

**2013 DRAFTING REQUEST**

**Bill**

Received: 12/5/2013 Received By: agary  
Wanted: As time permits Same as LRB:  
For: Gordon Hintz (608) 266-2254 By/Representing: Cecely Castillo  
May Contact: Drafter: agary  
Subject: Fin. Inst. - WCA Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Rep.Hintz@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:**

Wisconsin consumer act changes relating to debt collection, pleading requirements, and jury trials

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**Instructions:**

See attached

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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 1/29/2014			_____			
/P1	agary 2/19/2014	csicilia 2/6/2014	jfrantze 2/6/2014	_____	sbasford 2/6/2014		
/1		csicilia 2/20/2014		_____	mbarman 2/20/2014	mbarman 2/20/2014	

FE Sent For:

↳ Not  
Needed

<END>

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/P1		csicilia 2/6/2014	jfrantze 2/6/2014	_____	sbasford 2/6/2014		

FE Sent For:

1/15 2/20  
14

<END>

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See attached

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1/?	agary	Pligs 2/6 11	Jb	RS 2/6			

FE Sent For:

<END>

## Gary, Aaron

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**From:** Castillo, Cecely  
**Sent:** Thursday, December 05, 2013 12:11 PM  
**To:** Gary, Aaron  
**Subject:** Rep. Hintz drafting request  
**Attachments:** 10-31-13 Changes to WCA & debt collection.docx

Aaron,

Attached is a memo that was drafted by students at the Wisconsin Consumer Protection law clinic. We asked them to lay out their recommended changes regarding debt collection under the WCA. Rep. Hintz would like to have a bill drafted that would make these changes.

Please let us know if you have any questions.

Thank you,

**Cecely Castillo**

Office of Rep. Gordon Hintz

54th Assembly District

608-266-2254

[cecely.castillo@legis.wisconsin.gov](mailto:cecely.castillo@legis.wisconsin.gov)

*P draft*

To: Representative Gordon Hintz  
From: Sarah Orr, Steve Curry, Alex Lewein, Consumer Law Clinic  
Date: November 4, 2013

RE: Suggested Changes to Wisconsin Consumer Act

I. Overall Changes to WCA

A. Provide statutory right to jury trial in claims arising under Wisconsin Consumer Act (§§421 - 429).

Currently there is no guarantee for a jury trial. Different courts rule different ways, and this uncertainty results in the loss of thousands of dollars fighting over this issue. This bill should settle the argument to say there is a right to a jury trial.

B. Higher statutory damages - right now, even when a consumer wins a case against the most abusive debt collection harassment practices, there is a cap of \$1,000 in statutory damages. This hardly serves as a disincentive to debt collection agencies or lenders. To account for inflation since 1971, when the WCA was originally passed, maximum statutory damages should be \$5,591. The statutory damages should be amended to reflect inflation. Going forward, statutory damages should be adjusted to keep pace with future inflation.

A different way to achieve this goal could be to allow statutory damages related to each type of conduct set forth in the statute. Right now, judges often only apply the statutory damage once, even if there are multiple violations.

C. Wis. Stat. § 425.109

Pleadings requirements should include debt collectors.

II. Changes to Debt Collection Wis. Stat. § 427

A. A debt collector may only provide the following information on the exterior of the envelope in written communication to debtors: reference to debtor by name, address and telephone number; reference to debt collector by address and business name if such name does not indicate that it is in the debt collections business.

B. Prohibit debt collectors from communicating through postcards.

C. Require lenders and creditors to collect certain information, give it to consumers on demand, and pass on the following records to debt buyers.

