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WSSFC 2026

Substantive Track – Session 6

Consumer Law

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About the Presenters...

Amy Bentley, University of Wisconsin Law School, 1998, is a partner with Bentley Tuffnell Law, S.C., in Milwaukee. She focuses her practice on business law and consumer financial services law compliance and litigation. She serves as outside general counsel to several businesses, including consumer credit providers.

Theresa Anne Carey, J.D., came to the Driftless region, the birthplace of her grandfather, in 2005, semi-retiring from the practice of law to raise her seven children. With her youngest son moving on to high school and seeing a need for affordable legal services in the area, Ms. Carey came out of retirement to establish The People's Law Clinic & Mediation Center in Viroqua, Wisconsin. Prior to her admission to the Wisconsin State Bar Association in September of 2018, Ms. Carey was admitted to the State Bar of California in 1987, where she owned and operated a small law firm for many years specializing in Trial Work including Family Law, Child Custody, Domestic Violence, Divorce Mediation, Employment Litigation, Personal Injury, Criminal Law and General Civil Litigation. She got her start in the legal field while still in high school, working as a legal secretary then paralegal, before becoming an attorney. Since moving to Wisconsin, Ms. Carey has continued work in the legal field providing mediation, legal research and child & family advocacy with special emphasis on working with families in conflict.

J. David Krekeler of Krekeler Law, S.C., devotes his practice to solving financial problems for Wisconsin businesses and individuals. He is a past chair of both the Bankruptcy, Insolvency and Creditors' Rights Section and the Solo & Small Firm Section of the Wisconsin State Bar, as well as the Western District of Wisconsin Bankruptcy Bar. Only six Wisconsin lawyers are certified as business bankruptcy specialists, and David has been one of them for many years. He is past chair of the Bankruptcy Insolvency and Creditors Rights section of the Wisconsin State Bar, as well as the Western District Bankruptcy Bar Association. He is also past chair of the Solo and Small Firm section, and the 2021 recipient of its John Lederer distinguished service award. He has been selected as a Super Lawyer every year for at least the last 17, as well as being included in the Best Lawyers of America during those same years. He recently published his first book, "Bankruptcy Asked and Answered" (available on Amazon). His second book, this one on law office management, should be out by this spring. When not solving financial problems, you will find David on dinner dates with his wife, Mary, and enjoying time with his children and grandchildren. Sunday night dinners are a ritual. You can connect with David on LinkedIn at linkedin.com/in/david-krekeler or follow him on Twitter (X) twitter@jdavidkrekeler.com. Subscribe to his free newsletter by sending him an email. He also has a standing offer to meet with you to discuss bankruptcy and related topics. He buys the coffee and bagel.

Eric A. Ristau is a shareholder with Laffey, Sebranek, Auby & Ristau, S.C. in Madison and Sun Prairie, Wisconsin. He concentrates his practice in creditor's rights and collections, real estate, and estate planning, and enjoys representing a wide array of clients, including local financial institutions, businesses in many industries, and individuals. Eric is a member of the State Bar of Wisconsin, the Western District Bankruptcy Bar Association, and the Bankruptcy, Insolvency, and Creditors' Rights Section of the State Bar of Wisconsin. In addition to his legal practice, Eric recently concluded a 7-year stint on the Board of Directors of REACH-A-Child, Inc., a Madison-area non-profit which assists first responders to aid children in crisis, and is currently looking for new volunteering opportunities. Eric received his undergraduate degree from the University of Wisconsin - Eau Claire and his J.D. from the University of Wisconsin-Madison.

Consumer Law in Wisconsin: Practical Issue Spotting for Attorneys Outside the Consumer Law Practice

Wisconsin Solo & Small Firm Conference

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How to Use These Materials

These materials are designed for Wisconsin attorneys who do not regularly practice consumer law. They provide issue-spotting guidance, not transaction- or case-specific advice. The materials assume that the transaction involves a natural person acquiring goods, services, money, or credit primarily for personal, family, or household purposes; that Wisconsin law applies; and that no federal preemption, tribal-law issue, bankruptcy filing, arbitration agreement, or unusual product-specific statute changes the analysis.

The materials are current through September 14, 2026. The Wisconsin Consumer Act (WCA) jurisdictional limit changes on January 1, 2027; readers should confirm the operative date when advising on a particular transaction. These materials intentionally do not address the full range of consumer law issues.

I. Overview of Consumer Laws in Wisconsin

For practitioners who do not regularly practice consumer law, issues often arrive disguised as ordinary business or collection questions: Can the contractor let the homeowner pay over six months? Can the retailer add a monthly service fee? Can a business call their customer's employer? Can the finance company take the car? The answer may involve several statutes at once, including:

- Wisconsin Consumer Act: Wis. Stat. chs. 421–427, plus ch. 429 for motor-vehicle consumer leases.
- Article 9: Wis. Stat. ch. 409, which governs many security interests, possession, disposition, and redemption after default.
- Product-specific statutes, including Wis. Stat. §§ 138.052 and 138.056, where applicable.
- Wisconsin consumer-protection and marital-property law, including Wis. Stat. §§ 100.18(1) and 766.56(1)–(3).
- Federal law, commonly TILA and Regulation Z; ECOA and Regulation B; FDCPA and Regulation F; FCRA; and EFTA and Regulation E.

II. The Wisconsin Consumer Act (WCA)

The WCA regulates many consumer credit transactions, consumer leases, collection activity, and creditor remedies. The definitions are specific and not always intuitive. Because they control the analysis, consult them when the meaning of a term is unclear.

- A consumer credit transaction is a consumer 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 subject to a finance charge. Wis. Stat. § 421.301(10). A "customer" generally is a natural person who seeks or acquires property, services, money, or credit for personal, family, or household purposes. Id. § 421.301(17).

- A creditor is a merchant who regularly engages in consumer credit transactions or regularly arranges or procures consumer credit. Id. § 421.301(16). The word "regularly" matters. A single accommodation does not automatically establish that the business is a creditor, but repeat practices, standard forms, and a routine payment-plan program deserve close review.

- The WCA currently excludes consumer credit transactions with an amount financed above $25,000, motor-vehicle consumer leases with a total lease obligation above $25,000, and other consumer transactions with a cash price above $25,000. Effective January 1, 2027, those thresholds increase to $50,000. Wis. Stat. § 421.202(6), as amended by 2025 Wis. Act 105. There are other statutory exclusions, including first-lien real-estate mortgages and transactions with organizations. *Id*. § 421.202(1), (7).

In summary, if a transaction involves payment over time or a finance charge, further analysis is warranted to determine whether the parties and terms bring the transaction within the WCA, which imposes substantial compliance obligations and exposes noncompliant creditors to meaningful statutory consequences.

The companion blog post included in these materials, *How to Keep Your Business Clients from Becoming Accidental Creditors* (Bentley, Aug. 2026), addresses business-side creditor status, payment-plan screening, and federal disclosure issues. These materials do not repeat that discussion.

III. Guidance for Business Lawyers

A. Put a Consumer-Law Review in the Workflow

When a business client sells, finances, collects, or enforces against a consumer account, begin with the documents and the actual practice. Obtain the signed agreement, standard forms, invoices, payment history, account statements, advertisements, notices, and communications. Do not assume that a transaction is outside the WCA because the client does not identify itself as a lender. Useful screening questions include:

- Is the client's customer a natural person, and is the purpose personal, family, or household?
- Is the payment plan documented? How many installments are permitted after the down payment?
- Is the client charging, or reserving the right to charge, interest, a carrying charge, an administrative fee, a late fee, a deferral charge, or another amount that may be a finance charge?
- Does the client offer this accommodation often enough that it may be "regularly" extending consumer credit?
- Who is initially entitled to payment? Is the client assigning the obligation or arranging financing through a third party?
- Does the client need WCA registration, a product-specific license, compliant disclosures, revised contract terms, or a collection policy?

Registration and transaction-specific compliance are separate. Registration does not cure a defective disclosure, contract, or collection practice.

Accordingly, the client should evaluate WCA registration independent of transaction-specific compliance. Under Wis. Stat. § 426.201(1)(a)–(b), the registration requirement applies, subject to statutory exceptions, both to persons who make or solicit consumer credit transactions in Wisconsin and to persons who directly collect payments from, or enforce rights against, customers arising from those transactions.

B. If the Client Intends to Extend Consumer Credit

The client should not simply copy a form from the internet and fill in the numbers. The companion blog post walks through the closed-end TILA disclosure box and the technical nature of the annual percentage rate, finance charge, amount financed, total of payments, payment schedule, security interest, and prepayment terms. See 12 C.F.R. §§ 1026.17–.18. TILA disclosure errors can occur even when the underlying credit terms are otherwise lawful because of accuracy tolerances and timing rules. See id. § 1026.22. Civil liability under 15 U.S.C. § 1640(a) is available to the consumer, subject to the statute's terms, limitations, and defenses. Refer the client to consumer-finance counsel before the client presents the form to the customer.

Wisconsin also regulates additional charges, agreements and practices, and notices to obligors. See Wis. Stat. §§ 422.202–.204, .304–.305, .401–.421.

In practice, this means a creditor may not permit the customer to sign a writing with blanks to be completed later, except for the limited identifying-number exception. Wis. Stat. § 422.304(1); see also Wis. Admin. Code DFI-WCA § 1.34. Counsel should review the agreement before use, paying particular attention to any additional charges, payment terms, security-interest language, and notices required by the transaction type.

C. Treat Collection Communications as Regulated Conduct

Wisconsin defines "debt collection" broadly to include any action, conduct, or practice in soliciting or collecting a claim owed or allegedly owed a merchant by a customer. Wis. Stat. § 427.103(2). A "debt collector" includes any person engaging directly or indirectly in debt collection. Id. § 427.103(3). This includes first-party creditors, who are generally excluded from the federal Fair Debt Collection Practices Act (FDCPA), so it is worth noting. Section 427.104(1) identifies prohibited collection practices, including threats of force or criminal prosecution, certain disclosures to persons without a legitimate business need, false representations, simulated legal process, and attempts to enforce rights that the collector knows or has reason to know do not exist.

A form letter should not threaten repossession, suit, wage garnishment, credit reporting, or contact with an employer unless the client has a present legal basis for the action and intends to pursue it. The letter must fit the account's actual status and be supported by the file.

A recent decision clarifies this WCA collection analysis in a setting relevant to many general practitioners: a typical residential lease requiring monthly rent is not an "agreement to defer payment" under Wis. Stat. § 427.104(1). *Koble Investments v. Marquardt*, 2026 WI 19, ¶¶ 8–16.

D. Default, Cure, and Collateral Require a Timeline

A late payment and a statutory default are not always the same thing. For a WCA consumer credit transaction, a creditor's cause of action accrues only upon a default as defined by statute. Wis. Stat. § 425.103(1)–(2). The statutory definition of default varies by transaction type and may include nonpayment thresholds, first- or last-payment rules, and other material breaches. Id. § 425.103(2).

When a merchant believes a customer is in default, the WCA prescribes the content of a written notice of alleged default and, when applicable, the customer's right to cure. Wis. Stat. § 425.104(1)–(2). If the customer has a right to cure, the merchant generally may not accelerate, sue, or demand or take possession of collateral until 15 days after the required notice is given. Id. § 425.105(1)–(2). The administrative rule treats a cure notice as given on the date of mailing and addresses the date of tender. Wis. Admin. Code DFI-WCA § 1.62. The WCA also limits repossession of collateral in covered consumer transactions. A customer may voluntarily surrender collateral, but a surrender is not voluntary when it follows the merchant's request, demand, threat, statement, or notice of an intent to take possession, subject to the statutory exception. Wis. Stat. § 425.204(1)–(3); Wis. Admin. Code DFI-WCA § 1.67. After a valid voluntary surrender, Article 9 governs the parties' rights in the collateral. Wis. Stat. § 425.204(2).

Although Article 9 permits a secured party to take possession of collateral after default, Wis. Stat. § 409.609(1)–(2), a creditor in a covered WCA transaction generally must commence a replevin action unless an exception in Wis. Stat. § 425.206 applies. The creditor must separately satisfy any applicable notice and cure requirements. Counsel should also confirm proper venue before filing, because improper venue can invalidate

the recovery. In *Kett v. Community Credit Plan, Inc.*, the Wisconsin Supreme Court held that nonjudicial recovery under an invalid replevin judgment entered in an improper venue violated the WCA. 228 Wis. 2d 1, ¶¶ 11–13, 20–22, 31–32, 596 N.W.2d 786 (1999).

IV. Guidance for Consumer Lawyers

A. Start with the Contract and the File

When an individual client brings in a loan agreement, retail installment contract, lease, or payment plan, begin with the signed agreement and all pages. Request every disclosure, the payment history, account statements, advertisements or quotations, and every notice, email, text message, voicemail, and collection letter. A missing document can be as important as a troubling document.

Useful first questions include:

- What is the transaction: a credit sale, consumer loan, open-end account, lease, or payment plan?
- What amount was financed, what finance charge was imposed, and what charges may be added later?
- What is the payment schedule? Is there a balloon payment or a payment materially different from the others?
- Was the agreement complete when signed?
- Did the person sign as a borrower, co-signer, guarantor, or authorized user?
- Was the transaction advertised or offered to the public in a way that could raise a misleading-representation issue? See Wis. Stat. § 100.18(1).

For married Wisconsin consumers, do not stop with the name on the note. Section 766.56 governs aspects of creditworthiness and notice in credit transactions with married persons. Wis. Stat. § 766.56(1)–(3). Obtain any marital-property agreement and examine the timing and content of the notices before advising on liability or available property.

B. Preserve Evidence of Collection Activity

- Keep the envelope, letter, email, text, and voicemail. Preserve screenshots with dates and the full telephone number or sender name.
- Record the caller's name, company, callback number, date, time, and the statements made.
- Do not admit facts that have not been confirmed. Request the creditor's name, the amount claimed, and the basis for the claim.
- If suit papers arrive, calendar the response date immediately. A collection notice is not the same as a summons and complaint.

Then compare the communication to Wis. Stat. § 427.104(1) and the account records. The statute's scope depends on the transaction. Under Koble, monthly rent under a typical residential lease does not itself establish an agreement to defer payment for purposes of § 427.104(1). 2026 WI 19, ¶¶ 8–16.

C. Default, Cure, and Repossession

A late payment and a statutory default are not always the same. Compare the alleged default with Wis. Stat. § 425.103(2), then obtain the contract, payment ledger, notice, proof of mailing, and any prior cure notices. Read the notice line by line: What default is alleged? What amount or performance is required? What is the cure date? Have payments been credited correctly?

If collateral has been taken or is at risk, determine whether the transaction is covered by the WCA, whether a valid cure process was required, whether the creditor had a statutory basis to take possession without replevin, and whether the customer made a voluntary surrender. Wis. Stat. §§ 425.104–.106. After a voluntary surrender, a debtor, secondary obligor, or other secured party or lienholder may redeem before disposition, contract for disposition, collection, or acceptance of collateral, by tendering the secured obligations and required expenses. Wis. Stat. § 409.623(1)–(3). Any disposition must be commercially reasonable in method, manner, time, place, and other terms. Id. § 409.610(1)–(2).

V. Conclusion: A Practical Sequence

Consumer-law problems become harder to solve when the file is incomplete or the business has already acted. For either side, use the same sequence: identify the transaction; determine whether the WCA and another consumer-protection statute apply; gather the contract, payment record, notices, and communications; verify the default and cure timeline; and then assess available remedies or defenses.

For business lawyers, the goal is to prevent avoidable compliance problems before the company uses a form, sends a demand, or takes collateral. For consumer lawyers, the goal is to preserve evidence and test the creditor's conduct against the governing contract and statutes. When the facts involve a specialized product, federal preemption, a bankruptcy, an arbitration provision, or an unusual remedy, obtain consumer-finance advice before giving transaction-specific direction.

AI Disclosure

These materials were drafted with the assistance of AI-powered legal research and editing tools employed after the original draft was prepared independently by the author. All statutory references, regulatory citations, and legal analyses were independently verified for accuracy and integrity by the author prior to submission.

How to Keep Your Business Clients from Becoming Accidental Creditors

Blog Post from Wisconsin Lawyer August 2026

Summary

The Truth in Lending Act (TILA) and the Wisconsin Consumer Act (WCA) are not just for traditional financial institutions. This article explains how Wisconsin solo and small-firm practitioners can help local businesses avoid inadvertently triggering consumer-credit regulations and potential liability.

Article

If you are a solo or small firm practitioner in Wisconsin, you might assume that the Truth in Lending Act (TILA), found at 15 U.S.C. § 1601 et seq., is a headache reserved exclusively for banks, mortgage lenders, and auto finance companies. That assumption would be faulty.

In reality, TILA can apply to local businesses, home contractors, and service providers. When you pair TILA with Wisconsin's counterpart—the Wisconsin Consumer Act (WCA), Wis. Stat. chs. 421–427—you get a high-stakes compliance minefield. Whether you are drafting a payment plan for a local contractor, reviewing a service agreement for a professional service provider, or structuring payment terms for a retailer, understanding how to keep clients from becoming "accidental creditors" can protect them from liability.

What is TILA, and Who is Covered?

Congress enacted TILA in the late 1960s to ensure that creditors provide consumers with clear, standardized disclosures about the cost of credit. Regulation Z implements TILA. See 12 C.F.R. pt. 1026.

TILA generally covers credit extended primarily for personal, family, or household purposes. It does not cover credit extended primarily for business, agricultural, or commercial purposes, or credit extended to entities such as LLCs or corporations.

For a consumer transaction to fall within TILA's scope, the lender or service provider must be a covered "creditor." Under 12 C.F.R. § 1026.2(a)(17), a person or entity qualifies as a creditor if the applicable regulatory requirements are met, including that the person or entity regularly extends consumer credit, the credit is subject to a finance charge or payable by written agreement in more than four installments (not including any down payment), and the obligation is initially payable to that person or entity.

Note: The "more than four installments" prong applies only to obligations payable by written agreement. Under 12 C.F.R. § 1026.2(a)(17)(i), an oral arrangement does not

satisfy that particular TILA prong. But an oral arrangement that imposes a finance charge may satisfy the alternative finance-charge prong if the other creditor-definition requirements are met. An oral arrangement may also create other legal risks, including disputes over the parties' agreement and compliance with applicable state law.

The Wisconsin Twist: Enter the WCA

In Wisconsin, the compliance analysis must also include the Wisconsin Consumer Act (WCA). The WCA has its own definitions and requirements. Under Wis. Stat. § 421.301(16), a "creditor" is a person who regularly engages in consumer credit transactions or consumer leases. A consumer credit transaction includes a transaction in which the customer's obligation is payable in installments or a finance charge is or may be imposed. Wis. Stat. § 421.301(10). In general, "payable in installments" means more than four installments, excluding the down payment, unless a finance charge is or may be imposed; then two or more installments may qualify. Wis. Stat. § 421.301(30).

Although these triggers resemble federal law, the WCA has its own rules for finance charges and transaction structure. This dual-layered analysis can create a trap for businesses that assume they are not creditors because they do not lend money or engage in traditional financing.

The Danger of the "Accidental Creditor"

This is where small-business clients can run into trouble. Many business owners believe that if they do not charge interest, they are not lending money and are not regulated under consumer-finance laws. This is a misconception that could land them in hot water under TILA and the WCA.

Imagine a local Wisconsin home improvement contractor who steps up to help a homeowner in a pinch, agreeing to spread the cost of a new roof over five monthly installments. To accommodate the customer, the contractor charges no interest and adds no administrative fees. Believing this installment plan is simply a neighborly favor, the contractor sees no need for formal paperwork beyond a bare-bones written agreement to accept payments over time.

Unfortunately, under both federal and state law, no good deed goes unpunished. Because the agreement extends payment over more than four installments under a written agreement, this well-intentioned contractor has met an important element of the creditor definition under both TILA and the WCA. Whether the contractor is a creditor still depends on the remaining requirements, including whether the contractor regularly extends consumer credit.

If the remaining requirements are met and the contractor failed to provide required disclosures or notices, your client is now an accidental creditor in violation of federal and state law. Under 15 U.S.C. § 1640, this may expose them to civil liability, statutory damages in appropriate cases, and the consumer's attorney fees. Furthermore, under the WCA, failing to comply with consumer-credit rules can carry stiff penalties.

Depending on the violation, Wis. Stat. § 425.305 may void the transaction entirely. In a transaction to which that section applies, the customer may retain the goods, services, or money received without any obligation to pay and may recover sums already paid to the merchant. The WCA also provides one-way fee-shifting: a prevailing customer may recover reasonable costs, expenses, and attorney fees, while a prevailing business generally may not.

Potential Licensing and Registration Issues

If your client cannot restructure payment terms and must act as a consumer creditor, disclosures are only part of the analysis. The client must also evaluate state notification, registration, and licensing requirements.

Under Wis. Stat. § 426.201, a business that makes consumer credit transactions, or takes assignments of and undertakes direct collection of payments from those transactions, must file a notification with the Department of Financial Institutions and pay an annual fee, unless an exception applies.

Other licensing requirements may apply depending on the services or goods involved. Those issues exceed this article's scope, but you must identify them to determine when a referral to a consumer-credit compliance lawyer is necessary. Operating without the mandatory license or filing can lead to investigations, administrative cease-and-desist orders, heavy civil forfeitures, and private lawsuits where the consumer can seek to void the underlying debt.

The TILA Disclosure Box

If your client cannot avoid stepping into the role of a creditor and decides to extend credit, they may need to provide the familiar, conspicuous TILA disclosure box under 12 C.F.R. § 1026.18.

Do not treat those disclosures as a simple form-fill exercise. The calculations are technical, and the disclosure rules include specific tolerances. As an issue-spotting tool, the main disclosure figures include:

- Annual Percentage Rate (APR): The yearly cost of credit expressed as a percentage. Under 12 C.F.R. § 1026.22, an APR outside the applicable tolerance may violate TILA.
- Finance Charge: The dollar amount the credit will cost the borrower.
- Amount Financed: The net amount of credit provided to the borrower.
- Total of Payments: The sum of payments the borrower will have made after completing all payments as scheduled.

The disclosures may also need to address a prepayment penalty, a demand feature, and any security interest. Because the calculations and forms are technical, refer a client who must extend consumer credit to a consumer-credit compliance specialist for forms, policies, and transaction-specific advice.

Practical Guidance: Screening and Protecting Your Clients

To help clients avoid accidental-creditor status, incorporate these screening practices into routine consultations:

1. Review standard invoices, service agreements, and intake forms. Ask: *Are you letting individual customers pay for goods or services over time*?
2. If a client offers payment plans, determine whether a written agreement requires more than four installments.
3. Ask whether the client charges interest, late fees, or administrative carrying charges. Consider whether a charge may be treated as a finance charge.
4. If a client wants payment flexibility without becoming a creditor, review the terms before the client offers them.
5. If a client wants to extend consumer credit or charge interest, involve a consumer-finance lawyer to evaluate disclosures and state requirements.

Summary

TILA and the WCA are highly technical systems that Wisconsin lawyers must navigate to shield local corporate and small business clients from severe penalties.

To protect clients and your practice, identify whether a client's agreements permit payment in more than four installments, assess any interest or fees on consumer-facing balances, and confirm whether state notification or licensing requirements apply. When a client decides to extend consumer credit, consult a consumer-finance lawyer for compliant forms and policies.

By keeping these principles in focus, you can protect your business clients from regulatory pitfalls, transaction-voiding penalties, and devastating statutory fee-shifting claims.

AI Disclosure

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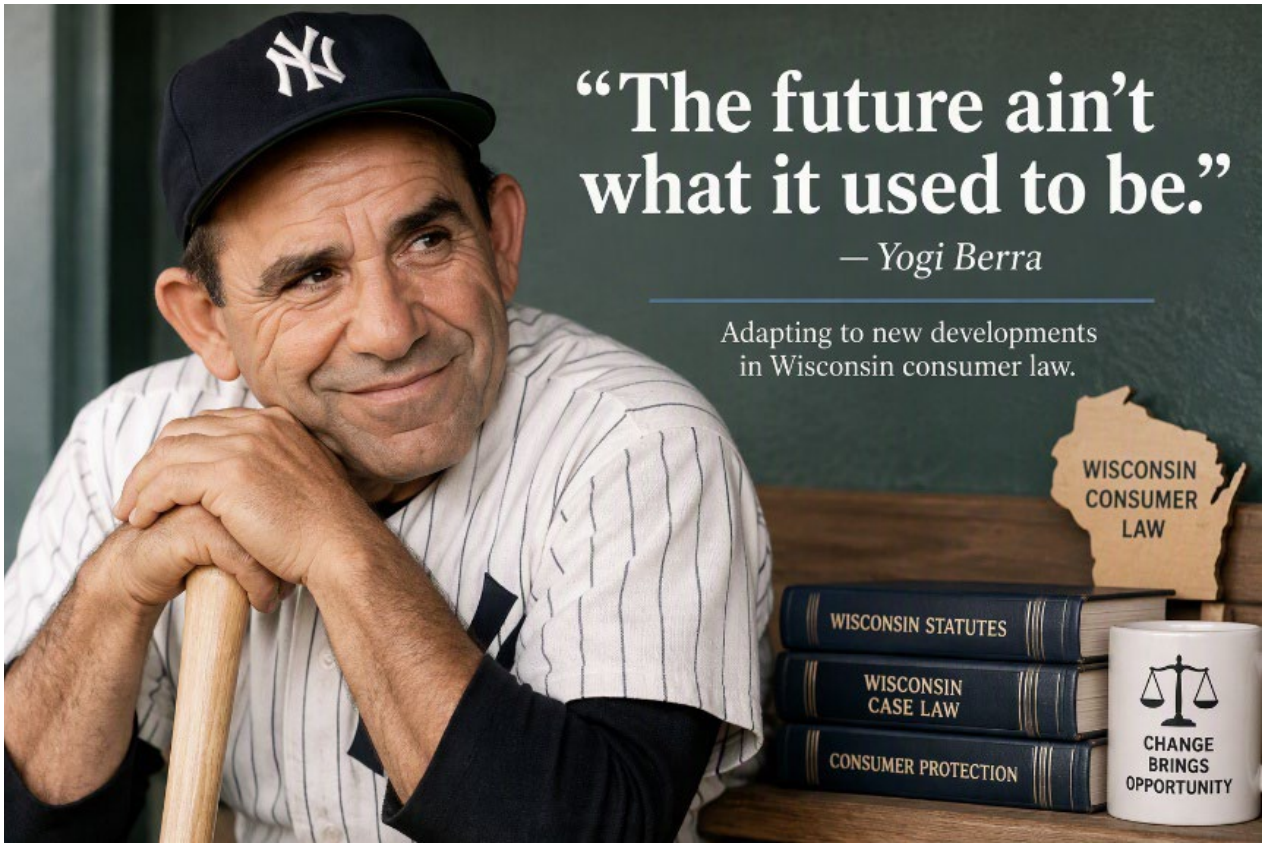
The Future Ain't What It Used to Be: Recent Changes in Wisconsin Consumer Law



If Yogi Berra had practiced law in Wisconsin, he might have been commenting on the past year's developments in the Wisconsin Consumer Act. New legislation and a noteworthy court decision have changed the landscape, and practitioners must adapt to a future that ain't what it used to be.

