

CHAPTER 427

DEBT COLLECTION

427.101 Short title

427.102 Scope

427.103 Definitions: "claim"; "debt collection"; "debt collector"

427.104 Prohibited practices

427.105 Remedies

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

History: 1971 c. 239.

Note: See the note under s. 421.101 as to the effective date and applicability of the Wisconsin Consumer Act.

427.102 Scope. This chapter applies to conduct and practices in connection with the collection of obligations arising from consumer transactions.

History: 1971 c. 239.

Wisconsin consumer act—a critical analysis. Heiser, 57 MLR 389.

Wisconsin consumer act—a freak out? Barrett, Jones, 57 MLR 483.

427.103 Definitions: "claim"; "debt collection"; "debt collector". (1) "Claim" means any obligation or alleged obligation arising from a consumer transaction.

(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.

427.104 Prohibited practices. (1) 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:

(a) Use or threaten force or violence to cause physical harm to the customer, his dependents or his 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 his 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 him 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 him 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 him;

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

(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;

(1) 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).

History: 1971 c. 239; 1975 c. 407.

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

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 he was induced to surrender collateral (s. 425.202) 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 he 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 his loss of use of the collateral.

History: 1971 c. 239.