

# SB3504



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB3504

Introduced 2/16/2018, by Sen. Elgie R. Sims, Jr.

#### SYNOPSIS AS INTRODUCED:

225 ILCS 422/45  
225 ILCS 422/80  
225 ILCS 422/85

Amends the Collateral Recovery Act of 1934. Provides that no repossession agency employee may be issued a recovery permit if the person has been convicted of specified crimes. Makes changes concerning which crimes the Illinois Commerce Commission may require a repossession agency licensee, a recovery manager licensee, or a recovery permit holder to disclose and which crimes the Commission may use in denying or disciplining a licensee or permit holder. Effective January 1, 2019.

LRB100 20550 XWW 35954 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Collateral Recovery Act is amended by  
5 changing Sections 45, 80, and 85 as follows:

6 (225 ILCS 422/45)

7 (Section scheduled to be repealed on January 1, 2022)

8 Sec. 45. Repossession agency employee requirements.

9 (a) All employees of a licensed repossession agency whose  
10 duties include the actual repossession of collateral must apply  
11 for a recovery permit. The holder of a repossession agency  
12 license issued under this Act, known in this Section as the  
13 "employer", may employ in the conduct of the business under the  
14 following provisions:

15 (1) No person may be issued a recovery permit who meets  
16 any of the following criteria:

17 (A) Is younger than 21 years of age.

18 (B) Has been convicted of a crime identified in  
19 paragraph (3) of subsection (a) of Section 80 of this  
20 Act and the Commission determines the ability of the  
21 person to engage in the position for which a permit is  
22 sought is impaired as a result of the conviction. ~~Has~~  
23 been determined by the Commission to be unfit by reason

1 ~~of conviction of an offense in this or another state,~~  
2 ~~other than a minor traffic offense, that the Commission~~  
3 ~~determines in accordance with Section 85 will impair~~  
4 ~~the ability of the person to engage in the position for~~  
5 ~~which a permit is sought. The Commission shall adopt~~  
6 ~~rules for making those determinations.~~

7 (C) Has had a license or recovery permit denied,  
8 suspended, or revoked under this Act.

9 (D) Has not successfully completed a certification  
10 program approved by the Commission.

11 (2) No person may be employed by a repossession agency  
12 under this Section until he or she has executed and  
13 furnished to the Commission, on forms furnished by the  
14 Commission, a verified statement to be known as an  
15 "Employee's Statement" setting forth all of the following:

16 (A) The person's full name, age, and residence  
17 address.

18 (B) The business or occupation engaged in for the 5  
19 years immediately before the date of the execution of  
20 the statement, the place where the business or  
21 occupation was engaged in, and the names of the  
22 employers, if any.

23 (C) That the person has not had a license or  
24 recovery permit denied, revoked, or suspended under  
25 this Act.

26 (D) Any conviction of a felony, except as provided

1 for in Section 85.

2 (E) Any other information as may be required by any  
3 rule of the Commission to show the good character,  
4 competency, and integrity of the person executing the  
5 statement.

6 (b) Each applicant for a recovery permit shall have his or  
7 her fingerprints submitted to the Commission by a Live Scan  
8 fingerprint vendor certified by the Illinois State Police under  
9 the Private Detective, Private Alarm, Private Security,  
10 Fingerprint Vendor, and Locksmith Act of 2004 in an electronic  
11 format that complies with the form and manner for requesting  
12 and furnishing criminal history record information as  
13 prescribed by the Illinois State Police. These fingerprints  
14 shall be checked against the Illinois State Police and Federal  
15 Bureau of Investigation criminal history record databases now  
16 and hereafter filed. The Commission shall charge applicants a  
17 fee for conducting the criminal history records check, which  
18 shall not exceed the actual cost of the records check. The  
19 Illinois Commerce Commission Police shall furnish, pursuant to  
20 positive identification, records of Illinois convictions to  
21 the Commission. The Commission, in its discretion, may allow an  
22 applicant who does not have reasonable access to a designated  
23 vendor to provide his or her fingerprints in an alternative  
24 manner. The Commission, in its discretion, may also use other  
25 procedures in performing or obtaining criminal history records  
26 checks of applicants. Instead of submitting his or her

1 fingerprints, an individual may submit proof that is  
2 satisfactory to the Commission that an equivalent security  
3 clearance has been conducted.