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Wisconsin Supreme Court decision

For the past couple of years, practitioners have debated the effect of the Court of Appeals decision in *Koble Investments v. Marquardt*. That decision held that a residential lease is a consumer transaction subject to the WCA. It also held that the lease was void for violating Wis. Stat. § 704.44(10) and Wis. Admin. Code § ATCP 134.08(10) because it did not include the required languages for eviction based on criminal activities, which entitled the tenant to double damages and attorney fees.

Tenants filed numerous lawsuits in reliance on the decision. The Wisconsin Supreme Court ruled on the appeal this past June. It reversed the Court of Appeals and upheld the trial court's findings.

Holdings

- Wis. Stat. § 427.104 does not apply to a residential lease under which rent is payable monthly. A lease for a year with monthly rent is not an agreement to defer payment. The tenant's obligation to pay rent under such a lease accrues monthly.
- The court did not address whether the lease was void. Even if there was a violation of Wis. Stat. § 704.44 and ATCP 134, the tenant did not show that the violation caused her any pecuniary loss. She occupied the premises and paid rent for that occupancy, and the rent paid was not damages.
- To recover, a tenant must show a causal connection between the violation and the damages alleged. A party asserting a pecuniary loss under Wis. Stat. § 100.20(5) must show a causal connection between a prohibited trade practice and the damage incurred.

Writing for the majority, Justice Rebecca Bradley said: "The law does not allow a tenant to occupy premises rent-free simply because the lease is void and unenforceable." A void lease did not relieve the tenant of the obligation to pay rent for the premises she occupied.

Back to the future

The *Koble* decision favors landlords on several points:

- A lease for a year with rent payable monthly is not an agreement to defer payment. The enforcement mechanisms and damage claims in Wis. Stat. § 427.104 for prohibited debt collection practices are not available to tenants for landlord violations under such a lease.
- A tenant may not occupy premises rent-free because the lease is void and unenforceable. A void rental agreement creates a periodic tenancy. This remains an issue in bankruptcy after a tenant discharges the lease obligation.
- Damages asserted by a tenant must be causally connected to the violation. A violation of the law does not by itself entitle the tenant to damages.

The Future Gets Bigger: New Thresholds for Consumer Credit and Small Claims Actions

In 2027, new dollar thresholds take effect for consumer law practice and small claims court jurisdiction.

Wisconsin Consumer Act coverage doubles to $50,000

This is the first adjustment to these thresholds in many years. More consumer loans, vehicle financing transactions, and collection actions will fall within the WCA.

Higher consumer credit limits

Consumer credit transactions have been limited to those with an amount financed of $25,000 or less. The same limit applied to motor vehicle consumer leases and other consumer transactions. The limit is now $50,000.

Many loans that were outside the WCA because of the $25,000 threshold will now be covered. Lenders and attorneys will need to evaluate whether notices, cure rights, venue requirements, and other WCA protections apply to more cases.

Expected results

- More WCA defenses asserted.
- More motions on statutory compliance.
- More attorney-fee claims by prevailing consumers.
- More compliance review by creditor counsel.

More cases in small claims court

The Act raises the general small claims limit from $10,000 to $15,000, and the replevin limit from $10,000 to $15,000. Cases between $10,000 and $15,000 that would have been filed as large claims in circuit court can now proceed under small claims procedures.

In practice

- More debt collection suits in small claims court.
- More contract disputes handled under the streamlined rules.
- More self-represented litigants.
- Faster case processing in many counties.

Replevin practice

The Act raises the replevin threshold to $15,000 and extends WCA-related replevin coverage to transactions up to $50,000.

- More vehicle repossession litigation may proceed through small claims procedures.
- More disputes over financed consumer goods may stay in small claims court.
- Creditor lawyers may find small claims replevin less costly than circuit court litigation.

Fee-shifting for consumer lawyers

More transactions fall under the WCA, so more borrowers can invoke WCA remedies. The WCA's fee-shifting provisions have encouraged consumer litigation and defenses. A higher covered transaction size raises the dollars at stake in those cases.

Section 425.109

Pleading requirements in consumer credit collection actions

A creditor's complaint on a consumer credit transaction must plead more than a balance due. Wis. Stat. § 425.109 remains a strong procedural defense but a weak damages claim.

Core allegations

1. The transaction and the facts of the default.
2. Collateral, if any (§ 425.109(1)(b)).
3. The amount due, with a breakdown of charges, interest, and payments (§ 425.109(1)(d)).
4. Redemption information in collateral cases, and any estimated deficiency (§ 425.109(1)(f)).
5. Accurate copies of the writings. In open-end credit suits, a statement that copies will be provided on request (§ 425.109(1)(h), (2)).

Limit on remedies: § 425.109(4)

2015 Wisconsin Act 155 added § 425.109(4):

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

The provision is weak as an affirmative-claim and fee-shifting tool and still strong as a procedural defense. In *Plaza Services LLC v. Burton*, 2025 WI App 51 (July 22, 2025), conclusory allegations that a serial filer knew the rules did not show willfulness. The court held itself bound by *Kirsch*[1], on missing cure notices.

Six ways to use § 425.109

1. **Attack sufficiency:** Check the complaint for the transaction, default facts, a calculable amount, and attached documents.
2. **Challenge the amount:** § 425.109(1)(d) requires the figures behind the balance. Look for interest errors, missing payment credits, unexplained fees, and unapplied repossession-sale proceeds.

[1] *Security Finance v. Kirsch*, 2019 WI 42, 386 Wis. 2d 388.

3. **Block a default judgment:** § 425.109(3) bars a default judgment on a noncompliant complaint, even where liability is not contested.
4. **Force the writings:** Demand the contract, assignment, and proof of ownership, especially in suits by debt buyers, on assigned accounts, on credit cards, and on older auto deficiencies.
5. **Drive discovery:** A deficient complaint signals a deficient file: account and payment histories, charge-offs, assignments, repossession and sale records, and internal calculations.
6. **Stack other defenses:** Cure notice (§§ 425.104, 425.105), venue (§ 421.401), collection practices (§ 427.104), and unconscionability (§ 425.107).

After January 1, 2027, debtor counsel should review every collection complaint on a $25,000 to $50,000 loan under § 425.109, and creditor counsel should comply with its requirements. Defects can usually be cured by amending or refiling (*Mercado v. GE Money Bank*), so expect delay, dismissal without prejudice, and settlement leverage.

Sources

- Wisconsin Legislature: 2025 Wisconsin Act 105
- Wisconsin Bankers Association: WCA law change
- *Plaza Services LLC v. Burton*, 2025 WI App 51 (CourtListener)
- *Mercado v. GE Money Bank* (Wisconsin Law Journal)
- Kramer, Elkins & Watt: *Koble Investments v. Marquardt*
- DrydenWire: Wisconsin governor signs 12 bills, vetoes others

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Wisconsin Supreme Court Hands Landlords a Win in Koble Investments v. Marquardt

"The law does not allow a tenant to occupy premises rent-free simply because the lease is void and unenforceable."

(Justice Rebecca Bradley, writing for the majority in

Koble Investments v. Marquardt, 2026 WI 19, ¶ 28.)

On Friday, June 5, 2026, the Wisconsin Supreme Court (hereinafter "Court") issued its opinion in the case of Koble Investments v. Elicia Marquardt, et al.[i]. The case had been pending before the Court since May 2024, after the District III Court of Appeals delivered a blow to Wisconsin landlords with its April 2024 published decision[ii]. What happened in the case, and what does it mean for landlords and tenants now?

Background: Circuit Court Case

I. Procedural History

In May 2020, Koble Investments ("Koble"), a residential landlord, issued a 5-day notice to pay rent or vacate to one of its tenants, Elicia Marquardt ("Marquardt"). When Marquardt failed to pay or vacate, Koble filed an eviction action, *pro se*, in Marathon County Circuit Court. At the time the 5-day notice was issued, the COVID-19 pandemic had begun, and Governor Tony Evers had issued multiple statewide emergency orders, including Emergency Order #15: Temporary Ban on Evictions and Foreclosures, issued on March 27, 2020. The temporary ban was effectively a 60-day moratorium on eviction actions, and prohibited landlords from serving any notice terminating a tenancy for failure to pay rent while the ban was in place (hereinafter the "Eviction Moratorium"). Because the 5-day notice offered the option to pay or vacate, consistent with what is required by state landlord-tenant law, it was also a notice terminating tenancy.

Marquardt, through her counsel, Attorney James D. Miller ("Miller"), filed an answer contesting the eviction, along with several counterclaims, some of which were dismissed/not pursued at the circuit court level. The two remaining counterclaims alleged a violation of the Wisconsin Consumer Act ("WCA") and that the lease was void pursuant to the Wisconsin Statutes.

The first counterclaim (the "WCA Claim") alleged that, by serving the 5-day notice in violation of the Eviction Moratorium, Koble was attempting to "collect a debt arising from a consumer credit transaction or other consumer transaction…where there is an agreement to defer payment" "with knowledge or reason to know that the right [to collect the debt] does not exist", contrary to the WCA.[iii] If successful in proving a violation, Marquardt would be entitled to recover her attorney fees.

The second counterclaim alleged that Marquardt's written lease agreement with Koble was void because it allowed eviction for criminal activity without containing required language advising potential domestic violence victims of rights they may have, pursuant to a provision of the Wisconsin statutes governing the landlord-tenant relationship and its administrative code counterpart[iv] (the "ATCP Claim"). If successful on the ATCP Claim, Marquardt would be entitled to recover double her pecuniary loss plus attorney fees, as authorized under Wis. Stat. § 100.20.

Early in the circuit court proceedings, Koble moved to dismiss the eviction, admitting that giving the eviction notice violated the Eviction Moratorium. The court granted the dismissal, but Marquardt's counterclaims remained. The dismissal of the eviction action did not render either counterclaim moot; the counterclaims were based on Koble's act of serving the 5-day notice, prior to the filing of the eviction action. Miller also filed a request for attorney fees based upon the fee-shifting nature of the counterclaims.

At some point, Miller withdrew as Marquardt's counsel due to lack of communication between himself Marquardt and Marquardt's lack of appearance in the proceedings. Miller sought to intervene to recover attorney fees on behalf of himself. The circuit court concluded that: (a) the WCA does not apply to residential leases; (b) the lease was not void or unenforceable under section 704.44 or ATCP 134.08, and (c) that because Marquardt did not suffer a pecuniary loss, Miller had no claim for attorney fees. However, the circuit court later allowed Miller to intervene file an appeal related to his pursuit of attorney fees.

II. Statutory and Regulatory Framework

The issues decided by all three levels of court were issues of law. Essentially, the material facts were not in dispute: Marquardt had a written lease for a term of one year with Koble; when Marquardt failed to pay rent on time, Koble served her with a 5-day notice, in violation of the Eviction Moratorium; and, Koble subsequently filed an eviction action when Marquardt neither paid nor vacated.

The law at issue in the WCA Claim was one specific section of the WCA (which, in total, is comprised of 8 chapters of statutes). The relevant section provides, in pertinent part, as follows:

> 427.104 Prohibited practices.
>
> (1) In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction, including a transaction primarily for an agricultural purpose, where there is an agreement to defer payment, a debt collector may not:
>
> …
>
> (j) Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist.[v]

The courts' analysis of the WCA Claim required review of certain definitions in the WCA to determine its applicability, before determining whether section 427.104 was violated. Specifically, the courts needed to review the definitions of "Consumer transaction" (a transaction in which one or more of the parties is a customer for purposes of that transaction) and "Customer" (person other than an organization who seeks or acquires real or personal property, services, money or credit for personal, family or household purposes or, for purposes of ch. 427 only, for agricultural purposes).[vi]

On the ATCP Claim, a statutory section and an administrative code section that contain mirrored language were at issue. They provide, in pertinent part, as follows:

> 704.44 Residential rental agreement that contains certain provisions is void. Notwithstanding s. 704.02, a residential rental agreement is void and unenforceable if it does any of the following:
>
> …
>
> (10) Allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property and the rental agreement does not include the notice required under s. 704.14.[vii]

Section 704.14, referenced in section 704.44(10), contains precise language, which must be repeated verbatim in a rental agreement, providing tenants with notice of certain domestic abuse protections they have – in short, that the tenancy of tenants who are victims of

domestic abuse cannot be terminated for conduct related to the domestic abuse.

It should be noted that it is not relevant whether the problematic lease provision is the basis for the termination of tenancy or eviction, or even whether landlord attempts to enforce that provision at all. The prohibited act is the inclusion of the clause in the lease.[viii] Even if a landlord later recognizes that its lease contains a prohibited provision, the landlord's decision to ignore that provision will not save the lease; nothing short of implementing a new lease that omits the problematic provision can substantially reduce the landlord's risk in this regard.

The corresponding provision in the administrative code contains an introductory note at the beginning of the chapter that provides the governing language regarding the availability of damages and attorney fees for a violation of the chapter:

> Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.[ix]

Court of Appeals Decision

The Court of Appeals reversed the circuit court (http://chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.wicourts.gov/ca/opinion/DisplayDocumer content=pdf&seqNo=792236), and Miller prevailed on all accounts. Remember that the tenant, Marquardt, had not been participating, and Miller appealed on his own on the issue of attorney fees. In order to decide whether he was entitled to attorney fees, the Court of Appeals needed to decide whether the circuit court's determinations on the merits of Marquardt's WCA Claim and ATCP Claim were appropriate.

On the WCA Claim, the Court of Appeals held that a residential lease is a "consumer transaction" falling under the auspices of the WCA. The Court of Appeals further reasoned that, because rent was to be paid monthly pursuant to the 12-month lease Marquardt had with Koble, the lease was an "agreement to defer payment." Therefore, the Court of Appeals construed Koble's termination of tenancy via the 5-day notice and subsequent attempt to evict Marquardt during the Eviction Moratorium as a violation of the WCA's prohibition on collecting with knowledge that Koble had no right to collect it.[x]

On the ATCP Claim, the Court of Appeals determined that Koble's lease agreement with Marquardt was void for violating sections 704.44(10) and ATCP 134.08(10), entitling Marquardt to recover double her damages under ATCP 134. Specifically, the Court of Appeals found that the circuit court record supported a finding that the rental agreement violated Wis. Stat. § 704.44(10). It contained a provision requiring that "[n]either party may…make [or] knowingly permit use of the premises for an unlawful purpose," with termination of the agreement as a consequence, but did not contain any mention of domestic abuse protections.[xi]

The Court of Appeals then turned to the issues of damages and attorney fees, based on the ATCP Claim. Despite discussing void leases, Chapter 704 does not explicitly provide an explanation for the effect of a voided lease on damages. In his briefing to the Court of

Appeals, Miller looked to the WCA as informative based on its similar consumer protection goals. He offered that the WCA provides that in a void transaction, customers are entitled to retain the goods received while recovering any sums paid pursuant to the transaction.

Koble's appellate brief failed to argue this point, so the Court of Appeals accepted Miller's reasoning, stating:

> Notably, Koble does not respond to Attorney Miller's argument that, as a result of Koble's violation of WIS. STAT. § 704.44(10) and WIS. ADMIN. CODE § ATCP 134.08(10), Marquardt is entitled to recover all of the payments that she made under the void and unenforceable lease, without any offset for the value of the benefit that she received from living in the rental premises. In particular, Koble fails to develop an argument that the claimed pecuniary loss *was not caused* by Koble's violation of § 704.44(10) and § ATCP 134.08(10).[xii]

Double damages and attorney fees are triggered by § 100.20(5) when a person has suffered pecuniary loss "because of" a violation of ATCP 134. The Court of Appeals made no finding that the tenant suffered a pecuniary loss because of a violation of ATCP 134. It merely found in the tenant's attorney's favor because the landlord conceded this argument by failing to address it.

The Court of Appeals remanded the case to the circuit court for a determination on the amount of damages and attorney fees. Koble then, with new counsel, petitioned the Wisconsin Supreme Court for review of the Court of Appeals' decision.

Supreme Court Decision

The Court reversed on all accounts (http://chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.wicourts.gov/sc/opinion/DisplayDocumer content=pdf&seqNo=1127588), holding: (1) section 427.104 of the WCA does not apply to residential leases under which rent is paid monthly; (2) even if Marquardt's lease were void under section 704.44 and ATCP 134.08, she suffered no damages; and (3) Miller was not entitled to attorney fees.

I. The Wisconsin Consumer Act Claim

The Court held that section 427.104 does not govern a residential lease under which rent is payable on a monthly basis because it is not an agreement to defer payment.[xiii] For the WCA to govern a resident lease, all of the following must be present, the Court said: (a) Marquardt must be a "customer" as defined in 427.01(17); (b) residential lease must constitutes a "consumer transaction" as defined in 421.301(13); and (c) a residential lease must constitute an "agreement to defer payment" (which is not defined in the WCA).

The Court's opinion focused on whether a residential lease under which rent is payable on a monthly basis is an agreement to defer payment. In doing so, the Court looked to the dictionary: "To defer means to delay or to put off a matter or a person to be dealt with deliberately for a future time" and "payment is the discharge of a debt or an obligation." (citing Webster's Third New International Dictionary 591 and 1659 (1986)). Therefore, the Court reasoned, "under the plain meaning of 427.104(1), an agreement to 'defer payment' is an agreement to delay or to put off the discharge of a debt or an obligation."[xiv]

The Court noted that the Court of Appeals had construed a 12-month lease to impart a debt equal to 12 months' rent, with Koble permitting Marquardt to pay one-twelfth of the amount each month. "That is not how residential leases work," the Court's opinion stated; "[a]n obligation that does not yet exist cannot be deferred."[xv] The Court further explained that a tenant's obligation to pay rent under a typical residential lease accrues monthly; the tenant does not owe all future monthly rent payments upon execution of the lease. In so characterizing the lease, the Court relied on earlier court of appeals decision, finding that a landlord is entitled to recover rent as it matures, not before.[xvi]

Justice Rebecca Grassl Bradley, who authored the majority opinion, also wrote a concurring opinion, in which Justice Annette Kingsland Ziegler joined. In the concurrence, Justice Bradley thought the majority didn't go far enough in holding that section 427.104 of the WCA did not apply to residential leases. Rather, Bradley feels the entire WCA does not apply to residential leases, because a tenant is not a customer for the purposes of the WCA, and that the Court should have so held. The majority opinion did not explicitly address whether a tenant is or can be a customer; thus, the question of whether the rest of the WCA applies or can apply to residential leases is now no more definitive than it was before the Koble decision. However, the majority opinion did emphasize the history of the enforcement and application of the WCA, quoting from an 1873 decision for the proposition that interpreting law in a manner that has never been the understanding or practice under it for more than fifty years is a strong signal the interpretation is wrong, and further noting that Miller did not identify a single case applying WCA to residential leases.[xvii] The Court's decision in Koble is likely to support an argument that the WCA does not apply to residential leases, under any circumstance.

II. The Void Lease, ATCP Claim, & Attorney Fees

The Court stated it need not determine whether Marquardt's lease with Koble was void pursuant to section 704.44, because it held that, even if there were a violation of 704.44 and the corresponding ATCP provision, Marquardt failed to show Koble's violation caused her to suffer pecuniary loss. As such, neither Marquardt nor Miller were entitled to damages, fees, or costs.

In finding there was no pecuniary loss, the Court explained that Marquardt enjoyed the benefit of the bargain she struck with Koble: she paid rent to Koble in exchange for Koble giving her exclusive occupancy of the premises. Thus, the rent she paid was not damages she suffered. In so stating, the Court made a statement landlords and their attorneys have been screaming from the mountain tops for years: **The law does not allow a tenant to occupy premises rent-free simply because the lease is void and unenforceable.**[xviii] The Court of Appeals' finding to the contrary, the Court noted, was based solely on Koble's purported failure to respond to Miller's argument on this issue, and was not supported by any analysis.

The Court also emphasized that, even if there are damages, there must be a causal connection between the violation and those damages: "A party asserting a pecuniary loss for the purposes of Wis. Stat. § 100.20(5) must show that there is a causal connection between a prohibited trade practice…and the damage incurred."[xix] The Court went on to note that, even though this argument was not made, Marquardt could not reasonably argue the omission of the domestic abuse protections notice from the lease caused her to make rent payments.

Finally, the Court's opinion clarified the answer to the question: if a residential lease is void, then what? Under Wisconsin law, the Court stated, a tenant occupying a premises under a void an unenforceable lease become a 'periodic tenant' under Wis. Stat. § 704.01(2) obligated to pay rent on whatever basis she had been paying rent under the lease.[xx]

Attorney Miller's Intervention in the Case

Upon reading the procedural history, one might wonder: What?!? How did the appellate courts decide a litigant's rights when her attorney had withdrawn from representation at the circuit court level, and the litigant did not herself participate in the appellate case? If you are thinking that, you are not alone. Justice Susan Crawford wrote a concurrence in which she questioned that very issue: how can the Court decide a landlord-tenant dispute with no tenant?

Crawford believes Miller lacked standing to appeal and that the decision of the Court of Appeals could have been reversed on that basis alone, without reaching the merits of the landlord-tenant issues presented by the case. Miller lacked standing, Crawford reasons, because Marquardt did not appeal the circuit court's dismissal of her counterclaims, and Miller's claim for fees rested upon the merits of Marquardt's counterclaims.

Justice Crawford saw, as many onlookers within the legal community did, that this case seemed to have been propelled by Miller's request for attorney fees, and not by the tenant herself, indicating that the case "went off the rails" early on in the proceedings.[xxi] She indicates she could find no case, in any jurisdiction, in which a court permitted an attorney to appeal a former client's substantive claims, in hopes of ultimately obtaining a legal basis for the award of attorney's fees. Crawford closed with a scathing characterization of Miller's conduct: "Thus, in his zeal to win an order requiring Koble to pay his fees, Miller completely disregarded his client's wishes" in violation of his professional responsibilities to his client pursuant to the ethics rules that govern attorneys admitted to practice before Wisconsin courts.[xxii]

What Now?

This case brings good news for landlords and tenants alike: the decision doesn't suddenly render a bunch of leases void, invalidate a bunch of tenancies, or fundamentally change the way landlords and tenants should view their leases and their landlord-tenant relationship. The statutory provision prohibiting certain language in residential rental agreements has not changed, and those agreements can still be considered void if they violate the statute. The decision provides confirmation and clarity to what happens next: if a rental agreement is void, there is a periodic tenancy.

What is less clear and may have landlords, tenants, their attorneys, and circuit courts scrambling: what happens to all of the cases that have been filed in circuit courts, relying on the Court of Appeals decision in Koble? The answer is, of course, it depends. It depends on how the local court and judge prefer to handle, procedurally, the introduction of new law, mid-case. It depends on how many claims were brought in those cases and whether all the claims rely on the now-reversed Koble decision, or just one or some of the claims do. And it depends, in those cases with some Koble-backed claims and some other claims, on whether it makes economic sense for the tenant and their attorney to continue, if the remaining claims do not include a fee-shifting element.

As with almost any case, there are some unanswered questions. There are other questions that can be answered with the benefit of the Court's decision, but that are too fact-dependent for a single answer. Landlords are well-advised to seek the advice of an attorney to determine whether, and how, this decision impacts their existing rental agreements, tenant relationships, or the way they do business.

To connect with an experienced landlord attorney who has followed this case and related issues closely, contact Kramer, Elkins & Watt, LLC at 608-709-7115. Attorneys Jessica M. Kramer (https://kewlaw.com/jessica-m-kramer/) and Joe Andreoni (https://kewlaw.com/joe-andreoni/) are ready to assist.

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[i] Koble II, 2026 WI 19.

[ii] Koble I, 2024 WI App 26.

[iii] Wis. Stat. § 427.104(1)(j).

[iv] Wis. Stat. § 704.44(10); Wis. Admin. Code § ATCP 134.08(10). The Wisconsin Department of Agriculture, Trade & Consumer Protection enforces this regulation, and others, impacting the landlord-tenant relationship.

[v] Wis. Stat. § 427.104(1)(j).

[vi] Wis. Stat. § 421.301(13) and (17).

[vii] Wis. Stat. § 704.44(10); see also Wis. Admin. Code § ATCP 134.08(10).

[viii] Baierl v. McTaggart, 2001 WI 107, ¶22, 245 Wis. 2d 632, 629 N.W.2d 277.

[ix] Chapter ATCP 134, Wis. Admin. Code.

[x] Koble I, 2024 WI App 26, ¶ 28.

[xi] Id. at ¶¶ 35-36.

[xii] Id. at ¶¶ 49-50 (emphasis added).

[xiii] Koble II, 2026 WI 19, ¶4 (internal quotation marks omitted).

[xiv] Id. at ¶8.

[xv] Id. at ¶¶9-10.

[xvi] Id. at ¶10, *citing* Kersten v. H.C. Prange Co., 186 Wis. 2d 49, 65, 520 N.W.2d 99 (Ct. App 1994) (*citing* Schaaf v. Nortman, 19 Wis. 2d 540, 547, 120 N.W.2d 654 (1963)).

[xvii] Koble II, 2026 WI 19, ¶19-20, *citing* Scanlan v. Childs, 33 Wis. 663, 665-666 (1873).

[xviii] Koble II at ¶ 28.

[xix] Id. ¶29, *citing* Grand View Windows, Inc. v. Brandt, 2013 WI 95, ¶21, 349 Wis. 2d 759, 837 N.W.2d 611.

[xx] Koble II at ¶ 28.

[xxi] Id. at ¶42.

[xxii] Id. at ¶41, *citing* SCR 20:1.2(a), 1.4(a)(3).

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Date of enactment: March 20, 2026
2025 Senate Bill 787 Date of publication*: March 21, 2026

2025 WISCONSIN ACT 105

AN ACT *to amend* 421.202 (6), 799.01 (1) (c) and 799.01 (1) (d) (intro.) of the statutes; **relating to:** increasing jurisdictional amounts in certain small claims actions.

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

SECTION 1. 421.202 (6) of the statutes is amended to read:

421.202 **(6)** Consumer credit transactions in which the amount financed exceeds ~~$25,000~~ $50,000, motor vehicle consumer leases in which the total lease obligation exceeds ~~$25,000~~ $50,000, or other consumer transactions in which the cash price exceeds ~~$25,000~~ $50,000.

SECTION 2. 799.01 (1) (c) of the statutes is amended to read:

799.01 **(1)** (c) *Replevins.* Actions for replevin under ss. 810.01 to 810.13 where the value of the property claimed does not exceed ~~$10,000~~ $15,000.

