



MARK BORN

STATE REPRESENTATIVE • 39TH ASSEMBLY DISTRICT

Testimony on Assembly Bill 717

Committee on Financial Institutions

February 4, 2014

Mr. Chairman and committee members,

Thank you for giving me the opportunity to testify in favor of Assembly Bill 717.

Under current law, consumer credit transactions of \$25,000 or less which are entered into for personal, family, or household purposes are generally subject to the Wisconsin Consumer Act (WCA). The WCA includes requirements that must be satisfied by a creditor or merchant in order to enforce rights arising from a consumer credit transaction.

The primary goal of AB 717 is to clarify ambiguities that currently exist in the pleading requirements for complaints filed by merchants in WCA cases. Under the bill, information relating to the customer's obligation would be more clearly defined, such as the amount owed and the assignee of the debt. This will help merchants and debtors save time and money associated with litigation.

AB 717 also creates an exception to the general 15-day cure period for defaults on obligations arising from a consumer credit transaction. Under the bill, there would be no right to cure a default with respect to a consumer transaction pursuant to an open-ended credit plan involving a credit card issued by a national bank. This change would align Wisconsin law with federal law since a 15-day cure period for this type of transaction is not required at the federal level. Bringing consistency to state and federal laws will provide more clarity for national banks operating in Wisconsin since they are regulated at the federal level and not the state level.

The changes included in AB 717 will help ensure our credit lending system functions properly which benefits both creditors and consumers.

Thank you.



State of Wisconsin
Department of Financial Institutions

Scott Walker, Governor

Peter Bildsten, Secretary

February 4, 2014

Testimony on Assembly Bill 717
To the Assembly Committee on Financial Institutions

Good morning, Chairman Craig and members of the committee. My name is Georgia Maxwell, Assistant Deputy Secretary for the Department of Financial Institutions.

I am here to testify on behalf of DFI for informational purposes about AB 717, which proposes changes to the Wisconsin Consumer Act. As administrator of the Wisconsin Consumer Act, DFI strives to maintain a balance between its regulatory function and its duty to protect consumers.

In reviewing this proposed legislation, there are some areas of concern to DFI.

For example, under this proposed bill, some consumers would no longer be given notice that they were in default on a debt and they would also not be afforded a 15-day period during which they could bring their accounts current before legal action was commenced. Changing the law for one specific type of credit or one specific type of lender (or both, as this bill proposes) would reduce the standardization of the Wisconsin Consumer Act.

Under this bill, the right of some consumers to obtain an explanation of the debt amount owed would be eliminated. Currently, after commencement of legal action, a consumer has the right to obtain a detailed explanation of his or her debt. This bill would require a merchant to provide only a copy of the last billing statement, the balance of which could be significantly different than the amount the consumer believes is owed.

This bill also would take away a consumer's ability to recover attorney fees unless a merchant's violation was "willful and intentional." Proving that a merchant's action was "willful and intentional" could be difficult for a consumer.

DFI supports the concept of clarifying any ambiguities that may exist in the Wisconsin Consumer Act. To that end, DFI would like to convene a working group made up of representatives of consumer groups as well as representatives of the Wisconsin Creditors Rights Association and members of the Legislature. The purpose of this working group would be to find common ground to changes to the Wisconsin Consumer Act that would balance the interests of both groups.

While DFI supports some portions of this bill, the department also has significant concerns with other aspects of it. In summary, DFI would not support legislation that unduly shifts onto consumers the burden of determining the accuracy of the debt they may – or may not – owe.

Thank you for the opportunity to be here today. With me is Chris Green, DFI's Chief Legal Counsel. We would be happy to answer any questions you may have.

Memo

To: Committee Members
From: Wisconsin Creditors' Rights Association
Date: February 4, 2014
Re: Assembly Bill 717 – Committee Hearings, February 4, 2014

The purpose of this memo is to address three primary concerns raised in meetings with a number of representatives and key groups leading up to the committee hearings scheduled for February 4, 2013. The three questions most commonly asked were 1) whether other states have enacted statutes related to pleading and other proof issues in debt collection matters; 2) how wide the judicial interpretation of 425.109(2), under the current version of the statute, varies; and 3) whether any banks headquartered in Wisconsin are negatively affected by either 425.109 or 425.105 as currently written.

