

Governor's Office of Management and Budget

Alexis Sturm

Director



IL Regulatory Sunset Act Review of The Collateral Recovery Act

March 18, 2021

**To the Honorable JB Pritzker
Governor of Illinois**

Governor Pritzker:

The Governor's Office of Management and Budget (GOMB) in collaboration with the Illinois Commerce Commission (ICC), in compliance with the requirements set forth in the Illinois Regulatory Sunset Act (5 ILCS 80), has conducted a review of the Collateral Recovery Act (225 ILCS 422). Public Act 101-639 extended this sunset until January 1, 2022 due to COVID-19. The following recommendation is pursuant to this review:

The Collateral Recovery Act (225 ILCS 422) should be continued with modifications to its existing statutory and administrative rule framework.

The examination of this Act considered the nine factors set out in Section 6 of the Illinois Regulatory Sunset Act. The following report details the criteria and data utilized to come to the above recommendation.

Very sincerely and respectfully,

Alexis Sturm
Director
Governor's Office of Management and Budget

Criteria (1) "The extent to which the agency or program has permitted qualified applicants to serve the public."

Applicants for the Class "MR" License and Class "E" Recovery Permit must successfully complete a certification program approved by the Commission. 225 ILCS 422/40(a)(5); 45(a)(1)(D). The Class "MR" License and Class "E" Recovery Permit will not be issued without a successfully completed certification program. The chart below indicates how many Class "MR" Licenses and Class "E" Recovery Permits were issued every year since July 1, 2012. Thus, those numbers also represent the number of persons who completed the certification program to participate in the regulated profession.

Fiscal Year	Class "E" Recovery Permit Employee	Class "MR" License Recovery Manager
2013	320	99
2014	304	16
2015	298	70
2016	263	19
2017	247	56
2018	270	37
2019	280	58
2020	212	35
2021	5	0

Permit/License Type	Total Number Issued
Class E recovery permits:	2,201
Class EE recovery permits:	145
Class MR licenses:	390
Class R licenses:	214
Class RR licenses:	93
Storage Location Registration:	26

The current licensure fee scheme is as follows:

See attached fee document.

According to the American Recovery Association approximately 14 states regulate repossession.¹ The extent of the regulation varies among them.

Licensing requirements in Florida, Louisiana, California and Nevada are very similar to Illinois' requirements. For instance, in Florida just like in Illinois, a repossession agency must obtain a Class "R" License, each branch office a Class "RR" License, a recovery manager a Class "MR" License, recovery agent/employee a Class "E" license and intern a Class "EE" license. All applicants must go through a background check. Also, in Florida, applicants for a Class "E" or a Class "EE" license must successfully complete professional training at a school or training facility licensed by the department, whereas in Illinois, applicants for Class "MR" License and Class "E" Recovery Permit must complete a certification program.

¹ American Recovery Association, State Requirements, August 11, 2020 <https://repo.org/member-tools/state-requirements/>

Similarly, in Louisiana, the repossession agency, repossession agents and apprentices must be licensed. Background checks must be performed, and the qualifying and repossession agent must complete a national certification program. Unlike in Illinois; however, in Louisiana each qualifying agent, repossession agent, and apprentice must complete a minimum of eight hours of collateral recovery continuing education prior to license renewal. In addition, in Louisiana like in Illinois, the repossession agency must have proper insurance as a condition of licensure. Id.

Likewise, in California, the repossession agency and its each additional office must obtain a license. Every office licensed as a repossession agency must be under the active charge of a qualified certificate holder which is akin to the Illinois requirement of each location needing to be under control and management of a licensed recovery manager. The qualified certificate holder must pass an examination and have a certain number of hours of experience which is also required of the recovery manager in Illinois. In addition, all non-clerical personnel must file an application for registration.

Also in Nevada, repossession agencies and their branch offices are required to be licensed. Applicants for a license must take an examination, submit fingerprints for a background check, and have proper insurance. Employees must also register and submit fingerprints for a background check.

In contrast, there are states which requirements are not as extensive as Illinois'. For instance, New Mexico simply requires a repossession agency's license and \$5000 surety bond, while Pennsylvania mandates a collector-repossession agency license, multiple locations registration and \$5000 bond. Oregon and Maryland; on the other hand, require repossession agencies to obtain a Collection Agency registration/license and a bond/irrevocable letter of credit.

Criteria (2) "The extent to which the trade, business, profession, occupation, or industry being regulated is being administered in a nondiscriminatory manner both in terms of employment and rendering of services."

The Commerce Commission does not track the race, nationality or gender of applicants and/or license holders in the collateral recovery industry.

Criteria (3) "The extent to which the regulatory agency or program has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of any other department of state government, and any other circumstances, including budgetary resources, and personnel matters."

An issue that the Commerce Commission foresees will impede its ability to administer the Collateral Recovery program is the insufficient revenue stream to meet the anticipated rise in expenditures over the next few years. The primary factor in the forecasted increase in expenditures is the rising cost of personnel due to increases per collective bargaining agreement and benefits such as retirement and group insurance, as well as, the current number of vacancies in the Transportation Division. Given the current and projected revenue stream, the Commission expects that without an increase in fees there will not be enough revenue generated to support full annualized authorized headcount cost.

