

CHAPTER 427

CONSUMER TRANSACTIONS — DEBT COLLECTION

427.101 Short title.

427.102 Scope.

427.103 Definitions: “claim”; “debt collection”; “debt collector”.

427.104 Prohibited practices.

427.105 Remedies.

Cross-reference: See definitions in s. 421.301.

427.101 Short title. This chapter shall be known and may be cited as Wisconsin consumer act — debt collection.

History: 1971 c. 239.

427.102 Scope. This chapter applies to conduct and practices in connection with the collection of obligations arising from consumer transactions, including transactions that are primarily for an agricultural purpose.

History: 1971 c. 239; 1997 a. 302.

427.103 Definitions: “claim”; “debt collection”; “debt collector”. (1) “Claim” means any obligation or alleged obligation arising from a consumer transaction, including a transaction that is primarily for an agricultural purpose.

(2) “Debt collection” means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a merchant by a customer.

(3) “Debt collector” means any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device or scheme, intended or calculated to be used to collect claims. The term does not include a printing company engaging in the printing and sale of forms.

History: 1971 c. 239; 1997 a. 302.

427.104 Prohibited practices. (1) In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction, including a transaction primarily for an agricultural purpose, where there is an agreement to defer payment, a debt collector may not:

(a) Use or threaten force or violence to cause physical harm to the customer or the customer’s dependents or property;

(b) Threaten criminal prosecution;

(c) Disclose or threaten to disclose information adversely affecting the customer’s reputation for credit worthiness with knowledge or reason to know that the information is false;

(d) Initiate or threaten to initiate communication with the customer’s employer prior to obtaining final judgment against the customer, except as permitted by statute including specifically s. 422.404, but this paragraph does not prohibit a debt collector from communicating with the customer’s employer solely to verify employment status or earnings or where an employer has an established debt counseling service or procedure;

(e) Disclose or threaten to disclose to a person other than the customer or the customer’s spouse information affecting the customer’s reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this paragraph does not prohibit the disclosure to another person of information permitted to be disclosed to that person by statute;

(f) Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the customer without disclosing the fact that the customer disputes the debt;

(g) Communicate with the customer or a person related to the customer with such frequency or at such unusual hours or in such

a manner as can reasonably be expected to threaten or harass the customer;

(h) Engage in other conduct which can reasonably be expected to threaten or harass the customer or a person related to the customer;

(i) Use obscene or threatening language in communicating with the customer or a person related to the customer;

(j) Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist;

(k) Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when it is not;

(L) Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt; or

(m) Engage in conduct in violation of a rule adopted by the administrator after like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against false, misleading, deceptive or unconscionable agreements or conduct (ss. 426.109 and 426.110).

(2) If a debt collector is not otherwise in violation of sub. (1) (j) with respect to a consumer credit transaction with a debtor, it is not a violation of this section to send a billing statement or other notice of account to, or to collect the amount due on the account from, the spouse of that debtor, if notice to the debtor’s spouse is provided under s. 766.56.

History: 1971 c. 239; 1975 c. 407; 1983 a. 186; 1991 a. 316; 1997 a. 302.

Sixty-nine calls to debtor over a 19-month period was not harassment. *Associates Financial Services Co. v. Hornik*, 114 Wis. 2d 163, 336 N.W.2d 395 (Ct. App. 1983).

A circuit court is competent to hear state consumer act claims based upon a creditor’s violation of federal bankruptcy debt collection prohibitions. *Gonzales v. AM Community Credit Union*, 150 Wis. 2d 773, 442 N.W.2d 536 (Ct. App. 1989).

A replevin action is an attempt to collect a debt under this section. *Kett v. Community Credit Plan, Inc.*, 228 Wis. 2d 1, 596 N.W.2d 786 (Ct. App. 1998), 97–3620.

Sub. (1) (f) requires a bank that discloses a disputed debt to a credit bureau to disclose the disputed status of the debt each time that the debt is reported and not just the first time. *Turner v. Gene Dencker Buick–Pontiac, Inc.*, 2001 WI App 28, 240 Wis. 2d 385, 623 N.W.2d 151, 99–3174.

When the parties’ contract plainly required the defendant to obtain a replevin judgment before repossessing a car, and it was undisputed that the defendant did not obtain that judgment, the defendant violated sub. (1) (j) by filing a deficiency action because it knew or had reason to know that it had no right to the deficiency. *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, 346 Wis. 2d 635, 829 N.W.2d 522, 10–2573.

A creditor’s failure to provide a notice of right to cure default under ch. 425 does not constitute a sufficient basis for relief under this chapter. *Security Finance v. Kirsch*, 2019 WI 42, 386 Wis. 2d 388, 926 N.W.2d 167, 17–1408.

Police agencies and district attorneys are not prohibited by sub. (1) (b) from sending letters threatening criminal prosecution to persons who have issued worthless checks. 63 Atty. Gen. 340.

To state a claim under either the federal Fair Debt Collection Practices Act or the Wisconsin Consumer Act, a plaintiff must demonstrate that the debt in question arises out of a transaction incurred for personal, family, or household purposes. When a plaintiff maintains that the underlying debt was not his or hers, the plaintiff can nonetheless claim protection by showing that the debt collector treated the plaintiff as a consumer allegedly owing a consumer debt. However, a plaintiff proceeding under this theory still must offer evidence to establish that the debt was a consumer debt: in other words, that the debt was incurred for personal, family, or household purposes. *Burton v. Kohn Law Firm, S.C.*, 934 F.3d 572 (2019).

The defendant violated sub. (1) (j) when it attempted to collect debts under a false name. *Hartman v. Meridian Financial Services, Inc.*, 191 F. Supp. 2d 1031 (2002).

Serving a garnishment form on the wrong person cannot reasonably be construed as a violation of sub. (1) (j). *Whitehead v. Discover Bank*, 221 F. Supp. 3d 1055 (2016).

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

(2) If a customer establishes that the customer was induced to surrender collateral, as defined in s. 425.202 (1), by conduct of the merchant which violates this chapter, the customer shall be entitled to a determination of the right to possession of the collateral

pursuant to s. 425.205 (1) (e) in any action brought under this subchapter, and if the customer prevails on such issue, in addition to any other damages under this subchapter, the customer shall be entitled to recover possession of the collateral if still in the merchant's possession, together with actual damages for the customer's loss of use of the collateral.

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

Sub. (1) does not restrict recovery to persons who are customers under s. 421.301 (17). *Zehetner v. Chrysler Financial Co.*, 2004 WI App 80, 272 Wis. 2d 628, 679 N.W.2d 919, 03–1473.