

CHAPTER 407, Laws of 1975

AN ACT to repeal 422.202 (2) (a) and (b) (intro.); to renumber 218.01 (6) (b) 6 and 7, 421.301 (20) (a) to (h) and 422.202 (2) (b) 1; to renumber and amend 218.01 (6) (b) 5, 422.202 (2) (b) 2 to 5 and 425.207; to amend 138.05 (6), 138.09 (7) (c) 2 and (i) 1, 421.201 (5), 421.301 (20) (intro.) and (27) (a) 2 and 3, 422.202 (2) (intro.), 422.303 (title) and (1), 422.417 (2), 425.103 (2) (c), 425.105 (1), 425.202, 425.205 (1) (intro.), (a), (d) and (e), (2), (3) (b) and (d) to (g), (4) and (5) (a) and (b), 425.206 (1) and (2), 426.110 (14), 426.202 (1) (a) and (3) and 427.104 (1) (intro.); to repeal and recreate 425.203; and to create 218.01 (6) (b) 5, 421.301 (20) (b) and (27) (a) 4 and (c), 425.206 (1) (c), 425.207 (2), 425.301 (4), 426.201 (5) and 426.202 (2) of the statutes, relating to various changes in the Wisconsin consumer act, rates of interest and related transactions.

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

SECTION 1. 138.05 (6) of the statutes is amended to read:

138.05 (6) This section does not apply to transactions governed by chs. 421 to 427 or to discounts described in s. 421.301 (20) (b).

SECTION 2. 138.09 (7) (c) 2 of the statutes is amended to read:

138.09 (7) (c) 2. For the purpose of computing interest under this section, whether at the maximum rate or less, a day shall be considered one-thirtieth of a month when such computation is made for a fraction of a month, ~~except that on loan.~~ Loan contracts providing for instalments payable at monthly intervals, a first interval may provide for a first period between the date of the contract and the first instalment due date of not more than 45 days and not less than 15 days shall be treated as a monthly interval. Where the first period is greater or lesser than one month, interest may be charged only for each day in the first period, at a rate not to exceed one-thirtieth of the interest which would be applicable to a first instalment period of one month, but such first period may be considered a monthly interval for purposes of determining rebates.

SECTION 3. 138.09 (7) (i) 1 of the statutes is amended to read:

138.09 (7) (i) 1. The additional charges allowed in s. 422.202 whether or not the loan is a consumer loan; ~~but no additional charge shall be permitted for the charges set forth in s. 422.202 (2) (b) 2 to 5;~~

SECTION 4. 218.01 (6) (b) 5 of the statutes is renumbered 218.01 (6) (b) 6 and amended to read:

218.01 (6) (b) 6. The time price differential shall be computed on the unpaid balance to be financed as determined under the introductory paragraph hereof at the annual rates provided for in the above classes which are payable by instalment payments, extending for a period of one year. On instalment sales contracts providing for equal instalment payments extending for a period which is less than or greater than one year the time price differential shall be computed proportionately. On contracts payable in one instalment or in unequal instalments the seller may receive a rate that will not yield more than would be received by the use of the rates permitted in classes 1 to 4 5. The time price differential shall be computed on the basis of a full month for any fractional month period in excess of 15 days.

SECTION 5. 218.01 (6) (b) 5 of the statutes is created to read:

218.01 (6) (b) 5. Class 5: Any new truck or truck tractor having a gross vehicular weight of 15,000 pounds or more and designated by the manufacturer by a year model of the same model year in which the sale is made — \$8.50 per \$100 per annum.

SECTION 6. 218.01 (6) (b) 6 and 7 of the statutes are renumbered 218.01 (6) (b) 7 and 8, respectively.

SECTION 7. 421.201 (5) of the statutes is amended to read:

421.201 (5) Subchapters I and II of ch. 425, relating to creditors' remedies, including applicable penalties, apply to actions or other proceedings brought in this state to enforce rights arising from consumer transactions or extortionate extensions of credit, wherever made, but conduct, action or proceedings to recover collateral shall be governed by the law of the state where the collateral is located at the time of its recovery unless the collateral is owned by a Wisconsin resident, who has removed it from this state only for purposes of transportation to or use in his employment or for temporary periods which do not exceed 15 days.

SECTION 8. 421.301 (20) (intro.) of the statutes is amended to read:

421.301 (20) (intro.) "Finance charge" means the sum of all charges, payable directly or indirectly by the customer as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the creditor or any other person on behalf of the customer to the creditor or to a 3rd party unless the creditor had no notice or knowledge of the charges paid or payable to the 3rd party, ~~including~~.