D. Incorporate the following into the statute:

1. No person shall attempt to collect on a consumer debt without obtaining reasonable verification that the debtor owes the debt in the amount claimed, which shall include:
  - a. Complete, authenticated documentation that the person attempting collection is the owner of the specific debt instrument or account at issue; and
  - b. Reasonable verification of the debtor's liability and the amount of the debt allegedly owed by the debtor. For purposes of this subparagraph, reasonable verification shall include:
    - (i) documentation of the name of the original creditor;
    - (ii) the name, last address, date of birth and last four digits of the Social Security Number of the debtor as it appeared on the original creditor's records;
    - (iii) the debtor's last account number with the original creditor;
    - (iv) the date that the debt was incurred, and the date and amount of the last payment by the consumer toward the debt; in the case of credit, the date that the debt was incurred shall be the last extension made for the purchase of goods or services, for the lease of goods, or as a loan of money;
    - (v) a copy of the signed contract, signed application, or other documents that provides evidence of the consumer's liability and the terms thereof; and
    - (vi) an itemized accounting of the amount claimed to be owed, including the amount of the principal; the amount of any interest, fees or charges; and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt. If the debt arises from a credit card, the account shall include copies of the last twenty four periodic statements required by the Truth in Lending Act, 15 U.S.C. § 1637(b), that evidence the transactions, purchases, fees and charges that comprise the debt.
2. Copies of actual business records containing the above documentation shall be provided to the consumer, upon request, within [30] days of such request.
3. Any seller of a consumer debt, whether the original creditor or a debt buyer, shall provide the following to the buyer or assignee when selling the debt:
  - a. the documentation listed in subsection (a); and
  - b. (a statement disclosing:
    - (i) whether the consumer has disputed or asserted any defenses to any portion of the debt, and notes or recordings of all related communications;
    - (ii) any validation, or lack thereof, that the seller has provided the consumer pursuant to the federal Fair Debt Collection Practices Act[and if applicable, any state or local debt collection practices

act], or has received from the original creditor or previous seller in response to a dispute or request for validation by the consumer;

- (iii) whether any settlement has been reached concerning any portion of the debt;
- (iv) whether the debt is within the statute of limitations
- (v) whether the consumer is or has been represented by an attorney and the attorney's contact information;
- (vi) whether the consumer has informed the collector that a time or place is inconvenient to the consumer for communication;
- (vii) whether the debt has been discharged or listed in bankruptcy;
- (viii) any illness or disability claimed by the consumer or known to the seller of the debt;
- (ix) whether the consumer has a disability, is over age 62, or is a limited English speaker;
- (x) whether the consumer is or has been a service member at any time since the formation of the contract; or
- (xi) whether the consumer is known to receive income that is exempt from garnishment or attachment.



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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SAW

Ger Cat

1 AN ACT ~~/~~...; relating to: litigation procedure, and debt collection, under the  
2 Wisconsin Consumer Act.

*Analysis by the Legislative Reference Bureau*

**ADD INSERT ANAL-A  
ADD INSERT ANAL-B**

(no ¶) The bill also provides that an aggrieved party is entitled to request a jury trial in any action to enforce a right or obligation under the WCA.

Under current law, provisions of the WCA also regulate debt collectors and debt collection practices in connection with the collection of obligations arising from consumer transactions. A consumer transaction is a transaction in which one or more of the parties is a customer for purposes of that transaction. A debt collector is defined as any person engaging, directly or indirectly, in debt collection. Debt collection is defined as any action, conduct, or practice of soliciting claims for collection or collecting claims alleged to be owed or due a merchant by a customer. A claim is defined as any obligation or alleged obligation arising from a consumer transaction.

Under current law, the WCA prohibits certain practices in connection with debt collection. In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction where there is an agreement to defer payment, a debt collector may not, among other things: 1) use or threaten force or

✓ violence; 2) threaten criminal prosecution; 3) disclose or threaten to disclose false  
 ✓ information about the customer's credit worthiness; 4) with exceptions,  
 ✓ communicate with the customer's employer; 5) disclose or threaten to disclose  
 ✓ information affecting the customer's reputation, except to a person who has a  
 ✓ legitimate business need for it; 6) engage in threatening or harassing conduct, which  
 ✓ may include communications with such frequency or at such unusual hours as to be  
 ✓ expected to threaten or harass the customer; 7) use obscene or threatening language; ✓  
 ✓ or 8) use a communication which simulates legal or judicial process or which gives  
 ✓ the appearance of being authorized by a government agency. A person who is injured  
 ✓ by a violation of any of these prohibitions may recover actual damages, including for  
 ✓ emotional distress or mental anguish, and a penalty ranging from \$100 to \$1,000.