SECTION 3. 799.01 (1) (d) (intro.) of the statutes is amended to read:

799.01 **(1)** (d) *Other civil actions.* (intro.) Other civil actions where the amount claimed is ~~$10,000~~ $15,000 or less, if the actions or proceedings are:

SECTION 4. Initial applicability.

(1) The treatment of ss. 421.202 (6) and 799.01 (1) (c) and (d) (intro.) first applies to actions commenced or claims made on the effective date of this subsection.

SECTION 5. Effective date.

(1) This act takes effect on January 1, 2027.

CHAPTER 425

CONSUMER TRANSACTIONS — REMEDIES AND PENALTIES

SUBCHAPTER I
CREDITORS' REMEDIES
425.101 Short title.
425.102 Scope.
425.1025 Definition.
425.103 Accrual of cause of action; "default".
425.104 Notice of customer's right to cure default.
425.105 Cure of default.
425.106 Exempt property.
425.107 Unconscionability.
425.108 Extortionate extensions of credit.
425.109 Pleadings.
425.110 No discharge from employment for garnishment.
425.111 Levy before judgment.
425.112 Stay of execution.
425.113 Body attachments.
SUBCHAPTER II
ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL
425.201 Scope.
425.202 Definitions.
425.203 Enforcement of merchant's rights in collateral and leased goods.
425.204 Voluntary surrender of collateral.
425.205 Action to recover collateral.
425.206 Nonjudicial enforcement limited.
425.2065 Notice to law enforcement.
425.207 Restraining order to protect collateral or leased goods; abandoned property.
425.208 Customer's right to redeem.
425.209 Restrictions on deficiency judgments.
425.210 Computation of deficiency.
SUBCHAPTER III
CUSTOMER'S REMEDIES
425.301 Remedies to be liberally administered.
425.302 Remedy and penalty for certain violations.
425.303 Remedy and penalty for certain violations.
425.304 Remedy and penalty for certain violations.
425.305 Transactions which are void.
425.306 Unenforceable obligations.
425.307 Limitation of action.
425.308 Reasonable attorney fees.
425.309 Class actions.
425.310 Liability of corporate officers.
425.311 Evidence of violation.
SUBCHAPTER IV
CRIMINAL PENALTIES
425.401 Willful violations: misdemeanor.

Cross-reference: See definitions in s. 421.301.

SUBCHAPTER I

CREDITORS' REMEDIES

425.101 Short title. This chapter shall be known and may be cited as the Wisconsin consumer act — remedies and penalties.

History: 1971 c. 239.

425.102 Scope. This subchapter applies to actions or other proceedings brought by a creditor to enforce rights arising from consumer credit transactions and to extortionate extensions of credit under s. 425.108.

History: 1971 c. 239.

The scope language of this section bars a customer from bringing a claim of unconscionability under s. 425.107 except in response to "actions or other proceedings brought by a creditor." Discussing whether a nonjudicial repossession pursuant to s. 425.206 (1) (d) is such an action or other proceeding. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19-1365.

When a creditor files a lawsuit against a debtor to enforce a loan agreement, that triggers the potential for an unconscionability counterclaim. The fact that the creditor moves for voluntary dismissal of its claim before the debtor brings the unconscionability counterclaim does not prevent the debtor from pursuing it. This section does not require dismissal of the counterclaim. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

425.1025 Definition. In this subchapter, "billing statement" means a statement issued pursuant to 15 USC 1637 (b).

History: 2015 a. 155.

425.103 Accrual of cause of action; "default". (1) Notwithstanding any term or agreement to the contrary, no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default, as defined in sub. (2).

(2) "Default", with respect to a consumer credit transaction, means without justification under any law:

(a) With respect to a transaction other than one pursuant to an open-end plan and except as provided in par. (am); if the interval between scheduled payments is 2 months or less, to have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date; if the interval between scheduled payments is more than 2 months, to have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date; or, if the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(am) With respect to an installment loan not secured by a motor vehicle made by a licensee under s. 138.09 or with respect to a payday loan not secured by a motor vehicle made by a licensee under s. 138.14; to have outstanding an amount of one full payment or more which has remained unpaid for more than 10 days after the scheduled or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(b) With respect to an open-end plan, failure to pay when due on 2 occasions within any 12-month period;

(bm) With respect to a motor vehicle consumer lease or a consumer credit sale of a motor vehicle, making a material false statement in the customer's credit application that precedes the consumer credit transaction; or

(c) To observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the 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.

(3) A cause of action with respect to the obligation of a customer in a consumer credit transaction shall be subject to this subchapter, including the provisions relating to cure of default (ss. 425.104 and 425.105).

(4) A cause of action arising from a transaction which resulted in the creation of a security interest in personal property shall also be subject to the limitations provided in subch. II.

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10; 1995 a. 225; 1997 a. 302; 2005 a. 110; 2013 a. 20.

12 CFR 227.13 (d), 12 CFR 535.1 (g) or 16 CFR 444.1 (i) consisting of furniture, appliances, one television, linens, china, crockery and personal effects including wedding rings, except works of art, electronic entertainment equipment, antiques and jewelry, to the extent a nonpossessory security interest in these household goods is prohibited under 12 CFR 227.13 (d), 12 CFR 535.2 (a) (4) or 16 CFR 444.2 (a) (4);

(c) Real property used as the principal residence of the customer or the customer's dependents, to the extent that the fair market value of such property, less all amounts secured by mortgages and liens outstanding against it, is $15,000 or less; and

(d) Earnings or other assets of the customer which are required to be paid by the customer as restitution under s. 973.20.

(2) With respect to process against marital property in satisfaction of a judgment for an obligation described under s. 766.55 (2) (b) arising from a consumer credit transaction, each spouse is entitled to and may claim the exemptions under sub. (1). Each spouse is entitled to one exemption under sub. (1) (c). That exemption is limited to the specified maximum dollar amount, which may be combined with the other spouse's exemption in the same property or applied to different property included under the same exemption.

(3) Nothing in this section shall be construed to displace other provisions of law which afford additional or greater protection to the customer.

(4) An order or process in violation of this section is void.

History: 1971 c. 239; 1973 c. 2, 3; 1979 c. 32 s. 92 (9); 1979 c. 89, 177, 221; 1983 a. 36; 1985 a. 37, 256; 1987 a. 398; 1991 a. 316; 1993 a. 80; 1995 a. 329.

NOTE: As to sub. (2), see notes in 1985 Wis. Act 37, marital property trailer bill.

425.107 Unconscionability. (1) With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall, in addition to the remedy and penalty authorized in sub. (5), either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

(2) Specific practices forbidden by the administrator in rules promulgated pursuant to s. 426.108 shall be presumed to be unconscionable.

(3) Without limiting the scope of sub. (1), the court may consider, among other things, the following as pertinent to the issue of unconscionability:

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

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

(c) 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 customers, or by other tests of true value;

(d) 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 to understand the language of the agreement, ignorance or lack of education or similar factors;

(e) That the terms of the transaction require customers to waive legal rights;

(f) 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;

(g) That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder;

(h) That the writing purporting to evidence the obligation of the customer in the transaction contains terms or provisions or authorizes practices prohibited by law; and

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

(4) Any charge or practice expressly permitted by chs. 421 to 427 and 429 is not in itself unconscionable but even though a practice or charge is authorized by chs. 421 to 427 and 429, the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.

(5) In addition to the protections afforded in sub. (1), the customer shall be entitled upon a finding of unconscionability to recover from the creditor or the person responsible for the unconscionable conduct a remedy and penalty in accordance with s. 425.303.

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

When a lender was promptly informed that a borrower had a valid disability insurance claim that would cover payments, it was an unconscionable practice to include an unpaid monthly charge that would be covered by the disability insurance in computing the unpaid balance for purposes of establishing default. Bank One Milwaukee, N.A. v. Harris, 209 Wis. 2d 412, 563 N.W.2d 543 (Ct. App. 1997), 96-0903.

The scope language of s. 425.102 bars a customer from bringing a claim of unconscionability under this section except in response to "actions or other proceedings brought by a creditor." Discussing whether a nonjudicial repossession pursuant to s. 425.206 (1) (d) is such an action or other proceeding. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19-1365.

When a creditor files a lawsuit against a debtor to enforce a loan agreement, that triggers the potential for an unconscionability counterclaim. The fact that the creditor moves for voluntary dismissal of its claim before the debtor brings the unconscionability counterclaim does not prevent the debtor from pursuing it. Section 425.102 does not require dismissal of the counterclaim. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

This section provides a defense to an action brought by a creditor and does not constitute an affirmative claim for relief. Gable v. Universal Acceptance Corp. (WI), 338 F. Supp. 3d 943 (2018). But see CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

425.108 Extortionate extensions of credit. (1) If it is the understanding of the creditor and the customer during any time that an extension of credit is outstanding, that delay in making repayment could result in the use of violence to cause harm to the person or property of any person, the extension of credit shall be unenforceable in accordance with s. 425.305 and the customer shall additionally recover triple the penalty provided in s. 425.304 (1).

(2) If it is shown that an extension of credit was made at an annual rate exceeding that permitted by or referred to in s. 422.201 on maximum charges and that the creditor had a reputation for the use or threat of use of violence to cause harm to the person or property of any person to collect extensions of credit or to punish the nonrepayment thereof, it shall be presumed that the extension of credit was a violation under chs. 421 to 427 under sub. (1).

History: 1971 c. 239; 1979 c. 89.

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

(a) An identification of the consumer credit transaction.

(b) A description of the collateral or leased goods, if any, which the merchant seeks to recover or has recovered.

(c) A specification of the facts constituting the alleged default by the customer.

(d) 1. If the consumer credit transaction is pursuant to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a named foreign currency that the merchant alleges he or she is entitled to recover and the figures necessary for compu-

tation of the amount alleged to be due to the merchant on a date certain after the customer's default. Figures necessary for computation shall mean the amount reflected on a billing statement addressed to the customer and a breakdown of all charges, interest, and payments, including any amount received from the sale of any collateral, occurring after this date certain. This paragraph does not require a specific itemization, but the breakdown shall identify separately the amount due on a date certain, the total of all charges occurring after this date certain, the total of all interest occurring after this date certain, and the total of all payments occurring after this date certain.

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

(e) Except in an action to recover goods subject to a consumer lease, a statement that the customer has the right to redeem any collateral as provided in s. 425.208 (1) (intro.) and the actual or estimated amount of U.S. dollars or of a named foreign currency required for redemption, itemized in accordance with s. 425.208 (1) (a) to (d).

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

(g) If the customer still has the right to cure a default under s. 425.105 pursuant to a notice given under s. 425.104, the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made.

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

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

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

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

History: 1971 c. 239; 1983 a. 389; 1991 a. 236; 2015 a. 155.

A stated amount owed as of a specific date with a per diem interest figure is not a sufficient statement of "the figures necessary for computation of the amount" as required by sub. (1) (d). A complaint is not sufficient under this section because it meets the general rules of notice pleading. Household Finance Corp. v. Kohl, 173 Wis. 2d 798, 496 N.W.2d 708 (Ct. App. 1993). See also Bank One v. Ofojebe, 2005 WI App 151, 284 Wis. 2d 510, 702 N.W.2d 456, 04-0902.

A company that purchased an overdue credit card account and brought an action to collect the amount due on it was not a "creditor" within the meaning of s. 421.301 (16) and not subject to the pleading requirements of sub. (1). Rsidue, LLC v. Michaud, 2006 WI App 164, 295 Wis. 2d 585, 721 N.W.2d 718, 05-1299.

Sub. (2) requires a creditor to document any transaction it wishes to collect upon. Estate of Newgard v. Bank of America, 2007 WI App 161, 303 Wis. 2d 466, 735 N.W.2d 578, 07-0082.

Even if there was a failure to comply with the pleading requirements of this section, such a failure cannot deprive a small claims court of subject matter jurisdiction and cannot render a default judgment void. Mercado v. GE Money Bank, 2009 WI App 73, 318 Wis. 2d 216, 768 N.W.2d 53, 08-1992.

Failure to comply with the Wisconsin Consumer Act's pleading requirements does not give rise to a claim for damages. Plaza Services LLC v. Burton, 2025 WI App 51, 418 Wis. 2d 123, 25 N.W.3d 556, 24-1129.

425.110 No discharge from employment for garnishment. (1) No employer shall discharge an employee because a merchant has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

(2) If an employer violates this section, an employee shall recover back wages and be reinstated, if the employee files an action for such relief within 90 days of the employee's discharge.

History: 1971 c. 239.

425.111 Levy before judgment. (1) Prior to entry of judgment in an action subject to this subchapter, no process, other than a restraining order to protect collateral (s. 425.207), shall issue with respect to amounts that are owing or are claimed to be owing or may be owing to the customer by any 3rd person, whether by way of attachment, garnishment or other process.

(2) With respect to property of the customer other than that described in sub. (1), process may issue in accordance with ch. 811 to establish a lien, except that such process shall not be effective to take, or to divest the customer of possession of, the property until final judgment is entered.

(3) If the court finds that the creditor probably will recover on the action, and that the customer is acting, or is about to act, with respect to property of the customer upon which a lien has been established under sub. (2), in a manner which substantially impairs the creditor's prospects for satisfying the judgment against such property (s. 811.03), the court may issue an order restraining the customer from so acting with respect to that property until final judgment is entered.

History: 1971 c. 239; 1973 c. 2; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975).

Legislative Council Note, 1973: Clarifies applicability of this subsection. Section 425.111 (1) refers to property of the customer subject to garnishment, and prescribes limitations on creditors' actions in relation to it. Sub. (2) refers to other property of the customer; however, the language struck by this amendment appears to make sub. (2) refer back to the same property dealt with by sub. (1), so it is deleted. [Bill 355-A]

425.112 Stay of execution. At the time of or at any time after the entry of a judgment in favor of a creditor against a customer in an action arising from a consumer transaction, the court, for cause and upon motion of a party or on its own motion, may stay enforcement of the judgment by order upon just and equitable conditions, and continue, modify or revoke the order as the interests of justice may require.

History: 1971 c. 239.

[redacted]

Consumer Loan Agreement

[redacted]

In this consumer loan agreement (the "Agreement") the words "you," and "your" mean each and all customers who have signed it. The words "we,""us," and "our" mean [redacted]

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE *The cost of your credit as a yearly rate.*	**FINANCE CHARGE** *The dollar amount the credit will cost you.*	**AMOUNT FINANCED** *The amount of credit provided to you or on your behalf.*	**TOTAL OF PAYMENTS** *The amount you will have paid after you have made all payments as scheduled.*
782.143%	**$5,031.60**	**$1,000.00**	**$ 6,031.60**
PREPAYMENT : You may prepay this loan agreement in full or in part at any time without penalty.	**SECURITY INTEREST** : If you have chosen the ACH Debit Authorization option, your ACH authorization is security for this loan.	**LATE CHARGE:** Failure to make all or any part of a scheduled installment on or before the 15th day after its scheduled or deferred due date, you may be charged $10.00 or 5% of the unpaid amount of the installment, whichever is less.	

YOUR PAYMENT SCHEDULE

NUMBER OF PAYMENTS:	AMOUNT OF PAYMENT:	WHEN PAYMENTS ARE DUE:
20	**$ 301.58** **View Loan Agreement For Final Payment Amount*	**BI Weekly** *With the first payment due:* **02-10-2023**

*Please see the Loan Agreement for additional information about nonpayment, default, and prepayment.

Itemization of Amount Financed of **$1000.00** **$1,000.00** Amount given to you directly **$0.00** Loan Proceeds paid on your account **$0.00** Amount paid to public officials **$0.00** Amount paid to others **$0.00** Loan Origination Fee **$0.00** Prepaid Finance Charge **$1000.00** Amount Financed	**NOTICE OF YOUR FINANCIAL PRIVACY RIGHTS** RESTRICTION OF NON-PUBLIC INFORMATION ACCESS We restrict access to your non-public personal information to employees needing to know that information to assist you with products or services. We keep the physical, electronic, and procedural safeguards required by our regulators to insure the safety of your personal information. **INFORMATION TO NON-AFFILIATED THIRD PARTIES** Since we value our relationship, we will not disclose your non-public personal information to non-affiliated third parties unless required by law. We also do not disclose non-public personal information about former customers unless required by law

[redacted]

LOAN AGREEMENT

PROMISE TO PAY: You promise to pay the lender the principal sum of **$1000.00**, plus interest thereon at the rate of 782.143% per annum until the loan is paid in full. The loan is payable in **20** payments of **$ 301.58** following the payment schedule listed below:

Payment Number	Payment Date	Payment Amount	Interest Amount	Principal Amount
1	02-10-2023	$301.58	$300.00	$1.58
2	02-24-2023	$301.58	$299.53	$2.05
3	03-10-2023	$301.58	$298.91	$2.67
4	03-24-2023	$301.58	$298.11	$3.47
5	04-07-2023	$301.58	$297.07	$4.51
6	04-21-2023	$301.58	$295.72	$5.86
7	05-05-2023	$301.58	$293.96	$7.62
8	05-19-2023	$301.58	$291.67	$9.91
9	06-02-2023	$301.58	$288.70	$12.88
10	06-16-2023	$301.58	$284.84	$16.74
11	06-30-2023	$301.58	$279.81	$21.77
12	07-14-2023	$301.58	$273.28	$28.30
13	07-28-2023	$301.58	$264.79	$36.79
14	08-11-2023	$301.58	$253.76	$47.82
15	08-25-2023	$301.58	$239.41	$62.17
16	09-08-2023	$301.58	$220.76	$80.82
17	09-22-2023	$301.58	$196.51	$105.07
18	10-06-2023	$301.58	$164.99	$136.59
19	10-20-2023	$301.58	$124.01	$177.57
20	11-03-2023	$301.58	$70.74	$230.84

PERSONS BOUND: "You" and "your" includes each customer who signs this Agreement and the obligations under this Agreement are joint and several. This Agreement may not be supplemented or modified except in writing. This Agreement benefits the Lender, its successors and assigns, and binds you and your heirs, personal representatives, successors and assigns.

DEFAULT: Default under this Agreement is defined in sec. 425.103(2)(am) and (c), Wis. Stats. You will be in default if (i) you have an outstanding amount of one full payment or more which has remained unpaid for more than 10 days after the scheduled or deferred due date, (ii) you fail to observe or perform any other covenants or duties contained in this Agreement if the failure materially impairs the condition, value or protection of Lender's right in any collateral securing this Agreement, or materially impairs your ability to pay any of the obligation when due.

RETURNED CHECK FEE: You agree to pay a $15.00 fee for any payment item returned unsatisfied because the drawer does not have an account with the drawee, does not have sufficient funds in his/her account, or does not have sufficient credit with the drawee.

ABILITY TO PAY: You shall not take any action or permit any event to occur that materially impairs your ability to pay any of the obligations when due. Such events may include, without limitation, the fact that you die, change marital status, domicile or become insolvent or subject to a bankruptcy, receivership, or other insolvency proceeding.

COURT COSTS: If Lender obtains a court judgment against you for default under this agreement, the Lender may request an award of statutory costs and statutory attorney fees pursuant to section 814.04 of the Wisconsin Statutes. If Lender's request is granted, you will be required to pay these fees.

VERIFICATION: You authorize us to verify the information you provided to us in connection with your Loan application. You give us consent to obtain information about you from a consumer reporting agency or other sources. We reserve the right to withhold funding of this Loan, at any time prior to disbursement, to allow us to verify the information you have provided to us.

LENDER'S RIGHTS IN THE EVENT OF DEFAULT: In the event of default, and if you have the right to cure the default pursuant to sec. 425.105, Wis. Stats., you fail to cure the default within 15 days after you are given notice of the default, the lender may declare the whole outstanding balance due under this agreement payable at once and proceed to collect it, including commencing legal action and repossessing collateral.

REPOSSESSION: Unless the collateral is removed from Wisconsin under section 421.201(5), Wis. Stats., abandoned under section 425.207(2), Wis. Stats., or the Lender has perfected its right to take possession of the collateral consisting of a motor vehicle under section 425.206(1)(d), Wis. Stats., you have a right to a court hearing on the issue of default before any repossession of any collateral,

[redacted]

but by surrendering the collateral, you waive such right.

CHECK CONVERSION NOTICE: By providing a check as payment, you authorize and agree that we may either use information from your check to make a one-time electronic withdrawal from your account or to process the payment as a check transaction. When we make an electronic withdrawal funds may be withdrawn as soon as the same day we receive your payment. You will not receive your check back from your bank.

REFINANCE POLICY: We, in our sole discretion, will determine if your Loan may be refinanced.

REFUND POLICY: If you have paid an excess charge, you reserve the right to a refund. A refund may be made whole or in part by reducing your debt obligation by the amount of the excess charge. We reserve the right to refund the excess amount to you directly, rather than reducing your debt obligation.

TELEPHONE CALLS: You agree and acknowledge that in the event we need to contact you to discuss your account or the repayment of your Loan. WE MAY CALL YOU AT ANY NUMBER YOU HAVE PROVIDED TO US. You further agree that we may leave an autodialed or prerecorded message or use other technology (including, but not limited to, SMS messaging or other text messaging) to contact or to communicate with you.

GOVERNING LAW: This Agreement shall be construed, applied and governed by the laws of State of Wisconsin. Unless otherwise required by the Wisconsin Consumer Act, the unenforceability or invalidity of any portion of this Agreement shall not render unenforceable or invalid any other portions.

CREDIT REPORTING: We may report your performance under this Agreement to credit reporting agencies. You agree and hereby authorize us to obtain credit reports on you at any time any portion of this loan remains owed to us. You specifically acknowledge and agree that we may disclose any default by you under this Agreement, along with any other relevant information, to credit reporting agencies.

ACKNOWLEDGEMENTS: By electronically signing this agreement you warrant and represent that the information you have given us is true and correct. You authorize us to verify your information, and you give consent for us to obtain information about you from a consumer reporting agency or other sources.
You warrant and represent that you have read, understand, and agree to all of the terms and conditions of this Agreement, including the disclosures and Arbitration Agreement and waiver of any jury trial (notwithstanding the "Opt Out Option" described above).
You warrant and represent that this Agreement contains all of the terms of the agreement between you and us and that no representations or promises other than those contained in this Agreement have been made.
You warrant and represent that you have the ability to print or retain a completed copy of this Agreement. However, if you send a written request for a copy of the Agreement, we will provide one to you, free of charge.
You warrant and represent that you are not a debtor under any proceeding bankruptcy, insolvency or reorganization, and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code.
You further warrant and represent that we may withhold funding of your Loan until we verify that all the information you gave us is correct.

CANCELLATION OF THE LOAN: YOU HAVE THE RIGHT TO CANCEL THIS LOAN WITHIN THREE (3) DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED. TO DO SO YOU MUST RETURN THE MONEY WHICH WE DEPOSITED IN YOUR ACCOUNT, ALLOW US TO WITHDRAW THE MONEY FROM YOUR ACCOUNT, OR RETURN THE MONEY BY MAIL IF YOU DID NOT SELECT THE ACH DEBIT AUTHORIZATION. TO NOTIFY US OF A VALID CANCELLATION PLEASE CALL [redacted], OR CONTACT US VIA EMAIL AT:

customerservice@[redacted]

NOTICE:
ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

NOTICE TO CUSTOMER
A) DO AGREE TO THIS BEFORE YOU READ THE WRITING ABOVE EVEN IF OTHERWISE ADVISED.
B) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
C) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
D) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITILED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION

Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator) for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. We have a policy of arbitrating all disputes with customers which cannot be resolved in a small claims tribunal, including the scope and validity of this Arbitration Provision and any right you may have to participate in an alleged class action. THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:

For purposes of this Waiver of Jury Trial and Arbitration Provision, the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to the Loan Agreement, the information you gave us before entering into this Agreement, including the customer information application, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross- claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

1. You acknowledge and agree that by entering into this Arbitration Provision:
   a.YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
   b.YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
   c.YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.
2. Except as provided in Paragraph 5 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.
3. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) http://www.adr.org or JAMS (1-800-352-5267) http://www.jamsadr.com. The parties may also agree to select an arbitrator who resides within your federal judicial district who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association, and arbitrate in accordance with such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.
4. Regardless of who demands arbitration, at your request we will pay your portion of the arbitration expenses, including the filing, administrative, hearing and arbitrator's fees ('Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall hot apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, we will reimburse you for any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.
5. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal in the county of your residence for disputes within the scope of such tribunal's jurisdiction. Any dispute which cannot be adjudicated within the jurisdiction of a small claims tribunal shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

[redacted]

6. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non- appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of Wisconsin.
7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. This Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. This Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. This Arbitration Provision survives any cancellation, termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
8. OPT-OUT PROCESS. You may choose to opt out of the Arbitration Provision, but only by following the process set-forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the date of your loan at the Lender's address provided at the top of this agreement Your written notice must include your name, address, account number or social security number and a statement that you wish to opt out of this Arbitration Provision.

Please note that this Loan Agreement contains a binding arbitration provision. You also warrant that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the "Waiver of Jury Trial and Arbitration Provision".

[redacted]

CHAPTER 421

CONSUMER TRANSACTIONS — GENERAL PROVISIONS AND DEFINITIONS

SUBCHAPTER I
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS
421.101 Short title.
421.102 Purposes; rules of construction.
421.103 Applicable law.
421.104 Construction against implied repeal.
421.106 Settlement of claims; agreement to forego rights; waiver.
421.107 Effect of chapters 421 to 427 on powers of organizations.
421.108 Obligation of good faith.

SUBCHAPTER II
SCOPE AND JURISDICTION
421.201 Territorial application.
421.202 Exclusions.
421.203 Partial exclusion for governmentally insured or guaranteed transactions.

SUBCHAPTER III
DEFINITIONS
421.301 General definitions.
421.401 Venue.

SUBCHAPTER I

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

421.101 Short title. Chapters 421 to 427 shall be known and may be cited as the Wisconsin consumer act.

History: 1971 c. 239.

The Wisconsin Consumer Act: Territorial Considerations. Anzivino. 96 MLR 833 (2013).

421.102 Purposes; rules of construction. (1) Chapters 421 to 427 shall be liberally construed and applied to promote their underlying purposes and policies.

(2) The underlying purposes and policies of chs. 421 to 427 are:

(a) To simplify, clarify and modernize the law governing consumer transactions;

(b) To protect customers against unfair, deceptive, false, misleading and unconscionable practices by merchants;

(c) To permit and encourage the development of fair and economically sound consumer practices in consumer transactions; and

(d) To coordinate the regulation of consumer credit transactions with the policies of the federal consumer credit protection act.

(3) A reference to a provision of chs. 421 to 427 includes reference to a related rule or order of the administrator adopted under chs. 421 to 427.

History: 1971 c. 239; 1979 c. 89.

Wisconsin Consumer Act penalties are improper when the underlying contract is tainted with illegality. Shea v. Grafe, 88 Wis. 2d 538, 274 N.W.2d 670 (1979).