(a) The term includes the following types of charges to the extent they are not permitted additional charges under s. 422.202 or delinquency charges (s. 422.203) or deferral charges (s. 422.204):

SECTION 9. 421.301 (20) (a) to (h) of the statutes are renumbered 421.301 (20) (a) 1 to 8, respectively.

SECTION 10. 421.301 (20) (b) of the statutes is created to read:

421.301 (20) (b) With respect to a consumer transaction, a discount of 5% or less of the cash price which is offered to the customer for payment by cash, check or the like either immediately or within a period of time is not a part of the finance charge for the purpose of determining the maximum rate of finance charge if the merchant transacts business only on the basis of immediate payment or payment by tender of a single sum within a stated period of time and provided such discount is disclosed in accordance with the requirements of the federal consumer credit protection act.

SECTION 11. 421.301 (27) (a) 2 and 3 of the statutes are amended to read:

421.301 (27) (a) 2. The customer has the privilege of paying the balance in full or in instalments; ~~and~~

3. A finance charge may be computed by the creditor from time to time on an outstanding unpaid balance; ~~and~~

SECTION 12. 421.301 (27) (a) 4 and (c) of the statutes are created to read:

421.301 (27) (a) 4. The creditor has treated the transaction as open-end consumer credit for purposes of any disclosures required under the federal consumer credit protection act.

(c) A credit plan shall not be considered an open-end credit plan, even though it meets the criteria listed in par. (a) 1, 2, and 3, if the creditor treats the transaction as other than open-end credit for each extension of credit for purposes of any disclosures required under the federal consumer credit protection act.

SECTION 13. 422.202 (2) (intro.) of the statutes is amended to read:

422.202 (2) (intro.) With respect to a consumer credit transaction which involves the extension of credit secured by an interest in real property, the ~~merchant may bargain for and receive in addition to the finance charge~~ parties may agree to the payment by the customer of the following additional charges in addition to the finance charge, if they will be paid to persons not related to the merchant, are reasonable in amount, bona fide and not for the purpose of circumvention or evasion of this subchapter:

SECTION 14. 422.202 (2) (a) and (b) (intro.) of the statutes are repealed.

SECTION 15. 422.202 (2) (b) 1 of the statutes is renumbered 422.202 (2) (a).

SECTION 16. 422.202 (2) (b) 2 to 5 of the statutes are renumbered 422.202 (2) (b) to (e), respectively, and amended to read:

422.202 (2) (b) Fees for preparation of a deed, settlement statement or other documents ~~to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit;~~

(c) Fees for notarizing deeds and other documents ~~to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit;~~

(d) Appraisal fees ~~to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit;~~ and

(e) Survey costs ~~to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit.~~

SECTION 17. 422.303 (title) and (1) of the statutes are amended to read:

422.303 (title) Form requirements other than open-end or discount. (1) In a consumer credit sale other than one pursuant to an open-end credit plan or a discount sale as described in s. 421.301 (20) (b), the customer's obligation to pay the total of payments shall be evidenced by a single instrument, which shall include, in addition to the other disclosures required by this subchapter, the signature of the seller, the signature of the customer, the date on which it was signed and a description of any property the customer transfers to the seller as a trade-in.

SECTION 18. 422.417 (2) of the statutes is amended to read:

422.417 (2) With respect to a consumer lease, a lessor may not take a security interest in any property of the customer other than the leased goods to secure his obligations under the lease. This subsection does not prohibit a security interest in a cash security deposit for a consumer lease of motor vehicles or agricultural equipment.

SECTION 19. 425.103 (2) (c) of the statutes is amended to read:

425.103 (2) (c) To observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the ~~creditor's merchant's~~ right in any collateral securing the transaction or goods subject to a consumer lease, or materially impairs the customer's ability to pay amounts due under the transaction.

SECTION 20. 425.105 (1) of the statutes is amended to read:

425.105 (1) A merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in s. 425.205 (6), or demand or take possession of collateral or goods subject to a consumer lease other than by accepting a voluntary surrender ~~of collateral thereof~~ (s. 425.204), unless he believes the customer to be in default (s. 425.103), and then only upon the expiration of 15 days after a notice is given pursuant to s. 425.104 if the customer has the right to cure under this section.

SECTION 21. 425.202 of the statutes is amended to read:

425.202 Definition: "collateral". For purposes of this ~~subchapter~~ chapter, "collateral" means goods subject to a security interest in favor of a merchant which secures a customer's obligations under a consumer credit transaction.