\* This bill adds to this list of prohibited practices by a debt collector and also  
 imposes certain requirements on a debt collector. Under the bill, a debt collector may  
 not communicate with a customer through a postcard or, in written communications  
 to the customer, place information on the exterior of an envelope except the  
 customer's name, address, and telephone number, the debt collector's address, and,  
 if the debt collector's business name does not indicate that it is in the debt collection  
 business, its business name. In addition, a debt collector may not attempt to collect  
 on the debt without obtaining reasonable verification that the customer owes the  
 debt in the amount claimed. Under the bill, reasonable verification must include  
 obtaining certain business records or business records that contain certain  
 information. These business records must include complete, authenticated  
 documentation that the debt collector, or person on whose behalf the debt collector  
 is acting, is the owner of the specific debt instrument or account at issue. These  
 business records must also contain the date that the debt was incurred, the date and  
 amount of the last payment by the customer, and an itemized accounting of the  
 amount claimed to be owed, including, if the debt arises from a credit card, copies of  
 the last 24 periodic statements on the account. Upon request by the customer, a debt  
 collector must provide to the customer, within 30 days of the request, copies of all of  
 these business records that the debt collector is required to obtain. The bill also  
 requires any person who sells or assigns a debt or claim to provide to the buyer or  
 assignee, at the time of the sale or assignment, specified documentation and a  
 statement disclosing specified information.

Under the bill, a person who is injured by a violation of any of the prohibitions  
 related to debt collection may recover, in addition to actual damages, a penalty of  
 \$5,590, which amount is adjusted for inflation every two years.

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

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**ADD INSERT TEXT A**

1 SECTION 1. 425.301 (title) of the statutes is amended to read:

2 425.301 (title) Remedies to be liberally administered; jury trials.

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

3 SECTION 2. 425.301 (2) of the statutes is amended to read:

4 425.301 (2) Any right or obligation declared by chs. 421 to 427 is enforceable  
5 by action unless the provision declaring it specifies a different and limited effect. In  
6 any action to enforce any right or obligation under chs. 421 to 427, the aggrieved  
7 party shall be entitled to a trial by jury upon timely request.

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

8 SECTION 3. 427.104 (1) (n) and (o) of the statutes are created to read:

9 427.104 (1) (n) In any written communication to the customer, place any  
10 information on the exterior of the envelope except the following:

- 11 1. The customer's name, address, and telephone number.
- 12 2. The debt collector's address and its business name if this name does not  
13 indicate that it is in the debt collection business.

14 (o) Communicate with a customer through a postcard.

Handwritten note: (4) and (5)

Handwritten note: are

15 SECTION 4. 427.104 (3) of the statutes is created to read:

16 427.104 (3) (a) In attempting to collect an alleged debt arising from a consumer  
17 credit transaction or other consumer transaction, including a transaction primarily  
18 for an agricultural purpose, where there is an agreement to defer payment, a debt  
19 collector may not attempt to collect on the debt without obtaining reasonable  
20 verification that the customer owes the debt in the amount claimed.

Handwritten circled number: 3

21 (b) For purposes of par. (a), reasonable verification shall include obtaining  
22 business records that constitute or contain all of the following:

1           1. Complete, authenticated documentation that the debt collector, or person on  
2 whose behalf the debt collector is acting, is the owner of the specific debt instrument  
3 or account at issue.

4           2. The name of the original merchant.

5           3. The name, last known address, date of birth, and last four digits of the social  
6 security number of the customer as it appeared on the original merchant's records.

7           4. The customer's last account number with the original merchant.

8           5. The date that the debt was incurred, and the date and amount of the last  
9 payment by the customer toward the debt. For purposes of this subdivision, in the  
10 case of credit, the date that the debt was incurred shall be the last extension made  
11 for the purchase of goods or services, for the lease of goods, or as a loan of money.

12           6. A copy of the signed contract, signed application, or other documents that  
13 provide evidence of the customer's obligation and the terms of the customer's  
14 obligation.