Criteria (4) "The extent to which the agency running the program has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons it regulates."

In the past 5 years, the Commerce Commission initiated PA 100-948, effective 1/1/2019, which made technical amendments to the statutory language that was amended by PA 100-0286, effective 1/1/2018. PA 100-0286 was

not initiated by the Commission. An example of the changes includes but is not limited to changing “licensees or permit holder” to “a license or permit holder or applicant”. The purpose of the changes in PA 100-948 was to improve the precision and clarity of the language in the amended section of the Act.

History of statutory changes in past 5 years.

SB No.	PA No.	Effective Date	Initiated by Commission	Brief Description
3302	98-0848	1-1-2015	No	Created religious exemptions from photograph requirement in Section 35, 40, 45.
1834	100-0102	1-1-2018	No	Created exemptions from regulation in Section 30.
1688	100-0286	1-1-2018	No	Amended section 40, 45, 80, 85 of the Act dealing with consideration of convictions as reason for denial of a license or permit. Added requirement of reporting statistical information relating to licensure and criminal convictions on Commission.
3504	100-0948	1-1-2019	Yes	See response above.

Criteria (5) “The extent to which the agency or program has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency or the impact of the program on the public regarding improved service, economy of service, and availability of service.”

The Act does not require the regulated persons to report back to the Commission regarding impact of rules, decisions or service at the Commission. Any feedback received is on voluntary basis.

Criteria (6) “The extent to which persons regulated by the agency or under the program have been required to assess the problems in their industry that affect the public.”

The Act does not require the regulated persons to provide feedback to the agency on the impact of deficiencies in the regulated industry on the public. Thus, the Commission has not taken any initiatives that would be contradictory to the Act. Any feedback received is on voluntary basis and is considered by the Commission.

Criteria (7) “The extent to which the agency or program has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates and the extent to which such rules and decisions are consistent with statutory authority.”

Prior to rulemakings, the Commission holds workshops to which the public and the regulated persons are invited to attend to share comments and opinions. The Commission considers all comments made and determines whether a different approach or a change is appropriate regarding the proposed administrative rules.

The Commission takes seriously and considers all voluntary feedback it receives from the public or the regulated persons regarding the above identified areas. The Commission may pursue an amendment to the rules, procedures, or policies in response to the feedback, if appropriate.

Criteria (8) “The efficiency with which formal public complaints filed with the regulatory agency or under the program concerning persons subject to regulation have been processed to completion, by the executive director of the regulatory agencies or programs, by the Attorney General and by any other applicable department of the State government.”

Section 15 of the Act enables the Commission to create special procedures for the receipt and handling of consumer complaints. All complaints received are informal consumer complaints. A member of the general public may file an informal complaint by sending to the Commission’s Police Section a completed Collateral Recovery Informal Complaint Form. The form is available on the Commission’s webpage. Within a couple of days after a complaint is received by the Police Section, an investigation file will be opened, an investigation number assigned and a police officer will be assigned to conduct an investigation. Police officers usually have 90 days to complete the investigation; however, sometimes more time may be needed. Once the investigation is completed, the file will either be closed, a warning letter will be issued to the respondent, or the file will be forwarded to the Office of Transportation Counsel for further prosecution.

Criteria (9) “The extent to which changes are necessary in the enabling laws of the agency or program to adequately comply with the factors listed in this section.”

The Commission is recommending the following changes to the Collateral Recovery Act:

Citation	Proposed Changes	Reason
225 ILCS 422/35(h)	Each individual, partner of a partnership, officer of a corporation, or member of a limited liability company shall submit with the application a copy of one form of personal identification upon which must appear a photograph taken within one year immediately preceding the date of the filing of the application.	Not possible to meet the 1 year requirement. Government issued identification cards (ex. driver’s license, state ID, passport) have photographing requirements that are not compatible with this requirement.
225 ILCS 422/45(c)	The Commission shall notify the submitting person within 10 days after receipt of the application of its intent to issue or deny the recovery permit.	Not possible to meet this requirement due to how long it takes for the deficiencies and criminal background check to be completed.
225 ILCS 422/45(j)	A person employed under this Section shall have 15 business days within which to notify the Commission of any change in employer, but may continue working under any other recovery permits granted as an employee or independent contractor. A recovery employee may work under the recovery permit for multiple licensed repossession agencies.	To ensure consistency throughout the statutory language.

225 ILCS 422/50(c)	The fees set forth in this Section-Act or by rule must be paid by certified check or money order, or at the discretion of the Commission, by agency check at the time of application. An applicant for a Class "E", Class "EE", or Class "MR" license or permit must pay the license or permit fee at the time the application is made. If a license or permit is revoked or denied, or if an application is withdrawn, then the license or permit fee shall not be refunded. An applicant filing an application, registration or form that carries a fee, must pay the associated fee at the time the application, registration or form is filed. Once paid, all fees are non-refundable.	To ensure consistency and clarify in administration of the Act.
225 ILCS 422/75(f)	At least 90 days prior to the expiration of a license or recovery permit, the Commission shall mail-send to the license or permit holder a renewal form-notice in the form and manner prescribed by the Commission.	To be able to more efficiently notify through electronic means the regulated persons of the upcoming renewals.

