CHAPTER 425

CONSUMER TRANSACTIONS — REMEDIES AND PENALTIES

Cross−reference: See definitions in s. 421.301.

SUBCHAPTER I

CREDITORS' REMEDIES

425.101 Short title. This chapter shall be known and may be cited as the Wisconsin consumer act — remedies and penalties.

History: 1971 c. 239.

425.102 Scope. This subchapter applies to actions or other proceedings brought by a creditor to enforce rights arising from consumer credit transactions and to extortionate extensions of credit under s. 425.108.

History: 1971 c. 239.

The scope language of this section bars a customer from bringing a claim of unconscionability under s. 425.107 except in response to "actions or other proceedings brought by a creditor." Discussing whether a nonjudicial repossession pursuant to s. 425.206 (1) (d) is such an action or other proceeding. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19−1365.

When a creditor files a lawsuit against a debtor to enforce a loan agreement, that triggers the potential for an unconscionability counterclaim. The fact that the creditor moves for voluntary dismissal of its claim before the debtor brings the unconscionability counterclaim does not prevent the debtor from pursuing it. This section does not require dismissal of the counterclaim. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22−0746.

425.1025 Definition. In this subchapter, "billing statement" means a statement issued pursuant to 15 USC 1637 (b).

History: 2015 a. 155.

425.103 Accrual of cause of action; "default". (1) Notwithstanding any term or agreement to the contrary, no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default, as defined in sub. (2).

(2) "Default", with respect to a consumer credit transaction, means without justification under any law:

(a) With respect to a transaction other than one pursuant to an open−end plan and except as provided in par. (am); if the interval between scheduled payments is 2 months or less, to have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date; if the interval between scheduled payments is more than 2 months, to have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date; or, if the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(am) With respect to an installment loan not secured by a motor vehicle made by a licensee under s. 138.09 or with respect to a payday loan not secured by a motor vehicle made by a licensee under s. 138.14; to have outstanding an amount of one full payment or more which has remained unpaid for more than 10 days after the scheduled or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(b) With respect to an open−end plan, failure to pay when due on 2 occasions within any 12−month period;

(bm) With respect to a motor vehicle consumer lease or a consumer credit sale of a motor vehicle, making a material false statement in the customer's credit application that precedes the consumer credit transaction; or

(c) To observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the merchant's right in any collateral securing the transaction or goods subject to a consumer lease, or materially impairs the customer's ability to pay amounts due under the transaction.

(3) A cause of action with respect to the obligation of a customer in a consumer credit transaction shall be subject to this subchapter, including the provisions relating to cure of default (ss. 425.104 and 425.105).

(4) A cause of action arising from a transaction which resulted in the creation of a security interest in personal property shall also be subject to the limitations provided in subch. II.

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10; 1995 a. 225; 1997 a. 302; 2005 a. 110; 2013 a. 20.

When a lender was promptly informed that a borrower had a valid disability insurance claim that would cover payments, it was an unconscionable practice to include an unpaid monthly charge that would be covered by the disability insurance in computing the unpaid balance for purposes of establishing default. Bank One Milwaukee, N.A. v. Harris, 209 Wis. 2d 412, 563 N.W.2d 543 (Ct. App. 1997), 96–0903.

Under sub. (2) (a), when payments are scheduled less than two months apart, a consumer is in default when an amount greater than one full payment remains unpaid for over ten days, not when a single payment is unpaid for more than ten days. Indianhead Motors v. Brooks, 2006 WI App 266, 297 Wis. 2d 821, 726 N.W.2d 352, 06–1002.

This section does not create a right for consumers to enforce when a merchant includes a particular provision in a loan agreement. Rather, it limits the circumstances in which a merchant can sue a customer for defaulting on a loan. Nelson v. Santander Consumer USA, Inc., 931 F. Supp. 2d 919 (2013).

Creditor's Remedies Under Wisconsin Consumer Act. WBB Dec. 1973.

425.104 Notice of customer's right to cure default. **(1)** A merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default (s. 425.105).

(2) Any notice given under this section shall contain the name, address and telephone number of the creditor, a brief identification of the consumer credit transaction, a statement of the nature of the alleged default and a clear statement of the total payment, including an itemization of any delinquency charges, or other performance necessary to cure the alleged default, the exact date by which the amount must be paid or performance tendered and the name, address and telephone number of the person to whom any payment must be made, if other than the creditor.

History: 1971 c. 239.

Notice need not be given if the obligation is entirely past due and fully owed, making it impossible for the customer to restore the loan to current status. Rosendale State Bank v. Schultz, 123 Wis. 2d 195, 365 N.W.2d 911 (Ct. App. 1985).

The s. 425.105 (1) prohibition of suits except when notice is given pursuant to this section imposes timing and content requirements for the notice. A notice that did not meet the timing requirements of sub. (1) and s. 425.103 (2) (a) never gave notice "pursuant to" this section. Thus, suit was barred by s. 425.105 (1). Indianhead Motors v. Brooks, 2006 WI App 266, 297 Wis. 2d 821, 726 N.W.2d 352, 06–1002.

Section 421.108 generally imposes the obligation of good faith on the performance or enforcement of duties that are defined in the Wisconsin Consumer Act. The particular duties defined in this section and s. 425.105 (1) do not necessarily fall outside the ambit of the good faith doctrine. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22–0746.

Courts construe sub. (2) strictly, so even minor defects or omissions are enough to render a notice of right to cure invalid. Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019).

Billing statements are not sufficient to give notice of a right to cure to an unsophisticated consumer, so they cannot qualify as right–to–cure notices under sub. (2). Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019).

This section establishes requirements regarding what information a right–to–cure notice must contain, and it is permissive in the sense that it does not obligate merchants to send such notices whenever a customer defaults. But s. 425.105 lays out the requirements for merchants who wish to sue on a default, and s. 425.105 (1) makes providing notice a mandatory prerequisite to suit. Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019). See also Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

425.105 Cure of default. **(1)** A merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in s. 425.205 (6), or demand or take possession of collateral or goods subject to a consumer lease other than by accepting a voluntary surrender thereof (s. 425.204), unless the merchant believes the customer to be in default (s. 425.103), and then only upon the expiration of 15 days after a notice is given pursuant to s. 425.104 if the customer has the right to cure under this section.

(2) Except as provided in subs. (3) and (3m), for 15 days after such notice is given, a customer may cure a default under a consumer credit transaction by tendering the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, and by tendering performance necessary to cure any default other than nonpayment of amounts due. The act of curing a default restores to the customer the customer's rights under the agreement as though no default had occurred.

