

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/15/2014 Received By: agary  
Wanted: As time permits Same as LRB:  
For: Mark Born (608) 266-2540 By/Representing: John Cronin  
May Contact: Drafter: agary  
Subject: Fin. Inst. - WCA Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Rep.Born@legis.wisconsin.gov  
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Pleading requirements, right to cure after default, under the consumer act

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**Instructions:**

Combining LRB-3659 and LRB-3660

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 1/16/2014	kfollett 1/16/2014		_____			
/1			rschluet 1/16/2014	_____	srose 1/16/2014	sbasford 1/24/2014	

FE Sent For:

*None needed*

<END>

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/?	agary	1/15 f 1/16	1/15 f 1/16				

FE Sent For:

<END>

# "RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: ARC) (Date: 1/16/14)

## Note:

**BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"**

*(exception: companion bills)*



 Please transfer the drafting file for  
**2011 LRB** \_\_\_\_\_ (For: Rep. / Sen. \_\_\_\_\_)

**2013 LRB** \_\_\_\_\_ to the drafting file for  
\_\_\_\_\_ (For: Rep. / Sen. \_\_\_\_\_)

----- **OR** -----

 Please copy the drafting file for  
**2013 LRB - 3660** 1P3 (include the version) (For: Rep. Born Sen. Born)

and place it in the drafting file for  
**2013 LRB - 3993** \_\_\_\_\_ (For: Rep. Born / Sen. Born)

 Are These "Companion Bills" ?? ... Yes  **No**

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: \_\_\_\_\_



State of Wisconsin  
2013 - 2014 LEGISLATURE

in 1/16  
needed  
1/17



LRB-20130008 - 3993/1  
ARG:kjf:art

RMNR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

9/10

insert 1-2

1 AN ACT to amend 425.105 (2); and to create 425.105 (3g) of the statutes;  
2 relating to: the cure of defaults on certain obligations, under the Wisconsin  
3 Consumer Act.

**Analysis by the Legislative Reference Bureau**

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan. An open-end credit plan means consumer credit extended on an account for which: the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card or other device; the customer has the choice of paying the balance in full or in installments; a finance charge may be imposed by the creditor on the outstanding unpaid balance; and the creditor has treated the transaction as open-end consumer credit for purposes of disclosures required under the federal Consumer Credit Protection Act.

insert  
ANAL - X

insert  
ANAL-B

provisions of

\* Under current law, the WCA ~~includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction.~~ A creditor's cause of action with respect to a customer's obligation in a consumer credit transaction does not accrue unless there is a default by the customer. A default occurs upon the happening of certain events, including the failure to make payments within specified times. For an open-end credit plan, default occurs with the failure to pay when due on two occasions within any 12-month period. If a merchant believes that a customer is in default, the merchant may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure the default. This notice of default must contain specified information, including identification of the creditor and the consumer credit transaction, a statement of the nature of the alleged default, and a clear statement of the total payment needed to cure the default and date by which the payment must be made.

\* (no #)

\* ~~Under current law, with limited exceptions, for 15 days after a notice of default is given to the customer, the customer may cure the default by paying the outstanding amount due, without acceleration, plus other charges owed ~~or, if the default does not arise from nonpayment, by tendering any other performance required.~~~~ The act of curing a default restores the customer's rights as though no default had occurred. Under one exception to the right to cure, a customer does not have a right to cure a default if, during the preceding 12 months, the customer twice cured defaults on the same transaction or open-end credit plan. Unless a merchant believes a customer is in default and, if the customer has a right to cure the default, at least 15 days have elapsed since the merchant gave the customer notice of the default, the merchant may not do any of the following: ~~accelerate the maturity of a consumer credit transaction; with a limited exception, commence any action; or demand or take possession of collateral unless it is voluntarily surrendered.~~

This bill creates an exception to the general 15-day cure period for defaults on obligations arising from consumer credit transactions. Under the bill, there is no right to cure a default with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank. For these transactions, a cause of action against the customer continues to accrue only upon default by the customer, but there is no requirement that the merchant provide the customer a 15-day opportunity to cure the default before the merchant accelerates the maturity of the consumer credit transaction, commences an action, or demands or takes possession of collateral.

insert  
2-1

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

- 1 SECTION 1. 425.105 (2) of the statutes is amended to read:
- 2 425.105 (2) Except as provided in subs. (3) ~~and~~ to (3m), for 15 days after such
- 3 notice is given, a customer may cure a default under a consumer credit transaction

1 by tendering the amount of all unpaid installments due at the time of the tender,  
2 without acceleration, plus any unpaid delinquency or deferral charges, and by  
3 tendering performance necessary to cure any default other than nonpayment of  
4 amounts due. The act of curing a default restores to the customer the customer's  
5 rights under the agreement as though no default had occurred.

6 **SECTION 2.** 425.105 (3g) of the statutes is created to read:

7 425.105 (3g) A right to cure shall not exist with respect to a consumer credit  
8 transaction pursuant to an open-end credit plan involving a credit card issued by a  
9 national bank.

10

(END)

77  
insert 3-9

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(Request Made By: ARC) (Date: 1/16/14)

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**2011 LRB** \_\_\_\_\_ (For: Rep. / Sen. \_\_\_\_\_)

to the drafting file for  
**2013 LRB** \_\_\_\_\_ (For: Rep. / Sen. \_\_\_\_\_)

-----OR-----

Please copy the drafting file for  
**2013 LRB - 3659 1P3** (include the version) (For:  Rep. / Sen. Barn)

and place it in the drafting file for  
**2013 LRB - 3993** (For:  Rep. / Sen. Barn)

 Are These "Companion Bills" ?? ... Yes  No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: \_\_\_\_\_



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*INSERTS*

*insert 1-2*

1 **AN ACT to renumber and amend** 425.109 (1) (d); **to amend** 425.109 (1) (intro.),  
 2 425.109 (1) (b), 425.109 (1) (f), 425.109 (1) (h), 425.109 (2), 425.109 (3) and  
 3 425.205 (4); and **to create** 425.1025, 425.109 (1) (d) 2. and 425.109 (4) of the  
 4 statutes; **relating to:** pleading requirements, *and* under the Wisconsin Consumer  
 5 **Act.**

***Analysis by the Legislative Reference Bureau***

*insert ANAL-A*

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit and expressly includes such a creditor's or seller's assignee or successor. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan (usually involving use of a credit card).

insert  
ANAL-B

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction, including pleading requirements for a complaint filed by a creditor to enforce these rights. Among the information that must be included in such a complaint, the creditor must: identify the consumer credit transaction; describe any collateral sought to be recovered; specify the facts constituting the customer's alleged default; identify the actual or estimated amount of money that the creditor is entitled to recover and the figures necessary for computation of this amount; and include an accurate copy of the writings evidencing the transaction except that, for a claim arising under an open-end credit plan, the creditor may substitute a statement that the creditor will, upon request, provide copies of the writings evidencing the customer's obligation. A judgment may not be entered on a complaint that fails to comply with these pleading requirements. For a claim arising under an open-end credit plan, on written request by the customer, the creditor must submit accurate copies to the customer and the court of writings evidencing any transaction on which the claim is made and judgment may not be entered for the creditor unless the creditor does so.

This bill modifies the pleading requirements in WCA cases. First, under the bill, these pleading requirements apply to a merchant, rather than a creditor. As defined under current law, a merchant expressly includes an assignee of or successor to a creditor or seller on credit. Second, the bill changes the manner in which a merchant is required to plead the amount owed by the customer. Under the bill, the merchant must identify the actual or estimated amount of money alleged to be due to the merchant on a date certain after the customer's default, and include a breakdown of all charges, interest, and payments occurring after this date certain. If the claim arises under an open-end credit plan, the amount alleged to be due on a date certain must be reflected in a billing statement addressed to the customer. Third, the bill specifies that, for a claim arising under an open-end credit plan in which the merchant has not attached to the complaint copies of the writings evidencing the customer's obligation and the customer has requested these copies, the merchant's obligation to provide these copies is satisfied if the merchant provides the customer and court with a copy of the last billing statement addressed to the customer reflecting the total outstanding balance on the customer's account at the time this billing statement was issued. The merchant may also satisfy its obligation by attaching copies of this billing statement to the complaint. Fourth, under the bill, the merchant's failure to comply with these requirements related to pleading and providing copies precludes entry of default judgment, rather than judgment, for the merchant. Fifth, under the bill, a complaint that fails to comply with these pleading requirements is not a violation that gives rise to a penalty, civil liability, or an award of attorney fees under the WCA unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

insert  
2-1

1

SECTION 1. 425.1025 of the statutes is created to read:

2

**425.1025 Definition.** In this subchapter, "billing statement" means a

3

statement issued pursuant to 15 USC 1637 (b).

4

SECTION 2. 425.109 (1) (intro.) of the statutes is amended to read:

5

425.109 (1) (intro.) A complaint by a ~~creditor~~ merchant to enforce any cause of

6

action arising from a consumer credit transaction shall include all of the following:

7

SECTION 3. 425.109 (1) (b) of the statutes is amended to read:

8

425.109 (1) (b) A description of the collateral or leased goods, if any, which the

9

~~creditor~~ merchant seeks to recover or has recovered.

insert  
3-9

10

SECTION 4. 425.109 (1) (d) of the statutes is renumbered 425.109 (1) (d) 1. and

11

amended to read:

12

425.109 (1) (d) 1. The If the consumer credit transaction is pursuant to an

13

open-end credit plan, the actual or estimated amount of U.S. dollars or of a named

14

foreign currency that the creditor alleges he or she is entitled to recover and the

15

figures necessary for computation of the amount, including any amount received

16

from the sale of any collateral alleged to be due to the merchant on a date certain after

17

the customer's default, as reflected on a billing statement addressed to the customer,

18

and a breakdown of all charges, interest, and payments, including any amount

19

received from the sale of any collateral, occurring after this date certain. This

20

paragraph does not require a specific itemization, but the breakdown shall identify

21

separately the amount due on a date certain, the total of all charges occurring after

22

this date certain, the total of all interest occurring after this date certain, and the

23

total of all payments occurring after this date certain.

