

2013 DRAFTING REQUEST

Bill

Received: 1/28/2014 Received By: agary
Wanted: As time permits Same as LRB: -3993
For: Paul Farrow (608) 266-9174 By/Representing: Matt Henkel
May Contact: Drafter: agary
Subject: Fin. Inst. - WCA Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Sen.Farrow@legis.wisconsin.gov
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Pleading requirements, right to cure after default, under the consumer act

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>
/?	agary 1/28/2014	jdyer 1/29/2014		_____			
/1			rschluet 1/30/2014	_____	sbasford 1/30/2014	lparisi 1/30/2014	

FE Sent For:

NOT
NEEDED

<END>

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/? agary

1/29 jld
jld
1301

FE Sent For:

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Gary, Aaron

From: Henkel, Matt
Sent: Tuesday, January 28, 2014 9:23 AM
To: Cronin, John
Cc: Gary, Aaron
Subject: Re: Senate companion to LRB 3993/1

Thanks John and Aaron.

-Matt

On Jan 28, 2014, at 9:18 AM, "Cronin, John" <John.Cronin@legis.wisconsin.gov> wrote:

Hi Aaron,

Can you please draft a companion bill to LRB 3993/1 for Senator Farrow? He is serving as the lead author in the Senate. I have cc'd his office.

Thanks,

John Cronin
Office of Rep. Mark Born
39th Assembly District



State of Wisconsin
2013 - 2014 LEGISLATURE

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in
1/28



LRB-3903/1
ARG:kjf&jld:rs

4130/1

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RMNR

2013 BILL

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Companion - no changes

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AN ACT *to renumber and amend* 425.109 (1) (d); *to amend* 425.105 (2), 425.109 (1) (intro.), 425.109 (1) (b), 425.109 (1) (f), 425.109 (1) (h), 425.109 (2), 425.109 (3) and 425.205 (4); and *to create* 425.1025, 425.105 (3g), 425.109 (1) (d) 2. and 425.109 (4) of the statutes; **relating to:** pleading requirements, and the cure 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

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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

BILL

of attorney fees under the WCA unless the customer establishes by a preponderance of the evidence that the failure to comply was willful or intentional.

Under current law provisions of the WCA, a creditor's cause of action with respect to a customer's obligation in a consumer credit transaction does not accrue unless there is a default by the customer. A default occurs upon the happening of certain events, including the failure to make payments within specified times. For an open-end credit plan, default occurs with the failure to pay when due on two occasions within any 12-month period. If a merchant believes that a customer is in default, the merchant may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure the default. With limited exceptions, for 15 days after a notice of default is given to the customer, the customer may cure the default by paying the outstanding amount due, without acceleration, plus other charges owed. The act of curing a default restores the customer's rights as though no default had occurred. Under one exception to the right to cure, a customer does not have a right to cure a default if, during the preceding 12 months, the customer twice cured defaults on the same transaction or open-end credit plan. Unless a merchant believes a customer is in default and, if the customer has a right to cure the default, at least 15 days have elapsed since the merchant gave the customer notice of the default, the merchant may not do any of the following: accelerate the maturity of a consumer credit transaction; with a limited exception, commence any action; or demand or take possession of collateral unless it is voluntarily surrendered.

This bill creates an exception to the general 15-day cure period for defaults on obligations arising from consumer credit transactions. Under the bill, there is no right to cure a default with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank. For these transactions, a cause of action against the customer continues to accrue only upon default by the customer, but there is no requirement that the merchant provide the customer a 15-day opportunity to cure the default before the merchant accelerates the maturity of the consumer credit transaction, commences an action, or demands or takes possession of collateral.

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

1 **SECTION 1.** 425.1025 of the statutes is created to read:

2 **425.1025 Definition.** In this subchapter, "billing statement" means a
3 statement issued pursuant to 15 USC 1637 (b).

4 **SECTION 2.** 425.105 (2) of the statutes is amended to read:

BILL**SECTION 2**

1 425.105 (2) Except as provided in subs. (3) ~~and to~~ (3m), for 15 days after such
2 notice is given, a customer may cure a default under a consumer credit transaction
3 by tendering the amount of all unpaid installments due at the time of the tender,
4 without acceleration, plus any unpaid delinquency or deferral charges, and by
5 tendering performance necessary to cure any default other than nonpayment of
6 amounts due. The act of curing a default restores to the customer the customer's
7 rights under the agreement as though no default had occurred.

8 **SECTION 3.** 425.105 (3g) of the statutes is created to read:

9 425.105 (3g) A right to cure shall not exist with respect to a consumer credit
10 transaction pursuant to an open-end credit plan involving a credit card issued by a
11 national bank.

12 **SECTION 4.** 425.109 (1) (intro.) of the statutes is amended to read:

13 425.109 (1) (intro.) A complaint by a ~~creditor~~ merchant to enforce any cause of
14 action arising from a consumer credit transaction shall include all of the following:

15 **SECTION 5.** 425.109 (1) (b) of the statutes is amended to read:

16 425.109 (1) (b) A description of the collateral or leased goods, if any, which the
17 ~~creditor~~ merchant seeks to recover or has recovered.