(3) A right to cure shall not exist if the following occurred twice during the preceding 12 months:

(a) The customer was in default on the same transaction or open–end credit plan;

(b) The creditor gave the customer notice of the right to cure such previous default in accordance with s. 425.104; and

(c) The customer cured the previous default.

(3m) A right to cure shall not exist with respect to a default specified under s. 425.103 (2) (bm).

(4) With respect to consumer credit transactions in which the creditor has a security interest in, and possession of, instruments or documents, as each is defined in s. 409.102 (1), which threaten to decline speedily in value, this section does not restrict the creditor's rights to dispose of such property pursuant to subch. VI of ch. 409 and the terms of the creditor's security agreement.

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316; 2001 a. 10; 2005 a. 110.

The sub. (1) prohibition of suits except when notice is given pursuant to s. 425.104 imposes timing and content requirements for the notice. A notice that did not meet the timing requirements of ss. 425.103 (2) (a) and 425.104 (1) never gave notice "pursuant to s. 425.104." Thus, suit was barred by sub. (1). Indianhead Motors v. Brooks, 2006 WI App 266, 297 Wis. 2d 821, 726 Wis. 2d 352, 06–1002.

A creditor's failure to send a notice of default and right to cure letter is merely a failure to comply with a procedural requirement that warrants dismissal of the creditor's action against the debtor. The failure does not disrupt the creditor's right to payment from the debtor. Security Finance v. Kirsch, 2019 WI 42, 386 Wis. 2d 388, 926 N.W.2d 167, 17–1408.

Section 421.108 generally imposes the obligation of good faith on the performance or enforcement of duties that are defined in the Wisconsin Consumer Act. The particular duties defined in sub. (1) and s. 425.104 do not necessarily fall outside the ambit of the good faith doctrine. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22–0746.

The requirement that a creditor provide a notice of right to cure default is a procedural hurdle creditors must clear in order to pursue their remedies. The appropriate remedy for a creditor's failure to comply with this procedural requirement is dismissal of the creditor's action. Beal v. Wyndham Vacation Resorts, Inc., 956 F. Supp. 2d 962 (2013).

12 CFR 7.4008 (d) (4) and (8), which permits banks to make loans without regard to state laws dealing with term to maturity, including circumstances under which a loan may be called due and payable, does not preempt sub. (1), which states that a creditor may not accelerate the maturity of a consumer credit transactions unless the creditor provides notice and the opportunity to cure the default. Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

Debts that are "fully due" are distinguished from debts that involve "installment payments," such as credit cards with minimum payments and a maximum credit amount. A right to cure default exists for installment payments. The debt in this case was a credit card debt with minimum payments and a credit limit, and the debtor was entitled to an opportunity to cure the default before any acceleration or collection commenced. The fact that the debt changed hands did not change that. A debt collector cannot step into a better position than its assignor where the consumer's rights are concerned. Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

Section 425.104 establishes requirements regarding what information a right–to–cure notice must contain, and it is permissive in the sense that it does not obligate merchants to send such notices whenever a customer defaults. But this section lays out the requirements for merchants who wish to sue on a default, and sub. (1) makes providing notice a mandatory prerequisite to suit. Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019). See also Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

425.106 Exempt property. **(1)** Except to the extent that the merchant has a valid security interest which is permitted by chs. 421 to 427 and 429 or has a lien under ch. 779 in such property, or where the transaction is for medical or legal services and there has been no finance charge actually imposed, the following property of the customer shall be exempt from levy, execution, sale, and other similar process in satisfaction of a judgment for an obligation arising from a consumer credit transaction:

(a) Unpaid earnings to the extent provided in s. 812.34.

(b) Clothing of the customer or his or her dependents, and the following: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware and household goods as defined in 12 CFR 227.13 (d), 12 CFR 535.1 (g) or 16 CFR 444.1 (i) consisting of furniture, appliances, one television, linens, china, crockery and personal effects including wedding rings, except works of art, electronic entertainment equipment, antiques and jewelry, to the extent a nonpossessory security interest in these household goods is prohibited under 12 CFR 227.13 (d), 12 CFR 535.2 (a) (4) or 16 CFR 444.2 (a) (4);

(c) Real property used as the principal residence of the customer or the customer's dependents, to the extent that the fair market value of such property, less all amounts secured by mortgages and liens outstanding against it, is $15,000 or less; and

(d) Earnings or other assets of the customer which are required to be paid by the customer as restitution under s. 973.20.

(2) With respect to process against marital property in satisfaction of a judgment for an obligation described under s. 766.55 (2) (b) arising from a consumer credit transaction, each spouse is entitled to and may claim the exemptions under sub. (1). Each spouse is entitled to one exemption under sub. (1) (c). That exemption is limited to the specified maximum dollar amount, which may be combined with the other spouse's exemption in the same property or applied to different property included under the same exemption.

(3) Nothing in this section shall be construed to displace other provisions of law which afford additional or greater protection to the customer.

(4) An order or process in violation of this section is void.

History: 1971 c. 239; 1973 c. 2, 3; 1979 c. 32 s. 92 (9); 1979 c. 89, 177, 221; 1983 a. 36; 1985 a. 37, 256; 1987 a. 398; 1991 a. 316; 1993 a. 80; 1995 a. 329.

NOTE: As to sub. (2), see notes in 1985 Wis. Act 37, marital property trailer bill.

425.107 Unconscionability. (1) With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall, in addition to the remedy and penalty authorized in sub. (5), either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

(2) Specific practices forbidden by the administrator in rules promulgated pursuant to s. 426.108 shall be presumed to be unconscionable.

(3) Without limiting the scope of sub. (1), the court may consider, among other things, the following as pertinent to the issue of unconscionability:

(a) That the practice unfairly takes advantage of the lack of knowledge, ability, experience or capacity of customers;

(b) That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved;

(c) That there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value;

(d) That the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors;

(e) That the terms of the transaction require customers to waive legal rights;

(f) That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction;

(g) That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder;

(h) That the writing purporting to evidence the obligation of the customer in the transaction contains terms or provisions or authorizes practices prohibited by law; and

(i) Definitions of unconscionability in statutes, regulations, rulings and decisions of legislative, administrative or judicial bodies.

(4) Any charge or practice expressly permitted by chs. 421 to 427 and 429 is not in itself unconscionable but even though a practice or charge is authorized by chs. 421 to 427 and 429, the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.