15           7. An itemized accounting of the amount claimed to be owed, including the  
16 amount of the principal; the amount of any interest, fees, or charges; and whether  
17 the charges were imposed by the original merchant, a debt collector, or a subsequent  
18 owner of the debt. If the debt arises from a credit card, the account shall include  
19 copies of the last 24 periodic statements required by the federal Truth in Lending Act,  
20 15 USC 1637 (b), that evidence the transactions, purchases, fees, and charges that  
21 comprise the debt. ✓

22           (2) Upon request by the customer, a debt collector shall provide to the customer,  
23 within 30 days of the request, copies of business records described in sub. (1) (b). e 3

24           (3) Any person who sells or assigns a debt or claim shall provide to the buyer  
25 or assignee, at the time of the sale or assignment, all of the following:

insert 5-1

(a) The documentation identified in sub. (b) 1.

(b) A statement disclosing all of the following:

1. Whether the customer has disputed or asserted any defenses to any portion of the debt or claim, and notes or recordings of all related communications.

2. Any validation, or lack of validation, that the seller or assignor has provided the customer under section 809 of the federal Fair Debt Collection Practices Act, 15 USC 809, or has received from the original merchant or previous seller or assignor in response to a dispute or request for validation by the customer.

3. Whether any settlement has been reached concerning any portion of the debt or claim.

4. Whether the debt or claim is within the statute of limitations.

5. Whether the customer is or has been represented by an attorney and, if so, the attorney's contact information.

6. Whether the customer has informed a debt collector that a time or place is inconvenient to the customer for communication.

7. Whether the debt or claim has been discharged or listed in bankruptcy.

8. Any illness or disability claimed by the customer or known to the seller or assignor of the debt or claim.

9. Whether the customer has a disability, is over the age of 62, or has limited English language ability.

10. Whether the customer is or has been a service member at any time since the debt was incurred or claim arose.

11. Whether the customer is known to receive income that is exempt from garnishment or attachment.

SECTION 5. 427.105 (1) of the statutes is amended to read:

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section 809 of

16929

1           427.105 (1) A person injured by violation of this chapter may recover actual  
2 damages and the penalty provided in ~~s. 425.304 sub. (1m)~~; but notwithstanding any  
3 other law actual damages shall include damages caused by emotional distress or  
4 mental anguish with or without accompanying physical injury proximately caused  
5 by a violation of this chapter.

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

6           **SECTION 6.** 427.105 (1m) of the statutes is created to read:

7           427.105 (1m) (a) A person who commits a violation of this chapter is liable to  
8 the customer in the amount of \$5,590, as adjusted under par. (b).

9           (b) 1. In this paragraph, "consumer price index" means the U.S. consumer price  
10 index for all urban consumers, U.S. city average, as determined by the U.S.  
11 department of labor.

12           2. On July 1 of each even-numbered year, beginning on July 1, 2016, the  
13 administrator shall make a calculation of the percentage difference between the  
14 consumer price index for the 12-month period ending on December 31 of the  
15 preceding year and the consumer price index for the 12-month period ending on  
16 December 31 of the year that is 2 years before the preceding year and, if this  
17 percentage difference is a positive number, shall make a calculation of the dollar  
18 amount specified under par. (a) as adjusted by this percentage difference, rounded  
19 to the nearest multiple of \$10. The administrator shall notify the legislative  
20 reference bureau of these calculated amounts, and the legislative reference bureau  
21 shall publish these calculated amounts in the Wisconsin administrative register  
22 under s. 35.93. If the calculated percentage difference is a positive number, then on

23           the effective date of the Wisconsin administrative register, the amount under par. (a)  
24 is adjusted to reflect the calculated adjusted amount, as published.

insert 6-23

1           **SECTION 7. Initial applicability.** ✓

2           (1) The treatment of sections 425.109 (1) (intro.), (b), (d), (f), and (h) and (2) and  
3           425.301 (2) of the statutes first applies to actions commenced on the effective date ✓  
4           of this subsection.