The Wisconsin Consumer Act may constitutionally regulate sales to residents by out-of-state mail order retailers. Aldens, Inc. v. LaFollette, 552 F.2d 745 (1977).

Wisconsin Consumer Act—A Critical Analysis. Heiser. 57 MLR 389 (1974).

Wisconsin Consumer Act—A Freak Out? Barrett & Jones. 57 MLR 483 (1974).

Protection for Consumers Against Unfair and Deceptive Business. Jeffries. 57 MLR 559 (1974).

The Wisconsin Consumer Act: Wisconsin Consumer Credit Laws Before and After. Crandall. 1973 WLR 334.

An Overview of The Wisconsin Consumer Act. Stute. WBB Feb. 1973.

Private enforcement of consumer laws in Wisconsin. Waxman. WBB May 1983.

Mandatory Arbitration of Consumer Rights Cases. Schneider & Quirk. Wis. Law. Sept. 2002.

Navigating Wisconsin's Consumer Protection System. Greene. Wis. Law. Sept. 2017.

421.103 Applicable law. (1) Unless superseded by the particular provisions of chs. 421 to 427, chs. 401 to 411 and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement chs. 421 to 427.

(2) Unless terms used in chs. 421 to 427 are defined by particular provisions of chs. 421 to 427, they shall have the meaning given them in chs. 401 to 411 and 429, if they are defined in chs. 401 to 411 and 429.

(3) Unless superseded by the particular provisions of chs. 421 to 427 parties to a consumer transaction have all of the obligations, duties, rights and remedies provided in chs. 401 to 411 which apply to the transaction.

(4) Chapters 421 to 427 shall not preempt the administration or enforcement of ch. 100. Conduct proscribed under s. 423.301, 426.108, 426.109 or 426.110 may also constitute violations of s. 100.18 or 100.20.

History: 1971 c. 239; 1979 c. 89, 177; 1991 a. 148, 304, 315; 1995 a. 329.

421.104 Construction against implied repeal. Chapters 421 to 427 being a general act intended as a unified coverage of the subject matter of such chapters, no part of chs. 421 to 427 shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: 1971 c. 239; 1979 c. 89.

421.106 Settlement of claims; agreement to forego rights; waiver. (1) Except as otherwise provided in chs. 421 to 427, a customer may not waive or agree to forego rights or benefits under chs. 421 to 427.

(2) A claim by a customer against a merchant for an excess charge, other violation of chs. 421 to 427 or civil penalty, or a claim against a customer for default or breach of a duty imposed by chs. 421 to 427, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a customer may be settled for less value than the amount claimed.

(4) A settlement in which the customer waives or agrees to forego rights or benefits under chs. 421 to 427 is invalid if the court as a matter of law finds the settlement to be unconscionable at the time it was made. In this regard the court may consider the competence of the customer as measured by his or her education, ability to speak and read the language of the contract, and his or her prior consumer experience; any deception or coercion practiced upon the customer; the nature and extent of the legal advice received by the customer; and the value of the consideration.

History: 1971 c. 239; 1979 c. 89.

The holding in *Concepcion*, 563 U.S. 333 (2011), is clear: the Federal Arbitration Act preempts any state law, including sub. (1) and s. 426.110 (1), that classifies an arbitration agreement as unconscionable, and therefore unenforceable, simply because the agreement prohibits an individual from proceeding as a member of a class. Accordingly, under *Concepcion*, the waiver of classwide proceedings in the borrower's arbitration agreement with the payday lender did not render the agreement substantively unconscionable. Cottonwood Financial, LTD v. Estes, 2012 WI App 12, 339 Wis. 2d 472, 810 N.W.2d 852, 09-0760.

421.107 Effect of chapters 421 to 427 on powers of organizations. (1) Except as specifically provided, chs. 421 to 427 prescribe maximum charges for all consumer credit transac-

tions and displace existing limitations on the powers of creditors based on maximum charges.

(2) Except as specifically provided, with respect to sellers of goods or services, lessors of goods, small loan companies, licensed lenders, consumer and sales finance companies and commercial banks and trust companies, chs. 421 to 427 displace existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in sub. (1), chs. 421 to 427 do not displace limitations on powers of credit unions, savings banks, savings and loan associations or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subs. (1) and (2), chs. 421 to 427 do not displace:

(a) Limitations on powers of supervised financial organizations (s. 421.301 (43)), with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land or other similar restrictions designed to protect deposits; or

(b) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

History: 1971 c. 239; 1979 c. 89.

421.108 Obligation of good faith. Every agreement or duty within chs. 421 to 427 imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

History: 1971 c. 239; 1979 c. 89.

Under this section, parties are obligated to act in good faith in the performance or enforcement of an agreement subject to the Wisconsin Consumer Act and to the performance or enforcement of a provision of the Act. Further, the honesty-in-fact requirement is violated when a party lacks an honest intention to abstain from taking unfair advantage of another by activities that render the transaction unfair, and the fair-dealing requirement is violated when a party does not observe reasonable commercial standards of fair dealing, which contemplates the application of an objective set of standards. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

SUBCHAPTER II

SCOPE AND JURISDICTION

421.201 Territorial application. (1) Except as otherwise provided in this section, chs. 421 to 427 apply to consumer transactions made in this state and to modifications including refinancings, consolidations and deferrals, made in this state, of consumer credit transactions wherever made.

(2) For the purposes of chs. 421 to 427, a consumer transaction or modification of a consumer transaction is made in this state if:

(a) A writing signed by the customer and evidencing the obligation or an offer of the customer is received by the merchant in this state; or

(b) The merchant induces the customer who is a resident of this state to enter into the transaction by face-to-face solicitation or by mail or telephone solicitation directed to the particular customer in this state.

(3) With respect to a transaction pursuant to an open-end credit plan, chs. 421 to 427 apply if the customer is a resident of this state and the open-end creditor or a merchant honoring a credit card issued by the open-end creditor, is a resident of this state or furnishes, mails or delivers the goods, services or credit to a resident of this state while the customer is within this state or receives a writing signed by the customer and evidencing the transaction in this state.

(4) Chapter 427 applies to any debt collection activity in this state, including debt collection by means of mail or telephone communications directed to customers in this state.

(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 or goods subject to a motor vehicle consumer lease shall be governed by the law of the state where the collateral or goods subject to a motor vehicle consumer lease are located at the time of recovery unless the collateral or goods subject to a motor vehicle consumer lease are owned by a Wisconsin resident, who has removed the collateral or goods from this state only for purposes of transportation to or use in the resident's employment or for temporary periods which do not exceed 15 days.

(6) If a consumer transaction, or modification thereof, is made in another state with a customer who is a resident of this state when the transaction or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A creditor, or assignee of the creditor's rights, may collect through actions or other proceedings charges only to the extent permitted by ch. 422; and

(b) A merchant may not enforce rights against the customer to the extent that the provisions of the agreement violate subch. IV of ch. 422 or ch. 423.

(7) Except as provided in sub. (4) or (5), a consumer transaction or modification thereof, made in another state with a customer who was not a resident of this state when the consumer transaction or modification was made, is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(8) For the purposes of chs. 421 to 427, the residence of a customer is the address given by the customer as his or her residence in any writing signed by the customer in connection with a consumer transaction. The given address is presumed to be unchanged until the merchant knows or has reason to know of a new or different address.

(9) Notwithstanding other provisions of this section:

(a) Except as provided in sub. (4) or (5), chs. 421 to 427 do not apply if the customer is not a resident of this state at the time of a consumer transaction and the parties then agree that the law of his or her residence applies; and

(b) Chapters 421 to 427 apply if the customer is a resident of this state at the time of a consumer transaction and the parties then agree that the law of this state applies.

(10) Except as provided in sub. (9), the following terms of a writing executed by a customer are invalid with respect to consumer transactions, or modifications thereof, to which chs. 421 to 427 apply:

(a) That the law of another state shall apply;

(b) That the customer consents to the jurisdiction of another state; and

(c) That fixes venue.

History: 1971 c. 239; 1975 c. 407, 421; 1979 c. 89; 1991 a. 316; 1995 a. 329.

Notwithstanding sub. (5), s. 425.206 governed repossession outside of the state when a contract provided for enforcement under the "internal law" of Wisconsin. First Wisconsin National Bank of Madison v. Nicolaou, 85 Wis. 2d 393, 270 N.W.2d 582 (Ct. App. 1978).

Sub. (10) (a) bars any provision mandating application of the law of another state with respect to a consumer transaction to which chs. 421 to 427 apply. All of chs. 421 to 427 need not be applicable for the choice-of-law prohibition to apply. As long as some portion of the Wisconsin Consumer Act is applicable, no choice-of-law provisions are effective. Credit Acceptance Corp. v. Kong, 2012 WI App 98, 344 Wis. 2d 259, 822 N.W.2d 506, 11-0476.

A corporation that repossessed the vehicle outside of the state was not subject to the Wisconsin police power. Patrin v. Chrysler Credit Corp., 530 F. Supp. 736 (1982).

The Wisconsin Consumer Act: Territorial Considerations. Anzivino. 96 MLR 833 (2013).

The Wisconsin Consumer Act: Consumer Credit Sales, Consumer Leases, Open-End Credit Plans, and Exclusions. Anzivino. 97 MLR 55 (2013).

421.202 Exclusions. Chapters 421 to 427 do not apply to any of the following:

(1) Extensions of credit to organizations (s. 421.301 (28)).

(2) Transactions in which all parties are organizations (s. 421.301 (28)).

(3) Charges for delayed payment and any discount allowed for early payment in transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates such charges or discounts, or if such charges or discounts are made in connection with the furnishing of electric service by an electric cooperative organized and operating on a nonprofit basis under ch. 185.

(4) The ceilings on rates and charges of a licensed pawnbroker if these ceilings are established by statute or ordinance.

(5) The sale of insurance by an insurer, except as otherwise provided in ch. 424.

(6) Consumer credit transactions in which the amount financed exceeds $50,000, motor vehicle consumer leases in which the total lease obligation exceeds $50,000, or other consumer transactions in which the cash price exceeds $50,000.

NOTE: Sub. (6) is shown as amended eff. 1-1-27 by 2025 Wis. Act 105. Prior to 1-1-27 it reads:

(6) Consumer credit transactions in which the amount financed exceeds $25,000, motor vehicle consumer leases in which the total lease obligation exceeds $25,000 or other consumer transactions in which the cash price exceeds $25,000.

(7) Transactions secured by a first lien real estate mortgage or equivalent security interest.

(8) Transactions in securities accounts or securities transactions by or with a broker-dealer, as defined in s. 551.102 (4), registered under ch. 551.

(9) Leases of motor vehicles that are not motor vehicle consumer leases under s. 421.301 (25m).

(10) Transactions that are primarily for an agricultural purpose, except that this subsection does not exclude transactions that are primarily for an agricultural purpose from ch. 427 and except that this subsection does not exclude credit transactions that are primarily for an agricultural purpose from s. 422.210.

History: 1971 c. 239; 1973 c. 18; 1975 c. 207; 1979 c. 89; 1995 a. 329; 1997 a. 302; 2005 a. 215; 2007 a. 196; 2025 a. 105.

Consumer leases are subject to the exclusionary provision of sub. (6). "Amount financed" means the purchase price or cash price for property leased. American Industrial Leasing Co. v. Geiger, 118 Wis. 2d 140, 345 N.W.2d 527 (Ct. App. 1984).

421.203 Partial exclusion for governmentally insured or guaranteed transactions. (1) Consumer credit transactions, not governed by ch. 428, which are made, insured or guaranteed by the federal government or any agency thereof, or by any federal instrumentality chartered under the federal farm credit act of 1971 (P.L. 92-181; 85 stats. 583; 12 USC 2001 et seq.), or by the department of veterans affairs shall be subject to only those provisions set forth in sub. (2).

(2) This chapter, ss. 422.203 (2), 422.305, 422.306, 422.404, 422.406 to 422.409, 422.411, 422.417 and 422.418, ch. 425 except ss. 425.103 to 425.105, and chs. 426 and 427.

History: 1973 c. 18; 1979 c. 10; 1997 a. 302; 2005 a. 22.

SUBCHAPTER III

DEFINITIONS

421.301 General definitions. In addition to definitions appearing in chs. 422 to 427, in chs. 421 to 427:

(1) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between amount financed and finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

(2) "Administrator" means the administrator designated in s. 426.103.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. Sections 402.202 and 411.202 and any other provisions on parol or extrinsic evidence shall be inoperative to exclude or limit the admissibility of evidence relating to agreements governed by chs. 421 to 427.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a person, other than an organization, which cultivates, plants, propagates or nurtures those agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Amount financed" in a consumer credit transaction means the total of the following items from which any prepaid finance charge or required deposit balance has been excluded:

(a) In a consumer credit sale, the cash price of the real or personal property or services, less the amount of any down payment whether made in cash or in property traded in, or, in a consumer loan, the amount paid to, receivable by or paid or payable to the customer or to another person in the customer's behalf;

(b) In a consumer credit sale, the amount actually paid or to be paid by the creditor pursuant to an agreement with the customer to discharge a security interest in or a lien on property traded in; and

(c) To the extent not included in par. (a) or (b):

1. Any applicable sales, use, excise or documentary stamp taxes;

2. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees; and

3. Additional charges permitted by s. 422.202.

(6) "Business day" means any calendar day except Saturday and Sunday, and except the following business holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas.

(7) "Cash price" means the price at which property or services are offered, in the ordinary course of business, for sale for cash, and may include:

(a) The cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications and improvements; and

(b) Taxes, to the extent imposed on the cash sale.

(8) "Conspicuous" means that the term or clause is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(9) "Consumer credit sale" means a sale of goods, services or an interest in land to a customer on credit where the debt is payable in installments or a finance charge is imposed and includes any agreement in the form of a bailment of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods or real property in-

volved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods or real property upon full compliance with the terms of the agreement.

(10) "Consumer credit transaction" means a consumer transaction between a merchant and a customer in which real or personal property, services or money is acquired on credit and the customer's obligation is payable in installments or for which credit a finance charge is or may be imposed, whether such transaction is pursuant to an open-end credit plan or is a transaction involving other than open-end credit. The term includes consumer credit sales, consumer loans, consumer leases and transactions pursuant to open-end credit plans.

(11) "Consumer lease" means a lease of goods which a merchant makes to a customer for a term exceeding 4 months.

Cross-reference: See also s. DFI-WCA 1.05, Wis. adm. code.

(12) "Consumer loan" means a loan made by a lender to a customer which is payable in installments or for which a finance charge is or may be imposed, and includes transactions pursuant to an open-end credit plan other than a seller credit card.

(13) "Consumer transaction" means a transaction in which one or more of the parties is a customer for purposes of that transaction.

(14) "Credit" means the right granted by a creditor to a customer to defer payment of debt, to incur debt and defer its payment or to purchase goods, services or interests in land on a time price basis.

(15) "Credit card" means any card, plate, merchandise certificate, letter of credit, coupon book or other like credit device existing for the purpose of obtaining money, property, labor or services on credit pursuant to an open-end credit plan.

(16) "Creditor" means a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by or procuring consumer credit from 3rd persons.

(17) "Customer" means a person other than an organization (s. 421.301 (28)) who seeks or acquires real or personal property, services, money or credit for personal, family or household purposes or, for purposes of ch. 427 only, for agricultural purposes. A person other than a customer may agree to be governed by chs. 421 to 427 with respect to all aspects of a transaction and in such event such person shall be deemed a customer for all purposes of chs. 421 to 427 with respect to such transaction.

Cross-reference: See also s. DFI-WCA 1.06, Wis. adm. code.

(18) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program. "Earnings" does not include renewal commissions payable to a licensed insurance agent.

(19) "Federal consumer credit protection act" means the consumer credit protection act (P.L. 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(20) "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. The term does not include any charge with respect to a motor vehicle consumer lease. The term includes the following types of charges to the extent they are not permitted additional charges under s. 422.202, delinquency charges under s. 422.203 or deferral charges under s. 422.204:

(a) Interest, time price differential and any amount payable under a discount or other system of additional charges;

(b) Service, transaction, activity or carrying charge;

(c) Loan fee, points, finder's fee or similar charge;

(d) Fee for an appraisal, investigation or credit report;

(e) Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any part of that charge in cash, as an addition to the obligation or as a deduction from the proceeds of the obligation;

(f) Premium or other charge for guarantee or insurance protecting the creditor against the customer's default or other credit loss;

(g) Charges or premiums for credit life, accident or health insurance, written in connection with any consumer credit transaction to the extent they are not permitted as additional charges under s. 422.202;

(h) Charges or premiums for insurance, written in connection with any action against loss of or damage to property or against liability arising out of the ownership or use of property to the extent they are not permitted as additional charges under s. 422.202; and

(i) Refund anticipation loan fees.

Cross-reference: See also s. DFI-WCA 1.07, Wis. adm. code.

(21) "Goods" has the meaning given in s. 409.102 (1) (ks) and includes goods not in existence at the time the transaction is entered into and goods which are or are to become fixtures.

(22) "Lender" means a merchant regularly engaged in the business of making consumer loans.

(23) "Loan" includes:

(a) The creation of debt by the lender's payment of or agreement to pay money to the customer or to a 3rd party for the account of the customer;

(b) The creation of debt by a credit to an account with the lender upon which the customer is entitled to draw immediately;

(c) The creation of debt pursuant to a credit card or similar arrangement other than pursuant to a seller credit card;

(d) The forbearance by a lender of debt arising from a loan.

(24) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(25) "Merchant" means a person who regularly advertises, distributes, offers, supplies or deals in real or personal property, services, money or credit in a manner which directly or indirectly results in or is intended or designed to result in, lead to or induce a consumer transaction. The term includes but is not limited to a seller, lessor, manufacturer, creditor, arranger of credit and any assignee of or successor to such person. The term also includes a person who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to such practices or to whom such knowledge or skill may be attributed by his or her employment as an agent, broker or other intermediary.

(25m) "Motor vehicle consumer lease" has the meaning given for "consumer lease" in s. 429.104 (9).

(26) "Official fees" means:

(a) Fees and charges which actually are or actually will be paid for determining the existence of or for perfecting a security interest related to a consumer credit transaction to the extent that such fees and charges do not exceed those fees and charges prescribed by law for payment to public officials; and

(b) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the consumer credit transaction, if the premium does not ex-

ceed the amount payable to the insurer and the fees and charges described in par. (a) which would otherwise be payable.

(27) (a) "Open-end credit plan" means consumer credit extended on an account pursuant to a plan under which:

1. The creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide;

2. The customer has the privilege of paying the balance in full or in installments;

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

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.

(b) The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

(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.

(28) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, limited liability company, partnership, cooperative or association other than a cooperative organized under ch. 185 or 193 which has gross annual revenues not exceeding $5 million.

(29) "Other than open-end credit" means consumer credit other than an open-end credit plan itself, or other than consumer credit transactions pursuant to an open-end credit plan, and includes precomputed transactions.

(30) "Payable in installments" means that payment is required or permitted by agreement to be made in:

(a) Two or more installments, excluding the down payment in a consumer credit sale, with respect to an obligation arising from a consumer credit transaction for which a finance charge is or may be imposed;

(b) More than 4 installments, excluding the down payment in a consumer credit sale, in any other consumer credit transaction; or

(c) Two or more installments if any installment other than the down payment is more than twice the amount of any other installment, excluding the down payment.

(31) "Person" includes a natural person, and an organization.

(32) "Person related to" with respect to a natural person means:

(a) The spouse of the natural person;

(b) A brother, brother-in-law, sister, sister-in-law of the natural person;

(c) An ancestor or lineal descendant, by blood or adoption, of the natural person or that person's spouse; and

(d) Any other relative, by blood, marriage or adoption, of the natural person or that person's spouse who shares the same home with the natural person.

(33) "Person related to" with respect to an organization means:

(a) A person directly or indirectly controlling the organization, controlled by the organization or, who together with the organization, is under common control;

(b) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) The spouse of a natural person related to the organization; and

(d) A relative by blood, marriage or adoption of a person related to the organization who shares the same home with that person.

(34) "Personal property" includes but is not limited to goods.

(35) "Precomputed" with respect to a consumer credit transaction means a consumer credit transaction, other than a motor vehicle consumer lease, in which debt is expressed as a single sum comprised of the amount financed and the finance charge computed in advance.

(36) "Prepaid finance charge" means any finance charge paid separately, in cash or otherwise, directly or indirectly to the creditor or with the creditor's knowledge to another person or withheld by the creditor from the proceeds of the credit extended.

(37) "Presumed" or "presumption" means that the trier of the issue must find the existence of that which is presumed unless and until evidence is introduced which would support a contrary finding.

(37m) "Refund anticipation loan" means an agreement under which a creditor arranges to be repaid for a loan directly from the proceeds of a customer's income tax refund.

(37r) "Refund anticipation loan fees" include charges, fees or other consideration imposed by a creditor for making a refund anticipation loan. "Refund anticipation loan fees" does not include any charge, fee or other consideration usually imposed by the creditor in the ordinary course of business for nonloan services, such as fees for tax return preparation or fees for electronic filing of tax returns.

(38) "Required deposit balance" means any deposit balance or any investment which the creditor requires the customer to make, maintain or increase in a specified amount or proportion as a condition to the extension of credit except:

(a) Amounts paid into an escrow account which are permitted additional charges under s. 422.202;

(b) A deposit balance which will be wholly applied toward satisfaction of the customer's obligation in the transaction;

(c) A deposit balance or investment which was in existence prior to the extension of credit and which is offered by the customer as security for that extension of credit; and

(d) A deposit balance or investment which is acquired or established from the proceeds of an extension of credit made for that purpose, which the creditor does not require as a condition to the extension of credit, and which is acquired or established at the written request of the customer.

Cross-reference: See also s. DFI-WCA 1.09, Wis. adm. code.

(39) "Sale of services" means furnishing or agreeing to furnish services and includes arranging to have services furnished by another.

(40) "Security interest" means a real property mortgage, deed of trust, seller's interest in real estate under a land contract, any interest in property which secures payment or performance of an obligation under ch. 409 or any other consensual or confessed lien whether or not recorded.

(41) "Seller credit card" means an arrangement pursuant to an open-end credit plan in which a person gives to a customer the privilege of using a credit card, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, a person related to that person or others licensed or franchised to do business under that person's business or trade name or designation.

(42) (a) "Services" includes:

1. Work, labor and other personal services;

2. Privileges with respect to transportation, hotel and restau-

rant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

3. Insurance provided in connection with a consumer credit transaction.

(b) "Services" does not include any services of common carriers if the tariffs, rates, charges, costs or expenses of such common carriers are required by law to be filed with or approved by the federal government or any official, department, division, commission or agency of the United States.

(43) "Supervised financial organization" means a person:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) Subject to supervision by an official or agency of this state or of the United States.

(43m) "Total lease obligation" means the sum of all of the following with respect to a motor vehicle consumer lease:

(a) All scheduled periodic payments under the lease.

(b) Capitalized cost reduction, as defined in s. 429.104 (6).

(44) "Transaction" means an agreement between 2 or more persons, whether or not the agreement is a contract enforceable by action, and includes the making of and the performance pursuant to that agreement.

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1983 a. 7; 1991 a. 148, 316; 1993 a. 111, 112; 1995 a. 329; 1997 a. 302; 1999 a. 162; 2001 a. 10; 2005 a. 22, 441.

A "rent-to-own" transaction was a consumer credit sale even though the customer was not contractually obligated to make installment payments. Palacios v. ABC TV & Stereo Rental of Milwaukee, Inc., 123 Wis. 2d 79, 365 N.W.2d 882 (Ct. App. 1985).

An option to purchase at the conclusion of a lease for appliances at a price equal to 11 percent of the total lease payments was a consumer credit sale under sub. (9). Rent-A-Center, Inc. v. Hall, 181 Wis. 2d 243, 510 N.W.2d 789 (Ct. App. 1993).

If a lessor of personal property is bound for a period exceeding four months, a consumer lease under sub. (11) exists even though the lessee may exercise an option to purchase the leased goods less than four months after the beginning of the lease period. LeBakken Rent-To-Own v. Warnell, 223 Wis. 2d 582, 589 N.W.2d 425 (Ct. App. 1998), 98-1569.

To determine if an option price is nominal under sub. (9), a court may consider: 1) the relation of the option price to the item's fair market value; 2) the relation of the option price to the total rental price; 3) the relationship between the option price and the original price of the goods; or 4) whether the lessee has "any sensible alternative" to exercising the option. LeBakken Rent-To-Own v. Warnell, 223 Wis. 2d 582, 589 N.W.2d 425 (Ct. App. 1998), 98-1569.

An agreement necessary to establish that there is an obligation "payable in installments" under sub. (30), which is required for there to be a "consumer credit transaction" under sub. (10), must be made before services are rendered. Permitting a debtor to pay over time only after attempts to collect in full have failed does not render the transaction a consumer credit transaction. Dean Medical Center, S.C. v. Conners, 2000 WI App 202, 238 Wis. 2d 636, 618 N.W.2d 194, 99-2091.

A person who, along with the person's fiance, signed a credit application but did not sign the subsequent retail installment agreement was a customer under sub. (17). Sub. (17) addresses personal, family, or household purposes. When a woman is engaged to the father of her child and they are purchasing a car together, they apparently are doing so for anticipated personal, family, and household purposes. Zehetner v. Chrysler Financial Co., 2004 WI App 80, 272 Wis. 2d 628, 679 N.W.2d 919, 03-1473.

A company that purchased an overdue credit card account and brought an action to collect the amount due on it was not a creditor within the meaning of sub. (16). Rsidue, L.L.C. v. Michaud, 2006 WI App 164, 295 Wis. 2d 585, 721 N.W.2d 718, 05-1299.

In this case, the tenant was a "customer," as defined in sub. (17), because the tenant acquired real property for personal, family, or household purposes, and thus the tenant's residential lease of an apartment was a "consumer transaction," as defined in sub. (13). Specifically, the tenant acquired a leasehold interest in a residential apartment for the tenant's personal use. Koble Investments v. Marquardt, 2024 WI App 26, 412 Wis. 2d 1, 7 N.W.3d 915, 22-0182.

To state a claim under either the federal Fair Debt Collection Practices Act or the Wisconsin Consumer Act, a plaintiff must demonstrate that the debt in question arises out of a transaction incurred for personal, family, or household purposes. When a plaintiff maintains that the underlying debt was not the plaintiff's, the plaintiff can nonetheless claim protection by showing that the debt collector treated the plaintiff as a consumer allegedly owing a consumer debt. However, a plaintiff proceeding under this theory still must offer evidence to establish that the debt was a consumer debt: in other words, that the debt was incurred for personal, family, or household purposes. Burton v. Kohn Law Firm, S.C., 934 F.3d 572 (2019).

Discussing the applicability of the Wisconsin Consumer Act to rent-to-own contracts. Burney v. Thorn Americas, Inc., 944 F. Supp. 762 (1996).

