CHAPTER 423

CONSUMER APPROVAL TRANSACTIONS AND OTHER CONSUMER RIGHTS

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SUBCHAPTER I

GENERAL PROVISIONS

423.101 Short title. This chapter shall be known and may be cited as Wisconsin consumer act — consumer approval transactions and other consumer rights.

History: 1971 c. 239; 1991 a. 158.

423.102 Scope. This chapter applies to all consumer transactions, except that subch. II does not apply to cemetery preneed sales under s. 440.92.

History: 1971 c. 239; 1989 a. 307.

SUBCHAPTER II

RIGHT TO CANCEL

423.201 Definition. In this subchapter:

(1) "Consumer approval transaction" means a consumer transaction other than a sale or lease or listing for sale of real property or a sale of goods at auction that:

(a) Is initiated by face–to–face solicitation away from a regular place of business of the merchant or by mail or telephone solicitation directed to the particular customer; and

(b) Is consummated or in which the customer's offer to contract or other writing evidencing the transaction is received by the merchant away from a regular place of business of the merchant and involves the extension of credit or is a cash transaction in which the amount the customer pays exceeds $25.

(2) "Consumer approval transaction" does not include a catalog sale that is not accompanied by any other solicitation or a consumer loan conducted and consummated entirely by mail.

History: 1971 c. 239; 1983 a. 389; 1997 a. 302; 1999 a. 32; 2011 a. 257.

This section does not restrict the ability of a merchant or seller to have more than one regular place of business. Reusch v. Roob, 2000 WI App. 76, 234 Wis. 2d 270, 610 N.W.2d 168, 98–3102.

423.202 Right to cancel: manner of cancellation. (1) Except as provided in sub. (4), in addition to any right otherwise to revoke an offer, to rescind the transaction or to exercise any remedy for the merchant's breach, a customer has the right to cancel a consumer approval transaction until midnight of the 3rd business day after the merchant has given the notice to the customer in accordance with s. 423.203.

(2) Except as provided in sub. (2m), notice of cancellation shall be by mail addressed to the merchant and shall be considered given at the time mailed.

(2m) If the property which is the subject of the transaction must be custom made in the ordinary course of business, and is unique to that transaction, the merchant may require that the notice of cancellation, if given, be made by certified or registered mail.

(3) Notice of cancellation by the customer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the customer not to be bound by the consumer approval transaction.

(4) The customer may not cancel a consumer approval transaction if:

(a) The customer has determined that a delay of 3 business days in performance of the merchant's obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the customer owns or for which the customer is responsible;

(b) The customer furnishes the merchant with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving the customer's right of rescission. The use of printed forms for this purpose is prohibited;

(c) The merchant in good faith makes a substantial beginning of performance of the contract before the customer gives notice of cancellation; and

(d) In the case of goods, the goods cannot be returned to the merchant in substantially as good condition as when received by the customer.

History: 1971 c. 239; 1973 c. 3; 1991 a. 316.

423.203 Notice to customer. (1) Whenever a customer has the right to cancel a consumer approval transaction, the merchant shall give 2 copies of a typed or printed notice of that fact to the customer. The notice must:

(a) Be printed in capital and lowercase letters of not less than 12–point boldface type;

(b) Appear under the conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL";

(c) Read as follows: You may cancel this agreement by mailing a written notice to (*insert name and mailing address of seller*) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address. A duplicate of this page is provided by the seller for your records.

(2) A merchant who in the ordinary course of business regularly uses a language other than English in any advertising or other solicitation of customers or in any printed forms for use by customers or in any face–to–face negotiations with the merchant's customers shall give the notice described in this section to a customer whose principal language is such other language both in English and in the other language.

(3) The notice required under this section must be delivered either after all the credit cost disclosures have been made to the customer as required by the federal consumer credit protection act and the customer has signed the writing evidencing the transaction, or contemporaneously therewith, but not before.

(3m) Compliance with requirements of federal statutes, rules or regulations governing form of notice of right of cancellation, in consumer approval transactions otherwise subject to this chapter, shall be deemed to satisfy the notice requirements of this chapter.

(4) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1991 a. 316.

Legislative Council Note, 1973: [As to sub. (3m)] Allows compliance with federal notice requirements as to form to constitute compliance with the notice requirements of this chapter. This subsection is directed primarily at merchants with interstate operations who are complying with the federal trade commission's recently–promulgated trade regulation on door–to–door sales.

This subsection goes only to the issue of notice. It is preferable not to require interstate merchants to print special forms just to comply with Wisconsin law. It does not accept other portions of the federal rules, such as return of downpayment and repossessing of already–delivered property. These subjects will continue to be governed by Wisconsin law. [Bill 432–A]

423.204 Restoration of down payment; security interest void; return of property. (1) Within 10 days after a consumer approval transaction has been canceled, the merchant shall cause any money paid by the customer, including a down payment, to be returned to the customer and shall take any appropriate action to reflect the termination of the transaction including any security interest created as a result.

(2) Upon cancellation, as allowed by this section, the customer is not liable for any finance or other charge and the transaction, including any security interest, is void.

(3) If the merchant has received any property from the customer, the merchant shall return such property in substantially as good condition as it was when it was given within 20 days after the cancellation of the transaction. If such property is not returned within such time, the customer shall have the right to recover the property or the greater of its agreed or fair market value at retail.

History: 1971 c. 239; 1991 a. 316.

423.205 Duty of customer. (1) The customer has the duty to take reasonable care of the delivered property in the customer's possession from the time of delivery until the expiration of a reasonable time after tender, not to exceed 20 days.

(2) Upon the performance of the merchant's obligations under s. 423.204, the customer shall tender the property to the merchant.

(3) Tender shall be made at the location of the property or at the residence of the customer at the option of the customer.

(4) If the merchant does not take possession of the property within 20 days after tender by the customer, ownership of the property vests in the customer without obligation on the customer's part to pay for it.

(5) If the merchant has performed any services pursuant to a consumer approval transaction prior to its cancellation, the merchant is entitled to no compensation.

History: 1971 c. 239; 1973 c. 3.; 1991 a. 316.

Cross–reference: See also s. DFI–WCA 1.44, Wis. adm. code.

SUBCHAPTER III

ADVERTISING

423.301 False, misleading or deceptive advertising. No merchant shall advertise, print, display, publish, distribute or broadcast or cause to be advertised, printed, displayed, published, distributed or broadcast, in any manner any statement or representation with regard to the extension of consumer credit including the rates, terms or conditions for the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information with respect to the extension of credit that is necessary to make the statements therein not false, misleading or deceptive. With respect to matters specifically governed by the federal consumer credit protection act, compliance with such act satisfies the requirements of this section.

History: 1971 c. 239.

423.302 Remedies and penalty. In addition to any other remedy provided by law, a customer who has been induced to consummate a consumer credit transaction as a result of advertising in violation of s. 423.301 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

History: 1971 c. 239.

SUBCHAPTER IV

CUSTOMER IDENTIFICATION

423.401 Credit card identification information. (1) LIMITATION. Except as provided in sub. (2), a merchant may not record a customer's address, telephone number or any other identification information as a condition for accepting a credit card as payment for a consumer credit transaction.

(2) EXCEPTIONS. A merchant may record a customer's address or telephone number if any of the following conditions exists:

(a) The credit card issuer does not require the merchant to obtain from the issuer prior authorization as to the availability of credit in order to complete the credit card transaction.

(b) The merchant requires the information for shipping, delivery, service orders or installation purposes or to notify the customer of a special order.

(3) REMEDIES. Whoever violates this section is subject to the remedies and penalties under s. 425.303.

History: 1991 a. 158.

423.402 Check identification information. (1) LIMITATION. Except as provided in sub. (4), a merchant may not request or record a customer's credit card number as a condition for accepting a check or share draft as payment for a consumer transaction.

(2) CREDIT CARD DISPLAY. If a customer pays for a consumer transaction by check or share draft, a merchant may request a customer to display a credit card as an indication of the customer's financial responsibility or as additional identification, but the merchant may not record any information except the type of credit card displayed and the credit card expiration date.

(3) CHECK ACCEPTANCE. This section does not require a merchant to accept a check or share draft as payment for a consumer transaction, whether or not a credit card is displayed.

(4) EXCEPTION. A merchant may request and record a customer credit card number as a condition for accepting a check or share draft if all of the following conditions are met:

(a) The merchant has contracted with the card issuer of the requested credit card to cash or accept a check or share draft presented by a holder of the requested credit card.

(b) The card issuer of the requested credit card has contracted with the merchant to guarantee a check or share draft presented to the merchant by a holder of the requested credit card.

(5) REMEDIES. Whoever violates this section is subject to the remedies and penalties under s. 425.303.

History: 1991 a. 158.