(5) In addition to the protections afforded in sub. (1), the customer shall be entitled upon a finding of unconscionability to recover from the creditor or the person responsible for the unconscionable conduct a remedy and penalty in accordance with s. 425.303.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

When a lender was promptly informed that a borrower had a valid disability insurance claim that would cover payments, it was an unconscionable practice to include an unpaid monthly charge that would be covered by the disability insurance in computing the unpaid balance for purposes of establishing default. Bank One Milwaukee, N.A. v. Harris, 209 Wis. 2d 412, 563 N.W.2d 543 (Ct. App. 1997), 96−0903.

The scope language of s. 425.102 bars a customer from bringing a claim of unconscionability under this section except in response to "actions or other proceedings brought by a creditor." Discussing whether a nonjudicial repossession pursuant to s. 425.206 (1) (d) is such an action or other proceeding. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19−1365.

When a creditor files a lawsuit against a debtor to enforce a loan agreement, that triggers the potential for an unconscionability counterclaim. The fact that the creditor moves for voluntary dismissal of its claim before the debtor brings the unconscionability counterclaim does not prevent the debtor from pursuing it. Section 425.102 does not require dismissal of the counterclaim. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22−0746.

This section provides a defense to an action brought by a creditor and does not constitute an affirmative claim for relief. Gable v. Universal Acceptance Corp. (WI), 338 F. Supp. 3d 943 (2018). But see CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22−0746.

425.108 Extortionate extensions of credit. (1) If it is the understanding of the creditor and the customer during any time that an extension of credit is outstanding, that delay in making repayment could result in the use of violence to cause harm to the person or property of any person, the extension of credit shall be unenforceable in accordance with s. 425.305 and the customer shall additionally recover triple the penalty provided in s. 425.304 (1).

(2) If it is shown that an extension of credit was made at an annual rate exceeding that permitted by or referred to in s. 422.201 on maximum charges and that the creditor had a reputation for the use or threat of use of violence to cause harm to the person or property of any person to collect extensions of credit or to punish the nonrepayment thereof, it shall be presumed that the extension of credit was a violation under chs. 421 to 427 under sub. (1).

History: 1971 c. 239; 1979 c. 89.

425.109 Pleadings. (1) A complaint by a merchant to enforce any cause of action arising from a consumer credit transaction shall include all of the following:

(a) An identification of the consumer credit transaction.

(b) A description of the collateral or leased goods, if any, which the merchant seeks to recover or has recovered.

(c) A specification of the facts constituting the alleged default by the customer.

(d) 1. If the consumer credit transaction is pursuant to an open−end credit plan, the actual or estimated amount of U.S. dollars or of a named foreign currency that the merchant alleges he or she is entitled to recover and the figures necessary for computation of the amount alleged to be due to the merchant on a date certain after the customer's default. Figures necessary for computation shall mean the amount reflected on a billing statement addressed to the customer and a breakdown of all charges, interest, and payments, including any amount received from the sale of any collateral, occurring after this date certain. This paragraph does not require a specific itemization, but the breakdown shall identify separately the amount due on a date certain, the total of all charges occurring after this date certain, the total of all interest occurring after this date certain, and the total of all payments occurring after this date certain.

2. If the consumer credit transaction is other than one pursuant to an open−end credit plan, the actual or estimated amount of U.S. dollars or of a named foreign currency alleged to be due to the merchant on a date certain after the customer's default, and a breakdown of all charges, interest, and payments, including any amount received from the sale of any collateral, occurring after this date certain. This paragraph does not require a specific itemization, but the breakdown shall identify separately the amount due on a date certain, the total of all charges occurring after this date certain, the total of all interest occurring after this date certain, and the total of all payments occurring after this date certain.

(e) Except in an action to recover goods subject to a consumer lease, a statement that the customer has the right to redeem any collateral as provided in s. 425.208 (1) (intro.) and the actual or estimated amount of U.S. dollars or of a named foreign currency required for redemption, itemized in accordance with s. 425.208 (1) (a) to (d).

(f) Except in an action to recover goods subject to a consumer lease, the estimated amount of U.S. dollars or of a named foreign currency of any deficiency claim which may be available to the merchant following the disposition of any collateral recovered subject to the limitations of s. 425.209 or which the merchant seeks to recover and which the merchant intends to assert subject to the limitations of s. 425.210 if the customer fails to redeem the collateral.

(g) If the customer still has the right to cure a default under s. 425.105 pursuant to a notice given under s. 425.104, the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made.

(h) Subject to sub. (2) and s. 425.205 (4), an accurate copy of the writings, if any, evidencing the transaction, except that with respect to claims arising under open–end credit plans, a statement that the merchant will submit accurate copies of the writings evidencing the customer's obligation to the court and the customer upon receipt of the customer's written request therefor on or before the return date or the date on which the customer's answer is due.

(2) Upon the written request of the customer under sub. (1) (h), the merchant shall submit accurate copies to the court and the customer of writings evidencing the customer's obligation pursuant to an open–end credit plan upon which the merchant's claim is made and default judgment may not be entered for the merchant unless the merchant does so. The writings requirement under this subsection is satisfied if the merchant provides the customer with a copy of the billing statement referenced in sub. (1) (d) 1. addressed to the customer reflecting the total outstanding balance on the customer's account at the time this billing statement was issued. If this billing statement is attached to the complaint, then the statement under sub. (1) (h) is not required to be included in the complaint.

(3) A default judgment may not be entered upon a complaint which fails to comply with this section.

(4) For purposes of subchs. III and IV, a complaint that fails to comply with this section does not constitute a violation of chs. 421 to 427, and shall not give rise to recovery of attorney fees under s. 425.308, unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

History: 1971 c. 239; 1983 a. 389; 1991 a. 236; 2015 a. 155.

A stated amount owed as of a specific date with a per diem interest figure is not a sufficient statement of "the figures necessary for computation of the amount" as required by sub. (1) (d). A complaint is not sufficient under this section because it meets the general rules of notice pleading. Household Finance Corp. v. Kohl, 173 Wis. 2d 798, 496 N.W.2d 708 (Ct. App. 1993). See also Bank One v. Ofojebe, 2005 WI App 151, 284 Wis. 2d 510, 702 N.W.2d 456, 04–0902.

A company that purchased an overdue credit card account and brought an action to collect the amount due on it was not a "creditor" within the meaning of s. 421.301 (16) and not subject to the pleading requirements of sub. (1). Rsidue, LLC v. Michaud, 2006 WI App 164, 295 Wis. 2d 585, 721 N.W.2d 718, 05–1299.

Sub. (2) requires a creditor to document any transaction it wishes to collect upon. Estate of Newgard v. Bank of America, 2007 WI App 161, 303 Wis. 2d 466, 735 N.W.2d 578, 07–0082.