The Wisconsin Consumer Act: When Is a Transaction a Consumer Credit Transaction? Anzivino. 96 MLR 205 (2012).

421.401 Venue. (1) The venue for a claim arising out of a consumer transaction or a consumer credit transaction is the county:

(a) Where the customer resides or is personally served;

(b) Where collateral securing a consumer credit transaction is located; or

(c) Where the customer sought or acquired the property, services, money or credit which is the subject of the transaction or signed the document evidencing his or her obligation under the terms of the transaction.

(2) When it appears from the return of service of the summons or otherwise that the county in which the action is pending under sub. (1) is not a proper place of trial for such action, unless the defendant appears and waives the improper venue, the court shall act as follows:

(a) Except as provided in par. (b), if it appears that another county would be a proper place of trial, the court shall transfer the action to that county.

(b) If the action arises out of a consumer credit transaction, the court shall dismiss the action for lack of jurisdiction.

(3) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any of them.

History: 1983 a. 228; 1987 a. 208.

An improperly venued action arising from a consumer credit transaction shall be dismissed for lack of jurisdiction under sub. (2) (b). When the court fails to dismiss, the action is invalid. Kett v. Community Credit Plan, Inc., 228 Wis. 2d 1, 596 N.W.2d 786 (1999), 97-3620.

Although voluntarily dismissed, prosecution of improperly venued actions violated the Wisconsin Consumer Act, and the defendants were prevailing parties under s. 425.308 entitled to attorney fees. Community Credit Plan, Inc. v. Johnson, 228 Wis. 2d 30, 596 N.W.2d 799 (1999), 97-0574.

Sections 801.50 and 801.51, the general venue statutes, do not apply to actions arising from consumer credit transactions. Rather, the venue provision in this section applies. Brunton v. Nuvell Credit Corp., 2010 WI 50, 325 Wis. 2d 135, 785 N.W.2d 302, 07-1253.

Sub. (2) (b) states that an improperly venued consumer credit action must be dismissed unless the defendant appears and waives the improper venue. Appearance in the action and pleading in the action are distinct requirements. Waiver under sub. (2) requires the intentional relinquishment of a known right. To establish a valid waiver, it must be proved that the defendant knew the place of proper venue and knew of the right to dismissal of the case when it was not properly venued. A plaintiff must prove that the rights to proper venue and dismissal of an improperly venued action were intentionally relinquished. Continued litigation of an action does not unambiguously demonstrate an intention to relinquish the right to proper venue. Brunton v. Nuvell Credit Corp., 2010 WI 50, 325 Wis. 2d 135, 785 N.W.2d 302, 07-1253.

CHAPTER 425

CONSUMER TRANSACTIONS — REMEDIES AND PENALTIES

SUBCHAPTER I
CREDITORS' REMEDIES
425.101 Short title.
425.102 Scope.
425.1025 Definition.
425.103 Accrual of cause of action; "default".
425.104 Notice of customer's right to cure default.
425.105 Cure of default.
425.106 Exempt property.
425.107 Unconscionability.
425.108 Extortionate extensions of credit.
425.109 Pleadings.
425.110 No discharge from employment for garnishment.
425.111 Levy before judgment.
425.112 Stay of execution.
425.113 Body attachments.
SUBCHAPTER II
ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL
425.201 Scope.
425.202 Definitions.
425.203 Enforcement of merchant's rights in collateral and leased goods.
425.204 Voluntary surrender of collateral.
425.205 Action to recover collateral.
425.206 Nonjudicial enforcement limited.
425.2065 Notice to law enforcement.
425.207 Restraining order to protect collateral or leased goods; abandoned property.
425.208 Customer's right to redeem.
425.209 Restrictions on deficiency judgments.
425.210 Computation of deficiency.
SUBCHAPTER III
CUSTOMER'S REMEDIES
425.301 Remedies to be liberally administered.
425.302 Remedy and penalty for certain violations.
425.303 Remedy and penalty for certain violations.
425.304 Remedy and penalty for certain violations.
425.305 Transactions which are void.
425.306 Unenforceable obligations.
425.307 Limitation of action.
425.308 Reasonable attorney fees.
425.309 Class actions.
425.310 Liability of corporate officers.
425.311 Evidence of violation.
SUBCHAPTER IV
CRIMINAL PENALTIES
425.401 Willful violations: misdemeanor.

Cross-reference: See definitions in s. 421.301.

SUBCHAPTER I

CREDITORS' REMEDIES

425.101 Short title. This chapter shall be known and may be cited as the Wisconsin consumer act — remedies and penalties.

History: 1971 c. 239.

425.102 Scope. This subchapter applies to actions or other proceedings brought by a creditor to enforce rights arising from consumer credit transactions and to extortionate extensions of credit under s. 425.108.

History: 1971 c. 239.

The scope language of this section bars a customer from bringing a claim of unconscionability under s. 425.107 except in response to "actions or other proceedings brought by a creditor." Discussing whether a nonjudicial repossession pursuant to s. 425.206 (1) (d) is such an action or other proceeding. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19-1365.

When a creditor files a lawsuit against a debtor to enforce a loan agreement, that triggers the potential for an unconscionability counterclaim. The fact that the creditor moves for voluntary dismissal of its claim before the debtor brings the unconscionability counterclaim does not prevent the debtor from pursuing it. This section does not require dismissal of the counterclaim. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

425.1025 Definition. In this subchapter, "billing statement" means a statement issued pursuant to 15 USC 1637 (b).

History: 2015 a. 155.

425.103 Accrual of cause of action; "default". (1) Notwithstanding any term or agreement to the contrary, no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default, as defined in sub. (2).

(2) "Default", with respect to a consumer credit transaction, means without justification under any law:

(a) With respect to a transaction other than one pursuant to an open-end plan and except as provided in par. (am); if the interval between scheduled payments is 2 months or less, to have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date; if the interval between scheduled payments is more than 2 months, to have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date; or, if the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(am) With respect to an installment loan not secured by a motor vehicle made by a licensee under s. 138.09 or with respect to a payday loan not secured by a motor vehicle made by a licensee under s. 138.14; to have outstanding an amount of one full payment or more which has remained unpaid for more than 10 days after the scheduled or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(b) With respect to an open-end plan, failure to pay when due on 2 occasions within any 12-month period;

(bm) With respect to a motor vehicle consumer lease or a consumer credit sale of a motor vehicle, making a material false statement in the customer's credit application that precedes the consumer credit transaction; or

(c) To observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the 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.

(3) A cause of action with respect to the obligation of a customer in a consumer credit transaction shall be subject to this subchapter, including the provisions relating to cure of default (ss. 425.104 and 425.105).

(4) A cause of action arising from a transaction which resulted in the creation of a security interest in personal property shall also be subject to the limitations provided in subch. II.

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10; 1995 a. 225; 1997 a. 302; 2005 a. 110; 2013 a. 20.

When a lender was promptly informed that a borrower had a valid disability insurance claim that would cover payments, it was an unconscionable practice to include an unpaid monthly charge that would be covered by the disability insurance in computing the unpaid balance for purposes of establishing default. Bank One Milwaukee, N.A. v. Harris, 209 Wis. 2d 412, 563 N.W.2d 543 (Ct. App. 1997), 96-0903.

Under sub. (2) (a), when payments are scheduled less than two months apart, a consumer is in default when an amount greater than one full payment remains unpaid for over ten days, not when a single payment is unpaid for more than ten days. Indianhead Motors v. Brooks, 2006 WI App 266, 297 Wis. 2d 821, 726 N.W.2d 352, 06-1002.

This section does not create a right for consumers to enforce when a merchant includes a particular provision in a loan agreement. Rather, it limits the circumstances in which a merchant can sue a customer for defaulting on a loan. Nelson v. Santander Consumer USA, Inc., 931 F. Supp. 2d 919 (2013).

Creditor's Remedies Under Wisconsin Consumer Act. WBB Dec. 1973.

425.104 Notice of customer's right to cure default. (1) A merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default (s. 425.105).

(2) Any notice given under this section shall contain the name, address and telephone number of the creditor, a brief identification of the consumer credit transaction, a statement of the nature of the alleged default and a clear statement of the total payment, including an itemization of any delinquency charges, or other performance necessary to cure the alleged default, the exact date by which the amount must be paid or performance tendered and the name, address and telephone number of the person to whom any payment must be made, if other than the creditor.

History: 1971 c. 239.

Notice need not be given if the obligation is entirely past due and fully owed, making it impossible for the customer to restore the loan to current status. Rosendale State Bank v. Schultz, 123 Wis. 2d 195, 365 N.W.2d 911 (Ct. App. 1985).

The s. 425.105 (1) prohibition of suits except when notice is given pursuant to this section imposes timing and content requirements for the notice. A notice that did not meet the timing requirements of sub. (1) and s. 425.103 (2) (a) never gave notice "pursuant to" this section. Thus, suit was barred by s. 425.105 (1). Indianhead Motors v. Brooks, 2006 WI App 266, 297 Wis. 2d 821, 726 N.W.2d 352, 06-1002.

Section 421.108 generally imposes the obligation of good faith on the performance or enforcement of duties that are defined in the Wisconsin Consumer Act. The particular duties defined in this section and s. 425.105 (1) do not necessarily fall outside the ambit of the good faith doctrine. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

The National Bank Act (NBA), 12 USC 25b, does not preempt the procedural notice requirements of the Wisconsin Consumer Act under ss. 425.103 to 425.105 to bring a collection action. The NBA's savings provision specifically does not preempt state laws on rights to collect debts. Bank of America, N.A. v. Riffard, 2025 WI App 17, 415 Wis. 2d 568, 19 N.W.3d 604, 23-0125.

Courts construe sub. (2) strictly, so even minor defects or omissions are enough to render a notice of right to cure invalid. Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019).

Billing statements are not sufficient to give notice of a right to cure to an unsophisticated consumer, so they cannot qualify as right-to-cure notices under sub. (2). Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019).

This section establishes requirements regarding what information a right-to-cure notice must contain, and it is permissive in the sense that it does not obligate merchants to send such notices whenever a customer defaults. But s. 425.105 lays out the requirements for merchants who wish to sue on a default, and s. 425.105 (1) makes providing notice a mandatory prerequisite to suit. Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019). See also Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

425.105 Cure of default. (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 thereof (s. 425.204), unless the merchant 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.

(2) Except as provided in subs. (3) and (3m), for 15 days after such notice is given, a customer may cure a default under a consumer credit transaction by tendering the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, and by tendering performance necessary to cure any default other than nonpayment of amounts due. The act of curing a default restores to the customer the customer's rights under the agreement as though no default had occurred.

(3) A right to cure shall not exist if the following occurred twice during the preceding 12 months:

(a) The customer was in default on the same transaction or open-end credit plan;

(b) The creditor gave the customer notice of the right to cure such previous default in accordance with s. 425.104; and

(c) The customer cured the previous default.

(3m) A right to cure shall not exist with respect to a default specified under s. 425.103 (2) (bm).

(4) With respect to consumer credit transactions in which the creditor has a security interest in, and possession of, instruments or documents, as each is defined in s. 409.102 (1), which threaten to decline speedily in value, this section does not restrict the creditor's rights to dispose of such property pursuant to subch. VI of ch. 409 and the terms of the creditor's security agreement.

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316; 2001 a. 10; 2005 a. 110.

The sub. (1) prohibition of suits except when notice is given pursuant to s. 425.104 imposes timing and content requirements for the notice. A notice that did not meet the timing requirements of ss. 425.103 (2) (a) and 425.104 (1) never gave notice "pursuant to s. 425.104." Thus, suit was barred by sub. (1). Indianhead Motors v. Brooks, 2006 WI App 266, 297 Wis. 2d 821, 726 Wis. 2d 352, 06-1002.

A creditor's failure to send a notice of default and right to cure letter is merely a failure to comply with a procedural requirement that warrants dismissal of the creditor's action against the debtor. The failure does not disrupt the creditor's right to payment from the debtor. Security Finance v. Kirsch, 2019 WI 42, 386 Wis. 2d 388, 926 N.W.2d 167, 17-1408.

Section 421.108 generally imposes the obligation of good faith on the performance or enforcement of duties that are defined in the Wisconsin Consumer Act. The particular duties defined in sub. (1) and s. 425.104 do not necessarily fall outside the ambit of the good faith doctrine. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

The National Bank Act (NBA), 12 USC 25b, does not preempt the procedural notice requirements of the Wisconsin Consumer Act under ss. 425.103 to 425.105 to bring a collection action. The NBA's savings provision specifically does not preempt state laws on rights to collect debts. Bank of America, N.A. v. Riffard, 2025 WI App 17, 415 Wis. 2d 568, 19 N.W.3d 604, 23-0125.

The requirement that a creditor provide a notice of right to cure default is a procedural hurdle creditors must clear in order to pursue their remedies. The appropriate remedy for a creditor's failure to comply with this procedural requirement is dismissal of the creditor's action. Beal v. Wyndham Vacation Resorts, Inc., 956 F. Supp. 2d 962 (2013).

12 CFR 7.4008 (d) (4) and (8), which permits banks to make loans without regard to state laws dealing with term to maturity, including circumstances under which a loan may be called due and payable, does not preempt sub. (1), which states that a creditor may not accelerate the maturity of a consumer credit transactions unless the creditor provides notice and the opportunity to cure the default. Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

Debts that are "fully due" are distinguished from debts that involve "installment payments," such as credit cards with minimum payments and a maximum credit amount. A right to cure default exists for installment payments. The debt in this case was a credit card debt with minimum payments and a credit limit, and the debtor was entitled to an opportunity to cure the default before any acceleration or collection commenced. The fact that the debt changed hands did not change that. A debt collector cannot step into a better position than its assignor where the consumer's rights are concerned. Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

Section 425.104 establishes requirements regarding what information a right-to-cure notice must contain, and it is permissive in the sense that it does not obligate merchants to send such notices whenever a customer defaults. But this section lays out the requirements for merchants who wish to sue on a default, and sub. (1) makes providing notice a mandatory prerequisite to suit. Bahena v. Jefferson Capital Systems, LLC, 363 F. Supp. 3d 914 (2019). See also Boerner v. LVNV Funding LLC, 358 F. Supp. 3d 767 (2019).

425.106 Exempt property. (1) Except to the extent that the merchant has a valid security interest which is permitted by chs. 421 to 427 and 429 or has a lien under ch. 779 in such property, or where the transaction is for medical or legal services and there has been no finance charge actually imposed, the following property of the customer shall be exempt from levy, execution, sale, and other similar process in satisfaction of a judgment for an obligation arising from a consumer credit transaction:

(a) Unpaid earnings to the extent provided in s. 812.34.

(b) Clothing of the customer or his or her dependents, and the following: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware and household goods as defined in

12 CFR 227.13 (d), 12 CFR 535.1 (g) or 16 CFR 444.1 (i) consisting of furniture, appliances, one television, linens, china, crockery and personal effects including wedding rings, except works of art, electronic entertainment equipment, antiques and jewelry, to the extent a nonpossessory security interest in these household goods is prohibited under 12 CFR 227.13 (d), 12 CFR 535.2 (a) (4) or 16 CFR 444.2 (a) (4);

(c) Real property used as the principal residence of the customer or the customer's dependents, to the extent that the fair market value of such property, less all amounts secured by mortgages and liens outstanding against it, is $15,000 or less; and

(d) Earnings or other assets of the customer which are required to be paid by the customer as restitution under s. 973.20.

(2) With respect to process against marital property in satisfaction of a judgment for an obligation described under s. 766.55 (2) (b) arising from a consumer credit transaction, each spouse is entitled to and may claim the exemptions under sub. (1). Each spouse is entitled to one exemption under sub. (1) (c). That exemption is limited to the specified maximum dollar amount, which may be combined with the other spouse's exemption in the same property or applied to different property included under the same exemption.

(3) Nothing in this section shall be construed to displace other provisions of law which afford additional or greater protection to the customer.

(4) An order or process in violation of this section is void.

History: 1971 c. 239; 1973 c. 2, 3; 1979 c. 32 s. 92 (9); 1979 c. 89, 177, 221; 1983 a. 36; 1985 a. 37, 256; 1987 a. 398; 1991 a. 316; 1993 a. 80; 1995 a. 329.

NOTE: As to sub. (2), see notes in 1985 Wis. Act 37, marital property trailer bill.

425.107 Unconscionability. (1) With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall, in addition to the remedy and penalty authorized in sub. (5), either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

(2) Specific practices forbidden by the administrator in rules promulgated pursuant to s. 426.108 shall be presumed to be unconscionable.

(3) Without limiting the scope of sub. (1), the court may consider, among other things, the following as pertinent to the issue of unconscionability:

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

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

(c) 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 customers, or by other tests of true value;

(d) 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 to understand the language of the agreement, ignorance or lack of education or similar factors;

(e) That the terms of the transaction require customers to waive legal rights;

(f) 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;

(g) That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder;

(h) That the writing purporting to evidence the obligation of the customer in the transaction contains terms or provisions or authorizes practices prohibited by law; and

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

(4) Any charge or practice expressly permitted by chs. 421 to 427 and 429 is not in itself unconscionable but even though a practice or charge is authorized by chs. 421 to 427 and 429, the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.

(5) In addition to the protections afforded in sub. (1), the customer shall be entitled upon a finding of unconscionability to recover from the creditor or the person responsible for the unconscionable conduct a remedy and penalty in accordance with s. 425.303.

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

When a lender was promptly informed that a borrower had a valid disability insurance claim that would cover payments, it was an unconscionable practice to include an unpaid monthly charge that would be covered by the disability insurance in computing the unpaid balance for purposes of establishing default. Bank One Milwaukee, N.A. v. Harris, 209 Wis. 2d 412, 563 N.W.2d 543 (Ct. App. 1997), 96-0903.

The scope language of s. 425.102 bars a customer from bringing a claim of unconscionability under this section except in response to "actions or other proceedings brought by a creditor." Discussing whether a nonjudicial repossession pursuant to s. 425.206 (1) (d) is such an action or other proceeding. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19-1365.

When a creditor files a lawsuit against a debtor to enforce a loan agreement, that triggers the potential for an unconscionability counterclaim. The fact that the creditor moves for voluntary dismissal of its claim before the debtor brings the unconscionability counterclaim does not prevent the debtor from pursuing it. Section 425.102 does not require dismissal of the counterclaim. CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

This section provides a defense to an action brought by a creditor and does not constitute an affirmative claim for relief. Gable v. Universal Acceptance Corp. (WI), 338 F. Supp. 3d 943 (2018). But see CreditBox.com, LLC v. Weathers, 2023 WI App 37, 408 Wis. 2d 715, 993 N.W.2d 802, 22-0746.

425.108 Extortionate extensions of credit. (1) If it is the understanding of the creditor and the customer during any time that an extension of credit is outstanding, that delay in making repayment could result in the use of violence to cause harm to the person or property of any person, the extension of credit shall be unenforceable in accordance with s. 425.305 and the customer shall additionally recover triple the penalty provided in s. 425.304 (1).

(2) If it is shown that an extension of credit was made at an annual rate exceeding that permitted by or referred to in s. 422.201 on maximum charges and that the creditor had a reputation for the use or threat of use of violence to cause harm to the person or property of any person to collect extensions of credit or to punish the nonrepayment thereof, it shall be presumed that the extension of credit was a violation under chs. 421 to 427 under sub. (1).

History: 1971 c. 239; 1979 c. 89.

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

(a) An identification of the consumer credit transaction.

(b) A description of the collateral or leased goods, if any, which the merchant seeks to recover or has recovered.

(c) A specification of the facts constituting the alleged default by the customer.

(d) 1. If the consumer credit transaction is pursuant to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a named foreign currency that the merchant alleges he or she is entitled to recover and the figures necessary for compu-

tation of the amount alleged to be due to the merchant on a date certain after the customer's default. Figures necessary for computation shall mean the amount reflected on a billing statement addressed to the customer and a breakdown of all charges, interest, and payments, including any amount received from the sale of any collateral, occurring after this date certain. This paragraph does not require a specific itemization, but the breakdown shall identify separately the amount due on a date certain, the total of all charges occurring after this date certain, the total of all interest occurring after this date certain, and the total of all payments occurring after this date certain.

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

(e) Except in an action to recover goods subject to a consumer lease, a statement that the customer has the right to redeem any collateral as provided in s. 425.208 (1) (intro.) and the actual or estimated amount of U.S. dollars or of a named foreign currency required for redemption, itemized in accordance with s. 425.208 (1) (a) to (d).

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

(g) If the customer still has the right to cure a default under s. 425.105 pursuant to a notice given under s. 425.104, the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made.

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

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

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

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

History: 1971 c. 239; 1983 a. 389; 1991 a. 236; 2015 a. 155.

A stated amount owed as of a specific date with a per diem interest figure is not a sufficient statement of "the figures necessary for computation of the amount" as required by sub. (1) (d). A complaint is not sufficient under this section because it meets the general rules of notice pleading. Household Finance Corp. v. Kohl, 173 Wis. 2d 798, 496 N.W.2d 708 (Ct. App. 1993). See also Bank One v. Ofojebe, 2005 WI App 151, 284 Wis. 2d 510, 702 N.W.2d 456, 04-0902.

A company that purchased an overdue credit card account and brought an action to collect the amount due on it was not a "creditor" within the meaning of s. 421.301 (16) and not subject to the pleading requirements of sub. (1). Rsidue, LLC v. Michaud, 2006 WI App 164, 295 Wis. 2d 585, 721 N.W.2d 718, 05-1299.

Sub. (2) requires a creditor to document any transaction it wishes to collect upon. Estate of Newgard v. Bank of America, 2007 WI App 161, 303 Wis. 2d 466, 735 N.W.2d 578, 07-0082.

Even if there was a failure to comply with the pleading requirements of this section, such a failure cannot deprive a small claims court of subject matter jurisdiction and cannot render a default judgment void. Mercado v. GE Money Bank, 2009 WI App 73, 318 Wis. 2d 216, 768 N.W.2d 53, 08-1992.

Failure to comply with the Wisconsin Consumer Act's pleading requirements does not give rise to a claim for damages. Plaza Services LLC v. Burton, 2025 WI App 51, 418 Wis. 2d 123, 25 N.W.3d 556, 24-1129.

425.110 No discharge from employment for garnishment. (1) No employer shall discharge an employee because a merchant has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

(2) If an employer violates this section, an employee shall recover back wages and be reinstated, if the employee files an action for such relief within 90 days of the employee's discharge.

History: 1971 c. 239.

425.111 Levy before judgment. (1) Prior to entry of judgment in an action subject to this subchapter, no process, other than a restraining order to protect collateral (s. 425.207), shall issue with respect to amounts that are owing or are claimed to be owing or may be owing to the customer by any 3rd person, whether by way of attachment, garnishment or other process.

(2) With respect to property of the customer other than that described in sub. (1), process may issue in accordance with ch. 811 to establish a lien, except that such process shall not be effective to take, or to divest the customer of possession of, the property until final judgment is entered.

(3) If the court finds that the creditor probably will recover on the action, and that the customer is acting, or is about to act, with respect to property of the customer upon which a lien has been established under sub. (2), in a manner which substantially impairs the creditor's prospects for satisfying the judgment against such property (s. 811.03), the court may issue an order restraining the customer from so acting with respect to that property until final judgment is entered.

History: 1971 c. 239; 1973 c. 2; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975).

Legislative Council Note, 1973: Clarifies applicability of this subsection. Section 425.111 (1) refers to property of the customer subject to garnishment, and prescribes limitations on creditors' actions in relation to it. Sub. (2) refers to other property of the customer; however, the language struck by this amendment appears to make sub. (2) refer back to the same property dealt with by sub. (1), so it is deleted. [Bill 355-A]

425.112 Stay of execution. At the time of or at any time after the entry of a judgment in favor of a creditor against a customer in an action arising from a consumer transaction, the court, for cause and upon motion of a party or on its own motion, may stay enforcement of the judgment by order upon just and equitable conditions, and continue, modify or revoke the order as the interests of justice may require.

History: 1971 c. 239.

425.113 Body attachments. (1) No merchant shall cause or permit a warrant against the person of a customer to issue under ch. 816 with respect to a claim arising from a consumer credit transaction. Any process issued in violation of this section is void.

(2) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975).

Cross-reference: See also s. DFI-WCA 1.66, Wis. adm. code.

If this section were to be interpreted to remove a court's power to issue a body attachment for one who chooses to ignore its orders, the interpretation would cause the statute to be unconstitutional as a violation of the principle of separation of powers. Smith v. Burns, 65 Wis. 2d 638, 223 N.W.2d 562 (1974).

SUBCHAPTER II

ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL

425.201 Scope. This subchapter applies to the enforcement by a creditor of security interests in collateral.

History: 1971 c. 239.

425.202 Definitions. For purposes of this chapter:

(1) "Collateral" means goods subject to a security interest in favor of a merchant which secures a customer's obligations under a consumer credit transaction.

(2) "Motor vehicle" has the meaning given in s. 218.0101 (22).

History: 1971 c. 239; 1975 c. 407; 2005 a. 255.

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 the 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 the merchant 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 the 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 ss. 409.620 to 409.624, in which event the merchant shall satisfy the judgment obtained pursuant to sub. (2); or shall dispose of the collateral pursuant to subch. VI of ch. 409, 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 the customer of 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 the customer of 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.

History: 1971 c. 239; 1975 c. 407, 421; 2001 a. 10.

425.204 Voluntary surrender of collateral. (1) Notwithstanding a waiver by the creditor of the security interest in collateral under s. 425.203 (2) or any other law, the customer shall have the right at any time to voluntarily surrender all of the customer's rights and interests in the collateral to the merchant.

(2) The rights and obligations of the merchant and customer with respect to collateral voluntarily surrendered as defined in this section shall be governed by subch. VI of ch. 409, and are not subject to this subchapter.

(3) The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to a request or demand, other than a notice under s. 425.205 (1g) (a), by the merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement, or notice, other than a notice under s. 425.205 (1g) (a),

by the merchant that the merchant intends to take possession of the collateral.

History: 1971 c. 239; 1991 a. 316; 2001 a. 10; 2005 a. 255.

Cross-reference: See also s. DFI-WCA 1.67, Wis. adm. code.

Under the facts of the case, the customer did not "voluntarily surrender" collateral under sub. (3). Wachal v. Ketterhagen Motor Sales, Inc., 81 Wis. 2d 605, 260 N.W.2d 770 (1978).

425.205 Action to recover collateral. (1) 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 the collateral or leased goods. Those actions shall be conducted in accordance with ch. 799, notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered, except that:

(a) Notwithstanding ss. 799.05 (2) and 799.06 (2), process shall be issued by the clerk of court, and such action shall be commenced upon the request of an officer or employee of a merchant on the merchant's behalf;

(b) The summons shall be in the form prescribed in sub. (2), and a complaint in the form described in sub. (3) shall be served with the summons;

(c) When service is made pursuant to s. 799.12 (3) certified mail with return receipt requested shall be employed;

(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 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.

