

a) Each licensed collection 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 collection agency to creditors.

b) Accounts and records of each agency shall include:

- 1) A cash receipts journal, showing each payment made, the allocation of the payment 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 receipts records.
- 4) A general ledger or record to which all payments handled by a collection agency are recorded.
- 5) A creditor's record setting forth the details of the contractual arrangement in writing, of the collection agency with each creditor, and shall reflect full details of all collections made on behalf of the creditor, whether paid to the collection agency or directly to creditor, and full details on remittance made by the collection agency to the creditor.

c) The trust account shall be reconciled each month.

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 and that includes the information set forth in Section 150.110(b).

Section 150.130 Renewals

a) Any license issued on or before October 31, 2024 shall expire on December 31, 2024. Thereafter, all licenses shall expire annually on December 31, except that any license issued on or after November 1 shall expire on December 31 of the next calendar year. A licensee may renew its license by submitting a license renewal application for the next calendar year and paying the required fee between November 1 and December 31 of the current year. A license shall be deemed not to have expired if its license renewal application is received by the Department before December 31. Licensees shall maintain sufficient proof to demonstrate receipt of the renewal application by the Department.

b) It is the responsibility of each licensee 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.

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

Section 150.135 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 license as a collection agency is \$750.

B) The fee for application for a license to operate as a branch office is \$250.

2) Renewal Fees

A) The fee for the annual renewal of a license as a collection agency is \$250.

B) The fee for the annual renewal of a license for a branch office is \$50.

3) General Fees

A) The fee for the restoration of a license is \$50 plus payment of all unpaid renewal fees that were payable in the period between expiration of the license and restoration of the license.

- B) The fee for a certification of a licensee's record for any purpose is \$20.
 - C) The fee for a roster of licensees shall be the actual cost of producing the roster.
- b) All fees collected under the Act and this Part shall be deposited into the Financial Institution Fund. All monies in the fund shall be used by the Division, as appropriated, for the ordinary and contingent expenses of the Division. (See Section 8a of the Act.)
- 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. The Division shall notify the person that fees shall be paid to the Department by certified check, money order, or any other method acceptable to the Division within 30 calendar days after that 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 may automatically terminate the license or deny the application, without hearing. Factors used by the Division to determine whether to automatically terminate the license or deny the application include, but are not limited to, whether the licensee has presented good cause justifying the delay and whether the licensee has previously failed to submit necessary remittances.
 - 4) Terminated or denied licenses may be restored or issued after the applicant pays 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 150.140 Granting Variances

- a) The Director may grant variances from this Part in individual cases when the Director 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 150.150 Reports

When determined necessary by the Department, the Department may provide a licensee a 45-day notice, except in extraordinary circumstances determined by the Director which requires a response within a shorter time period, requiring a licensee to submit written reports specified within that notice.

Section 150.160 Investigations and Examinations

Licensees may be investigated or examined from time to time to ensure compliance with the Act. (See Section 16 of the Act.)