SECTION 22. 425.203 of the statutes is repealed and recreated to read:

425.203 Enforcement of Merchant's rights in collateral and leased goods. (1) At any time after default (s. 425.103) and the expiration of the period for cure of default (s. 425.105), if applicable, a merchant may commence an action to recover collateral or goods subject to a consumer lease pursuant to s. 425.205, or reduce his claim to a judgment by any available judicial procedure.

(2) In any action for a judgment under sub. (1) other than an action pursuant to s. 425.205, the judgment may provide for the right to possession of the collateral or leased goods by the merchant and for a deficiency, if the merchant would not be precluded from a deficiency judgment under s. 425.209 had he initially proceeded against the collateral and if the judgment includes a finding that the merchant has the right to possession of any collateral securing the consumer credit transaction or goods subject to a consumer lease. Upon determining such judgment under this subsection the merchant shall have the right to:

(a) Have execution issue to require the sheriff in the county where the collateral or leased goods may be to take the same from the defendant and deliver it to the plaintiff; or

(b) Immediately exercise his right to nonjudicial recovery of the collateral or leased goods, subject to s. 425.206.

(3) Following recovery of collateral pursuant to a judgment under sub. (2), the merchant may either retain the collateral in full satisfaction of the customer's obligation pursuant to s. 409.505, in which event he shall satisfy the judgment obtained pursuant to sub. (2); or shall dispose of the collateral pursuant to s. 409.504, in which event:

(a) The merchant shall apply to the court which entered the judgment pursuant to sub. (2) to confirm the sale or other disposition of the collateral upon 8 days' notice to all parties named in such action, either personally or by certified or registered mail directed to the last-known address of the parties. Such notice shall state, in addition to any other matter required by law, the time and place of the hearing, the amount of the judgment, the proceeds received upon disposition of the collateral, the fair market value of the collateral claimed by the merchant if such standard is applicable under s. 425.210, the reasonable expenses incurred in disposition of collateral, the net amount proposed to be credited against the judgment, and any deficiency remaining. In addition, the notice directed to the customer shall conspicuously advise him that he has the right to appear at such hearing and to contest any matter set forth in the notice.

(b) At such a hearing on confirmation, the court shall determine on the basis of the evidence presented by the parties, by affidavit or otherwise, the commercial reasonableness of the merchant's disposition of the collateral, the reasonable expenses incurred by the merchant in disposition of the collateral, the compliance with s. 425.210 if applicable, the resulting amount to be credited against the judgment and the remaining deficiency. Following such hearing and determinations, the court shall enter an appropriate order to satisfy the judgment and provide such other relief as may be appropriate. Where the underlying transaction is a consumer credit sale of goods or services or a consumer loan in which the lender is subject to defenses arising from s. 422.408, this hearing shall be considered a proceeding for a deficiency judgment pursuant to s. 425.209 (1).

(4) Following recovery of goods subject to a consumer lease pursuant to a judgment under sub. (2), no deficiency shall be allowable unless the merchant disposes

of the leased goods and applies the proceeds to the customer's obligation, in which event:

(a) The merchant shall apply to the court which entered the judgment pursuant to sub. (2) to confirm the sale or other disposition of the leased goods upon 8 days' notice to all parties named in the action, either personally or by certified or registered mail directed to the last known address of the parties. Such notice shall state, in addition to any other matter required by law, the time and place of the hearing, the amount of the judgment, the proceeds received upon disposition of the leased goods, the reasonable expenses incurred in disposition of the leased goods, the net amount proposed to be credited against the judgment, and any deficiency remaining. In addition, the notice directed to the customer shall conspicuously advise him that he has the right to appear at such hearing and to contest any matter set forth in the notice.

(b) At such a hearing on confirmation, the court shall determine on the basis of evidence presented by the parties, by affidavit or otherwise, the commercial reasonableness of the merchant's disposition of the leased goods, the reasonable expenses incurred by the merchant in disposition of the leased goods, and the resulting amount to be credited against the judgment entered pursuant to sub. (2). Following such hearing and determinations, the court shall enter an appropriate order to satisfy the judgment and provide such other relief as may be appropriate.