(1g) (a) A merchant may not take possession of motor vehicle collateral or goods subject to a motor vehicle consumer lease under s. 425.206 (1) (d), unless the merchant gives, by mail, the customer a notice containing all of the following information:

1. The name, address, and telephone number of the merchant, a brief identification of the consumer credit transaction, and a brief description of the collateral or goods.

2. A statement that, as a result of the customer's default on the consumer credit transaction, the merchant may have the right to take possession of the collateral or goods without further notice or court proceeding.

3. A statement that if the customer is not in default or objects to the merchant's right to take possession of the collateral or goods, the customer may, no later than 15 days after the merchant has given the notice, demand that the merchant proceed in court by notifying the merchant in writing.

4. A statement that if the merchant proceeds in court, the customer may be required to pay court costs and attorney fees.

(b) The information required under par. (a) may be combined with any other notice, except that if the customer has a right to cure under s. 425.105, the information required under par. (a) shall be combined with the notice of right to cure under s. 425.104.

(c) A merchant is presumed to have given notice under par. (a) if the merchant sent the notice by certified or registered mail. A merchant who fails to give notice under par. (a) by certified or registered mail is subject to the penalties specified in s. 425.302 (1), but such failure does not constitute a failure to comply with s. 425.206 (1) (d).

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

State of Wisconsin
Circuit 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 CIRCUIT COURT OF .... COUNTY, IN THE COURTHOUSE LOCATED IN ...., (municipality), BEFORE JUDGE .... OR ANY OTHER JUDGE TO WHOM THE ACTION MAY BE ASSIGNED, ON .... (date), AT .... (time). IF YOU DO NOT APPEAR AT THAT TIME, JUDGMENT WILL BE RENDERED AGAINST YOU FOR DELIVERY OF THE PROPERTY TO THE PLAINTIFF.

DATED ...., ... (year)

E.F.
Clerk of Circuit Court
[or]
Plaintiff's Attorney

Plaintiff's P. O. Address
....
....
Plaintiff's Attorney (if any)
....
....
Defendant's P. O. Address
....
....

(3) The complaint in such action shall conform with the requirements of s. 425.109.

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

(5) Upon entry of judgment for the plaintiff, the plaintiff shall have the right to:

(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; or

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

(6) Action pursuant to this section may be commenced at any time after the customer is in default, but the return day of process may not be set prior to the expiration of the period for cure of the default by the customer (s. 425.105), if applicable.

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (16); 1981 c. 317; 1981 c. 391 s. 210; 1983 a. 389; 1989 a. 31; 1993 a. 246; 1997 a. 250; 2005 a. 255; 2015 a. 155.

Sub. (1g) (a) requires a creditor to give notice to the debtor that includes that the creditor may repossess the car without going to court unless the debtor demands within 15 days of the notice that the creditor proceed to court. Under s. 421.201(8), the debtor's address is established by any writing signed by the debtor in connection with the transaction and is presumed to be unchanged until the creditor knows or has reason to know of a different address. Given the debtor's failure to provide her new address to the creditor, the debtor failed to show that the creditor's notice by registered mail to the address that it had on file did not comply with this section. Molinski v. Chase Auto Finance Corp., 2013 WI App 101, 349 Wis. 2d 687, 837 N.W.2d 166, 12-2184.

Wisconsin's New Automobile Repossession Law: Creditors in the Driver's Seat. Anderson & Meili. Wis. Law. Feb. 2007.

425.206 Nonjudicial enforcement limited. (1) Notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state except when any of the following apply:

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

(b) Judgment for the 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).

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

(d) For motor vehicle collateral or goods subject to a motor vehicle consumer lease, the customer has not made a demand as specified in s. 425.205 (1g) (a) 3. and, no sooner than 15 days after the merchant gives the notice specified in s. 425.205 (1g) (a), the merchant has taken possession of the collateral or goods in accordance with sub. (2).

(2) In taking possession of collateral or leased goods, no merchant may do any of the following:

(a) Commit a breach of the peace.

(b) Enter a dwelling used by the customer as a residence except at the voluntary request of a customer.

(3) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1975 c. 94 s. 3; 1975 c. 407; 1979 c. 10; 1995 a. 225; 1997 a. 302; 2005 a. 255.

Under the facts of the case, the customer did not voluntarily surrender collateral under sub. (1) (a). Wachal v. Ketterhagen Motor Sales, Inc., 81 Wis. 2d 605, 260 N.W.2d 770 (1978).

Notwithstanding s. 421.201 (5), this section governed repossessions outside the state when the contract provided for enforcement under the "internal law" of Wisconsin. First Wisconsin National Bank of Madison v. Nicolaou, 85 Wis. 2d 393, 270 N.W.2d 582 (Ct. App. 1978).

A "breach of the peace" under sub. (2) has the same meaning as in s. 409.503. Repossession in disregard of the debtor's oral protest is a breach of the peace. Punitive damages may be appropriate as the result of the breach of the peace. Hollibush v. Ford Motor Co., 179 Wis. 2d 799, 508 N.W.2d 449 (Ct. App. 1993).

Repossession under an invalid judgment violates this section. Kett v. Community Credit Plan, Inc., 228 Wis. 2d 1, 596 N.W.2d 786 (1999), 97-3620.

The definition of "dwelling used by the customer as a residence" in sub. (2) (b) does not depend on whether the customer has the right to exclude others from a particular area or whether the customer has a reasonable expectation of privacy in a particular area under the 4th amendment. Dwelling generally refers to an entire building in which people live and includes a garage attached to the residential building in which the customer lives. Nothing in the language "dwelling used by the customer as a residence" suggests that the protections in sub. (2) (b) are limited to only the integral parts of a residence or the areas with indicia of residential use. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19-1365.

The modifier "used by the customer as a residence" is best understood as imposing a limitation on which dwelling sub. (2) (b) protects—the dwelling this customer uses as a residence—not what parts of the dwelling it protects. The phrase distinguishes the customer's dwelling from all other dwellings. Duncan v. Asset Recovery Specialists, Inc., 2022 WI 1, 400 Wis. 2d 1, 968 N.W.2d 661, 19-1365.

A lender, not its repossessors, falls within the definition of "merchant" under s. 421.301 (25) and is therefore covered by sub. (2) (a). In this case, it was the lender's authority to repossess the debtor's car that the repossession company was exercising. That the lender chose to authorize the repossession company to exercise the lender's right under Wisconsin law to take possession of its collateral extra-judicially does not mean the lender can avoid liability for actions taken on its behalf and at its request. Gable v. Universal Acceptance Corp. (WI), 338 F. Supp. 3d 943 (2018).

The Abolition of Self-Help Repossession: The Poor Pay Even More. White. 1973 WLR 503.

The Impact of Denying Self-Help Repossession of Automobiles: A Case Study of the Wisconsin Consumer Act. Whitford & Laufer. 1975 WLR 607.

Wisconsin's New Automobile Repossession Law: Creditors in the Driver's Seat. Anderson & Meili. Wis. Law. Feb. 2007.

425.2065 Notice to law enforcement. (1) In this section, "law enforcement agency" means the police department, combined protective services department under s. 60.553, 61.66, or 62.13 (2e), or sheriff, that has primary responsibility for providing police protection services in the city, village, or town in which a repossession is expected to occur.

(2) A merchant who repossesses motor vehicle collateral or goods subject to a motor vehicle consumer lease under s. 425.206 (1) (d), or a person who repossess such collateral or goods on behalf of the merchant, shall notify, verbally or in writing, the law enforcement agency about the repossession. The notification shall include the names of the customer, merchant, and, if applicable, the person who repossesses the collateral or goods on behalf of the merchant. The notification shall also include a description of the collateral or goods. Notification under this subsection shall be made before the repossession occurs.

(3) Failure to comply with this subsection does not constitute a failure to comply with s. 425.206 (1) (d).

History: 2005 a. 255; 2011 a. 32.

425.207 Restraining order to protect collateral or leased goods; abandoned property. (1) If the court finds that the 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 merchant's prospect for realization of the merchant's security interest or the merchant's 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 merchant, notwithstanding s. 813.06.

(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 the merchant has perfected the right to possession under s. 425.206 (1) (a), (b), or (d). 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 the right to possession under s. 425.206 (1) (a), (b), or (d), the customer is liable for the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods shall be considered collateral under s. 409.615 (1). 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 the right to possession in the manner provided in this subsection.

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421, 422; 1979 c. 10; 1981 c. 314 s. 146; 1997 a. 302; 2001 a. 10; 2005 a. 255.

425.208 Customer's right to redeem. (1) For a period of 15 days following exercise by the creditor of nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with regard to the collateral, the customer shall be entitled to redeem the goods by tendering:

(a) The total of all unpaid amounts, including any unpaid delinquency or deferral charges due at the time of tender, without acceleration; plus

(b) Performance necessary to cure any default other than nonpayment of amounts due; plus

(c) Any court costs, filing and service fees, and bond premium charges incurred by the creditor; plus

(cm) If a writing evidencing the consumer credit transaction so provides, expenses the creditor is entitled to recover under s. 422.413 (2g) (a) and (b); plus

(d) Whichever of the following is less:

1. A performance deposit, in the amount of 3 scheduled installments, or minimum payments in the case of an open-end credit plan.

2. One-third of the total obligation remaining unpaid with respect to the consumer credit transaction.

(2) Tender of the payment and performance pursuant to sub. (1) restores to the customer the customer's rights under the agreement as though all payments and performance had been made as scheduled.

(3) Upon such redemption, any process under which the collateral has been held shall be vacated, any pending action shall be dismissed, and the collateral shall be returned to the customer.

(4) The performance deposit shall be held by the merchant to secure, and may be applied at any time to, the remaining obligations of the customer under the consumer transaction.

(5) The existence of the deposit does not cure any subsequent default of the customer, and the deposit need not be credited to the customer's account until the remaining unpaid balance of the transaction becomes equal to the deposit. In the event of a subsequent default, prepayment, or other occurrence (except deferral) which requires the computation under chs. 421 to 427 of the outstanding obligation of the customer, the deposit shall be credited to the amount paid for the purposes of such computation.

(6) The creditor shall not dispose of the collateral or enter into a contract for the disposition of the collateral, until the expiration of the period for redemption provided in this section, unless the collateral is perishable or threatens to decline speedily in value. Upon the expiration of such period any disposition of the collateral shall be subject to subch. VI of ch. 409, except that the customer may be liable for a deficiency only to the extent provided in ss. 425.209 and 425.210.

History: 1971 c. 239; 1979 c. 10, 89; 1983 a. 389; 1991 a. 316; 1997 a. 302; 1999 a. 85; 2001 a. 10.

425.209 Restrictions on deficiency judgments. (1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408); a customer is not liable for a deficiency unless the merchant has disposed of the goods in good faith and in a commercially reasonable manner.

(2) If the merchant repossesses or accepts voluntary surrender of goods which were the subject of the sale and in which the merchant has a security interest, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale of a commercial unit of the goods of which the amount owing at the time of default was $1,000 or less, and the merchant is not obligated to resell the collateral unless the customer has paid 60 percent or more of the cash price and has not signed after default a statement renouncing the customer's rights in the collateral.

(3) If the merchant repossesses or accepts voluntary surrender of goods which were not the subject of the sale but in which the merchant has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the amount owing at the time of default was $1,000 or less, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale, and the merchant's duty to dispose of the collateral is governed by the provisions on disposition of collateral under chs. 401 to 411.

(4) If the lender takes possession or accepts voluntary surrender of goods in which the lender has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408) and the amount owing at the time of default of the loan paid to or for the benefit of the customer were $1,000 or less, the customer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral under chs. 401 to 411.

(5) The customer may be liable in damages to the merchant if the customer has wrongfully damaged the collateral or if, after judgment for the creditor has been entered in a proceeding for recovery of collateral under s. 425.205, the customer has wrongfully failed to make the collateral available to the merchant.

(6) If the merchant elects to bring an action against the customer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408), when under this section the merchant would not be entitled to a deficiency judgment if the merchant took possession of the collateral, and obtains judgment:

(a) The merchant may not take possession of the collateral; and

(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

History: 1971 c. 239; 1973 c. 2, 3; 1991 a. 148, 304, 315, 316.

Cross-reference: See also ss. DFI-WCA 1.70 and 1.71, Wis. adm. code.

Proof of disposal of goods in accordance with sub. (1) must be made by a merchant to obtain a deficiency judgment. Failure to do so need not be asserted as an affirmative defense. Shoeder's Auto Center, Inc. v. Teschner, 166 Wis. 2d 198, 479 N.W.2d 203 (Ct. App. 1991).

Consistent with *Shoeder's Auto Center*, 166 Wis. 2d 198 (Ct. App. 1991), in order to make a prima facie case for summary judgment for a deficiency judgment, the merchant is required to present evidence demonstrating that the collateral was disposed of in a commercially reasonable manner. Gemini Capital Group, LLC v. Jones, 2017 WI App 77, 378 Wis. 2d 614, 904 N.W.2d 131, 16-2123.

425.210 Computation of deficiency. If the creditor is entitled to a deficiency judgment pursuant to s. 425.209 (1), the creditor shall be entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance.

History: 1971 c. 239.

SUBCHAPTER III

CUSTOMER'S REMEDIES

425.301 Remedies to be liberally administered. (1) The remedies provided by this subchapter shall be liberally administered to the end that the customer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with chs. 421 to 427. Recoveries under chs. 421 to

427 shall not in themselves preclude the award of punitive damages in appropriate cases.

(2) Any right or obligation declared by chs. 421 to 427 is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Notwithstanding any other section of chs. 421 to 427, a customer shall not be entitled to recover specific penalties provided in s. 425.302 (1) (a), 425.303 (1), 425.304 (1) or 425.305 (1) if the person violating chs. 421 to 427 shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) The liability of a merchant under chs. 421 to 427 is in lieu of and not in addition to any liability under the federal consumer credit protection act and ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation under chs. 421 to 427 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 or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a final judgment is entered against any merchant under chs. 421 to 427 and the federal consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.

(5) If there are multiple obligors in the same consumer credit transaction or consumer lease, there may be no more than one recovery of civil penalties for each violation of chs. 421 to 427.

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1999 a. 31; 2009 a. 405.

An error of law is not a bona fide error under sub. (3). First Wisconsin National Bank v. Nicolaou, 113 Wis. 2d 524, 335 N.W.2d 390 (1983).

Sub. (2)'s right to enforcement "by action" does not specify any right to trial. In this case, the arbitration agreement merely shifted the proceedings to a less formal, less expensive, and more expedient form. Therefore, the borrower's general attack on agreements to arbitrate, rather than litigate, failed. Cottonwood Financial, LTD v. Estes, 2012 WI App 12, 339 Wis. 2d 472, 810 N.W.2d 852, 09-0760.

425.302 Remedy and penalty for certain violations. **(1)** A person who commits a violation to which this section applies is liable to the customer in an amount equal to:

(a) Twenty-five dollars; and

(b) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

(2) This section also applies to all violations for which no other remedy is specifically provided.

History: 1971 c. 239.

425.303 Remedy and penalty for certain violations. A person who commits a violation to which this section applies is liable to the customer in an amount equal to:

(1) One hundred dollars; and

(2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1971 c. 239.

425.304 Remedy and penalty for certain violations. A person who commits a violation to which this section applies is liable to the customer in an amount equal to the greater of:

(1) Twice the amount of the finance charge in connection with the transaction, except that the liability under this subsection shall not be less than $100 nor greater than $1,000; or

(2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1971 c. 239.

The word "or" in this section makes it clear that the recovering party is not entitled to both statutory and actual damages. Kirk v. Credit Acceptance Corp., 2013 WI App 32, 346 Wis. 2d 635, 829 N.W.2d 522, 10-2573.

425.305 Transactions which are void. **(1)** In a transaction to which this section applies, the customer shall be entitled to retain the goods, services or money received pursuant to the transaction without obligation to pay any amount.

(2) In addition, the customer shall be entitled to recover any sums paid to the merchant pursuant to the transaction.

History: 1971 c. 239; 1973 c. 2.

425.306 Unenforceable obligations. **(1)** Any charge, practice, term, clause, provision, security interest or other action or conduct in violation of chs. 421 to 427, to the extent that the same is in violation of chs. 421 to 427, shall confer no rights or obligations enforceable by action.

(2) This section shall not affect the enforcement of any provision that is not prohibited by chs. 421 to 427.

History: 1971 c. 239; 1979 c. 89.

425.307 Limitation of action. **(1)** Any action brought by a customer to enforce rights pursuant to chs. 421 to 427 shall be commenced within one year after the date of the last violation of chs. 421 to 427, 2 years after consummation of the agreement or one year after last payment, whichever is later, except with respect to transactions pursuant to open-end credit plans which shall be commenced within 2 years after the date of the last violation; but no action may be commenced more than 6 years after the date of the last violation.

(2) Rights under chs. 421 to 427 may be asserted as a defense, setoff or counterclaim to an action against the customer without regard to this time limitation.

History: 1971 c. 239; 1979 c. 89.

Regardless of the reason the six-year limitations period was included, the language of the statute makes it clear that the six-year deadline is not a way for a plaintiff to avoid the deadlines in the first part of the statute. That part of the statute says that a lawsuit "shall be commenced" within one or two years of certain events. In other words, if the plaintiff is a customer and he cannot meet the limitations periods in the first part of the statute, the plaintiff cannot rely on the last part of the statute to extend his limitations period. McDonough v. WESTconsin Credit Union, 97 F. Supp. 3d 1040 (2015).

425.308 Reasonable attorney fees. **(1)** If the customer prevails in an action arising from a consumer transaction, the customer shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the customer's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorney fees.

(2) The award of attorney fees shall be in an amount sufficient to compensate attorneys representing customers in actions arising from consumer transactions. In determining the amount of the fee, the court may consider:

(a) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause;

(b) The customary charges of the bar for similar services;

(c) The amount involved in the controversy and the benefits resulting to the client or clients from the services;

(d) The contingency or the certainty of the compensation;

(e) The character of the employment, whether casual or for an established and constant client; and

(f) The amount of the costs and expenses reasonably advanced by the attorney in the prosecution or defense of the action.

History: 1971 c. 239; 1991 a. 316; 1993 a. 490.

Attorney fees awarded under this section often far exceed the amount of recovery. First Wisconsin National Bank v. Nicolaou, 113 Wis. 2d 524, 335 N.W.2d 390 (1983).

Awards of attorney fees and costs are limited to instances in which a customer has

shown that a creditor has not "fully complied with chs. 421 to 427." Suburban State Bank v. Squires, 145 Wis. 2d 445, 427 N.W.2d 393 (Ct. App. 1988).

A prevailing party is one who succeeds on any significant issue and is entitled to recover fees relating to successfully litigated issues. Footville State Bank v. Harvell, 146 Wis. 2d 524, 432 N.W.2d 122 (Ct. App. 1988).

Although voluntarily dismissed, prosecution of improperly venued actions violated the consumer act, and the defendants were prevailing parties under this section entitled to attorney fees. Community Credit Plan, Inc. v. Johnson, 228 Wis. 2d 30, 596 N.W.2d 799 (1999), 97-0574.

A party moving for attorney's fees and costs under the Wisconsin Consumer Act (WCA) must show both a significant benefit in litigation and a violation of the WCA on the part of the non-moving party. When a claim for deficiency judgment was dismissed without costs and without prejudice, no violation of the WCA was shown. Credit Acceptance Corp. v. Woodard, 2012 WI App 43, 340 Wis. 2d 548, 812 N.W.2d 525, 11-0135.

425.309 Class actions. Class actions are governed by s. 426.110.

History: 1971 c. 239.

425.310 Liability of corporate officers. Damages or penalties awarded to a customer or the administrator for a violation of chs. 421 to 427 which cannot be collected from a corporation by reason of its insolvency or dissolution shall be recoverable against the principal agents of the corporation including, but not limited to, officers, managers and assistant managers who knew of, should have known of or willfully participated in such a violation, if a meaningful part of the corporation's activities were in violation of chs. 421 to 427.

History: 1971 c. 239; 1979 c. 89.

425.311 Evidence of violation. Sections 402.202 and 411.202 and any other statute restricting admissibility of parol evidence shall be inoperative to exclude or limit the admissibility of evidence of an act or practice in violation of chs. 421 to 427.

History: 1971 c. 239; 1979 c. 89; 1991 a. 148.

SUBCHAPTER IV

CRIMINAL PENALTIES

425.401 Willful violations: misdemeanor. (1) Except as provided in sub. (2), a person who willfully and knowingly engages in any conduct or practice in violation of chs. 421 to 427 may be fined not more than $2,000.

(2) A person who intentionally violates s. 425.2065 (2) may be fined not more than $500.

History: 1971 c. 239; 1979 c. 89; 2005 a. 255.

State of Wisconsin
Department of Financial Institutions

Licensed Financial Services Statutes & Rules

Statutes

Adjustment Service Companies Wis. Stat. s. 218.02

Collection Agencies Wis. Stat. s. 218.04

Community Currency Exchanges Wis. Stat. s. 218.05

Credit Service Organizations Wis. Stat. ch. 422, subchapter V

Earned Wage Access Services Providers Wis. Stat. ch. 203

Insurance Premium Finance Companies Wis. Stat. s. 138.12

Loan Companies Wis. Stat. s. 138.09

Nondepository Small Business Lenders Wis. Stat. ch. 224, subchapter IV

Money Transmitters (formerly known as Sellers of Checks) Wis. Stat. ch. 217

Payday Lenders Wis. Stat. s. 138.14

Sales Finance Companies Wis. Stat. ss. 218.0101-218.0163

Title Lenders Wis. Stat. s. 138.16

Use of Nationwide Multistate Licensing System & Registry (NMLS) Wis. Stat. s. 224.35

Rules

Adjustment Service Companies Wis. Admin. Code ch. DFI-Bkg 73

Collection Agencies Wis. Admin. Code ch. DFI-Bkg 74

Pawnbrokers Wis. Admin. Code ch. DFI-Bkg 77

Payday Lenders Wis. Admin. Code ch. DFI-Bkg 75

Sales Finance Companies Wis. Admin. Code ch. DFI-Bkg 76

Money Transmitters (Seller of Checks) Wis. Admin. Code ch. DFI-Bkg 79

Title Lenders Wis. Admin. Code ch. DFI-Bkg 78

Browse all Statutes & Rules related to the Wisconsin Department of Financial Institutions.

Contact Us

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Resources

Applications & Forms

Fees

File a Complaint

Frequently Asked Questions

General Information

Licensee Search

Contact Us

Wisconsin Department of Financial Institutions
4822 Madison Yards Way, North Tower
Madison, WI 53705

A To Z Contact Information

Visitor Information

Office Hours:
Monday - Friday
7:45 a.m. - 4:30 p.m.

Phone:
(608) 261-9555

TTY:
7-1-1 For hearing-impaired callers

Resources

Translate Website

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STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Plaintiff(s): [Names and Addresses]

_____

_____

_____

-vs-

Defendant(s): [Names and Addresses]

_____

_____

_____

☐ Amended

Order on Motion to Reopen Small Claims Judgment

Case No. _____

A Motion to Reopen a Small Claims Judgment was filed on [Date] _____.

THE COURT ORDERS:

☐ 1. A hearing on the motion to reopen will be held on
- ☐ a date to be set and a Notice of Hearing will be provided.
  OR
- ☐ the following date and time:

Date	Time	Location (include Room No.)
Court Official		

- ☐ If the motion to reopen is granted, a hearing in this case will be held at the same time and place.
- ☐ The prior judgment is stayed pending further order of the court.

☐ 2. Motion to reopen denied for failure to
- ☐ meet statutory requirements.
- ☐ demonstrate good cause.
- ☐ demonstrate reasonable prospect of success on the merits.

☐ 3. Other: _____

If you require reasonable accommodations due to a disability to participate in the court process, please call _____ prior to the scheduled court date. Please note that the court does not provide transportation.

DISTRIBUTION:
1. Court
2. Parties

This form shall not be modified. It may be supplemented with additional material.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Creditor: _____
-vs-
Debtor: _____
and
Garnishee: _____

Debtor's Answer
Non-Earnings Garnishment
(Small Claims)

Case No. _____

To the garnishee:

☐ 1. My income or assets are **completely** exempt from garnishment because
- ☐ A. the judgment has been paid.
- ☐ B. the judgment has been discharged in bankruptcy.
- ☐ C. I have filed bankruptcy and enforcement of the judgment has been stayed.
  Name of bankruptcy court: _____.
  Bankruptcy court file number: _____.
- ☐ D. the judgment is void.
- ☐ E. I have another defense to this non-earnings garnishment. [Explain briefly]

_____
_____
_____

☐ 2. My income or assets are completely exempt or $ _____ is exempt under the exemption checked below:
- ☐ A. 75% of the debtor's net income for each one week pay period [Wis. Stats. §815.18(3)(h)].
- ☐ B. Depository accounts in the aggregate value of $5,000 [Wis. Stats. §815.18(3)(k)].
- ☐ C. Veteran's benefits [Wis. Stats. §45.03(8)(b) or 38 USC 501-562].
- ☐ D. Assistance grants [Wis. Stats. §49.96].
- ☐ E. Pension funds and benefits from 1st class cities and counties of populations over 500,000 [Wis. Stats. §62.63(4) and Ch. 201, Laws 1937, s. 11].
- ☐ F. Worker's compensation awards [Wis. Stats. §102.27(1)].
- ☐ G. Unemployment insurance benefits [Wis. Stats. §108.13(2)].
- ☐ H. Partner's rights in specific partnership property [Wis. Stats. §178.21(3)(c)].
- ☐ I. Tenant's housing corporation lease and stock interests [Wis. Stats. §182.004(6)].
- ☐ J. Income or assets required to be paid by customers as restitution [Wis. Stats. §425.106(1)(d)].
- ☐ K. Insurance company deposits with the State Treasurer [Wis. Stats. §601.13(7)].
- ☐ L. Fraternal benefits [Wis. Stats. §614.96].
- ☐ M. Child support, family support or maintenance payments [Wis. Stats. §815.18(3)(c)].
- ☐ N. Federal disability insurance payments [Wis. Stats. §815.18(3)(ds)].
- ☐ O. Fire and casualty insurance proceeds [Wis. Stats. §815.18(3)(e)]
- ☐ P. Fire and police pension and benefits [Wis. Stats. §815.18(3)(ef)].
- ☐ Q. Life insurance contract and accrued dividends, interest or loan value as provided by statute [Wis. Stats. §815.18(3)(f)].
- ☐ R. Life insurance claims, personal injury or wrongful death claims [Wis. Stats. §815.18(3)(i)].
- ☐ S. Retirement and public employee trust funds [Wis. Stats. §§40.08(1) and 815.18(3)(j)].
- ☐ T. Federal war pensions [Wis. Stats. §815.18(3)(n)].
- ☐ U. Crime victim award [Wis. Stats. §949.07].
- ☐ V. College savings accounts [Wis. Stats. §815.18(3)(p)].
- ☐ W. Clothing, jewelry, household furniture and furnishings [Wis. Stats. §425.106(1)(b)].
- ☐ X. Consumer goods held primarily for personal, family, or household use not to exceed $12,000 [Wis. Stats. §815.18(3)(d)].
- ☐ Y. Any other exemptions permitted under the law. [Explain briefly]

_____
_____
_____

I understand that if I claim a complete exemption, limitation or defense in bad faith, I may be held liable for court costs.