Even if there was a failure to comply with the pleading requirements of this section, such a failure cannot deprive a small claims court of subject matter jurisdiction and cannot render a default judgment void. Mercado v. GE Money Bank, 2009 WI App 73, 318 Wis. 2d 216, 768 N.W.2d 53, 08–1992.

425.110 No discharge from employment for garnishment. (1) No employer shall discharge an employee because a merchant has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

(2) If an employer violates this section, an employee shall recover back wages and be reinstated, if the employee files an action for such relief within 90 days of the employee's discharge.

History: 1971 c. 239.

425.111 Levy before judgment. (1) Prior to entry of judgment in an action subject to this subchapter, no process, other than a restraining order to protect collateral (s. 425.207), shall issue with respect to amounts that are owing or are claimed to be owing or may be owing to the customer by any 3rd person, whether by way of attachment, garnishment or other process.

(2) With respect to property of the customer other than that described in sub. (1), process may issue in accordance with ch. 811 to establish a lien, except that such process shall not be effective to take, or to divest the customer of possession of, the property until final judgment is entered.

(3) If the court finds that the creditor probably will recover on the action, and that the customer is acting, or is about to act, with respect to property of the customer upon which a lien has been established under sub. (2), in a manner which substantially impairs the creditor's prospects for satisfying the judgment against such property (s. 811.03), the court may issue an order restraining the customer from so acting with respect to that property until final judgment is entered.

History: 1971 c. 239; 1973 c. 2; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975).

Legislative Council Note, 1973: Clarifies applicability of this subsection. Section 425.111 (1) refers to property of the customer subject to garnishment, and prescribes limitations on creditors' actions in relation to it. Sub. (2) refers to other property of the customer; however, the language struck by this amendment appears to make sub. (2) refer back to the same property dealt with by sub. (1), so it is deleted. [Bill 355–A]

425.112 Stay of execution. At the time of or at any time after the entry of a judgment in favor of a creditor against a customer in an action arising from a consumer transaction, the court, for cause and upon motion of a party or on its own motion, may stay enforcement of the judgment by order upon just and equitable conditions, and continue, modify or revoke the order as the interests of justice may require.

History: 1971 c. 239.

425.113 Body attachments. (1) No merchant shall cause or permit a warrant against the person of a customer to issue under ch. 816 with respect to a claim arising from a consumer credit transaction. Any process issued in violation of this section is void.

(2) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975).

Cross–reference: See also s. DFI–WCA 1.66, Wis. adm. code.

If this section were to be interpreted to remove a court's power to issue a body attachment for one who chooses to ignore its orders, the interpretation would cause the statute to be unconstitutional as a violation of the principle of separation of powers. Smith v. Burns, 65 Wis. 2d 638, 223 N.W.2d 562 (1974).

SUBCHAPTER II

ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL

425.201 Scope. This subchapter applies to the enforcement by a creditor of security interests in collateral.

History: 1971 c. 239.

425.202 Definitions. For purposes of this chapter:

(1) "Collateral" means goods subject to a security interest in favor of a merchant which secures a customer's obligations under a consumer credit transaction.

(2) "Motor vehicle" has the meaning given in s. 218.0101 (22).

History: 1971 c. 239; 1975 c. 407; 2005 a. 255.

425.203 Enforcement of merchant's rights in collateral and leased goods. (1) At any time after default (s. 425.103)

and the expiration of the period for cure of default (s. 425.105), if applicable, a merchant may commence an action to recover collateral or goods subject to a consumer lease pursuant to s. 425.205, or reduce the claim to a judgment by any available judicial procedure.

(2) In any action for a judgment under sub. (1) other than an action pursuant to s. 425.205, the judgment may provide for the right to possession of the collateral or leased goods by the merchant and for a deficiency, if the merchant would not be precluded from a deficiency judgment under s. 425.209 had the merchant initially proceeded against the collateral and if the judgment includes a finding that the merchant has the right to possession of any collateral securing the consumer credit transaction or goods subject to a consumer lease. Upon determining such judgment under this subsection the merchant shall have the right to:

(a) Have execution issue to require the sheriff in the county where the collateral or leased goods may be to take the same from the defendant and deliver it to the plaintiff; or

(b) Immediately exercise the right to nonjudicial recovery of the collateral or leased goods, subject to s. 425.206.

(3) Following recovery of collateral pursuant to a judgment under sub. (2), the merchant may either retain the collateral in full satisfaction of the customer's obligation pursuant to ss. 409.620 to 409.624, in which event the merchant shall satisfy the judgment obtained pursuant to sub. (2); or shall dispose of the collateral pursuant to subch. VI of ch. 409, in which event:

(a) The merchant shall apply to the court which entered the judgment pursuant to sub. (2) to confirm the sale or other disposition of the collateral upon 8 days' notice to all parties named in such action, either personally or by certified or registered mail directed to the last−known address of the parties. Such notice shall state, in addition to any other matter required by law, the time and place of the hearing, the amount of the judgment, the proceeds received upon disposition of the collateral, the fair market value of the collateral claimed by the merchant if such standard is applicable under s. 425.210, the reasonable expenses incurred in disposition of collateral, the net amount proposed to be credited against the judgment, and any deficiency remaining. In addition, the notice directed to the customer shall conspicuously advise the customer of the right to appear at such hearing and to contest any matter set forth in the notice.

(b) At such a hearing on confirmation, the court shall determine on the basis of the evidence presented by the parties, by affidavit or otherwise, the commercial reasonableness of the merchant's disposition of the collateral, the reasonable expenses incurred by the merchant in disposition of the collateral, the compliance with s. 425.210 if applicable, the resulting amount to be credited against the judgment and the remaining deficiency. Following such hearing and determinations, the court shall enter an appropriate order to satisfy the judgment and provide such other relief as may be appropriate. Where the underlying transaction is a consumer credit sale of goods or services or a consumer loan in which the lender is subject to defenses arising from s. 422.408, this hearing shall be considered a proceeding for a deficiency judgment pursuant to s. 425.209 (1).

(4) Following recovery of goods subject to a consumer lease pursuant to a judgment under sub. (2), no deficiency shall be allowable unless the merchant disposes of the leased goods and applies the proceeds to the customer's obligation, in which event:

(a) The merchant shall apply to the court which entered the judgment pursuant to sub. (2) to confirm the sale or other disposition of the leased goods upon 8 days' notice to all parties named in the action, either personally or by certified or registered mail directed to the last−known address of the parties. Such notice shall state, in addition to any other matter required by law, the time and place of the hearing, the amount of the judgment, the proceeds received upon disposition of the leased goods, the reasonable expenses incurred in disposition of the leased goods, the net amount proposed to be credited against the judgment, and any deficiency remaining. In addition, the notice directed to the customer shall conspicuously advise the customer of the right to appear at such hearing and to contest any matter set forth in the notice.