5           (2) The treatment of section 427.105 (1) and (1m) of the statutes first applies  
6           to violations committed on the effective date of this subsection. ✓

(END)

7 →  
insert  
7-6



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB/3993/1  
ARG:kjf&jld:rs

2013 BILL

INSERTS

1 AN ACT to renumber and amend 425.109 (1) (d); to amend 425.105 (2), 425.109  
2 (1) (intro.), 425.109 (1) (b), 425.109 (1) (f), 425.109 (1) (h), 425.109 (2), 425.109  
3 (3) and 425.205 (4); and to create 425.1025, 425.105 (3g), 425.109 (1) (d) 2. and  
4 425.109 (4) of the statutes; relating to: pleading requirements, and the cure  
5 of defaults on certain obligations, under the Wisconsin 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 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. An open-end credit plan means consumer credit extended on an account for which: the creditor may permit

insert ANAL-A

(usually involving use of a credit card).

only with respect to debt collections for agricultural purposes



**BILL**

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.

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

insert  
ANAL-  
cont. of A



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB 3363/1  
ARC:jld:jf

**2011 ASSEMBLY BILL 442**

*INSERTS*

December 23, 2011 - Introduced by Representatives HEBL, BEWLEY, C. TAYLOR, SPANBAUER, ZAMARRIPA, WYNN, RINGHAND, HINTZ, GRIGSBY, SINICKI and ROYS, cosponsored by Senators TAYLOR, LASSA, RISSER and S. COGGS. Referred to Committee on Financial Institutions.

1 AN ACT ~~to amend~~ 425.109 (1) (intro.), (b), (d), (f) and (h) and (2) of the statutes;  
2 relating to: pleading requirements for assignees of creditors under the  
3 Wisconsin 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). The WCA includes requirements for a creditor to satisfy to enforce rights arising from a consumer credit transaction that is subject to the WCA, including pleading requirements for a complaint filed by a creditor to enforce such rights. In *Rsidue, L.L.C. v. Michaud*, 2006 WI App 164, 295 Wis. 2d 585, 721 N.W. 2d 718, the Wisconsin Court of Appeals held that, because the WCA does not refer to an assignee of a creditor, the pleading requirements do not apply to an assignee. This bill amends the WCA to specify that the pleading requirements do apply to an assignee of a creditor.~~

*insert ANAL-B*

*7*

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

SECTION 1. 425.109 (1) (intro.), (b), (d), (f) and (h) and (2) of the statutes are amended to read:

*insert text A*

ASSEMBLY BILL 442

SECTION 1

1           425.109 (1) (intro.) A complaint by a creditor or its assignee to enforce any  
 2 cause of action arising from a consumer credit transaction shall include all of the  
 3 following:

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

6           (d) The actual or estimated amount of U.S. dollars or of a named foreign  
 7 currency that the creditor or assignee alleges he or she is entitled to recover and the  
 8 figures necessary for computation of the amount, including any amount received  
 9 from the sale of any collateral.

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

16           (h) An accurate copy of the writings, if any, evidencing the transaction, except  
 17 that with respect to claims arising under open-end credit plans, a statement that the  
 18 creditor or assignee will submit accurate copies of the writings evidencing the  
 19 customer's obligation to the court and the customer upon receipt of the customer's  
 20 written request therefor on or before the return date or the date on which the  
 21 customer's answer is due.

22           (2) Upon the written request of the customer, the creditor or its assignee shall  
 23 submit accurate copies to the court and the customer of writings evidencing any  
 24 transaction pursuant to an open-end credit plan upon which the creditor's claim, or

insert  
 text  
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ASSEMBLY BILL 442

INSR  
text  
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cont'd

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the claim of the creditor's assignee, is made and judgment may not be entered for the creditor or assignee unless the creditor or assignee does so.

(END)

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3775/P1ins  
ARG:.....

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**INSERT 5-1:**

(n) (4) Complete, authenticated documentation that the person is the owner of the debt instrument, account, or claim at issue.

**INSERT 6-23:**

⑨ (no 4) date of publication, as defined in s. 207.22 (1),

**INSERT 7-6:**

(3) The treatment of section 427.104 (5) of the statutes first applies to debts or claims sold or assigned on the effective date of this subsection.

