CHAPTER 426
CONSUMER TRANSACTIONS — ADMINISTRATION

SUBCHAPTER I
POWERS AND FUNCTIONS OF ADMINISTRATOR
426.101 Short title. This chapter shall be known and may be cited as Wisconsin consumer act — administration.

426.102 Applicability. This chapter applies to persons who do any of the following in this state:

(1) Make or solicit consumer approval transactions (s. 423.201) or consumer credit transactions or modifications thereof.

(2) Directly collect payments from or enforce rights against customers arising from consumer approval transactions or consumer credit transactions, wherever made.

(3) Act as a credit services organization, as defined in s. 422.501 (2).

426.103 Administrator. “Administrator” means the secretary of financial institutions.

426.104 Powers of administrator; duty to report. (1) In addition to other powers granted by chs. 421 to 427 and 429, the administrator within the limitations provided by law shall:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with chs. 421 to 427 and 429, commence administrative proceedings on his or her own initiative and commence civil actions solely through the department of justice;

(b) Counsel persons and groups on their rights and duties under chs. 421 to 427 and 429;

(c) Make studies appropriate to effectuate the purposes and policies of chs. 421 to 427 and 429 and make the results available to the public;

(d) Hold such public or private hearings as the administrator deems necessary or proper to effectuate the purposes and policies of chs. 421 to 427 and 429;

(e) Adopt, amend and repeal rules to carry out the purposes and policies of chs. 421 to 427 and 429, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(2) The administrator shall report annually on practices in consumer transactions, on the use of consumer credit in the state, on problems attending the collection of debts, on the problems of persons of limited means in consumer transactions, and on the operation of chs. 421 to 427 and 429. For the purpose of making the report, the administrator may conduct research and make appropriate studies. The report shall be given to the division of banking for inclusion in the report of the division of banking under s. 220.14 and shall include:

(a) A description of the examination and investigation procedures and policies of the administrator’s office;

(b) A statement of policies followed in deciding whether to investigate or examine the offices of persons subject to chs. 421 to 427 and 429;

(c) A statement of policies followed in deciding whether to bring any action authorized under chs. 421 to 427 and 429;

(d) Such recommendations for modifications or additions to chs. 421 to 427 and 429 as in the experience and judgment of the administrator are necessary; and

(e) Such other statements as are necessary or proper to achieve the purposes or policies of this section or to effectuate the purposes or policies of chs. 421 to 427 and 429.

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426.105 Administrative powers with respect to super-
vised financial organizations. (1) All powers and duties of
the administrator under chs. 421 to 427 and 429 shall be exer-
cised by the administrator with respect to a supervised financial or-
ganization.

(2) If the administrator receives a complaint or other informa-
tion concerning noncompliance with chs. 421 to 427 and 429 by
a supervised financial organization, the administrator shall inform
the official or agency having supervisory authority over the orga-
nization. The administrator may request information about supervised financial organizations from the officials or
agencies supervising them.

(3) The administrator and any official or agency of this state
having supervisory authority over a supervised financial organ-
ization shall consult and assist one another in maintaining com-
pliance with chs. 421 to 427 and 429. They may jointly pursue
investigations, prosecute suits and take other official action, as
they deem appropriate, if either of them otherwise is empowered
to take the action.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

426.106 Investigatory powers. (1) At any time that the
administrator has reason to believe that a person has engaged
in or is about to engage in an act which is subject to action by
the administrator, the administrator may make an investigation and,
with respect thereto, may administer oaths or affirmations, and,
upon the administrator’s own motion or upon request of any party,
may subpoena witnesses, compel their attendance, adduce evi-
dence, and require the production of any matter, including the
existence, description, nature, custody, condition and location of
any books, documents or other tangible things, and the identity
and location of persons having knowledge of relevant facts, or any
other matter reasonably calculated to lead to the discovery of
admissible evidence, and the administrator shall have the right of
access to and of examination of such books, documents or other
tangible things. In any civil action brought on behalf of the admin-
istrator following such an investigation, the administrator may
recover the administrator’s costs of making the investigation if the
administrator prevails in the action.

(2) If 5 or more persons file a verified complaint with the
administrator alleging that a person has engaged in an act which is
subject to action by the administrator, the administrator shall
immediately commence an investigation pursuant to sub. (1).

(3) If the person’s records are located outside this state, the
person at the person’s option shall either make them available to
the administrator at a convenient location within this state or pay
the reasonable and necessary expenses for the administrator or the
administrator’s representative to examine them at the place where
they are maintained. The administrator may designate representa-
tives, including comparable officials of the state in which the
records are located, to inspect them on the administrator’s behalf.

(4) Upon failure without lawful excuse to obey a subpoena or
to give testimony and upon reasonable notice to all persons
affected thereby, the administrator may apply to any court of
record for an order compelling compliance.

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

Cross-reference: See also ss. DFI-WCA 1.80 and 1.82, Wis. adm. code.

426.107 Application of chapter 227. Except as otherwise
provided, ch. 227 applies to and governs all administrative action
by the administrator pursuant to chs. 421 to 427 and 429.