(b) At such a hearing on confirmation, the court shall determine on the basis of evidence presented by the parties, by affidavit or otherwise, the commercial reasonableness of the merchant's disposition of the leased goods, the reasonable expenses incurred by the merchant in disposition of the leased goods, and the resulting amount to be credited against the judgment entered pursuant to sub. (2). Following such hearing and determinations, the court shall enter an appropriate order to satisfy the judgment and provide such other relief as may be appropriate.

History: 1971 c. 239; 1975 c. 407, 421; 2001 a. 10.

425.204 Voluntary surrender of collateral. (1) Notwithstanding a waiver by the creditor of the security interest in collateral under s. 425.203 (2) or any other law, the customer shall have the right at any time to voluntarily surrender all of the customer's rights and interests in the collateral to the merchant.

(2) The rights and obligations of the merchant and customer with respect to collateral voluntarily surrendered as defined in this section shall be governed by subch. VI of ch. 409, and are not subject to this subchapter.

(3) The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to a request or demand, other than a notice under s. 425.205 (1g) (a), by the merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement, or notice, other than a notice under s. 425.205 (1g) (a), by the merchant that the merchant intends to take possession of the collateral.

History: 1971 c. 239; 1991 a. 316; 2001 a. 10; 2005 a. 255.

Cross−reference: See also s. DFI−WCA 1.67, Wis. adm. code.

Under the facts of the case, the customer did not "voluntarily surrender" collateral under sub. (3). Wachal v. Ketterhagen Motor Sales, Inc., 81 Wis. 2d 605, 260 N.W.2d 770 (1978).

425.205 Action to recover collateral. (1) Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease shall commence an action for replevin of the collateral or leased goods. Those actions shall be conducted in accordance with ch. 799, notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered, except that:

(a) Notwithstanding ss. 799.05 (2) and 799.06 (2), process shall be issued by the clerk of court, and such action shall be commenced upon the request of an officer or employee of a merchant on the merchant's behalf;

(b) The summons shall be in the form prescribed in sub. (2), and a complaint in the form described in sub. (3) shall be served with the summons;

(c) When service is made pursuant to s. 799.12 (3) certified mail with return receipt requested shall be employed;

(d) On the return date of the summons or any adjournment date thereof the customer shall have the right to a hearing on the issue of default or other matter which questions the validity of the merchant's claim to the collateral or leased goods, and the customer may answer, move to dismiss under s. 802.06 (2) or otherwise plead to the complaint orally, but if the customer fails to appear on the return day, judgment may be entered by the clerk or judge in accordance with the demands of the verified complaint, or upon an affidavit of the facts, or sworn testimony or other evidence to the clerk or judge; and

(e) Judgment in such action shall determine only the right to possession of the collateral or leased goods, but such judgment shall not bar any subsequent action for damages or deficiency to the extent permitted by this subchapter.

(1g) (a) A merchant may not take possession of motor vehicle collateral or goods subject to a motor vehicle consumer lease

under s. 425.206 (1) (d), unless the merchant gives, by mail, the customer a notice containing all of the following information:

1. The name, address, and telephone number of the merchant, a brief identification of the consumer credit transaction, and a brief description of the collateral or goods.

2. A statement that, as a result of the customer's default on the consumer credit transaction, the merchant may have the right to take possession of the collateral or goods without further notice or court proceeding.

3. A statement that if the customer is not in default or objects to the merchant's right to take possession of the collateral or goods, the customer may, no later than 15 days after the merchant has given the notice, demand that the merchant proceed in court by notifying the merchant in writing.

4. A statement that if the merchant proceeds in court, the customer may be required to pay court costs and attorney fees.

(b) The information required under par. (a) may be combined with any other notice, except that if the customer has a right to cure under s. 425.105, the information required under par. (a) shall be combined with the notice of right to cure under s. 425.104.

(c) A merchant is presumed to have given notice under par. (a) if the merchant sent the notice by certified or registered mail. A merchant who fails to give notice under par. (a) by certified or registered mail is subject to the penalties specified in s. 425.302 (1), but such failure does not constitute a failure to comply with s. 425.206 (1) (d).

(2) The summons in such actions shall be in the following form:

State of Wisconsin

Circuit Court

.... County

A. B. Plaintiff

v.

C. D. Defendant

SUMMONS (Small Claim)

THE STATE OF WISCONSIN

To said Defendant:

The Plaintiff named above has commenced an action to recover possession of the following property:

[Description of Collateral or Leased Goods]

This claim arises under a consumer credit transaction under which you are alleged to be in default, as described in the attached complaint.

IF YOU ARE NOT IN DEFAULT OR HAVE AN OBJECTION TO THE PLAINTIFF'S TAKING THE PROPERTY LISTED ABOVE, YOU MAY ARRANGE FOR A HEARING ON THESE ISSUES BY APPEARING IN THE CIRCUIT COURT OF .... COUNTY, IN THE COURTHOUSE LOCATED IN ...., (municipality), BEFORE JUDGE .... OR ANY OTHER JUDGE TO WHOM THE ACTION MAY BE ASSIGNED, ON .... (date), AT .... (time). IF YOU DO NOT APPEAR AT THAT TIME, JUDGMENT WILL BE RENDERED AGAINST YOU FOR DELIVERY OF THE PROPERTY TO THE PLAINTIFF.

DATED ...., ... (year)

E.F.

Clerk of Circuit Court

[or]

Plaintiff's Attorney

Plaintiff's P. O. Address

....

....

Plaintiff's Attorney (if any)

....

....

Defendant's P. O. Address

....

....

(3) The complaint in such action shall conform with the requirements of s. 425.109.

(4) Upon the written request of the customer under s. 425.109 (2), the merchant shall produce an accurate copy of writings evidencing the customer's obligation pursuant to an open–end credit plan upon which the merchant's claim is made, and default judgment shall not be entered for the merchant unless the merchant does so. The writings requirement under this subsection is satisfied if the merchant provides the customer with a copy of the billing statement referenced in s. 425.109 (1) (d) 1. addressed to the customer reflecting the total outstanding balance on the customer's account at the time this billing statement was issued. If this billing statement is attached to the complaint, then the statement under s. 425.109 (1) (h) is not required to be included in the complaint.

(5) Upon entry of judgment for the plaintiff, the plaintiff shall have the right to:

(a) Have execution issue to require the sheriff of the county where the collateral or leased goods may be to take the same from the defendant and deliver it to the plaintiff; or

(b) Immediately exercise the right to nonjudicial recovery of the collateral or leased goods, subject to s. 425.206.

(6) Action pursuant to this section may be commenced at any time after the customer is in default, but the return day of process may not be set prior to the expiration of the period for cure of the default by the customer (s. 425.105), if applicable.

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (16); 1981 c. 317; 1981 c. 391 s. 210; 1983 a. 389; 1989 a. 31; 1993 a. 246; 1997 a. 250; 2005 a. 255; 2015 a. 155.

Sub. (1g) (a) requires a creditor to give notice to the debtor that includes that the creditor may repossess the car without going to court unless the debtor demands within 15 days of the notice that the creditor proceed to court. Under s. 421.201(8), the debtor's address is established by any writing signed by the debtor in connection with the transaction and is presumed to be unchanged until the creditor knows or has reason to know of a different address. Given the debtor's failure to provide her new address to the creditor, the debtor failed to show that the creditor's notice by registered mail to the address that it had on file did not comply with this section. Molinski v. Chase Auto Finance Corp., 2013 WI App 101, 349 Wis. 2d 687, 837 N.W.2d 166, 12–2184.

Wisconsin's New Automobile Repossession Law: Creditors in the Driver's Seat. Anderson & Meili. Wis. Law. Feb. 2007.

425.206 Nonjudicial enforcement limited. (1) Notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state except when any of the following apply:

(a) The customer has surrendered the collateral or leased goods.

(b) Judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203 (2).

(c) The merchant has taken possession of collateral or leased goods pursuant to s. 425.207 (2).

(d) For motor vehicle collateral or goods subject to a motor vehicle consumer lease, the customer has not made a demand as specified in s. 425.205 (1g) (a) 3. and, no sooner than 15 days after the merchant gives the notice specified in s. 425.205 (1g) (a), the merchant has taken possession of the collateral or goods in accordance with sub. (2).

(2) In taking possession of collateral or leased goods, no merchant may do any of the following:

(a) Commit a breach of the peace.

(b) Enter a dwelling used by the customer as a residence except at the voluntary request of a customer.

(3) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1975 c. 94 s. 3; 1975 c. 407; 1979 c. 10; 1995 a. 225; 1997 a. 302; 2005 a. 255.

Under the facts of the case, the customer did not voluntarily surrender collateral under sub. (1) (a). Wachal v. Ketterhagen Motor Sales, Inc., 81 Wis. 2d 605, 260 N.W.2d 770 (1978).

Notwithstanding s. 421.201 (5), this section governed repossessions outside the state when the contract provided for enforcement under the "internal law" of Wisconsin. First Wisconsin National Bank of Madison v. Nicolaou, 85 Wis. 2d 393, 270 N.W.2d 582 (Ct. App. 1978).

A "breach of the peace" under sub. (2) has the same meaning as in s. 409.503. Repossession in disregard of the debtor's oral protest is a breach of the peace. Punitive damages may be appropriate as the result of the breach of the peace. Hollibush v. Ford Motor Co., 179 Wis. 2d 799, 508 N.W.2d 449 (Ct. App. 1993).

Repossession under an invalid judgment violates this section. Kett v. Community Credit Plan, Inc., 228 Wis. 2d 1, 596 N.W.2d 786 (1999), 97−3620.

The definition of "dwelling used by the customer as a residence" in sub. (2) (b) does not depend on whether the customer has the right to exclude others from a particular area or whether the customer has a reasonable expectation of privacy in a particular area under the 4th amendment. Dwelling generally refers to an entire building in which people live and includes a garage attached to the residential building in which the customer lives. Nothing in the language "dwelling used by the customer as a residence" suggests that the protections in sub. (2) (b) are limited to only the integral parts of a residence or the areas with indicia of residential use. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19−1365.

The modifier "used by the customer as a residence" is best understood as imposing a limitation on which dwelling sub. (2) (b) protects—the dwelling this customer uses as a residence—not what parts of the dwelling it protects. The phrase distinguishes the customer's dwelling from all other dwellings. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19−1365.

A lender, not its repossessors, falls within the definition of "merchant" under s. 421.301 (25) and is therefore covered by sub. (2) (a). In this case, it was the lender's authority to repossess the debtor's car that the repossession company was exercising. That the lender chose to authorize the repossession company to exercise the lender's right under Wisconsin law to take possession of its collateral extra−judicially does not mean the lender can avoid liability for actions taken on its behalf and at its request. Gable v. Universal Acceptance Corp. (WI), 338 F. Supp. 3d 943 (2018).

The Abolition of Self−Help Repossession: The Poor Pay Even More. White. 1973 WLR 503.

The Impact of Denying Self−Help Repossession of Automobiles: A Case Study of the Wisconsin Consumer Act. Whitford & Laufer. 1975 WLR 607.

Wisconsin's New Automobile Repossession Law: Creditors in the Driver's Seat. Anderson & Meili. Wis. Law. Feb. 2007.

425.2065 Notice to law enforcement. (1) In this section, "law enforcement agency" means the police department, combined protective services department under s. 60.553, 61.66, or 62.13 (2e), or sheriff, that has primary responsibility for providing police protection services in the city, village, or town in which a repossession is expected to occur.

(2) A merchant who repossesses motor vehicle collateral or goods subject to a motor vehicle consumer lease under s. 425.206 (1) (d), or a person who repossess such collateral or goods on behalf of the merchant, shall notify, verbally or in writing, the law enforcement agency about the repossession. The notification shall include the names of the customer, merchant, and, if applicable, the person who repossesses the collateral or goods on behalf of the merchant. The notification shall also include a description of the collateral or goods. Notification under this subsection shall be made before the repossession occurs.

(3) Failure to comply with this subsection does not constitute a failure to comply with s. 425.206 (1) (d).

History: 2005 a. 255; 2011 a. 32.

425.207 Restraining order to protect collateral or leased goods; abandoned property. (1) If the court finds that the merchant probably will recover possession of the collateral or goods subject to a consumer lease, and the customer is acting, or is about to act, with respect to the collateral or leased goods in a manner which substantially impairs the merchant's prospect for realization of the merchant's security interest or the merchant's interest in the leased goods, the court may issue an order pursuant to s. 813.02 restraining the customer from so acting with respect to the collateral or leased goods, and need not require a bond by the merchant, notwithstanding s. 813.06.