SECTION 23. 425.205 (1) (intro.), (a), (d) and (e), (2), (3) (b) and (d) to (g), (4) and (5) (a) and (b) of the statutes, as affected by supreme court order dated February 17, 1975 and effective January 1, 1976, are amended to read:

425.205 (1) (intro.) Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease shall commence an action for replevin of such collateral or leased goods. Such actions shall be conducted in accordance with ch. 299, notwithstanding s. 299.01 (3) and the value of the collateral or leased goods sought to be recovered, except that:

(a) Notwithstanding ss. 299.05 (2) and 299.06 (2) (a), process ~~may shall~~ be issued ~~to by the clerk of court~~, and such action ~~may shall~~ be commenced by upon the request of an officer or agent employe of a merchant on the merchant's behalf ~~even though such officer or agent is not an attorney authorized to practice law in this state;~~

(d) On the return date of the summons or any adjournment date thereof the customer shall have the right to a hearing on the issue of default or other matter which questions the validity of the ~~creditor's merchant's~~ claim to the collateral or leased goods, and the customer may answer, move to dismiss under s. 802.06 (2) or otherwise plead to the complaint orally, but if the customer fails to appear on the return day, judgment may be entered by the clerk or judge in accordance with the demands of the verified complaint, or upon an affidavit of the facts, or sworn testimony or other evidence to the clerk or judge; and

(e) Judgment in such action shall determine only the right to possession of the collateral or leased goods, but such judgment shall not bar any subsequent action for damages or deficiency to the extent permitted by this subchapter.

425.205 (2) The summons in such actions shall be in the following form:

State of Wisconsin

County Court

.... County

A. B. Plaintiff

v.

C. D. Defendant

SUMMONS (Small Claim)

THE STATE OF WISCONSIN

To said Defendant:

The Plaintiff named above has commenced an action to recover possession of the

following property:

[Description of Collateral or Leased Goods]

This claim arises under a consumer credit transaction under which you are alleged to be in default, as described in the attached complaint.

IF YOU ARE NOT IN DEFAULT OR HAVE AN OBJECTION TO THE PLAINTIFF'S TAKING THE PROPERTY LISTED ABOVE, YOU MAY ARRANGE FOR A HEARING ON THESE ISSUES BY APPEARING IN THE COUNTY COURT OF COUNTY, IN THE COURTHOUSE IN THE CITY OF, BEFORE JUDGE OR ANY OTHER JUDGE OF SAID COURT TO WHOM THE ACTION MAY BE ASSIGNED, ON DAY OF A.D. 19.. AT O'CLOCK IN THE NOON. IF YOU DO NOT APPEAR AT THAT TIME, JUDGMENT WILL BE RENDERED AGAINST YOU FOR DELIVERY OF SUCH PROPERTY TO THE PLAINTIFF.

DATED, 19..

E.F.
Clerk of County Court
[or]

Plaintiff's P. O. Address

Plaintiff's Attorney or Agent

....

Plaintiff's Attorney (if any)

....

Defendant's P. O. Address

....

....

(3) (b) A description of the collateral or leased goods;

(d) ~~A~~ Except in an action to recover leased goods, a statement that the customer will have the right to redeem pursuant to s. 425.208 and the actual or estimated total payments required for redemption of the collateral, itemized in accordance with s. 425.208 (1);

(e) ~~The~~ Except in an action to recover leased goods, the estimated amount of any deficiency claim which may be available to the merchant (s. 425.209) and which he intends to assert (s. 425.210) if the customer fails to redeem the collateral; ~~and~~

(f) If applicable, a statement that the customer has the right to cure, pursuant to a notice given under s. 425.104, and the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made; ~~and~~

(g) An accurate copy of the writing, if any, evidencing the transaction, except that with respect to claims arising under open-end credit plans, the complaint shall state that the ~~creditor~~ merchant will produce writings evidencing the customer's obligation, upon receipt of the customer's written request therefor on or before the return day.

(4) Upon the written request of the customer, the ~~creditor~~ merchant shall produce an accurate copy of writings evidencing any transactions pursuant to an open-end credit plan upon which the ~~creditor's~~ merchant's claim is made, and judgment shall not be entered for the ~~creditor~~ merchant until he does so.

(5) (a) Have execution issue to require the sheriff of the county where the collateral or leased goods may be to take the same from the defendant and deliver it to the plaintiff, pursuant to ~~ss. 810.01 to 810.13~~; or

(b) Immediately exercise his right to nonjudicial recovery of the collateral or leased goods, subject to s. 425.206.

SECTION 24. 425.206 (1) of the statutes is amended to read:

425.206 (1) Notwithstanding any other provision of law, no ~~creditor shall~~ merchant may take possession of collateral or goods subject to a consumer lease in this state by means other than legal process in accordance with this subchapter except when:

(a) The customer has surrendered the collateral or leased goods; ~~or~~

(b) Judgment for the ~~creditor~~ merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203 (2); or

SECTION 25. 425.206 (1) (c) of the statutes is created to read:

425.206 (1) (c) The merchant has taken possession of collateral or leased goods pursuant to s. 425.207 (2).