4 (c) Qualified applicants shall purchase a recovery permit  
5 from the Commission and in a form that the Commission  
6 prescribes. The Commission shall notify the submitting person  
7 within 10 days after receipt of the application of its intent  
8 to issue or deny the recovery permit. The holder of a recovery  
9 permit shall carry the recovery permit at all times while  
10 actually engaged in the performance of the duties of his or her  
11 employment. No recovery permit shall be effective unless  
12 accompanied by a license issued by the Commission. Expiration  
13 and requirements for renewal of recovery permits shall be  
14 established by rule of the Commission. Possession of a recovery  
15 permit does not in any way imply that the holder of the  
16 recovery permit is employed by any agency unless the recovery  
17 permit is accompanied by the employee identification card  
18 required by subsection (e) of this Section.

19 (d) Each employer shall maintain a record of each employee  
20 that is accessible to the duly authorized representatives of  
21 the Commission. The record shall contain all of the following  
22 information:

23 (1) A photograph taken within 10 days after the date  
24 that the employee begins employment with the employer. The  
25 photograph shall be replaced with a current photograph  
26 every 3 calendar years.

1           (2) The Employee's Statement specified in paragraph  
2           (2) of subsection (a) of this Section.

3           (3) All correspondence or documents relating to the  
4           character and integrity of the employee received by the  
5           employer from any official source or law enforcement  
6           agency.

7           (4) In the case of former employees, the employee  
8           identification card of that person issued under subsection  
9           (e) of this Section.

10          (e) Every employer shall furnish an employee  
11          identification card to each of his or her employees. This  
12          subsection (e) shall not apply to office or clerical personnel.  
13          This employee identification card shall contain a recent  
14          photograph of the employee, the employee's name, the name and  
15          agency license number of the employer, the employee's personal  
16          description, the signature of the employer, the signature of  
17          that employee, the date of issuance, and an employee  
18          identification card number.

19          (f) No employer may issue an employee identification card  
20          to any person who is not employed by the employer in accordance  
21          with this Section or falsely state or represent that a person  
22          is or has been in his or her employ. It is unlawful for an  
23          applicant for registration to file with the Commission the  
24          fingerprints of a person other than himself or herself or to  
25          fail to exercise due diligence in resubmitting replacement  
26          fingerprints for those employees who have had original

1 fingerprint submissions returned as unclassifiable. An agency  
2 shall inform the Commission within 15 days after contracting or  
3 employing a licensed repossession agency employee. The  
4 Commission shall develop a registration process by rule.

5 (g) Every employer shall obtain the identification card of  
6 every employee who terminates employment with the employer. An  
7 employer shall immediately report an identification card that  
8 is lost or stolen to the local police department having  
9 jurisdiction over the repossession agency location.

10 (h) No agency may employ any person to perform any activity  
11 under this Act unless the person possesses a valid license or  
12 recovery permit under this Act.

13 (i) If information is discovered affecting the  
14 registration of a person whose fingerprints were submitted  
15 under this Section, then the Commission shall so notify the  
16 agency that submitted the fingerprints on behalf of that  
17 person.

18 (j) A person employed under this Section shall have 15  
19 business days within which to notify the Commission of any  
20 change in employer, but may continue working under any other  
21 recovery permits granted as an employee or independent  
22 contractor.

23 (k) This Section applies only to those employees of  
24 licensed repossession agencies whose duties include actual  
25 repossession of collateral.

26 (l) An applicant who is 21 years of age or older seeking a

1 religious exemption to the photograph requirement of this  
2 Section shall furnish with his or her application an approved  
3 copy of United States Department of the Treasury Internal  
4 Revenue Service Form 4029. Regardless of age, an applicant  
5 seeking a religious exemption to this photograph requirement  
6 shall submit fingerprints in a form and manner prescribed by  
7 the Commission with his or her application in lieu of a  
8 photograph.

9 (Source: P.A. 100-286, eff. 1-1-18.)

10 (225 ILCS 422/80)

11 (Section scheduled to be repealed on January 1, 2022)

12 Sec. 80. Refusal, revocation, or suspension.

13 (a) The Commission may refuse to issue or renew or may  
14 revoke any license or recovery permit or may suspend, place on  
15 probation, fine, or take any disciplinary action that the  
16 Commission may deem proper, including fines not to exceed  
17 \$2,500 for each violation, with regard to any license ~~holder~~ or  
18 recovery permit holder or applicant for one or any combination  
19 of the following causes:

20 (1) Knowingly making any misrepresentation for the  
21 purpose of obtaining a license or recovery permit.

22 (2) Violations of this Act or its rules.