**SECTION 1. Effective date.**

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

these need to be auto numbers not hand numbers

## Gary, Aaron

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**From:** Castillo, Cecely  
**Sent:** Wednesday, February 19, 2014 3:12 PM  
**To:** Gary, Aaron  
**Subject:** Rep. Hintz drafts

Rep. Hintz is ready to introduce 3 bills that we had you draft the preliminary drafts for:

- LRB 3775
- ~~LRB 3988~~
- ~~LRB 3999~~

### Cecely Castillo

Office of Rep. Gordon Hintz  
54th Assembly District  
608-266-2254

[cecely.castillo@legis.wisconsin.gov](mailto:cecely.castillo@legis.wisconsin.gov)



in  
2/19  
wanted  
2/20  
LRB-377507 /  
ARG:cjs:jf  
RCRTR  
stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

St. v. Consumer

Gov. Cat

No change

1 AN ACT ~~to amend~~ 425.109 (1) (intro.), (b), (d), (f) and (h) and (2), 425.301 (title),  
2 425.301 (2) and 427.105 (1); and **to create** 427.104 (1) (n) and (o), 427.104 (3),  
3 (4) and (5) and 427.105 (1m) of the statutes; **relating to:** litigation procedure,  
4 and debt collection, under the Wisconsin 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 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 or, with respect to debt collection, for agricultural 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).

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.

In *Rsidue, L.L.C. v. Michaud*, 2006 WI App 164, 295 Wis. 2d 585, 721 N.W. 2d 718, the Wisconsin Court of Appeals held that, because the WCA does not refer to an assignee of a creditor, these pleading requirements do not apply to an assignee.

This bill amends the WCA to specify that these pleading requirements do apply to an assignee of a creditor. The bill also provides that an aggrieved party is entitled to request a jury trial in any action to enforce a right or obligation under the WCA.

Under current law, provisions of the WCA also regulate debt collectors and debt collection practices in connection with the collection of obligations arising from consumer transactions. A consumer transaction is a transaction in which one or more of the parties is a customer for purposes of that transaction. A debt collector is defined as any person engaging, directly or indirectly, in debt collection. Debt collection is defined as any action, conduct, or practice of soliciting claims for collection or collecting claims alleged to be owed or due a merchant by a customer. A claim is defined as any obligation or alleged obligation arising from a consumer transaction.

Under current law, the WCA prohibits certain practices in connection with debt collection. In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction where there is an agreement to defer payment, a debt collector may not, among other things: 1) use or threaten force or violence; 2) threaten criminal prosecution; 3) disclose or threaten to disclose false information about the customer's credit worthiness; 4) with exceptions, communicate with the customer's employer; 5) disclose or threaten to disclose information affecting the customer's reputation, except to a person who has a legitimate business need for it; 6) engage in threatening or harassing conduct, which may include communications with such frequency or at such unusual hours as to be expected to threaten or harass the customer; 7) use obscene or threatening language; or 8) use a communication which simulates legal or judicial process or which gives the appearance of being authorized by a government agency. A person who is injured by a violation of any of these prohibitions may recover actual damages, including for emotional distress or mental anguish, and a penalty ranging from \$100 to \$1,000.

This bill adds to this list of prohibited practices by a debt collector and also imposes certain requirements on a debt collector. Under the bill, a debt collector may not communicate with a customer through a postcard or, in written communications to the customer, place information on the exterior of an envelope except the

customer's name, address, and telephone number, the debt collector's address, and, if the debt collector's business name does not indicate that it is in the debt collection business, its business name. In addition, a debt collector may not attempt to collect the debt without obtaining reasonable verification that the customer owes the debt in the amount claimed. Under the bill, reasonable verification must include obtaining certain business records or business records that contain certain information. These business records must include complete, authenticated documentation that the debt collector, or person on whose behalf the debt collector is acting, is the owner of the specific debt instrument or account at issue. These business records must also contain the date that the debt was incurred, the date and amount of the last payment by the customer, and an itemized accounting of the amount claimed to be owed, including, if the debt arises from a credit card, copies of the last 24 periodic statements on the account. Upon request by the customer, a debt collector must provide to the customer, within 30 days of the request, copies of all of these business records that the debt collector is required to obtain. The bill also requires any person who sells or assigns a debt or claim to provide to the buyer or assignee, at the time of the sale or assignment, specified documentation and a statement disclosing specified information.

Under the bill, a person who is injured by a violation of any of the prohibitions related to debt collection may recover, in addition to actual damages, a penalty of \$5,590, which amount is adjusted for inflation every two years.