The debtor is required to deliver or mail a copy of this form within 20 days of service of the summons to the court, the creditor, and the garnishee.

Mailed/delivered on [Date] _____.

▶ _____
Debtor

_____
Name Printed or Typed

_____
Address

_____
Email Address

_____
Telephone Number Date

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Plaintiff(s): [Names and Addresses]

_____

_____

_____

-vs-

Defendant(s): [Names and Addresses]

_____

_____

_____

☐ Amended

Motion to Reopen Small Claims Judgment

Case No. _____

This matter should be reopened because

☐ 1. Venue [the county where the case should be heard] for this matter was improper under §799.11, Wis. Stats., because:

_____

[Venue motions must be brought within one year of entry of judgment.]

☐ 2. Good Cause.

I am the ☐ plaintiff and my case was either dismissed or a counterclaim was granted because I failed to appear for a scheduled court hearing.

I am the ☐ defendant and default judgment was entered against me because I failed to file an answer or appear for a scheduled court hearing.

If you check 2, complete both A and B.

A. My failure to appear or file an answer was for good cause because: [Explain]

_____

_____

B. If the case is reopened I will win because:

_____

_____

Motions based on a failure to appear or file an answer must be brought within 12 months of entry of judgment.

▶ _____
Signature

_____
Name Printed or Typed

_____
Address

_____
Email Address

_____
Telephone Number Date

DISTRIBUTION:
1. Court
2. Parties

This form shall not be modified. It may be supplemented with additional material.

Enter the name of the county in which the case was filed.	**STATE OF WISCONSIN, CIRCUIT COURT,** _____ **COUNTY**
Enter the Plaintiff's name. Enter the Plaintiff's address. If there is more than one plaintiff, check the "additional plaintiffs" box and attach another sheet with their names and addresses.	Plaintiff(s): [Names and Addresses] First name Middle name Last name Address Address City State Zip ☐ **See attached** for additional plaintiffs.
Enter the case number.	-vs-
Enter the Defendant's name. Enter the Defendant's address. If there is more than one defendant, check the "additional defendants" box and attach another sheet with their names and addresses.	Defendant(s): [Names and Addresses] First name Middle name Last name Address Address City State Zip ☐ **See attached** for additional defendants.

Demand for Trial and Instructions (Small Claims)

Case No. _____

For 1, check one box. For 2, check either 2A or 2B and enter the appropriate date. If 2A, file with the court and mail to the other parties and attorney (if any) copies of this form within 10 calendar days of the oral decision. If 2B, file with the court and mail to the other parties and attorney (if any) copies of this form within 15 calendar days from the date a written decision was mailed.	**NOTICE TO PARTIES:** If you do not file a timely demand for trial, you have no right to a trial and no right to an appeal. 1. I am the ☐ plaintiff ☐ defendant in this small claims case. 2. This case was decided by a court commissioner as follows: ☐ A. Orally in court on [Date] _____. - OR - ☐ B. By a written decision mailed on [Date] _____.
Sign and print your name. Enter the date on which you signed your name. **Note**: This signature **does not** need to be notarized.	I demand a trial before a circuit court judge. I understand it is my responsibility to mail or deliver copies of this demand to all other parties and attorney (if any) and I must prove that I have done so. ▶ _____ Signature of Party _____ Name Printed or Typed _____ Address _____ Email Address _____ Telephone Number Date

If an attorney is completing this form, enter the attorney's information.

▶ _____
Signature of Attorney

_____
Name Printed or Typed

_____
Attorney's Address

_____
Email Address | Telephone Number

_____
Date | State Bar No. (if any)

You must be able to prove you mailed copies to the other parties and attorney (if any). After you mail a copy, you should file your proof of mailing with the Court as soon as possible. Proof of mailing may include a return receipt for certified or registered mail; a post office certificate of mailing, or Form SC-5130V, Declaration of Mailing.

Basic Guide to Wisconsin Small Claims Actions

This guide is provided by the Wisconsin court system to give you general information about Wisconsin small claims actions. Resources available in each county may be found at the link below:

https://www.wicourts.gov/services/public/selfhelp/docs/countylegalresources.pdf

For additional information, please see the Pre-Judgment and Post-Judgment Basic Steps Documents. These basic steps documents and any forms mentioned in this basic guide may be obtained from the clerk of court or online at:

https://www.wicourts.gov/forms1/circuit.htm.

In addition to the guidance in this handbook, follow local court rules or procedures:

Wisconsin Circuit Court Rules

NOTICE: Small Claims laws change often. The small claims forms are intended to be useful in many cases, but you may have to add or attach additional information as it applies to your case. Talk to a lawyer if you are unsure whether these forms are the most appropriate for your situation.

COURT STAFF CANNOT GIVE LEGAL ADVICE.

GENERAL INFORMATION ABOUT SMALL CLAIMS COURT

What is Small Claims Court?

Small Claims Court is a special court where disputes are resolved more quickly and inexpensively than in other court proceedings. The rules in Small Claims Court also are simpler and less formal. The person who sues is called the plaintiff. The person who is sued is called the defendant.

What terms are used in Small Claims Court?

All terms are defined in the Glossary which can be found starting on page 14.

What kinds of cases go to Small Claims Court?

The most common types of small claims cases are:

- Claims for money: where the amount claimed is $10,000 or less, if the actions are:
  - For money judgments only, or
  - For garnishment of wages.
- Claims for tort/personal injury: where the amount claimed is $5,000 or less.
- Claims for eviction: regardless of the amount of rent claimed.
- Claims for replevin (return of property):
  - Non-consumer credit actions where the value of the property claimed is $10,000 or less;
  - Consumer credit transactions where the amount financed is $25,000 or less.

Less common types of small claims cases include:

- Return of earnest money for purchase of real property
- Action on an arbitration award for the purchase of real property

- Eviction action due to foreclosure

See also §799.01(1), Wis. Stats., the **Legal Glossary** (page 14 of this document),

- *Pre-Judgment: Basic Steps for Handling a Small Claims Case for Eviction, (SC-6010V),*
- *Pre-Judgment: Basic Steps for Handling a Small Claims Case for Recovery of Money, (SC-6020V),* and
- *Pre-Judgment: Basic Steps for Handling a Small Claims Case for Replevin (Recovery of Property), (SC-6030V)* for further information.

What is a tort or personal injury action?

A tort is a wrongful act that injures someone, where the injured person may sue the person/business causing the injury for money damages. The injury may be to a person's body, property, business, reputation, or other interest. The act may be the result of carelessness ("negligence") or may be intentional. A tort is different from a breach of contract or a crime.

For more information about torts/personal injury actions, please see *Appendix A: "Personal Injury – Helpful Information*" at the end of this document.

Who can sue in Small Claims Court?

Any person who is 18 years or older.

Do I have to have an attorney?

Whether to hire an attorney is your decision. Many people feel that they can handle their legal matters without an attorney in Small Claims Court. When you represent yourself in court without an attorney it is called "*self-representation*" or "*pro se.*"

Even if you do not intend to hire an attorney to represent you in Small Claims Court, you may wish to contact an attorney for advice. An attorney may be able to advise you whether you have a valid claim or defense, about the types of evidence you will need to prove it, and may even be able to assist you in settling your case. If you cannot afford an attorney, there are organizations that may be able to assist you.

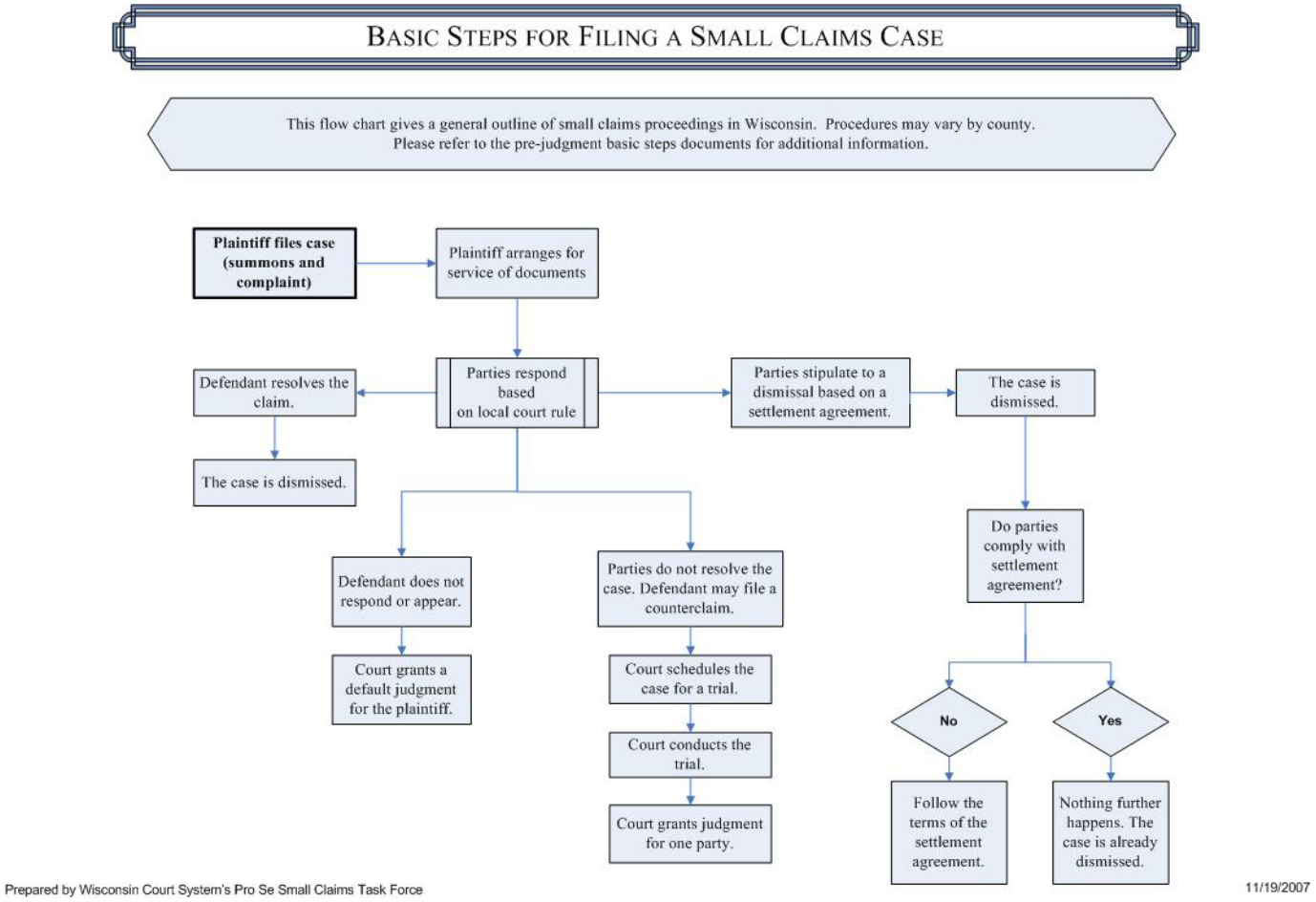
Court staff **MAY ONLY** provide general information about court rules, procedures, practices, and forms. Court staff **cannot** give you legal advice. For instance, this means court staff cannot tell you which form(s) to use, or assist you in filling out the form, and cannot interpret terms or court orders.

Try to settle first!

To avoid the time and expense of going to court, try to settle the matter first. Contact the other party or the party's attorney, discuss the situation, and try to solve the problem by an agreement you can both accept. Even after your small claims suit is filed, you may still engage in settlement negotiations with the opposing party. Don't be reluctant to compromise; even in large civil lawsuits, more than 90% are settled prior to trial.

Small Claims Pre-Judgment Flowchart

Even though each county may do things a little differently or call various hearings by different names, there is a basic structure to how a small claims action will proceed in Wisconsin. The flowchart below is a brief representation of the process.



However, there are different procedures for the various types of small claims actions that can be filed. Also, there may be specific procedures that you must complete in some counties. Please refer to:

- *Pre-Judgment: Basic Steps for Handling a Small Claims Case for Eviction, (SC-6010V),*
- *Pre-Judgment: Basic Steps for Handling a Small Claims Case for Recovery of Money, (SC-6020V),*
- *Pre-Judgment: Basic Steps for Handling a Small Claims Case for Replevin (Return of Property), (SC-6030V),*
- *Pre-Judgment: Basic Steps for Filing an Answer to a Small Claims Complaint, (SC-6040V),* and
- *Pre-Judgment: Basic Steps to Small Claims Service, (SC-6050V)* for an overview of the basic steps involved in completing these actions.

I WOULD LIKE TO FILE A SMALL CLAIMS CASE.

Who do I sue?

It is important that you sue the right party. Naming the wrong party could result in the dismissal of your case. To assist you, please see *Appendix B: "Suing the Right Party"* at the end of this document.

Do I have to pay to file a Small Claims action?

Yes. You will have to pay the clerk of court a fee to file your *Summons and Complaint, (SC-500) form or Summons and Complaint (with Instructions), (SC-500I) form*. This small claims filing fee is set by state law (https://www.wicourts.gov/courts/circuit/docs/fees.pdf). This and certain other fees may be charged against the other party if you win your case.

However, if you cannot afford the filing fee, you may complete the *Petition for Waiver of Filing Fees and Costs - Declaration of Indigency, (CV-410A) and Order on Waiver of Filing Fees and Costs, (CV-410B) form*. If the court finds that you cannot afford to pay, the court may waive the filing and service fees.

Where do I file my Small Claims case?

If you determine that your claim can be brought as a small claims case and have determined the right party to sue, you will need to decide where you should file the small claims action.

- **Eviction actions**. Actions for eviction should be filed in the county where:
  - a defendant resides,
  - the rented property is located.
- **Return of earnest money**. Actions for the return of earnest money should be filed in the county where:
  - a defendant resides;
  - the real estate is located, or
  - the purchase contract was signed.
- **Replevins**. Actions for replevin (return of personal property) should be filed in the county where one of the following is true:

  For Non-consumer claims:
  - a defendant resides;
  - the personal property is located, or
  - the claim arose.

  For Consumer claims:
  - the customer resides or is personally served;
  - collateral securing a consumer credit transaction is located, or
  - the customer sought or acquired the property, services, money or credit.
- **Arbitration**. Actions for the confirmation, vacation, modification or correction of an arbitration award should be filed in the county where:
  - a defendant resides;
  - the real estate is located, or

- the claim arose.

- **Other civil actions**. In other civil actions where the amount claimed is $10,000 or less, or for torts or personal injury actions where the amount claimed is $5,000 or less, the action should be filed in the county where:
  For Money judgments:
  - For Non-consumer claims:
    1. a defendant resides, or
    2. the claim arose.
  - For Consumer claims:
    1. the customer resides or is personally served, or
    2. the customer sought or acquired the money or credit which is the subject of the claim or signed the document showing his or her obligation.

  For Garnishment:
  - the garnishee resides or is located;
  - the summons in the original action was issued, or
  - the judgment from the original action was entered.

How do I file the Small Claims Case?

Complete the *Summons and Complaint, (SC-500) form* or *Summons and Complaint (with Instructions), (SC-500I) form* and make two (2) copies for each defendant. Take the original and copies to the clerk of court's office for filing and payment of the filing fee.

If you would like to file and manage your case electronically, please visit the Wisconsin Court System website and look for eFiling. Use the *Summons and Complaint, (SC-500) form* or *(SC-500I) form* to file your documents and pay your filing fee online.

I HAVE BEEN SUED IN SMALL CLAIMS COURT.

NOW WHAT DO I DO?

The first thing you should do is **READ THE ENTIRE SUMMONS AND COMPLAINT.**

DO THIS NOW!

The *Summons and Complaint* will tell you:

Who is suing me?

The person suing you is the person listed in the *Summons and Complaint* as the Plaintiff. You are the Defendant. If the plaintiff has an attorney, the *Summons and Complaint* will also list the attorney's name and address.

Must I appear in court?

See the *Summons* (first page of the *Summons and Complaint*), which will tell you if you are required to appear in person or can respond in writing. If you are required to appear in person, the *Summons* will list the date, time and location.

Why am I being sued?

The *Summons and Complaint* will tell you why the plaintiff is suing you. There are many reasons a claim could be filed. Common examples are:

- If you are renting property, the plaintiff may be your landlord and claims you have not paid your rent or have not lived up to your rental agreement, whether it is in writing or not.
- If you bought a car or some other item on credit, the bank or finance company may claim you are behind on your payments.
- The plaintiff may claim you owe money.
- The plaintiff may claim he or she was injured or the plaintiff's property was damaged and it is your fault.

What does the Plaintiff want from me?

The *Summons and Complaint* will tell you what the plaintiff wants from you. Some common examples are:

- If you are renting property, the plaintiff may want rent or money for utility bills that are not paid, or money for damage to the property, AND may want you evicted (removed) from the property.
- If you bought something on credit, like a car, the plaintiff may want to get the car from you plus the money you still owe after the car is sold.
- If the plaintiff claims you owe money, the plaintiff wants money from you.

What if I disagree with what the Plaintiff says?

If you don't agree with what the plaintiff claims or if you don't agree with what the plaintiff wants from you, **YOU MUST ANSWER THE *COMPLAINT*.**

Counties may have different procedures to answer the *Complaint*.
See local court rules at: https://www.wisbar.org/Directories/CourtRules/Pages/Circuit-Court-Rules.aspx.
You must answer the *Complaint* in writing, in person or both. If you need to appear in person to answer the *Summons and Complaint*, the *Summons and Complaint* will tell you when and where to appear. If you need to file a written answer, the *Summons and Complaint* will tell you where to file the answer. See *Pre-Judgment: Basic Steps for Filing an Answer to a Small Claims Complaint, (SC-6040V)* for more information.

IF YOU DON'T ANSWER THE COMPLAINT PROPERLY, A JUDGMENT MAY BE ENTERED AGAINST YOU.

How do I answer the Complaint in person?

Some counties require you to answer the *Complaint* in person. If you have to answer the *Complaint* in person, the *Summons* will state the court date and where and what time you need to appear.

You must appear on time and it is recommended that you arrive at least 15 minutes early. If you have any questions about where you should appear, go to the Clerk of Court's office.

IF YOU FAIL TO APPEAR AT THE CORRECT LOCATION AND ON TIME, A JUDGMENT MAY BE ENTERED AGAINST YOU.

When your case is called, be prepared to say if you are or are not contesting the claim. You may want to bring along with you some short notes to help keep yourself organized. If you have a counterclaim and have not already filed it, you should file it at this time and give a copy to the plaintiff.

How do I answer the Complaint in writing?

Some counties require you to answer the *Complaint* in writing. If you have to answer the *Complaint* in writing, the *Summons* will state where to file your written answer. In your answer, state why you disagree with the plaintiff and what defenses you feel you have to the plaintiff's claim. You may use the small claims *Answer and Counterclaim, (SC-5200V) form*. The form has step-by-step instructions on the left side to help you fill it out.

When you have completed your *Answer and Counterclaim form*, follow the instructions in the *Summons* that tell you where to send the *Answer*.

YOU MUST SEND A COPY OF YOUR WRITTEN ANSWER TO THE PLAINTIFF.

IF YOU FAIL TO FILE YOUR WRITTEN ANSWER TIMELY AND PROPERLY, A JUDGMENT MAY BE ENTERED AGAINST YOU.

If you would like to file and manage your documents electronically, please visit the Wisconsin Court System website and look for eFiling (https://www.wicourts.gov/ecourts/index.htm). Follow the steps provided to sign up. You can file the small claims *Answer and Counterclaim, (SC-5200V) form* online.

What if I have a Claim against the Plaintiff?

If you believe that you have a claim against the plaintiff, you may file a counterclaim, which is the legal term for a defendant's claim against the plaintiff.

Use the *Answer and Counterclaim, (SC-5200V) form* to prepare your counterclaim. Clearly describe your claim in your own words. Make sure to include any relevant dates and specific facts. State the amount of money you believe you are owed and also state any other action you are asking the court to take. Think carefully about how much your claim is worth. This is important because the amount of your claim affects how you proceed with your counterclaim and whether there will be a filing fee for the counterclaim (see below: *"What if I want to counterclaim for more than $10,000 or I want to file a tort or personal injury counterclaim for more than $5,000?"*).

File your counterclaim with the clerk of court in the same county where you are being sued by the plaintiff. Each county can have different procedures for filing a counterclaim, so check with the clerk of court to find out the specific county rules for filing a counterclaim. There is no fee for filing a counterclaim unless your claim is for more than $10,000 or unless you file a tort or personal injury counterclaim that is more than $5,000.

Prepare a copy of your counterclaim for each plaintiff so the clerk can file stamp them and return them to you. You must then have those copies served on each plaintiff. Check local court rules to see if you can serve the counterclaim on the plaintiff by mail or if you must use

the sheriff or a process server. There will be a service fee if you use the sheriff or a process server to serve the plaintiff. If you have served the counterclaim on the plaintiff by mail, complete the *Declaration of Mailing, (SC-5130V) form* and file it with the clerk of court. If service was done by the sheriff or process server, you must ensure a *Declaration of Service* is filed with the court. Follow the local court rules for attending the next court date.

What if I want to counterclaim for more than $10,000 OR I want to file a tort or personal injury counterclaim for more than $5,000?

If your counterclaim demands more than $10,000, or if you want to file a tort or personal injury counterclaim demanding more than $5,000, you will have to pay a filing fee to the clerk of court. You must have the sheriff or process server serve the counterclaim on the plaintiff(s) personally within 60 days of filing and file the proof of service with the clerk of court. Because a counterclaim takes the case over the small claims dollar limit, the case may be transferred to regular civil court for scheduling and further proceedings.

In addition to filing and serving the *Answer and Counterclaim, (SC-5200V) form* as explained in the previous paragraph, you will also need to file and mail a *Notice of Counterclaim, (SC-5250V) form*. This should be done on the same day you file the counterclaim. Once you have mailed the *Notice of Counterclaim* to the plaintiff, complete the *Declaration of Mailing, (SC-5130V) form* and file it with the clerk of court.

Can I try to settle the case?

Yes. Some counties may have mediation services available to help you reach an agreement with the other party. You may also contact the other party or the party's attorney directly at any time to try to reach a settlement agreement. See *Stipulation for Dismissal - Eviction, (SC-5300VA and Order for Dismissal- Eviction, SC-5300VB) form,* or *Stipulation for Dismissal - Non-Eviction, (SC-5310VA and Order for Dismissal - Non-Eviction, SC-5310VB) form.*

What if I don't contest the plaintiff's claim and have no counterclaim?

If you do not contest the plaintiff's claim and have no counterclaim, it is not necessary to appear in person or file a written answer. If you do not appear or file a written answer, a default judgment will likely be granted against you and in favor of the plaintiff for what the plaintiff is asking for in the *Summons and Complaint*, plus statutory court costs.

MY CASE IS GOING TO TRIAL

PREPARING FOR AND PARTICIPATING IN A CONTESTED TRIAL

Refer to Local Court Rules

You must follow local court rules that may not be contained in this guide. Local court rules can be found on the WI State Bar website at:
https://www.wisbar.org/Directories/CourtRules/Pages/Circuit-Court-Rules.aspx

or the courts website at: https://www.wicourts.gov/scrules/index.htm.

Now do I need a lawyer?

Before attempting to handle a contested small claims hearing on your own, you should consider seeking legal assistance. There are specific rules that must be followed in a small claims hearing.

Preparing Your Case

Collect and preserve any documents or other evidence needed for trial.

Collect and preserve any documents or receipts from your dealings with the other party. Put them in chronological date order. Evidence on cell phones, computers or other electronic devices must be printed out or saved to a storage device to submit to the court. Making a detailed timeline of all of the events involved (in date order) may help you present your case in a more organized way. **It is recommended that you bring copies of all documents for the court and all other parties.**

Determine if you will need witnesses.

Determine if you will need witnesses to testify at the trial. Witnesses are people who have personal knowledge of the facts of your case. Friends and relatives may come voluntarily, but business people, police officers and others with no personal interest in the outcome of your case may not. In that case, if the witness lives in Wisconsin, you can require the witness to come to court by having the witness served with a subpoena.

- *Subpoena, (GF-126A) form* and *Certificate of Appearance (Subpoena), (GF-126B) form* can be obtained at www.wicourts.gov or without charge from the clerk of court's office. All *Subpoenas* must be signed by a court official.
- If you need the witness to bring documents or other evidence to the trial, you need to specifically state what the witness is to bring on the *Subpoena* form.
- You will need to have the *Subpoena* served on the witness by the sheriff or a private process server in a reasonable time before the trial.
- You will also need to serve with each *Subpoena* a check for the witness fee, which is $16.00, plus $0.20 per mile the witness has to travel to and from the courthouse.

An expert witness is a person with special training, experience, or expertise in a field beyond the knowledge of an ordinary person. For example, if your case involves defective merchandise or faulty repairs, a full-time mechanic or repair person with several years of experience may qualify as an expert. The expert witness can charge whatever he or she wishes for the testimony. The

standard $16.00 witness fee does not apply to expert witnesses. If you win, the cost of the expert witness, up to $300, can be added to any judgment.

Having the expert witness testify in person is almost always necessary. Merely repeating what your expert told you will probably not be allowed. A written or sworn statement from the expert witness will not be sufficient.

Participating in Trial

How will the trial be conducted?

Small claims trials are conducted in an informal manner by a judge or commissioner. Parties must treat each other with dignity and respect.

It is recommended that you and your witnesses show up at least 15 minutes early to the assigned courtroom on the date and time of the trial. If there is a bailiff or court clerk present, let him or her know that you have arrived. You should bring any documents related to the facts of the case with you to present at trial. The judge or commissioner may refuse to consider evidence or arguments that are repeated, irrelevant or otherwise inadmissible.

Each party bears the burden of proving his or her claim(s) “by the greater weight of the credible evidence.”

The plaintiff presents his or her evidence first; then the defendant is able to present his or her evidence. After swearing or affirming to testify truthfully, state the facts clearly and concisely. Keep to the key facts and do not discuss side issues unless a question requires it. If you have written documents, or other evidence to support your claim, show them to the judge or commissioner and opposing party, explaining what it is and how it relates to your case. It is recommended that you bring copies of each document for you, the judge, and all parties.