18 **SECTION 6.** 425.109 (1) (d) of the statutes is renumbered 425.109 (1) (d) 1. and
19 amended to read:

20 425.109 (1) (d) 1. ~~The~~ If the consumer credit transaction is pursuant to an
21 open-end credit plan, the actual or estimated amount of U.S. dollars or of a named
22 foreign currency that the creditor alleges he or she is entitled to recover and the
23 figures necessary for computation of the amount, including any amount received
24 from the sale of any collateral alleged to be due to the merchant on a date certain after
25 the customer's default, as reflected on a billing statement addressed to the customer,

BILL

1 and a breakdown of all charges, interest, and payments, including any amount
2 received from the sale of any collateral, occurring after this date certain. This
3 paragraph does not require a specific itemization, but the breakdown shall identify
4 separately the amount due on a date certain, the total of all charges occurring after
5 this date certain, the total of all interest occurring after this date certain, and the
6 total of all payments occurring after this date certain.

7 **SECTION 7.** 425.109 (1) (d) 2. of the statutes is created to read:

8 425.109 (1) (d) 2. If the consumer credit transaction is other than one pursuant
9 to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a
10 named foreign currency alleged to be due to the merchant on a date certain after the
11 customer's default, and a breakdown of all charges, interest, and payments,
12 including any amount received from the sale of any collateral, occurring after this
13 date certain. This paragraph does not require a specific itemization, but the
14 breakdown shall identify separately the amount due on a date certain, the total of
15 all charges occurring after this date certain, the total of all interest occurring after
16 this date certain, and the total of all payments occurring after this date certain.

17 **SECTION 8.** 425.109 (1) (f) of the statutes is amended to read:

18 425.109 (1) (f) Except in an action to recover goods subject to a consumer lease,
19 the estimated amount of U.S. dollars or of a named foreign currency of any deficiency
20 claim which may be available to the ~~creditor~~ merchant following the disposition of
21 any collateral recovered subject to the limitations of s. 425.209 or which the ~~creditor~~
22 merchant seeks to recover and which the ~~creditor~~ merchant intends to assert subject
23 to the limitations of s. 425.210 if the customer fails to redeem the collateral.

24 **SECTION 9.** 425.109 (1) (h) of the statutes is amended to read:

BILL**SECTION 9**

1 425.109 (1) (h) ~~An~~ Subject to sub. (2) and s. 425.205 (4), an accurate copy of the
2 writings, if any, evidencing the transaction, except that with respect to claims arising
3 under open-end credit plans, a statement that the ~~creditor~~ merchant will submit
4 accurate copies of the writings evidencing the customer's obligation to the court and
5 the customer upon receipt of the customer's written request therefor on or before the
6 return date or the date on which the customer's answer is due.

7 **SECTION 10.** 425.109 (2) of the statutes is amended to read:

8 425.109 (2) Upon the written request of the customer under sub. (1) (h), the
9 ~~creditor~~ merchant shall submit accurate copies to the court and the customer of
10 writings evidencing ~~any transaction~~ the customer's obligation pursuant to an
11 open-end credit plan upon which the ~~creditor's~~ merchant's claim is made and default
12 judgment may not be entered for the ~~creditor~~ merchant unless the ~~creditor~~ merchant
13 does so. The writings requirement under this subsection is satisfied if the merchant
14 provides the customer with a copy of the last billing statement addressed to the
15 customer reflecting the total outstanding balance on the customer's account at the
16 time this billing statement was issued. If this billing statement is attached to the
17 complaint, then the statement under sub. (1) (h) is not required to be included in the
18 complaint.

19 **SECTION 11.** 425.109 (3) of the statutes is amended to read:

20 425.109 (3) A default judgment may not be entered upon a complaint which
21 fails to comply with this section.

22 **SECTION 12.** 425.109 (4) of the statutes is created to read:

23 425.109 (4) For purposes of subchs. III and IV, a complaint that fails to comply
24 with this section does not constitute a violation of chs. 421 to 427, and shall not give

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1 rise to recovery of attorney fees under s. 425.308, unless the customer establishes by
2 a preponderance of the evidence that the failure to comply was willful or intentional.

3 **SECTION 13.** 425.205 (4) of the statutes is amended to read:

4 425.205 (4) Upon the written request of the customer under s. 425.109 (2), the
5 merchant shall produce an accurate copy of writings evidencing ~~any transactions~~ the
6 customer's obligation pursuant to an open-end credit plan upon which the
7 merchant's claim is made, and default judgment shall not be entered for the
8 merchant ~~until~~ unless the merchant does so. The writings requirement under this
9 subsection is satisfied if the merchant provides the customer with a copy of the last
10 billing statement addressed to the customer reflecting the total outstanding balance
11 on the customer's account at the time this billing statement was issued. If this billing
12 statement is attached to the complaint, then the statement under s. 425.109 (1) (h)
13 is not required to be included in the complaint.

14 **SECTION 14. Initial applicability.**

15 (1) The treatment of sections 425.1025, 425.109 (1) (intro.), (b), (f), and (h), (2),
16 (3), and (4) and 425.205 (4) of the statutes, the renumbering and amendment of
17 section 425.109 (1) (d) of the statutes, and the creation of section 425.109 (1) (d) 2.
18 of the statutes first apply to complaints filed on the effective date of this subsection.

19 **SECTION 15. Effective date.**

20 (1) The treatment of sections 425.1025, 425.109 (1) (intro.), (b), (f), and (h), (2),
21 (3), and (4) and 425.205 (4) of the statutes, the renumbering and amendment of
22 section 425.109 (1) (d) of the statutes, and the creation of section 425.109 (1) (d) 2.
23 of the statutes take effect on the first day of the 4th month beginning after
24 publication.

25 (END)

Barman, Mike

From: Henkel, Matt
Sent: Thursday, January 30, 2014 9:55 AM
To: LRB.Legal
Subject: Draft Review: LRB -4130/1 Topic: Pleading requirements, right to cure after default, under the consumer act

Please Jacket LRB -4130/1 for the SENATE.