

**2009 DRAFTING REQUEST**

**Bill**

Received: **02/04/2009**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Hebl (608) 266-7678**

By/Representing: **Kate Battiato**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - WCA**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Hebl@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Pleading requirements for assignees of creditors

---

**Instructions:**

See attached

---

**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>
/?	mkunkel 02/04/2009	jdyer 02/04/2009		_____			
/1			rschluet 02/04/2009	_____	lparisi 02/04/2009	cduerst 02/06/2009	

FE Sent For: **NONE**

<END>

**2009 DRAFTING REQUEST**

**Bill**

Received: **02/04/2009**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Hebl (608) 266-7678**

By/Representing: **Kate Battiato**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - WCA**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Hebl@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Pleading requirements for assignees of creditors

---

**Instructions:**

See attached

---

**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>
/?	mkunkel 02/04/2009	jdye 02/04/2009		_____			
/1			rschluet 02/04/2009	_____	lparisi 02/04/2009		

FE Sent For:

<END>

**2009 DRAFTING REQUEST**

**Bill**

Received: 02/04/2009

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Hebl (608) 266-7678**

By/Representing: **Kate Battiato**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - WCA**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Hebl@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Pleading requirements for assignees of creditors

---

**Instructions:**

See attached

---

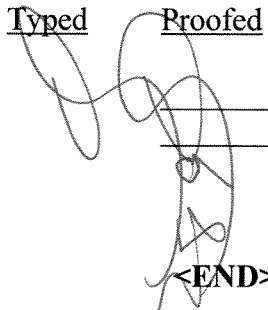
**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?

mkunkel

1 2/4 jld



FE Sent For:

<END>

## Kunkel, Mark

---

**From:** Battiato, Kate  
**Sent:** Wednesday, January 14, 2009 11:56 AM  
**To:** Kunkel, Mark  
**Subject:** Wisconsin Consumer Act Information

**Attachments:** Hebl Debt Collection Proposal.pdf

Hi Mark,

Attached is the informational memo that should be helpful to you in your drafting of the amendment we requested for



Hebl Debt Collection  
Proposal....

s. 425.109(1). Thank you for your assistance.

Kate Battiato  
Office of State Representative Gary Hebl  
46th Assembly District  
Phone: 266-7678

## MADISON OFFICE

31 South Mills Street, Madison, Wisconsin 53715

www.legalaction.org | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510

**LEGALAction**  
OF WISCONSIN

40 Years of Justice

December 11, 2008

Assembly Representative Gary Hebl  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

RE: **Proposed Clarification of WIS. STAT. § 425.109(1) to Ensure that *Debt Collectors Who Purchase Debts from Creditors* are Required to Explain A Consumer's Debt in Their Pleadings, as is Currently Required for *Creditors and Collections Agencies*.**

Dear Representative Hebl:

We would like to ask whether you would be interested in introducing legislation that would pick up on a suggestion made by a Court of Appeals to make a simple amendment to a Wisconsin Consumer Act statute that would clarify that the statute applies to debt collectors who purchase debts from creditors, in the same manner as it applies to the creditors themselves. *We agree with the suggestion of the court (Deiningner) below that this would correct what was an oversight when this statute was written. Without the adoption of this amendment, a debt collector who purchases the debt does not have to inform a consumer in a complaint about a whole list of information that is vitally important (see below). There is no reason why a debt collector who purchases a debt should not have to follow the same requirements in a complaint. According to the Department of Financial Institutions, relatively few debts are collected by purchasers of debt anymore, so this should not have that big an impact. The vast majority of debts are collected by collection agencies, who are covered under current law.*

The Court of Appeals (*Deiningner*) said:

“Accordingly, even though we may sympathize with Michaud’s belief that our conclusion regarding the limited scope of WIS. STAT. § 425.109(1) is not in keeping with the public policy underlying the WCA, *we are not free to rewrite the statute in the way we believe the legislature should have written it, or might have written it, had the present circumstances been brought to the legislature’s attention.*”

*The legislature certainly could have extended the pleading requirements of WIS. STAT § 425.109(1) to complaints filed by assignees of creditors. It might easily have*

Serving Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock and Sauk Counties