SECTION 26. 425.206 (2) of the statutes is amended to read:

425.206 (2) In taking possession of collateral or leased goods, no merchant ~~shall may~~ a) commit a breach of the peace, ~~nor~~ or b) enter a dwelling used by the customer as his residence except at the voluntary request of a customer.

SECTION 27. 425.207 of the statutes, as affected by supreme court order dated February 17, 1975 and effective January 1, 1976, is renumbered 425.207 (1) and amended to read:

425.207 (title) Restraining order to protect collateral or leased goods; abandoned property. (1) If the court finds that the ~~creditor~~ merchant probably will recover possession of the collateral or goods subject to a consumer lease, and the customer is acting, or is about to act, with respect to the collateral or leased goods in a manner which substantially impairs the ~~creditor's~~ merchant's prospect for realization of his security interest or his interest in the leased goods, the court may issue an order pursuant to s. 813.02 restraining the customer from so acting with respect to the collateral or leased goods, and need not require a bond by the ~~creditor~~ merchant, notwithstanding s. 813.06.

SECTION 28. 425.207 (2) of the statutes is created to read:

425.207 (2) A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request a) the customer has surrendered the collateral or leased goods; or b) judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last-known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects his right to possession through a surrender by the customer or a judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set forth in s. 409.504 (1). In determining such expenses, leased goods shall be considered collateral under such subsection. However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects his right to possession in the manner provided in this subsection.

SECTION 29. 425.301 (4) of the statutes is created to read:

425.301 (4) The liability of a merchant under this act is in lieu of and not in addition to any liability under the federal consumer credit protection act. An action by a person alleging a violation under this act may not be maintained if a final judgment has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act. In the event that a final judgment is entered against any merchant under this act and the federal consumer credit protection act for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.

SECTION 30. 426.110 (14) of the statutes is amended to read:

426.110 (14) A merchant shall not be liable in a class action for specific penalties (ss. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1)) for which it would be liable in individual actions by reason of violations of this act or of conduct prescribed in sub. (2) unless it is shown by a preponderance of the evidence that the violation was a wilful and knowing violation of this act. No recovery in an action under this subsection may exceed \$100,000.

SECTION 31. 426.201 (5) of the statutes is created to read:

426.201 (5) No person is subject to this section solely by reason of offering the discount described in s. 421.301 (20) (b).

SECTION 32. 426.202 (1) (a) of the statutes is amended to read:

426.202 (1) (a) Except for licensees under s. 218.04, persons required to file notification shall on or before December 1 of each year pay to the administrator an annual fee on the amounts financed on which the annual percentage rate exceeds the rates permitted by s. 138.05 (1) (a) or (b), and which arise from consumer credit transactions made in this state, other than those made pursuant to an open-end credit plan, within the preceding calendar year, or any 12-month period ending subsequent thereto and prior to December 1, and held by the merchant for more than 30 days after the inception of the transaction giving rise to the obligations, or by an assignee who has not filed notification, according to the following schedule:

SECTION 33. 426.202 (2) of the statutes is created to read:

426.202 (2) With respect to consumer credit transactions made pursuant to an open-end credit plan on which any applicable periodic rate exceeds the rate permitted by s. 138.05 (1) (a) persons required to file notification shall calculate the total amount of credit outstanding for each month in their reporting period, subject to the exclusion provided in this subsection, divide the sum of those amounts by the number of months in the reporting period and pay a fee on the resulting average monthly outstanding credit balance according to the schedule set forth for amounts financed in sub. (1). The filing date and reporting period shall be determined in the same manner as required for all other merchants by sub. (1) and rules issued by the administrator. In determining the average monthly outstanding credit balance the merchant may exclude that amount which is equal to the amount of all monthly outstanding credit balances paid by customers within any grace period offered by the merchant and upon which no finance charge is assessed. However, the amount so excluded shall in no event exceed 20% of the average monthly outstanding credit balance calculated without application of this exclusion.

SECTION 34. 426.202 (3) of the statutes is amended to read:

426.202 (3) A licensee under ss. 138.09, 138.12, 218.01, 218.04 and 218.11 and ch. 186 shall receive a credit for the amount of fees paid to the commissioner of banking or the commissioner of credit unions under each of those sections for the fees in sub. (1).

SECTION 35. 427.104 (1) (intro.) of the statutes is amended to read:

427.104 (1) (intro.) 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 shall not:
