



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1279/1
ARG:wlj:wj

2015 ASSEMBLY BILL 117

March 27, 2015 – Introduced by Representatives BORN, KREMER and MURPHY, sponsored by Senator FARROW. Referred to Committee on Financial Institutions.

1 **AN ACT** *to renumber and amend* 425.109 (1) (d); *to amend* 425.109 (1) (intro.),
2 425.109 (1) (b), 425.109 (1) (f), 425.109 (1) (h), 425.109 (2), 425.109 (3) and
3 425.205 (4); and *to create* 425.1025, 425.109 (1) (d) 2. and 425.109 (4) of the
4 statutes; **relating to:** pleading requirements under the Wisconsin Consumer
5 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 (usually involving use of a credit card).

ASSEMBLY BILL 117

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 this billing statement reflecting the total outstanding balance on the customer's account. 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 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.

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

ASSEMBLY BILL 117

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

5 425.109 (1) (intro.) A complaint by a ~~creditor~~ merchant to enforce any cause of
6 action arising from a consumer credit transaction shall include all of the following:

7 **SECTION 3.** 425.109 (1) (b) of the statutes is amended to read:

8 425.109 (1) (b) A description of the collateral or leased goods, if any, which the
9 ~~creditor~~ merchant seeks to recover or has recovered.

10 **SECTION 4.** 425.109 (1) (d) of the statutes is renumbered 425.109 (1) (d) 1. and
11 amended to read:

12 425.109 (1) (d) 1. ~~The~~ If the consumer credit transaction is pursuant to an
13 open-end credit plan, the actual or estimated amount of U.S. dollars or of a named
14 foreign currency that the creditor alleges he or she is entitled to recover and the
15 figures necessary for computation of the amount, including any amount received
16 from the sale of any collateral alleged to be due to the merchant on a date certain after
17 the customer’s default, as reflected on a billing statement addressed to the customer,
18 and a breakdown of all charges, interest, and payments, including any amount
19 received from the sale of any collateral, occurring after this date certain. This
20 paragraph does not require a specific itemization, but the breakdown shall identify
21 separately the amount due on a date certain, the total of all charges occurring after
22 this date certain, the total of all interest occurring after this date certain, and the
23 total of all payments occurring after this date certain.

24 **SECTION 5.** 425.109 (1) (d) 2. of the statutes is created to read:

ASSEMBLY BILL 117**SECTION 5**

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

10 **SECTION 6.** 425.109 (1) (f) of the statutes is amended to read:

11 425.109 (1) (f) Except in an action to recover goods subject to a consumer lease,
12 the estimated amount of U.S. dollars or of a named foreign currency of any deficiency
13 claim which may be available to the ~~creditor~~ merchant following the disposition of
14 any collateral recovered subject to the limitations of s. 425.209 or which the ~~creditor~~
15 merchant seeks to recover and which the ~~creditor~~ merchant intends to assert subject
16 to the limitations of s. 425.210 if the customer fails to redeem the collateral.

17 **SECTION 7.** 425.109 (1) (h) of the statutes is amended to read:

18 425.109 (1) (h) ~~An~~ Subject to sub. (2) and s. 425.205 (4), an accurate copy of the
19 writings, if any, evidencing the transaction, except that with respect to claims arising
20 under open-end credit plans, a statement that the ~~creditor~~ merchant will submit
21 accurate copies of the writings evidencing the customer's obligation to the court and
22 the customer upon receipt of the customer's written request therefor on or before the
23 return date or the date on which the customer's answer is due.

24 **SECTION 8.** 425.109 (2) of the statutes is amended to read:

ASSEMBLY BILL 117

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

12 **SECTION 9.** 425.109 (3) of the statutes is amended to read:

13 425.109 (3) A default judgment may not be entered upon a complaint which
14 fails to comply with this section.

15 **SECTION 10.** 425.109 (4) of the statutes is created to read:

16 425.109 (4) For purposes of subchs. III and IV, a complaint that fails to comply
17 with this section does not constitute a violation of chs. 421 to 427, and shall not give
18 rise to recovery of attorney fees under s. 425.308, unless the customer establishes by
19 a preponderance of the evidence that the failure to comply was willful or intentional.

20 **SECTION 11.** 425.205 (4) of the statutes is amended to read:

21 425.205 (4) Upon the written request of the customer under s. 425.109 (2), the
22 merchant shall produce an accurate copy of writings evidencing ~~any transactions~~ the
23 customer's obligation pursuant to an open-end credit plan upon which the
24 merchant's claim is made, and default judgment shall not be entered for the
25 merchant ~~until~~ unless the merchant does so. The writings requirement under this

ASSEMBLY BILL 117**SECTION 11**

1 subsection is satisfied if the merchant provides the customer with a copy of the billing
2 statement referenced in s. 425.109 (1) (d) 1. addressed to the customer reflecting the
3 total outstanding balance on the customer's account at the time this billing
4 statement was issued. If this billing statement is attached to the complaint, then the
5 statement under s. 425.109 (1) (h) is not required to be included in the complaint.

6 **SECTION 12. Initial applicability.**

7 (1) This act first applies to complaints filed on the effective date of this
8 subsection.

9 **SECTION 13. Effective date.**

10 (1) This act takes effect on the first day of the 4th month beginning after
11 publication.

12 (END)