23 (3) For a license ~~licensees~~ or permit holder or  
24 applicant ~~holders~~, conviction of any crime under the laws  
25 of the United States or any state or territory thereof that



1 is (i) a felony, (ii) a misdemeanor, an essential element  
2 of which is dishonesty, or (iii) a crime that is related to  
3 the practice of the profession. For license or permit  
4 holders or applicants, the provisions of Section 85 of this  
5 Act apply. ~~Commission may refuse to issue a license or~~  
6 ~~permit based on restrictions set forth in paragraph (2) of~~  
7 ~~subsection (a) of Section 40 and subparagraph (B) of~~  
8 ~~paragraph (1) of subsection (a) of Section 45,~~  
9 ~~respectively, if the Commission determines in accordance~~  
10 ~~with Section 85 that such conviction will impair the~~  
11 ~~ability of the applicant to engage in the position for~~  
12 ~~which a license or permit is sought.~~

13 (4) Aiding or abetting another in violating any  
14 provision of this Act or its rules.

15 (5) Engaging in dishonorable, unethical, or  
16 unprofessional conduct of a character likely to deceive,  
17 defraud, or harm the public as defined by rule.

18 (6) Violation of any court order from any State or  
19 public agency engaged in the enforcement of payment of  
20 child support arrearages or for noncompliance with certain  
21 processes relating to paternity or support proceeding.

22 (7) Solicitation of professional services by using  
23 false or misleading advertising.

24 (8) A finding that the license or recovery permit was  
25 obtained by fraudulent means.

26 (9) Practicing or attempting to practice under a name

1 other than the full name shown on the license or recovery  
2 permit or any other legally authorized name.

3 (b) The Commission may refuse to issue or may suspend the  
4 license or recovery permit of any person or entity who fails to  
5 file a return, pay the tax, penalty, or interest shown in a  
6 filed return, or pay any final assessment of tax, penalty, or  
7 interest, as required by any tax Act administered by the  
8 Department of Revenue, until the time the requirements of the  
9 tax Act are satisfied. The Commission may take into  
10 consideration any pending tax disputes properly filed with the  
11 Department of Revenue.

12 (Source: P.A. 100-286, eff. 1-1-18.)

13 (225 ILCS 422/85)

14 (Section scheduled to be repealed on January 1, 2022)

15 Sec. 85. Consideration of past crimes.

16 (a) The Commission shall not require the license or permit  
17 holder or applicant ~~applicant~~ to report the following  
18 information and shall not consider the following criminal  
19 history records in connection with an application for a license  
20 or permit under this Act:

21 (1) Juvenile adjudications of delinquent minors as  
22 defined in Section 5-105 of the Juvenile Court Act of 1987,  
23 subject to the restrictions set forth in Section 5-130 of  
24 the Juvenile Court Act of 1987.

25 (2) Law enforcement records, court records, and

1 conviction records of an individual who was 18 ~~17~~ years old  
2 or younger at the time of the conviction for the offense  
3 and before January 1, 2014, unless the nature of the  
4 offense required the individual to be tried as an adult.

5 (3) Records of arrest not followed by a conviction.

6 (4) Convictions overturned by a higher court.

7 (5) Convictions or arrests that have been sealed or  
8 expunged.

9 (b) When considering the denial of a license or recovery  
10 permit on the grounds of conviction of a crime, ~~including those~~  
11 ~~set forth in paragraph (2) of subsection (a) of Section 40 and~~  
12 ~~subparagraph (B) of paragraph (1) of subsection (a) of Section~~  
13 ~~45, respectively,~~ the Commission, in evaluating whether the  
14 conviction will impair the license or permit holder's or  
15 applicant's ability to engage in the position for which a  
16 license or permit is sought and the license or permit holder's  
17 or applicant's present eligibility for a license or recovery  
18 permit, shall consider each of the following criteria:

19 (1) The lack of direct relation of the offense for  
20 which the license or permit holder or applicant was  
21 previously convicted to the duties, functions, and  
22 responsibilities of the position for which a license or  
23 permit is sought.

24 (2) Circumstances relative to the offense, including  
25 the license or permit holder's or applicant's age at the  
26 time that the offense was committed.

1           (3) Evidence of any act committed subsequent to the act  
2 or crime under consideration as grounds for denial, which  
3 also could be considered as grounds for disciplinary action  
4 under this Act.

5           (4) Whether 5 years since a conviction or 3 years since  
6 successful completion of the imposed sentence ~~release from~~  
7 ~~confinement~~ for the conviction, whichever is later, have  
8 passed without a subsequent conviction.

9           (5) Successful completion of sentence or for license or  
10 permit holders or applicants serving a term of parole or  
11 probation, a progress report provided by the license or  
12 permit holder's or applicant's probation or parole officer  
13 that documents the license or permit holder's or  
14 applicant's compliance with conditions of supervision.

15           (6) If the license or permit holder or applicant was  
16 previously licensed or employed in this State or other  
17 states or jurisdictions, then the lack of prior misconduct  
18 arising from or related to the licensed position or  
19 position of employment.