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

1           **SECTION 1.** 425.109 (1) (intro.), (b), (d), (f) and (h) and (2) of the statutes are  
2 amended to read:

3           **425.109 (1) (intro.)** A complaint by a creditor or its assignee to enforce any  
4 cause of action arising from a consumer credit transaction shall include all of the  
5 following:

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

8           (d) The actual or estimated amount of U.S. dollars or of a named foreign  
9 currency that the creditor or assignee alleges he or she is entitled to recover and the  
10 figures necessary for computation of the amount, including any amount received  
11 from the sale of any collateral.

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

7 (h) An accurate copy of the writings, if any, evidencing the transaction, except  
8 that with respect to claims arising under open-end credit plans, a statement that the  
9 creditor or assignee will submit accurate copies of the writings evidencing the  
10 customer's obligation to the court and the customer upon receipt of the customer's  
11 written request therefor on or before the return date or the date on which the  
12 customer's answer is due.

13 (2) Upon the written request of the customer, the creditor or its assignee shall  
14 submit accurate copies to the court and the customer of writings evidencing any  
15 transaction pursuant to an open-end credit plan upon which the creditor's claim, or  
16 the claim of the creditor's assignee, is made and judgment may not be entered for the  
17 creditor or assignee unless the creditor or assignee does so.

18 SECTION 2. 425.301 (title) of the statutes is amended to read:

19 **425.301 (title) Remedies to be liberally administered; jury trials.**

20 SECTION 3. 425.301 (2) of the statutes is amended to read:

21 425.301 (2) Any right or obligation declared by chs. 421 to 427 is enforceable  
22 by action unless the provision declaring it specifies a different and limited effect. In  
23 any action to enforce any right or obligation under chs. 421 to 427, the aggrieved  
24 party shall be entitled to a trial by jury upon timely request.

25 SECTION 4. 427.104 (1) (n) and (o) of the statutes are created to read:

1           427.104 (1) (n) In any written communication to the customer, place any  
2 information on the exterior of the envelope except the following:

- 3           1. The customer's name, address, and telephone number.
- 4           2. The debt collector's address and its business name if this name does not  
5 indicate that it is in the debt collection business.

6           (o) Communicate with a customer through a postcard.

7           **SECTION 5.** 427.104 (3), (4) and (5) of the statutes are created to read:

8           427.104 (3) (a) In attempting to collect an alleged debt arising from a consumer  
9 credit transaction or other consumer transaction, including a transaction primarily  
10 for an agricultural purpose, where there is an agreement to defer payment, a debt  
11 collector may not attempt to collect the debt without obtaining reasonable  
12 verification that the customer owes the debt in the amount claimed.

13           (b) For purposes of par. (a), reasonable verification shall include obtaining  
14 business records that constitute or contain all of the following:

- 15           1. Complete, authenticated documentation that the debt collector, or person on  
16 whose behalf the debt collector is acting, is the owner of the specific debt instrument  
17 or account at issue.

- 18           2. The name of the original merchant.

- 19           3. The name, last known address, date of birth, and last four digits of the social  
20 security number of the customer as it appeared on the original merchant's records.

- 21           4. The customer's last account number with the original merchant.

- 22           5. The date that the debt was incurred, and the date and amount of the last  
23 payment by the customer toward the debt. For purposes of this subdivision, in the  
24 case of credit, the date that the debt was incurred shall be the last extension made  
25 for the purchase of goods or services, for the lease of goods, or as a loan of money.

1           6. A copy of the signed contract, signed application, or other documents that  
2 provide evidence of the customer's obligation and the terms of the customer's  
3 obligation.

4           7. An itemized accounting of the amount claimed to be owed, including the  
5 amount of the principal; the amount of any interest, fees, or charges; and whether  
6 the charges were imposed by the original merchant, a debt collector, or a subsequent  
7 owner of the debt. If the debt arises from a credit card, the account shall include  
8 copies of the last 24 periodic statements required by the federal Truth in Lending Act,  
9 15 USC 1637 (b), that evidence the transactions, purchases, fees, and charges that  
10 comprise the debt.

11           (4) Upon request by the customer, a debt collector shall provide to the customer,  
12 within 30 days of the request, copies of business records described in sub. (3) (b).