24

SECTION 5. 425.109 (1) (d) 2. of the statutes is created to read:

insert 3-9 cont'

1 425.109 (1) (d) 2. If the consumer credit transaction is other than one pursuant  
 2 to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a  
 3 named foreign currency alleged to be due to the merchant on a date certain after the  
 4 customer's default, and a breakdown of all charges, interest, and payments,  
 5 including any amount received from the sale of any collateral, occurring after this  
 6 date certain. This paragraph does not require a specific itemization, but the  
 7 breakdown shall identify separately the amount due on a date certain, the total of  
 8 all charges occurring after this date certain, the total of all interest occurring after  
 9 this date certain, and the total of all payments occurring after this date certain.

10 SECTION 6. 425.109 (1) (f) of the statutes is amended to read:

11 425.109 (1) (f) Except in an action to recover goods subject to a consumer lease,  
 12 the estimated amount of U.S. dollars or of a named foreign currency of any deficiency  
 13 claim which may be available to the ~~creditor~~ merchant following the disposition of  
 14 any collateral recovered subject to the limitations of s. 425.209 or which the ~~creditor~~  
 15 merchant seeks to recover and which the ~~creditor~~ merchant intends to assert subject  
 16 to the limitations of s. 425.210 if the customer fails to redeem the collateral.

17 SECTION 7. 425.109 (1) (h) of the statutes is amended to read:

18 425.109 (1) (h) ~~An~~ Subject to sub. (2) and s. 425.205 (4), an accurate copy of the  
 19 writings, if any, evidencing the transaction, except that with respect to claims arising  
 20 under open-end credit plans, a statement that the ~~creditor~~ merchant will submit  
 21 accurate copies of the writings evidencing the customer's obligation to the court and  
 22 the customer upon receipt of the customer's written request therefor on or before the  
 23 return date or the date on which the customer's answer is due.

24 SECTION 8. 425.109 (2) of the statutes is amended to read:

insert 3-9 cont'd

1           425.109 (2) Upon the written request of the customer under sub. (1) (h), the  
 2 ~~creditor merchant~~ shall submit accurate copies to the court and the customer of  
 3 writings evidencing ~~any transaction~~ the customer's obligation pursuant to an  
 4 open-end credit plan upon which the ~~creditor's~~ merchant's claim is made and default  
 5 judgment may not be entered for the ~~creditor merchant~~ unless the ~~creditor merchant~~  
 6 does so. The writings requirement under this subsection is satisfied if the merchant  
 7 provides the customer with a copy of the last billing statement addressed to the  
 8 customer reflecting the total outstanding balance on the customer's account at the  
 9 time this billing statement was issued. If this billing statement is attached to the  
 10 complaint, then the statement under sub. (1) (h) is not required to be included in the  
 11 complaint.

12           **SECTION 9.** 425.109 (3) of the statutes is amended to read:

13           425.109 (3) A default judgment may not be entered upon a complaint which  
 14 fails to comply with this section.

15           **SECTION 10.** 425.109 (4) of the statutes is created to read:

16           425.109 (4) For purposes of subchs. III and IV, a complaint that fails to comply  
 17 with this section does not constitute a violation of chs. 421 to 427, and shall not give  
 18 rise to recovery of attorney fees under s. 425.308, unless the customer establishes by  
 19 a preponderance of the evidence that the failure to comply was willful or intentional.

20           **SECTION 11.** 425.205 (4) of the statutes is amended to read:

21           425.205 (4) Upon the written request of the customer under s. 425.109 (2), the  
 22 merchant shall produce an accurate copy of writings evidencing ~~any transactions~~ the  
 23 customer's obligation pursuant to an open-end credit plan upon which the  
 24 merchant's claim is made, and default judgment shall not be entered for the  
 25 merchant ~~until~~ unless the merchant does so. The writings requirement under this

1 subsection is satisfied if the merchant provides the customer with a copy of the last  
 2 billing statement addressed to the customer reflecting the total outstanding balance  
 3 on the customer's account at the time this billing statement was issued. If this billing  
 4 statement is attached to the complaint, then the statement under s. 425.109 (1) (h)  
 5 is not required to be included in the complaint.

**SECTION 12. Initial applicability.**

6  
 7 (1) This act first applies to complaints filed on the effective date of this  
 8 subsection.

**SECTION 13. Effective date.**

9  
 10 (1) This act takes effect on the first day of the 4th month beginning after  
 11 publication.  
 12

(END)

insert 3-9  
cont'd

change  
component  
change  
component

The treatment of sections 425.1025,  
 425.109 (1) (intro.), (b), (d) 2., (f) and (h),  
 (2), (3), and (4) and 425.205 (4) of  
 the statutes and the renumbering and  
 amendment of section 425.109 (1) (d) of  
 the statutes, and the creation of  
 section 425.109 (1) (d) 2. of the  
 statutes

**Parisi, Lori**

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**From:** Cronin, John  
**Sent:** Thursday, January 23, 2014 4:15 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3993/1 Topic: Pleading requirements, right to cure after default, under the consumer act

Please Jacket LRB -3993/1 for the ASSEMBLY.