(2) A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request the merchant has perfected the right to possession under s. 425.206 (1) (a), (b), or (d). A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last−known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects the right to possession under s. 425.206 (1) (a), (b), or (d), the customer is liable for the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods shall be considered collateral under s. 409.615 (1). However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects the right to possession in the manner provided in this subsection.

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421, 422; 1979 c. 10; 1981 c. 314 s. 146; 1997 a. 302; 2001 a. 10; 2005 a. 255.

425.208 Customer's right to redeem. (1) For a period of 15 days following exercise by the creditor of nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with regard to the collateral, the customer shall be entitled to redeem the goods by tendering:

(a) The total of all unpaid amounts, including any unpaid delinquency or deferral charges due at the time of tender, without acceleration; plus

(b) Performance necessary to cure any default other than nonpayment of amounts due; plus

(c) Any court costs, filing and service fees, and bond premium charges incurred by the creditor; plus

(cm) If a writing evidencing the consumer credit transaction so provides, expenses the creditor is entitled to recover under s. 422.413 (2g) (a) and (b); plus

(d) Whichever of the following is less:

1. A performance deposit, in the amount of 3 scheduled installments, or minimum payments in the case of an open−end credit plan.

2. One−third of the total obligation remaining unpaid with respect to the consumer credit transaction.

(2) Tender of the payment and performance pursuant to sub. (1) restores to the customer the customer's rights under the agreement as though all payments and performance had been made as scheduled.

(3) Upon such redemption, any process under which the collateral has been held shall be vacated, any pending action shall be dismissed, and the collateral shall be returned to the customer.

(4) The performance deposit shall be held by the merchant to secure, and may be applied at any time to, the remaining obligations of the customer under the consumer transaction.

(5) The existence of the deposit does not cure any subsequent default of the customer, and the deposit need not be credited to the customer's account until the remaining unpaid balance of the transaction becomes equal to the deposit. In the event of a subsequent default, prepayment, or other occurrence (except deferral) which requires the computation under chs. 421 to 427 of the outstanding obligation of the customer, the deposit shall be credited to the amount paid for the purposes of such computation.

(6) The creditor shall not dispose of the collateral or enter into a contract for the disposition of the collateral, until the expiration of the period for redemption provided in this section, unless the collateral is perishable or threatens to decline speedily in value. Upon the expiration of such period any disposition of the collateral shall be subject to subch. VI of ch. 409, except that the customer may be liable for a deficiency only to the extent provided in ss. 425.209 and 425.210.

History: 1971 c. 239; 1979 c. 10, 89; 1983 a. 389; 1991 a. 316; 1997 a. 302; 1999 a. 85; 2001 a. 10.

425.209 Restrictions on deficiency judgments. (1) This section applies to a deficiency on a consumer credit sale

of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408); a customer is not liable for a deficiency unless the merchant has disposed of the goods in good faith and in a commercially reasonable manner.

(2) If the merchant repossesses or accepts voluntary surrender of goods which were the subject of the sale and in which the merchant has a security interest, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale of a commercial unit of the goods of which the amount owing at the time of default was $1,000 or less, and the merchant is not obligated to resell the collateral unless the customer has paid 60 percent or more of the cash price and has not signed after default a statement renouncing the customer's rights in the collateral.

(3) If the merchant repossesses or accepts voluntary surrender of goods which were not the subject of the sale but in which the merchant has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the amount owing at the time of default was $1,000 or less, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale, and the merchant's duty to dispose of the collateral is governed by the provisions on disposition of collateral under chs. 401 to 411.

(4) If the lender takes possession or accepts voluntary surrender of goods in which the lender has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408) and the amount owing at the time of default of the loan paid to or for the benefit of the customer were $1,000 or less, the customer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral under chs. 401 to 411.

(5) The customer may be liable in damages to the merchant if the customer has wrongfully damaged the collateral or if, after judgment for the creditor has been entered in a proceeding for recovery of collateral under s. 425.205, the customer has wrongfully failed to make the collateral available to the merchant.

(6) If the merchant elects to bring an action against the customer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408), when under this section the merchant would not be entitled to a deficiency judgment if the merchant took possession of the collateral, and obtains judgment:

(a) The merchant may not take possession of the collateral; and

(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

History: 1971 c. 239; 1973 c. 2, 3; 1991 a. 148, 304, 315, 316.

Cross–reference: See also ss. DFI–WCA 1.70 and 1.71, Wis. adm. code.

Proof of disposal of goods in accordance with sub. (1) must be made by a merchant to obtain a deficiency judgment. Failure to do so need not be asserted as an affirmative defense. Shoeder's Auto Center, Inc. v. Teschner, 166 Wis. 2d 198, 479 N.W.2d 203 (Ct. App. 1991).

Consistent with *Shoeder's Auto Center*, 166 Wis. 2d 198 (Ct. App. 1991), in order to make a prima facie case for summary judgment for a deficiency judgment, the merchant is required to present evidence demonstrating that the collateral was disposed of in a commercially reasonable manner. Gemini Capital Group, LLC v. Jones, 2017 WI App 77, 378 Wis. 2d 614, 904 N.W.2d 131, 16–2123.

425.210 Computation of deficiency. If the creditor is entitled to a deficiency judgment pursuant to s. 425.209 (1), the creditor shall be entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance.

History: 1971 c. 239.

SUBCHAPTER III

CUSTOMER'S REMEDIES

425.301 Remedies to be liberally administered. **(1)** The remedies provided by this subchapter shall be liberally administered to the end that the customer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with chs. 421 to 427. Recoveries under chs. 421 to 427 shall not in themselves preclude the award of punitive damages in appropriate cases.

(2) Any right or obligation declared by chs. 421 to 427 is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Notwithstanding any other section of chs. 421 to 427, a customer shall not be entitled to recover specific penalties provided in s. 425.302 (1) (a), 425.303 (1), 425.304 (1) or 425.305 (1) if the person violating chs. 421 to 427 shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) The liability of a merchant under chs. 421 to 427 is in lieu of and not in addition to any liability under the federal consumer credit protection act and ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation under chs. 421 to 427 may not be maintained if a final judgment has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a final judgment is entered against any merchant under chs. 421 to 427 and the federal consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.

(5) If there are multiple obligors in the same consumer credit transaction or consumer lease, there may be no more than one recovery of civil penalties for each violation of chs. 421 to 427.

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1999 a. 31; 2009 a. 405.

An error of law is not a bona fide error under sub. (3). First Wisconsin National Bank v. Nicolaou, 113 Wis. 2d 524, 335 N.W.2d 390 (1983).

Sub. (2)'s right to enforcement "by action" does not specify any right to trial. In this case, the arbitration agreement merely shifted the proceedings to a less formal, less expensive, and more expedient form. Therefore, the borrower's general attack on agreements to arbitrate, rather than litigate, failed. Cottonwood Financial, LTD v. Estes, 2012 WI App 12, 339 Wis. 2d 472, 810 N.W.2d 852, 09–0760.

425.302 Remedy and penalty for certain violations. **(1)** A person who commits a violation to which this section applies is liable to the customer in an amount equal to:

(a) Twenty–five dollars; and

(b) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

(2) This section also applies to all violations for which no other remedy is specifically provided.

History: 1971 c. 239.

425.303 Remedy and penalty for certain violations. A person who commits a violation to which this section applies is liable to the customer in an amount equal to:

(1) One hundred dollars; and

(2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1971 c. 239.

425.304 Remedy and penalty for certain violations. A person who commits a violation to which this section applies is liable to the customer in an amount equal to the greater of:

(1) Twice the amount of the finance charge in connection with the transaction, except that the liability under this subsection shall not be less than $100 nor greater than $1,000; or

(2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1971 c. 239.

The word "or" in this section makes it clear that the recovering party is not entitled to both statutory and actual damages. Kirk v. Credit Acceptance Corp., 2013 WI App 32, 346 Wis. 2d 635, 829 N.W.2d 522, 10–2573.

425.305 Transactions which are void. (1) In a transaction to which this section applies, the customer shall be entitled to retain the goods, services or money received pursuant to the transaction without obligation to pay any amount.

(2) In addition, the customer shall be entitled to recover any sums paid to the merchant pursuant to the transaction.

History: 1971 c. 239; 1973 c. 2.

425.306 Unenforceable obligations. (1) Any charge, practice, term, clause, provision, security interest or other action or conduct in violation of chs. 421 to 427, to the extent that the same is in violation of chs. 421 to 427, shall confer no rights or obligations enforceable by action.

(2) This section shall not affect the enforcement of any provision that is not prohibited by chs. 421 to 427.

History: 1971 c. 239; 1979 c. 89.

425.307 Limitation of action. (1) Any action brought by a customer to enforce rights pursuant to chs. 421 to 427 shall be commenced within one year after the date of the last violation of chs. 421 to 427, 2 years after consummation of the agreement or one year after last payment, whichever is later, except with respect to transactions pursuant to open−end credit plans which shall be commenced within 2 years after the date of the last violation; but no action may be commenced more than 6 years after the date of the last violation.

(2) Rights under chs. 421 to 427 may be asserted as a defense, setoff or counterclaim to an action against the customer without regard to this time limitation.

History: 1971 c. 239; 1979 c. 89.

Regardless of the reason the six−year limitations period was included, the language of the statute makes it clear that the six−year deadline is not a way for a plaintiff to avoid the deadlines in the first part of the statute. That part of the statute says that a lawsuit "shall be commenced" within one or two years of certain events. In other words, if the plaintiff is a customer and he cannot meet the limitations periods in the first part of the statute, the plaintiff cannot rely on the last part of the statute to extend his limitations period. McDonough v. WESTconsin Credit Union, 97 F. Supp. 3d 1040 (2015).

425.308 Reasonable attorney fees. (1) If the customer prevails in an action arising from a consumer transaction, the customer shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the customer's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorney fees.

(2) The award of attorney fees shall be in an amount sufficient to compensate attorneys representing customers in actions arising from consumer transactions. In determining the amount of the fee, the court may consider:

(a) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause;

(b) The customary charges of the bar for similar services;

(c) The amount involved in the controversy and the benefits resulting to the client or clients from the services;

(d) The contingency or the certainty of the compensation;

(e) The character of the employment, whether casual or for an established and constant client; and

(f) The amount of the costs and expenses reasonably advanced by the attorney in the prosecution or defense of the action.

History: 1971 c. 239; 1991 a. 316; 1993 a. 490.

Attorney fees awarded under this section often far exceed the amount of recovery. First Wisconsin National Bank v. Nicolaou, 113 Wis. 2d 524, 335 N.W.2d 390 (1983).

Awards of attorney fees and costs are limited to instances in which a customer has shown that a creditor has not "fully complied with chs. 421 to 427." Suburban State Bank v. Squires, 145 Wis. 2d 445, 427 N.W.2d 393 (Ct. App. 1988).

A prevailing party is one who succeeds on any significant issue and is entitled to recover fees relating to successfully litigated issues. Footville State Bank v. Harvell, 146 Wis. 2d 524, 432 N.W.2d 122 (Ct. App. 1988).

Although voluntarily dismissed, prosecution of improperly venued actions violated the consumer act, and the defendants were prevailing parties under this section entitled to attorney fees. Community Credit Plan, Inc. v. Johnson, 228 Wis. 2d 30, 596 N.W.2d 799 (1999), 97−0574.

A party moving for attorney's fees and costs under the Wisconsin Consumer Act (WCA) must show both a significant benefit in litigation and a violation of the WCA on the part of the non−moving party. When a claim for deficiency judgment was dismissed without costs and without prejudice, no violation of the WCA was shown. Credit Acceptance Corp. v. Woodard, 2012 WI App 43, 340 Wis. 2d 548, 812 N.W.2d 525, 11−0135.

425.309 Class actions. Class actions are governed by s. 426.110.

History: 1971 c. 239.

425.310 Liability of corporate officers. Damages or penalties awarded to a customer or the administrator for a violation of chs. 421 to 427 which cannot be collected from a corporation by reason of its insolvency or dissolution shall be recoverable against the principal agents of the corporation including, but not limited to, officers, managers and assistant managers who knew of, should have known of or willfully participated in such a violation, if a meaningful part of the corporation's activities were in violation of chs. 421 to 427.

History: 1971 c. 239; 1979 c. 89.

425.311 Evidence of violation. Sections 402.202 and 411.202 and any other statute restricting admissibility of parol evidence shall be inoperative to exclude or limit the admissibility of evidence of an act or practice in violation of chs. 421 to 427.

History: 1971 c. 239; 1979 c. 89; 1991 a. 148.

SUBCHAPTER IV

CRIMINAL PENALTIES

425.401 Willful violations: misdemeanor. (1) Except as provided in sub. (2), a person who willfully and knowingly engages in any conduct or practice in violation of chs. 421 to 427 may be fined not more than $2,000.

(2) A person who intentionally violates s. 425.2065 (2) may be fined not more than $500.

History: 1971 c. 239; 1979 c. 89; 2005 a. 255.