A. Statutory Treatment of Pleading and Proof Issues Related to Debt Collection In Other Jurisdictions.

Within the past two years at least three states have passed legislation addressing the degree of information that a plaintiff must provide to substantiate the balance due in a credit card collection action. Those states are California, Arkansas and Arizona.

1. California

On July 11, 2013, California passed the Fair Debt Buying Practices Act in response to criticism that “debt buyers” did not have adequate documentation to support the consumer collection suits filed within the state. The Act imposes a series of new requirements related to collection process. Included within that statutory scheme are requirements for complaints filed in consumer collection cases. See Cal. Civ. Code §1788.58 (copy attached for reference). This section lays out nine requirements that must be included in the allegations of the complaint. In pertinent part, subsection (4) states that a complaint must include the balance

due at the time the account is closed and an explanation of the amount of any interest and fees (if any) imposed by the creditor and any purchasers of the debt. See Cal. Civ. Code §1788.58(4). This subsection goes on to explain that a specific itemization is not required so long as the total charge off balance and the totals of any interest and fees are separately identified.

Assembly Bill 717 borrows this requirement in Section 6 which amends 425.109(1)(d). Except that Assembly Bill 717 goes a step further, and allows a consumer to request documentation very early on in the litigation process. The creditor-plaintiff must comply by providing the consumer with the last billing statement addressed to the consumer. If a creditor fails to comply, then a default judgment cannot be sought.

2. Arkansas

In 2013, Arkansas passed legislation related to matters involving the collection of consumer, credit card debt. The Arkansas statute, AR ST §4-107-306 (copy attached for reference), addresses the documentation required to establish a presumption of correctness of the amount of charges and interest owed in a credit card collection case. In pertinent part, subsection (a)(1) states that a copy of the issuer's **final billing statement** or charge-off statement is sufficient to prove the amount due. AR ST §4-107-306 also acknowledges that a consumer may still dispute the plaintiff's claim as allowed by state and federal law.

By passing Assembly Bill 717, Wisconsin would not be first state to acknowledge that the final billing statement sent by the creditor raises a presumption that the amount sought in a complaint is accurate. See. Assembly Bill 717, Section 10 (amending 425.109(2)). And much like the Arkansas statute, Assembly Bill 717 does nothing to prevent or deny a consumer's right to contest the action to the fullest extent permitted by state or federal law. If the matter is contested, then the plaintiff must establish its claim by meeting the relevant standard of proof.

3. Arizona

In 2012, Arizona passed legislation related to matters involving the collection of credit card debt. The Arizona statute, AZ ST §44-7804 (copy attached for reference), addresses the documentation required to establish the amount owed in a credit card debt in an uncontested court action. That statute permits a [plaintiff] to establish the amount owed by providing a copy of the issuer's **final billing statement**. AZ ST §44-7804 also acknowledges that a consumer may still dispute the plaintiff's claim. If the matter is contested, the court shall weigh the evidence as required by law.

We see here another example whereby the final billing statement sent by the creditor raises a presumption that the amount sought in a complaint is accurate. Again, much like AZ ST §44-7804, Assembly Bill 717 does nothing to prevent or deny a consumer's right to contest the action to the fullest extent permitted by state or federal law. If the matter is contested, then the plaintiff must establish its claim by meeting the relevant standard of proof. The court will have a hearing on the contested issues and weigh the evidence as required by law.

B. Variations in the Interpretation of 425.109(2).

There are several venues that interpret the writings requirement under Wis. Stat. 425.109(2) to require a plaintiff to provide the billing statements even if no such request is made by a consumer; and even if the consumer never appears in the action. This interpretation varies between the final billing statement to all the billing statements going back to when the account was first opened. A breakdown of these venues is as follows:

Buffalo County – the final billing statement

Jackson County – the final billing statement, plus the preceding twelve months

Jefferson County – the final two years of billing statements

Pepin County – all billing statements

Dane County – all billing statements depending on the judge

Milwaukee County – all billing statements depending on the judge

Dane and Milwaukee County are the venues where a request for all the billing statements is most often encountered. The counties also happen to be two of the largest counties in the State. WCRA member firms see some of their largest suit volumes in these counties. But in these counties, the documentation requirement varies between judges. A list of the judges requiring all the billing statements includes Judge Dugan in Dane County, and Judge White, Judge Moroney, Judge Siefert and Judge Flanagan in Milwaukee County. Other civil judges in these same venues may not require any statements at all, or something altogether different. Even in the same county, a plaintiff cannot be sure how to comply with the Wis. Stat. 425.109.

C. Negative Impacts of 425.105 and 425.109 on Banks Headquartered in Wisconsin.

By passing Assembly Bill 717, all national banks (those organized under the National Banking Act), whether they are headquartered in Wisconsin or not, will be relieved from sending the right to cure on an open-end credit plan – thereby speeding up the collection process. A national bank would be able to accelerate the maturity of the credit transaction or file suit within a shorter timeframe.

With respect to 425.109, no distinction is made between state and national banks. Any Wisconsin state bank or national bank headquartered in Wisconsin that issues credit cards must comply with this pleading statute. They are not exempt from having to deal with the same ambiguity discussed above in Section A.

Respectfully Submitted.

- Wisconsin Creditors' Rights Association

CALIFORNIA STATUTE

1788.58. In an action brought by a debt buyer on a consumer debt:

(a) The complaint shall allege all of the following:

(1) That the plaintiff is a debt buyer.

(2) The nature of the underlying debt and the consumer transaction or transactions from which it is derived, in a short and plain statement.

(3) That the debt buyer is the sole owner of the debt at issue, or has authority to assert the rights of all owners of the debt.

(4) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(5) The date of default or the date of the last payment.

(6) The name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(7) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the debtor's name and last known address as they appeared in the debt owner's records on December 31, 2013, shall be sufficient.

(8) The names and addresses of all persons or entities that purchased the debt after charge off, including the plaintiff debt buyer. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(9) That the debt buyer has complied with Section 1788.52.

(b) A copy of the contract or other document described in subdivision (b) of Section 1788.52, shall be attached to the complaint.

(c) The requirements of this title shall not be deemed to require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

ARKANSAS STATUTE

.C.A. § 4-107-306 (Copy w/ Cite)

Pages: **2**

A.C.A. § 4-107-306

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*** Legislation is current through the 2013 Regular Session and updates ***
*** received from the Arkansas Code Revision Commission through ***
*** October 9, 2013. ***

Title 4 Business and Commercial Law
Subtitle 7. Consumer Protection
Chapter 107 Credit Cards
Subchapter 3 -- Unauthorized Use of Credit Cards

A.C.A. § 4-107-306 (2013)

4-107-306. Amount owed.

(a) A creditor may establish a presumption of correctness of its ownership of the credit card account and the amount of the charges and interest that is owed on a credit card account by:

(1) Filing a copy of the credit card issuer's final billing statement or charge-off statement;
or

(2) Filing a compilation of the data maintained by the original creditor, credit card issuer, or succeeding creditor in the regular course of business.

(b) The cardholder may dispute the presumption with any credible evidence as allowed by state or federal law.

HISTORY: Acts 2013, No. 1495, § 2.

ARIZONA STATUTE

44-7804. Establishment of amount owed on a credit card account

In an uncontested court action in this state a creditor may establish the amount of the debt that is owed on a credit card account through a copy of the issuer's final billing statement or by the electronic record pursuant to section 44-7007 that is maintained by the issuer and that represents the amount owed. In contested actions the court shall weigh the evidence of the parties as required by law.