Green Bay Office Brown, Calumet, Door, Kewaunee, Manitowoc and Outagamie Counties | tel 920-432-4645 | toll-free 800-236-1127 | fax 920-432-5078

La Crosse Office Buffalo, Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon Counties | tel 608-785-2809 | toll-free 800-873-0927 | fax 608-782-0800

Migrant Project Statewide | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510

Milwaukee Office Milwaukee and Waukesha Counties | tel 414-278-7722 | toll-free 888-278-0633 | fax 414-278-7126

Oshkosh Office Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan, Washington, Waushara and Winnebago Counties | tel 920-233-6521 | toll-free 800-236-1128 | fax 920-233-0307

Racine Office Kenosha, Racine and Walworth Counties | tel 262-635-8836 | toll-free 800-242-5840 | fax 262-635-8838

Representative Hebl  
December 11, 2008  
Page Two

done so by simply inserting "or its assignee" at the end of the prepositional phrase "by a creditor." *Rsidue v. Michaud*, Appeal No. 2005AP1299 (July 13, 2006). [emphasis added]

Consequently the amendment we request would simply be the addition of the underlined material to the existing statute:

**425.109 Pleadings. (1)** A complaint by a creditor or its assignee to enforce any cause of action arising from a consumer credit transaction shall include all of the following [list of information to be included in the complaint]:

The consumer in this case complained that the debt collector did not include in the complaint "the figures necessary for the computation of the amount" due the plaintiff. The complaint just made general statements about how much the consumer owed.

The statute, s. 425.109, is an important statute, because it contains several requirements for information that need to be included in a complaint against a consumer, including the following:

- an identification of the consumer credit transaction
- a description of the collateral or leased goods involved, if any
- a specification of the facts constituting the alleged default by the consumer
- the actual or estimated amount that it is alleged that the consumer owes, including the figures necessary for the computation of the amount
- a statement that the consumer has the right to redeem collateral under certain circumstances
- the amount of any deficiency that remains after collateral is sold
- if the consumer still has the right to cure, the total payments or performance that would be required by the consumer in order to cure the default
- an accurate copy of the writings evidencing the transaction

What happened in this case is that the consumer owed money for purchases on a credit card issued by Household Bank of North America. Household sold the account to Collins Financial Services, which in turn sold the account to Rsidue, who is the debt collector that brought the action against the consumer.

There is no rational reason why a debt collector who purchases a debt from a creditor would not be required to provide the same information in a complaint that would be required to be provided by the original creditor. This is simply an oversight that occurred when this statute was written – or perhaps, the drafters of this statute *thought* that assignees were automatically covered. While the court of appeals agrees that this should be the result, they were bound by the express words of the statute. So an amendment is necessary to clarify this.

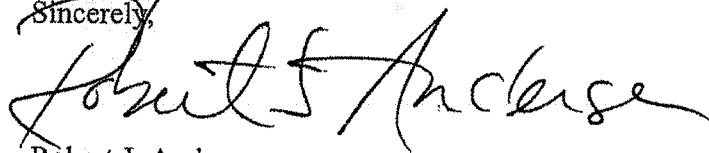
Representative Hebl  
December 11, 2008  
Page Three

This is an issue that was raised by attorneys on our staff who provide representation in consumer cases.

If you are interested in introducing this legislation, we would be happy to provide whatever information and assistance is necessary as this bill travels through the legislative process. *In addition, the Consumer Law Clinic of the University of Wisconsin Law School is interested in this legislation and may be involved in testifying on this as well, as well as individual attorneys who practice consumer law.*

Thank you very much for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Robert J. Andersen". The signature is written in black ink and is positioned below the word "Sincerely,".

Robert J. Andersen  
Staff Attorney

SOON

2-4-09

2009 BILL

stays ↑

1964/1

RM not  
RUN

Regen

1 AN ACT *to amend* 425.109 (1) (intro.) of the statutes; **relating to:** pleading  
2 requirements for assignees of creditors 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). 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.

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

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





**Duerst, Christina**

---

**From:** Battiato, Kate  
**Sent:** Friday, February 06, 2009 3:59 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-1964/1 Topic: Pleading requirements for assignees of creditors

Please Jacket LRB 09-1964/1 for the ASSEMBLY.