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Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
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### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

**Committee on Small Business, Emergency Preparedness, Technical Colleges,  
and Consumer Protection**

**Assembly Bill 131**

Relating to: pleading requirements for assignees of creditors under the Wisconsin Consumer Act.

By Representatives Hebl, Roys, Colon, A. Ott, Pope-Roberts, Black, Gunderson, Berceau, Townsend, Molepske Jr., Spanbauer, Fields, Hintz and Seidel; cosponsored by Senators Taylor, Lehman, Lassa and Miller.

September 24, 2009 Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

October 14, 2009 **EXECUTIVE SESSION HELD**

Present: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Absent: (0) None.

Moved by Senator Wirch, seconded by Senator Plale that **Assembly Bill 131** be recommended for concurrence.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Noes: (0) None.

CONCURRENCE RECOMMENDED, Ayes 5, Noes 0

Michael Tierney  
Committee Clerk

## MADISON OFFICE

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LEGAL ACTION  
OF WISCONSIN

40 Years of Justice

TO: Wisconsin State Assembly

FROM: Bob Andersen *Bob Andersen*

RE: **AB 131 – Clarification to Ensure that Debt Collectors Who Purchase Debts from Creditors are Required to Explain A Consumer's Debt in Their Lawsuits, as is Currently Required for Creditors and Collections Agencies.**

**Approved by the Assembly Committee on Judiciary and Ethics by a vote of 6-4. It is now ready for scheduling for floor action.**

DATE: July 28, 2009

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of the priorities of the organization.

***This is a simple bill that requires debt collectors who purchase debts from creditors to explain in their lawsuits why the debtors owe the amount of money that is claimed. This is currently required both of creditors and collection agencies. The fact that the current statute does not expressly apply to debt purchasers is an oversight. Attached is the substitute amendment.***

We agree with the suggestion of the court (Deininger) below that this would correct what was an oversight when this statute was written. Without the adoption of this amendment, a debt collector who purchases the debt does not have to inform a consumer in a complaint about a whole list of information that is vitally important (see below). There is no reason why a debt collector who purchases a debt should not have to follow the same requirements in a complaint.

The Court of Appeals (*Deininger*) said:

“Accordingly, even though we may sympathize with Michaud’s belief that our conclusion regarding the limited scope of WIS. STAT. § 425.109(1) is not in keeping with the public policy underlying the WCA, ***we are not free to rewrite the statute in the way we believe the legislature should have written it, or might have written it, had the present circumstances been brought to the legislature’s attention.***”

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*The legislature certainly could have extended the pleading requirements of WIS. STAT§ 425.109(1) to complaints filed by assignees of creditors. It might easily have done so by simply inserting “or its assignee” at the end of the prepositional phrase “by a creditor.” Rsidue v. Michaud, Appeal No. 2005AP1299 (July 13, 2006). [emphasis added]*

Consequently substitute amendment 1 to AB 131 would simply add the underlined material to the existing statute:

**425.109 Pleadings. (1)** A complaint by a creditor, its assignee, or any other person to enforce any cause of action arising from a consumer credit transaction shall include all of the following [list of information to be included in the complaint]:

*The consumer in this case complained that the debt collector did not include in the complaint “the figures necessary for the computation of the amount” due the plaintiff. The complaint just made general statements about how much the consumer owed.*

The statute, s. 425.109, is an important statute, because it contains several requirements for information that need to be included in a complaint against a consumer, including the following:

- an identification of the consumer credit transaction
- a description of the collateral or leased goods involved, if any
- a specification of the facts constituting the alleged default by the consumer
- *the actual or estimated amount that it is alleged that the consumer owes, including the figures necessary for the computation of the amount*
- a statement that the consumer has the right to redeem collateral under certain circumstances
- the amount of any deficiency that remains after collateral is sold
- if the consumer still has the right to cure, the total payments or performance that would be required by the consumer in order to cure the default
- an accurate copy of the writings evidencing the transaction

What happened in this case is that the consumer owed money for purchases on a credit card issued by Household Bank of North America. Household sold the account to Collins Financial Services, which in turn sold the account to Rsidue, who is the debt collector that brought the action against the consumer.

There is no rational reason why a debt collector who purchases a debt from a creditor would not be required to provide the same information in a complaint that would be required to be provided by the original creditor. This is simply an oversight that occurred when this statute was written – or perhaps, the drafters of this statute *thought* that assignees were automatically covered. While the court of appeals agrees that this should be the result, they were bound by the express words of the statute. So an amendment is necessary to clarify this.

Thank you for your consideration.