History: 1971 c. 239; 1979 c. 89; 1985 a. 182 s. 57; 1995 a. 329.

426.108 Unconscionable conduct. The administrator shall
promulgate rules declaring specific conduct in consumer credit
transactions and the collection of debts arising from con-
sumer credit transactions to be unconscionable and prohibiting
the use of those unconscionable acts. In promulgating rules under
this section, the administrator shall consider, among other things,
all of the following:

(1) That the practice unfairly takes advantage of the lack of
knowledge, ability, experience, or capacity of customers.

(2) That those engaging in the practice know of the inability
of customers to receive benefits properly anticipated from the
goods or services involved.

(3) That there exists a gross disparity between the price of
goods or services and their value as measured by the price at which
similar goods or services are readily obtainable by other custom-
ers, or by other tests of true value.

(4) That the practice may enable merchants to take advantage
of the inability of customers reasonably to protect their interests
by reason of physical or mental infirmities, illiteracy or inability
understand the language of the agreement, ignorance or lack of
education or similar factors.

(5) That the terms of the transaction require customers to
waive legal rights.

(6) That the terms of the transaction require customers to
unreasonably jeopardize money or property beyond the money or
property immediately at issue in the transaction.

(7) That the natural effect of the practice is to cause or aid in
causing customers to misunderstand the true nature of the transac-
tion or their rights and duties under the transaction.

(8) That the writing purporting to evidence the obligation
of the customers in the transaction contains terms or provisions or
authorizes practices prohibited by law.

(9) Definitions of unconscionability in statutes, rules, rulings
and decisions of legislative, administrative or judicial bodies.

History: 1971 c. 239; 1999 a. 85.

Cross-reference: See also ss. DFI-WCA 1.85, 1.86, 1.87, and 1.88, Wis. adm.
code.

426.109 Temporary relief; injunctions. (1) The adminis-
trator or any customer may bring a civil action to restrain by tem-
porary or permanent injunction a person from violating chs. 421
to 427 and 429 or the rules promulgated pursuant thereto, or to so
restrain a merchant or a person acting on behalf of a merchant from
engaging in false, misleading, deceptive, or unconscionable
conduct in consumer credit transactions. It shall not be a defense
to an action brought under this section that there exists an adequate
remedy at law.

(2) The administrator or customer may seek a temporary
restraining order without written or oral notice to the adverse party
or his or her attorney. If the court finds that there is reasonable
cause to believe that the respondent is engaged in the conduct
sought to be restrained and that such conduct violates chs. 421
to 427 and 429 or rules promulgated under chs. 421 to 427 and 429,
it may grant a temporary restraining order or any temporary relief
it deems appropriate. A temporary restraining order granted with-
out notice shall expire by its terms within a stated time after entry,
not to exceed 30 days, as the court fixes, unless within this time
it is extended by the court, or unless the party against whom the
order is directed consents that it may be extended for a longer
period. When a temporary restraining order is granted without
notice, the motion for a preliminary injunction shall be set down
for hearing at the earliest possible time. Upon notice to the party
who obtained the temporary restraining order without notice, the
adverse party may appear and move its dissolution or modification, and in this event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

426.110 Class actions; injunctions; declaratory relief.
(1) Either the administrator, or any customer affected by a violation of chs. 421 to 427 and 429 or of the rules promulgated pursuant thereto or by a violation of the federal consumer credit protection act, or by conduct of a kind described in sub. (2), may bring a civil action on behalf of himself or herself and all persons similarly situated, for actual damages by reason of such conduct or violation, together with penalties as provided in sub. (14), reasonable attorney fees and other relief to which such persons are entitled under chs. 421 to 427 and 429. The customer filing the action must give prompt notice thereof to the administrator, who shall, if permitted, upon application within 30 days, to join as a party plaintiff. For purposes of apportionment of cost, the administrator need not be a party to the action.

(2) Actions may be maintained under this section against any person who in making, soliciting or enforcing consumer credit transactions engages in any of the following kinds of conduct:
(a) Making or enforcing unconscionable terms or provisions of consumer credit transactions;
(b) False, misleading, deceptive, or unconscionable conduct in inducing customers to enter into consumer credit transactions;
(c) False, misleading, deceptive, or unconscionable conduct in enforcing debts or security interests arising from consumer credit transactions.

(3) Notwithstanding this chapter, no class action may be maintained for conduct proscribed in sub. (2) or for a violation of s. 423.301, 424.501, 425.107, 426.108 or 427.104 (1) (h) unless the conduct has been found to constitute a violation of chs. 421 to 427 and 429 at least 30 days prior to the occurrence of the conduct involved in the class action by an appellate court of this state or by a rule promulgated by the administrator as provided in ss. 426.104 (1) (e) and 426.108 specifying with particularity the act or practice in question.

(4) At least 30 days or more prior to the commencement of a class action for damages pursuant to the provisions of this section, any party must:
1. Notify the person against whom an alleged cause of action is asserted of the particular alleged claim or violation; and
2. Demand that such person correct, or otherwise remedy the basis for the alleged claim.