13           (5) Any person who sells or assigns a debt or claim shall provide to the buyer  
14 or assignee, at the time of the sale or assignment, all of the following:

15           (a) Complete, authenticated documentation that the person is the owner of the  
16 debt or claim at issue.

17           (b) A statement disclosing all of the following:

18           1. Whether the customer has disputed or asserted any defenses to any portion  
19 of the debt or claim, and notes or recordings of all related communications.

20           2. Any validation, or lack of validation, that the seller or assignor has provided  
21 the customer under section 809 of the federal Fair Debt Collection Practices Act, 15  
22 USC 1692g, or has received from the original merchant or previous seller or assignor  
23 in response to a dispute or request for validation by the customer.

24           3. Whether any settlement has been reached concerning any portion of the debt  
25 or claim.

- 1           4. Whether the debt or claim is within the statute of limitations.
- 2           5. Whether the customer is or has been represented by an attorney and, if so,  
3 the attorney's contact information.
- 4           6. Whether the customer has informed a debt collector that a time or place is  
5 inconvenient to the customer for communication.
- 6           7. Whether the debt or claim has been discharged or listed in bankruptcy.
- 7           8. Any illness or disability claimed by the customer or known to the seller or  
8 assignor of the debt or claim.
- 9           9. Whether the customer has a disability, is over the age of 62, or has limited  
10 English language ability.
- 11          10. Whether the customer is or has been a service member at any time since  
12 the debt was incurred or claim arose.
- 13          11. Whether the customer is known to receive income that is exempt from  
14 garnishment or attachment.

15           **SECTION 6.** 427.105 (1) of the statutes is amended to read:

16           427.105 (1) A person injured by violation of this chapter may recover actual  
17 damages and the penalty provided in ~~s. 425-304 sub. (1m)~~; but notwithstanding any  
18 other law actual damages shall include damages caused by emotional distress or  
19 mental anguish with or without accompanying physical injury proximately caused  
20 by a violation of this chapter.

21           **SECTION 7.** 427.105 (1m) of the statutes is created to read:

22           427.105 (1m) (a) A person who commits a violation of this chapter is liable to  
23 the customer in the amount of \$5,590, as adjusted under par. (b).

1 (b) 1. In this paragraph, “consumer price index” means the U.S. consumer price  
2 index for all urban consumers, U.S. city average, as determined by the U.S.  
3 department of labor.

4 2. On July 1 of each even-numbered year, beginning on July 1, 2016, the  
5 administrator shall make a calculation of the percentage difference between the  
6 consumer price index for the 12-month period ending on December 31 of the  
7 preceding year and the consumer price index for the 12-month period ending on  
8 December 31 of the year that is 2 years before the preceding year and, if this  
9 percentage difference is a positive number, shall make a calculation of the dollar  
10 amount specified under par. (a) as adjusted by this percentage difference, rounded  
11 to the nearest multiple of \$10. The administrator shall notify the legislative  
12 reference bureau of these calculated amounts, and the legislative reference bureau  
13 shall publish these calculated amounts in the Wisconsin administrative register  
14 under s. 35.93. If the calculated percentage difference is a positive number, then on  
15 the date of publication, as defined in s. 227.22 (1), of the Wisconsin administrative  
16 register, the amount under par. (a) is adjusted to reflect the calculated adjusted  
17 amount, as published.

18 **SECTION 8. Initial applicability.**

19 (1) The treatment of sections 425.109 (1) (intro.), (b), (d), (f), and (h) and (2) and  
20 425.301 (2) of the statutes first applies to actions commenced on the effective date  
21 of this subsection.

22 (2) The treatment of section 427.105 (1) and (1m) of the statutes first applies  
23 to violations committed on the effective date of this subsection.

24 (3) The treatment of section 427.104 (5) of the statutes first applies to debts or  
25 claims sold or assigned on the effective date of this subsection.



**Barman, Mike**

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**From:** Pritzkow, Emily  
**Sent:** Thursday, February 20, 2014 9:52 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3775/1 Topic: Wisconsin consumer act changes relating to debt collection, pleading requirements, and jury trials

Please Jacket LRB -3775/1 for the ASSEMBLY.