20           (7) Evidence of rehabilitation or rehabilitative  
21 effort during or after incarceration, or during or after a  
22 term of supervision, including, but not limited to, a  
23 certificate of good conduct under Section 5-5.5-25 of the  
24 Unified Code of Corrections or a certificate of relief from  
25 disabilities under Section 5-5.5-10 of the Unified Code of  
26 Corrections.

1           (8) Any other mitigating factors that contribute to the  
2           license or permit holder's or applicant's ~~person's~~  
3           potential and current ability to perform the duties and  
4           responsibilities of practices licensed or registered under  
5           this Act.

6           (c) When considering the suspension or revocation of a  
7           license or recovery permit on the grounds of conviction of a  
8           crime, the Commission, in evaluating the rehabilitation of the  
9           license or permit holder ~~applicant~~, whether the conviction will  
10          impair the license or permit holder's ~~applicant's~~ ability to  
11          engage in the position for which a license or permit is sought,  
12          and the license or permit holder's ~~applicant's~~ present  
13          eligibility for a license or recovery permit, shall consider  
14          each of the following criteria:

15                 (1) The nature and severity of the act or offense.

16                 (2) The license holder's or recovery permit holder's  
17                 criminal record in its entirety.

18                 (3) The amount of time that has lapsed since the  
19                 commission of the act or offense.

20                 (4) Whether the license holder or recovery permit  
21                 holder has complied with any terms of parole, probation,  
22                 restitution, or any other sanctions lawfully imposed  
23                 against him or her.

24                 (5) If applicable, evidence of expungement  
25                 proceedings.

26                 (6) Evidence, if any, of rehabilitation submitted by

1 the license holder or recovery permit holder.

2 (d) If the Commission refuses to issue or renew a license  
3 or permit, or suspends, revokes, places on probation, or takes  
4 any disciplinary action that the Commission may deem proper  
5 against a license or permit ~~grant a license or permit to an~~  
6 ~~applicant,~~ then the Commission shall notify the license or  
7 permit holder or applicant of the decision ~~denial~~ in writing  
8 with the following included in the notice of decision ~~denial~~:

9 (1) a statement about the decision ~~to refuse to grant a~~  
10 ~~license or permit;~~

11 (2) a list of the convictions that the Commission  
12 determined will impair the license or permit holder's or  
13 applicant's ability to engage in the position for which a  
14 license or permit is sought;

15 (3) a list of convictions that formed the sole or  
16 partial basis for the decision ~~refusal to grant a license~~  
17 ~~or permit;~~ and

18 (4) a summary of the appeal process or the earliest  
19 reapplication for a license or permit is permissible ~~the~~  
20 ~~applicant may reapply for a license or permit,~~ whichever is  
21 applicable.

22 (e) No later than May 1 of each year, the Commission must  
23 prepare, publicly announce, and publish a report of summary  
24 statistical information relating to new and renewal license or  
25 permit applications during the preceding calendar year. Each  
26 report shall show, at a minimum:

1 (1) the number of applicants for a new or renewal  
2 license or permit under this Act within the previous  
3 calendar year;

4 (2) the number of applicants for a new or renewal  
5 license or permit under this Act within the previous  
6 calendar year who had a ~~any~~ criminal conviction identified  
7 in paragraph(3) of subsection (a) of Section 80;

8 (3) the number of applicants for a new or renewal  
9 license or permit under this Act in the previous calendar  
10 year who were granted a license or permit;

11 (4) the number of applicants for a new or renewal  
12 license or permit with a criminal conviction identified in  
13 paragraph (3) of subsection (a) of Section 80 who were  
14 granted a license or permit under this Act within the  
15 previous calendar year;

16 (5) the number of applicants for a new or renewal  
17 license or permit under this Act within the previous  
18 calendar year who were denied a license or permit;

19 (6) the number of applicants for a new or renewal  
20 license or permit with a criminal conviction identified in  
21 paragraph (3) of subsection (a) of Section 80 who were  
22 denied a license or permit under this Act in the previous  
23 calendar year in whole or in part because of the ~~a~~ prior  
24 conviction;

25 (7) the number of licenses or permits issued with a  
26 condition of ~~on~~ probation without monitoring imposed by the

1        Commission under this Act in the previous calendar year to  
2        applicants with a criminal conviction identified in  
3        paragraph (3) of subsection (a) of Section 80; and

4                (8) the number of licenses or permits issued with a  
5        condition of ~~on~~ probation with monitoring imposed by the  
6        Commission under this Act in the previous calendar year to  
7        applicants with a criminal conviction identified in  
8        paragraph (3) of subsection (a) of Section 80.

9        (Source: P.A. 100-286, eff. 1-1-18.)

10        Section 99. Effective date. This Act takes effect January  
11        1, 2019.