The registration requirements of chs. 421 to 427 and 429 or under principles of law or equity.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SUBCHAPTER II
REGISTRATION AND FEES

426.201 Registration. (1) The registration requirements of this section apply to persons who do any of the following in this state:
(a) Make or solicit consumer credit transactions, except a person who engages in consumer credit transactions solely through honoring credit cards issued by 3rd parties not related to such person.
(b) Directly collect payments from or enforce rights against customers arising from such transactions, wherever made.

(2) Each person subject to the registration requirements under sub. (1) shall file a registration statement with the administrator within 30 days after commencing business in this state. The registration statement shall include all of the following information:
(a) The name of the person.
(b) The name under which the person transacts business if different from par. (a).
(c) The address of the person's principal office, which may be outside this state.
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(d) The addresses of all of the person’s offices or retail stores, if any, in this state.

(e) If consumer transactions or other business subject to this chapter are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made.

(f) The address of the person’s designated agent upon whom service of process may be made in this state.

(ff) The year−end balance of all consumer credit transactions held by the person. In this paragraph, “year−end balance” has the meaning given under s. 426.202 (1m) (a).

(g) Such other similar information as the administrator may require to effectuate the purposes and policies of chs. 421 to 427 and 429.

(2m) (a) Except as provided in par. (b), each person subject to the registration requirements under sub. (1) shall file a registration statement containing the information under sub. (2) (a) to (g) no later than February 28 of each year following the year of the person’s initial registration under sub. (2).

(b) 1. In this paragraph, “year−end balance” has the meaning given in s. 426.202 (1m) (a).

2. Paragraph (a) does not apply if the person’s year−end balance is not more than $250,000.

(3) The administrator shall adopt rules governing the filing of changes, additions, or modifications of the registration statement required by this section, and shall adopt rules pertaining to form, verification, fees, and similar matters pertaining to the registration.

(4) The following persons shall not be subject to this section solely by reason of their debt collection activities unless they are licensed debt collectors under s. 218.04:

(a) Attorneys authorized to practice law in this state or professional service corporations composed of licensed attorneys formed pursuant to ss. 180.1901 to 180.1921;

(b) Duly licensed real estate brokers and real estate salespersons;

(c) Duly licensed insurance companies subject to the supervision of the office of the commissioner of insurance.

(5) No person is subject to this section solely by reason of offering the discount described in s. 422.201 (8).

History: 1971 c. 239; 1975 c. 10 s. 24; 1979 c. 89; 1979 c. 162 s. 38 (3); 1979 c. 168 s. 21; 1979 c. 141 s. 12 (2); 1989 a. 303; 1995 a. 27, 328, 329; 2001 a. 16.

426.202 Fees. (1m) AMOUNT OF REGISTRATION FEE. (a) Definitions. In this subsection:

2. “Reporting period” means, for any registration statement, the last full calendar year preceding the date on which the registration statement is due.

3. “Year−end balance” means, for any reporting period, the outstanding balance of all consumer credit transactions that a person has entered into or has obtained by assignment, and that originated in this state, as of December 31 preceding the annual registration filing date under s. 426.201 (2m) (a).

(b) Registration fee requirement. Any person required to register under s. 426.201 shall pay a registration fee to the administrator when the person files the registration statement required under s. 426.201.

(c) Amount of registration fee. The amount of the registration fee shall be determined in accordance with rates set by the administrator. In setting these rates, the administrator shall consider the costs of administering chs. 421 to 427 and 429, including the costs of enforcement, education and seeking voluntary compliance with chs. 421 to 427 and 429. The registration fee for a person shall be based on the person’s year−end balance for the reporting period.

(4) SUBMISSION OF DATA FOR CALCULATING THE AMOUNT OF FEE. A person required to register under s. 426.201 shall submit such financial and other data as the administrator may require which will support the computation of the amount of the fee.

(5) RECOVERY OF FEES. The administrator shall bring an action in any court of record to recover any fees that the administrator determines are due and owing under this section.


426.203 Penalties. Whoever fails to comply with the registration requirements under s. 426.201 or fails to pay a fee required under s. 426.202 may be required to forfeit not more than $50. Each day that this failure continues constitutes a separate offense. Forfeitures received by the administrator under this section shall be credited to the appropriation account under s. 20.144 (1) (h) and may be expended from the account only for consumer or merchant education programs.

History: 1995 a. 27.

SUBCHAPTER III
VIOLATIONS AND ENFORCEMENT

426.301 Violations and enforcement. (1) The administrator may recover in a civil action from a person who violates chs. 421 to 427 and 429 or any rule made pursuant to any authority granted in chs. 421 to 427 and 429, a civil penalty of not less than $100 and not more than $1,000 for each violation.

(2) In addition to the amount to which the administrator shall be entitled under sub. (1), the administrator may recover in a civil action from a person who knowingly or willfully violates chs. 421 to 427 and 429 or any rule made pursuant to any authority granted in chs. 421 to 427 and 429, a civil penalty of not less than $1,000 and not more than $10,000 for each violation.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.