In addition to the suggested changes in question 9 above, the Commission is proposing the following changes.

Changes to the Act	Changes to the Administrative Rules
<p>Add the requirement of completing a certain number of continuing education hours pertaining to collateral recovery for recovery managers Class "MR" License and recovery employees Class "E" Recovery Permit. The continuing education program would have to be reviewed and approved by the Commission. The Commission recommends requiring 10 hours of CE for Class "MR" License within a 2 year period to be completed prior to each renewal. The Commission recommends requiring 8 hours of CE for Class "E" Recovery Permit within a 2 year period to be completed by July 1. Adding this requirement would ensure that the regulated persons are staying abreast of the changes in the law and practice in the industry.</p>	<p>Add the requirement on the Commission of periodically (every 2 years) reviewing the already approved certification programs to ensure that they still meet Commission requirements. Adding this requirement would ensure that the approved programs continue to meet Commission's standards.</p>
	<p>Increase fees in Section 1480.540 of the rules. This recommendation is based on an anticipated rise in expenditures due to the rising cost of personnel (increases per collective bargaining agreement and benefits such as retirement and group insurance) and the current number of vacancies in the Transportation Division. Given the current and projected revenue stream, without an increase in fees, there will not be enough revenue generated to support full annualized authorized headcount cost.</p>
	<p>Amend 92 III. Adm. Code 1480.61, 393 to conform these sections to recent amendments of the Act. See attachment with proposed changes.</p>

Add an enforcement provision that would allow the Commission to not renew the Class "MR" license or suspend or revoke the Class "E" recovery permit if continuing education hours are not completed by the license/permit holder. Adding this requirement would ensure that the Commission can properly enforce the continuing education requirement.

92 Ill. Adm. Code 1480.90

Applications for renewal of a license or permit must be filed with the Commission no earlier than 90 days and not later than 45 days prior to the expiration of a license or permit. ~~The license or permit holder must satisfactorily complete the application process and fulfill all the fitness standards by the expiration date of the license or permit. A license or permit expires on the expiration date if not successfully renewed by the Commission prior to the expiration date. Any license or recovery permit holder whose license or recovery permit is not renewed by the license's or permit's expiration date shall not engage in the practice of recovery in this State or use the title or advertise that he, she, or it performs the services of a licensed repossession agency, licensed recovery manager, or repossession agency employee. [225 ILCS 422/75(k)]~~ When a license holder or permit holder has made timely and sufficient application

Conclusion:

According to Section 5 of the Collateral Recovery Act, the General Assembly found that collateral recovery practices affect public health, safety, and welfare and declared that the purpose of this Act is to regulate individuals and entities engaged in the business of collateral recovery for the protection of the public. 225 ILCS 422/5.

In its current form, the Act protects public health and safety through the requirement of criminal background checks of applicants for license or recovery permit. Each individual, partner of a partnership, officer of a corporation, or owner of a limited liability company, as part of the application process, must undergo a criminal background check which includes fingerprinting. 225 ILCS 422/60. The Act then permits the Commission to refuse to issue or renew, suspend, revoke or take any disciplinary action for a conviction of any crime under the laws of the United States or any state or territory thereof that is (i) a felony, (ii) a misdemeanor, an essential element of which is dishonesty, or (iii) a crime that is related to the practice of the profession. 225 ILCS 422/80(a)(3).

Public safety is also protected through the requirement of identification cards to prevent fraudulent and misleading behavior. Upon the issuance of a recovery manager license, the Commission is required to issue the license holder a suitable pocket identification card that shall include a photograph of the license holder and other pertinent information. 225 ILCS 422/40(b). Every employer is also required to furnish an employee identification card to each of its employees except office or clerical personnel. 225 ILCS 422/45(e). "This employee identification card must contain a recent photograph of the employee, the employee's name, the name and agency license number of the employer, the employee's personal description, the signature of the employer, the signature of that employee, the date of issuance, and an employee identification card number." Id.

Furthermore, the Act promotes public welfare by placing insurance requirements on repossession agencies. 225 ILCS 422/90. In addition, repossession agencies' main office, branch offices and remote storage locations must be physically located in the State of Illinois and must pass an inspection by the Commission's Police Section as a condition of licensure. 225 ILCS 422/10; 92 Ill. Adm. Code 1480.310, 380. This ensures that the recovered collateral and any personal property found within it is stored in a secure and safe manner at the repossession agency's facility in Illinois. The fact that any personal property found in a repossessed collateral must remain stored in either

the main or branch office ensures debtors' ease of access to retrieve their personal property. In the absence of these regulations, public health, safety and welfare would be harmed and endangered.