



2013 ASSEMBLY BILL 863

March 12, 2014 - Introduced by Representatives HINTZ, RICHARDS, HEBL, BARNES, SARGENT, ZAMARRIPA, OHNSTAD, WRIGHT, PASCH, GOYKE, SINICKI, HULSEY, BERCEAU, C. TAYLOR and SHANKLAND, cosponsored by Senators HANSEN and T. CULLEN. Referred to Committee on Judiciary.

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).

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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

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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.

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

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1 figures necessary for computation of the amount, including any amount received
2 from the sale of any collateral.

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

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

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

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

21 **425.301 (title) Remedies to be liberally administered; jury trials.**

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

23 425.301 (2) Any right or obligation declared by chs. 421 to 427 is enforceable
24 by action unless the provision declaring it specifies a different and limited effect. In

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1 any action to enforce any right or obligation under chs. 421 to 427, the aggrieved
2 party shall be entitled to a trial by jury upon timely request.

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

4 427.104 (1) (n) In any written communication to the customer, place any
5 information on the exterior of the envelope except the following:

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

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

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

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

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

- 18 1. Complete, authenticated documentation that the debt collector, or person on
19 whose behalf the debt collector is acting, is the owner of the specific debt instrument
20 or account at issue.
- 21 2. The name of the original merchant.
- 22 3. The name, last known address, date of birth, and last four digits of the social
23 security number of the customer as it appeared on the original merchant's records.
- 24 4. The customer's last account number with the original merchant.

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

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

8 7. An itemized accounting of the amount claimed to be owed, including the
9 amount of the principal; the amount of any interest, fees, or charges; and whether
10 the charges were imposed by the original merchant, a debt collector, or a subsequent
11 owner of the debt. If the debt arises from a credit card, the account shall include
12 copies of the last 24 periodic statements required by the federal Truth in Lending Act,
13 15 USC 1637 (b), that evidence the transactions, purchases, fees, and charges that
14 comprise the debt.

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

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

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

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

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

24 2. Any validation, or lack of validation, that the seller or assignor has provided
25 the customer under section 809 of the federal Fair Debt Collection Practices Act, 15

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1 USC 1692g, or has received from the original merchant or previous seller or assignor
2 in response to a dispute or request for validation by the customer.

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

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

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

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

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

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

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

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

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

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

20 427.105 (1) A person injured by violation of this chapter may recover actual
21 damages and the penalty provided in s. 425.304 sub. (1m); but notwithstanding any
22 other law actual damages shall include damages caused by emotional distress or
23 mental anguish with or without accompanying physical injury proximately caused
24 by a violation of this chapter.

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

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

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

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

20 **SECTION 8. Initial applicability.**

21 (1) The treatment of sections 425.109 (1) (intro.), (b), (d), (f), and (h) and (2) and
22 425.301 (2) of the statutes first applies to actions commenced on the effective date
23 of this subsection.

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