At the conclusion of the plaintiff’s testimony, the judge or commissioner may ask some questions. The defendant then has the right to cross-examine the plaintiff. When that is completed, the plaintiff may call any other witnesses he or she has. The judge or commissioner may ask questions and the defendant may cross-examine any of the plaintiff’s witnesses.

The defendant follows the plaintiff and presents his or her case in the same way. The plaintiff may cross-examine any of the defendant’s witnesses.

Following the presentation of the defendant’s evidence, the plaintiff may present rebuttal evidence.

After all the evidence has been presented, the judge or commissioner will state the decision or issue a written decision at a later date.

I WON A SMALL CLAIMS ACTION.

Now what happens?

The clerk of court will enter a judgment in the court record; each party will receive notice of the entry of judgment.

Can I recover my costs?

If you win a small claims case, the judgment will include statutory costs and fees. Statutory costs and fees may include:

- the filing fee for the case;
- the mailing fee for the *Summons and Complaint*, or the service fees, if you had to have your case served by the sheriff or a process server;
- witness fees, if the witness was subpoenaed and paid the statutory fee to attend, or
- limited attorney fees, if an attorney appeared with you in court.

Not all costs will be included in the judgment. For example, you cannot recover lost wages for appearing in court or parking and transportation costs for coming to court. You also cannot recover attorney fees for consulting with an attorney about your case, if that lawyer did not formally appear with you in court.

How do I enforce the judgment?

If you are granted a money judgment, the other party will be required to complete a *Financial Disclosure Statement, (SC-506B) form* and send it to you within 15 days of entry of judgment unless they have already paid. If the other party does not complete the disclosure, you may file a *Motion and Request for Hearing on Contempt, (SC-507A) form and Order for Hearing on Contempt, (SC-507B) form.*

The court does not collect your judgment for you, but there are actions you can take to collect your judgment. See:

- *Post-Judgment: Basic Steps for Docketing a Judgment for Collection, (SC-6060V),*
- *Post-Judgment: Basic Steps for Handling a Small Claims Earnings Garnishment, (SC-6070V),*
- *Post-Judgment: Basic Steps for Handling a Non-Earnings Garnishment (SC-6071).*
- *Post-Judgment: Basic Steps for Handling an Execution Against Property, (SC-6080V),*
- *Post-Judgment: Basic Steps in Collecting on a Judgment for Money, (SC-6090V),* and
- *Post-Judgment: Basic Steps in Collecting on a Judgment for Replevin, (SC-6100V).*

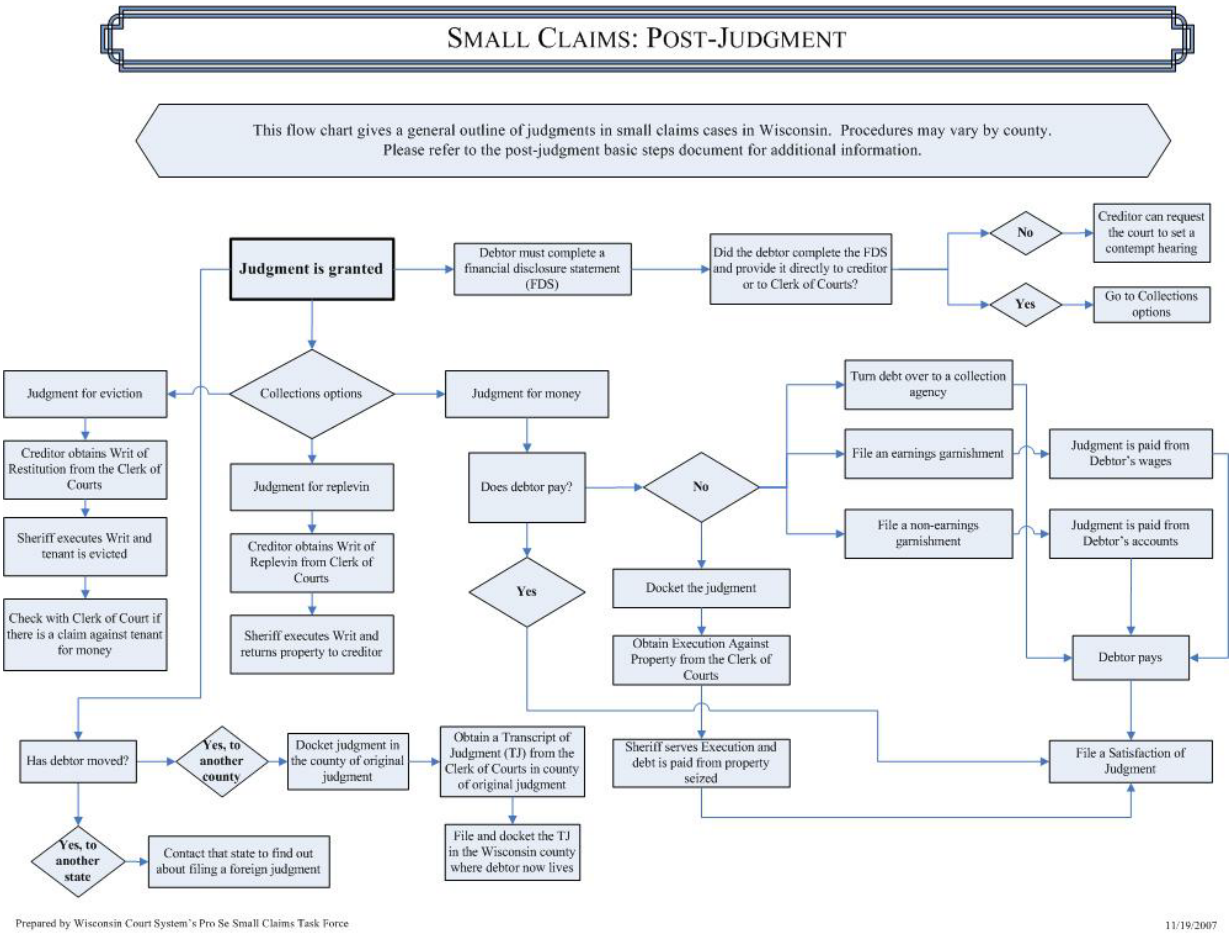
If you are granted a judgment of $500 or more for damages arising out of a motor vehicle accident, you can request that the clerk provide a certified copy of the judgment to the Division of Motor Vehicles (DMV). In most instances, the DMV will then suspend the operating privilege and all registrations of the debtor:

- Complete the Certificate of Judgment form (MV3158), available on the DMV website: https://wisconsindot.gov/pages/global-footer/formdocs/default.aspx
- Provide the completed Certificate of Judgment form to the clerk, along with the required fee.

The clerk will review the case information included on the form, then sign and affix the clerk's seal, and send to the DMV.

Small Claims Post-Judgment Flowchart

Even though each county may do things a bit differently, there is a basic structure to the small claims post-judgment process in Wisconsin. The flowchart below is a brief representation of the steps one may take to enforce judgments.



I DISAGREE WITH THE OUTCOME OF THE SMALL CLAIMS CASE.

Can I appeal the decision?

If a commissioner made the decision in your case, you may request a trial before a judge. If the commissioner made the decision at the hearing, you have 10 days from the hearing date to file a demand for trial. If the commissioner issues a written decision, you have 15 days from the date of mailing to file a demand for trial. You must complete the *Demand for Trial and Instructions, (SC-517) form*, and file the form in the clerk of court's office in the same county where the commissioner heard your case. The party demanding the trial must mail a copy of the *Demand for Trial and Instructions* to the other party within the time limits. The party filing the demand for trial is responsible for providing proof that the form was mailed to the other party.

If a judge has made the decision in your case and you are dissatisfied with that decision, you may appeal that decision to the Wisconsin Court of Appeals. The circuit court does not provide any forms for appeals. The rules for filing an appeal are complex. On the Wisconsin Court System website in the self-help center, you will find a publication entitled "Guide to Appellate Procedure for the Self-Represented".

- Clerk of the Wis. Supreme Ct. & Ct. of Appeals, *Guide to Appellate Procedure for the Self-Represented* . https://www.wicourts.gov/publications/guides/docs/proseappealsguide.pdf
- The State Bar's Appellate Practice Section offers an online Appellate Help Desk for people who are representing themselves in a Wisconsin civil appeal. https://www.wisbar.org/forPublic/INeedaLawyer/AppellateHelpDesk/Pages/Appellate-Help-Desk.aspx

You may wish to contact an attorney about filing an appeal. There are strict time limits for filing an appeal, so if you think you may appeal your small claims case do not delay in making that decision.

Can I reopen the Small Claims case?

- **Service by mail not received:**
  If service of the *Summons and Complaint* was by mail, you never received it, and a judgment was entered against you, you may petition the court to set aside the judgment. You must file the petition within 15 days of receiving actual knowledge of the case or judgment. This option is not available to you more than one year after the judgment was entered. See *Petition to Answer or to Reopen Small Claims Action with Mail Service, (SC-511A) form* and *Order on Petition to Answer or to Reopen Small Claims Action with Mail Service, SC-511B) form*.
- **Improper Venue:**
  If a default judgment was entered against you and you believe the case was filed in the wrong county, you may file a motion to reopen the case. This must be done within one year of entry of the default judgment. If the court finds the venue was improper, it will reopen the case. See *Motion to Reopen Small Claims Judgment, (SC-515A) form* and *Order on Motion to Reopen Small Claims Judgment (SC-515B) form.*
- **Default Judgment/Judgment of Dismissal:**
  If you have a good reason for missing court or failing to meet court requirements, you may file a motion to reopen the case within 12 months after the judgment was entered. The court will determine whether you have a good reason to reopen the judgment. If the court reopens the judgment, you will be notified. See *Motion to Reopen Small Claims Judgment, (SC-515A) form* and *Order on Motion to Reopen Small Claims Judgment (SC-515B) form.*

SATISFACTION OF JUDGMENT.

How do I satisfy a judgment?

A judgment may be satisfied when it has been paid. If you have paid the judgment, the plaintiff must sign the *Satisfaction of Judgment, (GF-129) form* at your request. You must make this request directly to the plaintiff, not through the court. Plaintiff's failure to sign and file or return the satisfaction within 7 days may result in an award of damages against the plaintiff.

If you wish the court record to reflect that the judgment has been satisfied, you must file the *Satisfaction of Judgment*. There is a fee for filing the satisfaction. Once the satisfaction is filed, the court record will reflect that the judgment has been satisfied.

LEGAL GLOSSARY

Although small claims procedure is designed to be simple and easy to use, you will still come across some legal words and phrases when going through the court system. If you need help, look at our legal glossary to find out what some of these words and phrases mean.

ACTION	A lawsuit.
ADJOURN	To delay a hearing until a future time.
ADVERSE PARTY	Party on the other side of the lawsuit.
DECLARATION OF NON-MILITARY SERVICE	Statement that, to the best of plaintiff's knowledge, the defendant is not now in the military.
AFFIRMATIVE DEFENSE	A new matter, which assuming the complaint to be true, constitutes a defense to it.
ANSWER	A statement by the defendant in response to the plaintiff's complaint.
APPEAL	A request that a higher court review and change the final decision in a case.
ARBITRATION	A form of alternative dispute resolution where an unbiased person or panel renders an opinion as to responsibility for or extent of a loss.
BUSINESS DAYS	Any calendar day except Saturday or Sunday and except the following business days: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas, and that is not a legal or federal legal holiday.
CALENDAR	A schedule of cases to be heard in court.
CALENDAR DAYS	Any one of the seven days in a week.
CAPTION	The heading of a court paper, showing the court, county, names of parties and case number.
CLAIM FOR MONEY	A legal action in which a plaintiff argues that a defendant is indebted to the plaintiff for an amount of money.
CLERK	An administrative officer of the court.
COMPLAINT	The court paper that states why the plaintiff is suing and what plaintiff wants the court to order.
CONSUMER	An individual customer buying goods or services primarily for a personal, family or household purpose.
CONTRACT	An agreement.
COUNTERCLAIM	A claim entered by a defendant as a response to or as a defense against an earlier claim made against the defendant by the plaintiff.
COURT COMMISSIONER	An attorney authorized to conduct hearings and initial proceedings.
COURT TRIAL	A trial in which the judge serves as the trier of fact.
CREDITOR	A person who is owed money.
CROSS-EXAMINE	To question a witness for the opposing side in a hearing or trial
CUSTOMER	An individual buying goods or services.
DAMAGES	The amount of money requested in a lawsuit to compensate the plaintiff for injuries to person or property or for the defendant's failure to perform a contract.
DEBTOR	A person who owes money.
DEFAULT	Failure to answer a complaint or appear for a hearing.
DEFENDANT	The person who is sued.
DEFENSE	A reason why a claim in a complaint is not valid.
DISMISSAL	A court order terminating a case because the plaintiff has failed to appear in court or state or prove a valid claim.
DOCKET	**(see Judgment and Lien Docket)**
EMANCIPATION	When a child is no longer legally under a parent's control. In Wisconsin, a child is emancipated when he or she turns 18 years of age or marries.
EVICTION	An action by a landlord to remove a tenant from the landlord's property.
EVICTION DUE TO FORECLOSURE	An action to remove a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale.
EVIDENCE	Objects, information or statements that demonstrate or prove something.
EXAMINE	To ask questions of a witness or other party to a case in a court of law.
EXECUTION	A legal procedure in which the sheriff seizes a debtor's property to pay a judgment.
EXEMPTION	A law allowing a debtor to keep some property free from the claims of creditors.

EXHIBIT	A paper or thing shown to a court during a hearing and used as evidence.
FEE	A charge fixed by the law for the service of public officers.
FORECLOSURE ON RESIDENCE	Residential real property where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including land contract payments.
GARNISHEE	In garnishments, the party who owes money to the debtor and is ordered to pay it to the creditor instead.
GARNISHMENT	A proceeding after judgment authorizing the creditor to be paid from the debtor's wages or bank accounts.
GUARDIAN AD LITEM	An attorney appointed by the court to take legal action on behalf of a minor or an adult not able to handle his or her own affairs.
HEARING	The examination of a certain aspect of a case or the trial of a case in a court of law.
JUDGMENT	Final determination by the court.
JUDGMENT AND LIEN DOCKET	An official list of court judgments.
JURY TRIAL	A trial in which the jury serves as the trier of fact.
LIEN	The legal right to keep or sell somebody else's property as security for debt.
NON-CONSUMER	An individual or business customer buying goods or services for business reasons and not primarily for a personal, family or household purpose.
NOTARY PUBLIC	An attorney or other official authorized to certify the signing of sworn documents.
PARTY	A plaintiff or defendant in a case.
PLAINTIFF	The party who begins a lawsuit.
PREJUDICE (with)	Dismissal with prejudice means that the case cannot be filed again in the Circuit Court.
PRETRIAL CONFERENCE	A meeting between the parties, sometimes including a judge or court commissioner, to investigate settlement or narrow the disputed issues.
PRO SE	Latin meaning "for oneself," i.e., without the aid of an attorney.
PROOF OF SERVICE	That the delivery of a legal document such as a writ or summons was accomplished.
REPLEVIN	A lawsuit seeking return of property.
RETURN DATE	The initial date at which the defendant must respond, answer, or appear in court. In some counties, the plaintiff must also appear.
RETURN OF EARNEST MONEY	An action brought to recover money paid to a seller as a deposit for the purchase of real property.
RETURN OF PROPERTY (REPLEVIN)	An action brought to recover personal property being held by someone else.
SATISFACTION	A notice from the plaintiff stating a defendant has paid the judgment.
SELF-REPRESENTATION	(**see Pro Se)**
SERVICE	The delivery of the complaint, summons or other papers filed by one party to another party.
SETTLEMENT AGREEMENT	An agreement reached without completing legal proceeding.
STIPULATED DISMISSAL	A court order dismissing the suit upon agreement of the parties. If the agreement is not kept, the dismissal may be vacated and a judgment entered.
STIPULATION	A legally binding agreement between parties.
SUBPOENA	A court document that requires a witness appear in court.
SUMMONS	A court order that the defendant answer the complaint or appear in court at a stated time.
TORT	A tort is a wrongful act that injures someone, where the injured person may sue the person/business causing the injury for money damages. The injury may be to a person's body, property, business, reputation, or other interest. The act may be the result of carelessness (called "negligence") or may be intentional. A tort is different from a breach of contract or a crime.
TRIAL	A formal examination of the facts and law in before a court of law to determine an issue.
VENUE	The county or counties in which a lawsuit may be filed and tried.

Appendix A - Personal Injury – Helpful Information

I've been injured, now what? If someone else is more at fault for your injury than you are, you may make a claim against that person or business and their insurance company, if any. The type of accident and the cause of the accident may affect whether you are entitled to compensation, as in the following examples:

***Motor vehicle accidents*:** Fault or "negligence" is determined by traffic regulations and which driver's carelessness contributed most to the accident and injuries, including your own conduct such as failure to use seatbelts.

***Commercial accidents* (such as in stores):** Injuries are compensable only if caused by an unsafe condition that the owner should have known of, appreciated, and corrected before the accident.

***Home/farm/apartment/recreation injuries*:** Renters, owners, or residents may be found liable for injuries they cause by negligent maintenance, oversight, or attacks by pets; however, property owners who permit others to use their land without charge for recreational purposes may be completely immune to any claim for unsafe conditions, however flagrant.

***Government employees and premises*:** Injuries caused by negligent public employees or unsafe conditions will be compensated only in limited circumstances and are subject to stringent notice and claim requirements.

State, federal, and local governments are given broad latitude to determine most matters involving public safety, including the design and maintenance of roads, parks, and facilities.

***Workplace injuries*:** Injuries at work generally are covered by worker's compensation benefits which compensate for medical expenses, lost wages, and permanent impairments, without regard to fault by anyone. If the accident was caused by someone *other than the employer or a co-worker,* a fault-based claim can be made that could include damages for pain and suffering in addition to the worker's compensation benefits.

***Intentional injuries*:** Injuries inflicted on purpose by any means are not usually covered by the guilty party's liability insurance, although the responsible party may be personally liable for such harm.

***Other accidents*:** More complicated rules determine if injuries caused by dangerous products, the accumulation of ice or snow, faulty professional services, or public utilities will be compensated. In addition, users of firearms, dog owners, and operators of restaurants, hotels, and public transportation may be liable for injuries they cause because the law imposes special responsibility for these hazards which your attorney can explain in more detail.

Reprinted with permission from the State Bar of Wisconsin consumer pamphlet, *Answering Your Legal Questions About Personal Injury.* Find other consumer resources at www.wisbar.com.

Appendix B: Suing the Right Party: Getting it Right the *First* Time

Type	Definition	What is the Liability?	How do I tell?	Who gets named in the lawsuit?	Who gets served?
Natural Person	A living, breathing actual human being.	Personally responsible for obligations.	May not have a business name at all or may go by a "doing business as" tradename; in a business context this is known as a "sole proprietorship."	Individual person	Individual person (s.801.11(1))
Partnership	Two or more natural persons who have joined together in order to conduct business.	Each partner is personally responsible for all of the obligations incurred by the partnership.	May not have a business name at all or may go by a "doing business as" tradename	Each individual partner	Each individual partner (s.801.11(6))
Limited Partnership	A legally-created organization (under ch. 179, Wis. Stats.) having one or more general partners and one or more limited partners.	General partners are liable for obligations; limited partners are not liable unless they are also general partners or participate in the control of the business.	Must have a business name containing the words Limited Partnership or the intials LP.	Business name	All general partners or Agent (s.801.11(6))
Corporation	A legally-created organization owned by "stockholders" who have purchased or received shares of stock in the organization.	Individual stockholders are NOT personally responsible; only the assets of the corporation itself are liable for obligations.	Business name followed by the word "Incorporated" or "Inc." A corporation must give you fair notice that it is a corporate entity when dealing with you.	Business name	Officer, director, managing agent or Registered Agent (s.801.11(5)); contact the Wisconsin Department of Financial Institutions
Limited Liability Corporation	A legally-created organization (under ch. 183, Wis. Stats.) created by "members" who enter into an operating agreement concerning the business' activities.	Individual owners are NOT personally responsible; only the assets of the corporation itself are liable for obligations	Business name followed by the letters "LLC." A limited liability corporation must give you fair notice that it is a corporate entity when dealing with you.	Business name	
What is meant by "doing business as" or "DBA"	Often a natural person or a partnership will create a distinctive tradename under which to operate or advertise. For example, a person named Tom Smith might do business as "Smith Welding" or a partnership of Tom Smith and Peter Jones may do business as "Smith & Jones Welding." The legal designation in the case of a natural person would be "Tom Smith doing business as Smith Welding."		Business or shop may have a business name on its paperwork (letters or invoices), advertising, or building without any designation that it is either limited or incorporated (for example, LP, Inc. or LLC).	Individual person(s) with additional words "doing business as [name]."	Same as for natural person or partnership

This document is only a general guide and cannot substitute for sound legal advice. There are many other types of business entities that exist in Wisconsin or which do business in Wisconsin. Any change in the facts of your particular case may drastically alter the type of entity with which you are dealing and the appropriate parties that should be named in YOUR lawsuit.

2017 WI App 77

COURT OF APPEALS OF WISCONSIN
PUBLISHED OPINION

Case No.: 2016AP2123

Complete Title of Case:

GEMINI CAPITAL GROUP, LLC,

PLAINTIFF-RESPONDENT,

V.

LEROY JONES AND ROGER JONES,

DEFENDANTS-APPELLANTS.

Opinion Filed:	October 17, 2017
Submitted on Briefs:	September 5, 2017
Oral Argument:	

JUDGES:	Stark, P.J., Hruz and Seidl, JJ.
Concurred:	
Dissented:	

Appellant ATTORNEYS:	On behalf of the defendants-appellants, the cause was submitted on the briefs of *Matthew C. Lein* of *Lein Law Offices*, Hayward.
Respondent ATTORNEYS:	On behalf of the plaintiff-respondent, the cause was submitted on the brief of *Bryan K. Nowicki, Joshua D. Taggatz* and *Monica A. Mark* of *Reinhart Boerner Van Deuren s.c.*, Madison, and *Kersten Holzhueter* of *Spencer Fane LLP, Kansas City, Missouri*.

2017 WI App 77

COURT OF APPEALS
DECISION
DATED AND FILED

October 17, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP2123 **Cir. Ct. No. 2015CV45**

STATE OF WISCONSIN **IN COURT OF APPEALS**

GEMINI CAPITAL GROUP, LLC,

PLAINTIFF-RESPONDENT,

V.

LEROY JONES AND ROGER JONES,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Sawyer County: JOHN M. YACKEL, Judge. *Reversed and cause remanded for further proceedings*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 STARK, P.J. Leroy and Roger Jones (collectively, Jones) appeal an order granting summary judgment to Gemini Capital Group, LLC. Gemini filed the instant lawsuit in attempt to recover a deficiency judgment against Jones.

Jones argues the circuit court improperly granted summary judgment in Gemini's favor because: (1) Gemini failed to establish its ownership of the debt; (2) Gemini failed to prove the collateral at issue was sold in a commercially reasonable manner, as required by WIS. STAT. § 425.209(1) (2015-16);[1] and (3) a material issue of fact exists as to whether Gemini's complaint was timely filed, pursuant to the applicable statute of limitations.

¶2 We conclude Gemini failed to make a prima facie case for summary judgment with respect to the first two issues raised by Jones, and a genuine issue of material fact exists regarding the third issue. We therefore reverse the order granting summary judgment to Gemini and remand for further proceedings.

BACKGROUND

¶3 In July 2007, Jones purchased a 2004 Ford Ranger from Timber Ford Mercury of Hayward, Inc. To finance the purchase, Jones entered into a "Motor Vehicle Consumer Simple Interest Installment Sale and Security Agreement" with Timber Ford Mercury. It is undisputed that Jones made some of the payments due under this agreement, but he eventually stopped making payments. In March 2009, HSBC Auto Finance, Inc., filed a small claims lawsuit against Jones in Sawyer County, seeking to repossess the vehicle. That lawsuit resulted in a default judgment against Jones, and the vehicle was subsequently repossessed and sold.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶4 On March 23, 2015, Gemini filed the present lawsuit in attempt to recover a deficiency judgment against Jones. In its complaint, Gemini alleged it had "purchased the deficiency amount owed on the [Motor Vehicle Consumer Simple Interest Installment Sale and Security Agreement]" and was "the successor-in-interest for the HSBC Serv Auto Loan."

¶5 Gemini ultimately moved for summary judgment. As relevant to this appeal, Gemini relied on an affidavit of Roger Neustadt to establish its ownership of Jones' debt. In his affidavit, Neustadt averred:

> I am a custodian of records for [Gemini] and the facts recited herein are based upon my personal knowledge of the electronic business records of the account in question, which are part of [Gemini's] regular business records. These records are kept by [Gemini] in the regular course of business, and it was the regular course of business of [Gemini] or its predecessor in interest for an employee or representative of [Gemini] or its predecessor in interest, with knowledge of the act or event recorded, to make the record or to transmit information thereof to be included in such record, and the record was made at or near the time or reasonably soon thereafter.

¶6 Neustadt averred that Jones entered into a Motor Vehicle Consumer Simple Interest Installment Sale and Security Agreement with Timber Ford Mercury on or around July 12, 2007, and, "[a]s indicated on the contract," Timber Ford Mercury assigned Jones' debt to "HSBC." Neustadt further averred that, on or about November 9, 2009, HSBC "transferred the contract and the rights therein to Santander Consumer USA Inc." Neustadt next averred that, on or about September 7, 2012, Santander "sold the contract and the rights therein to Main Street Acquisition Corp." Finally, Neustadt averred that, on or about July 16, 2014, Main Street "sold the contract and the rights therein" to Gemini. Neustadt averred Gemini is "the current holder and owner of [Jones'] contract and the rights

therein." Various documents were attached to Neustadt's affidavit in support of these averments.

¶7 Jones filed a brief and affidavits in opposition to Gemini's summary judgment motion, but he did not submit any evidence disputing Gemini's claim that it was the current owner of Jones' debt. Instead, Jones argued the evidence Gemini submitted was insufficient to make a prima facie showing regarding Gemini's ownership.

¶8 The circuit court granted summary judgment in Gemini's favor. Addressing Jones' argument that Gemini had failed to establish its ownership of the debt, the court stated Gemini had presented a "logical … step by step … from the point the vehicle was purchased, was financed by HSBC all the way up to Gemini." The court observed that, while Jones was critical of Neustadt's affidavit, he had "not necessarily challenged the affidavit with any counter affidavits."

¶9 The circuit court also rejected Jones' argument that Gemini was not entitled to summary judgment because it had failed to show that the vehicle was disposed of in a commercially reasonable manner, as required by WIS. STAT. § 425.209(1). The court reasoned further proceedings were not necessary on that issue because Jones had never alleged or presented any evidence to indicate that the sale of the vehicle was not commercially reasonable. Stated differently, the court concluded Jones had failed to show the existence of a genuine issue of material fact regarding the reasonableness of the sale.

¶10 Finally, the circuit court concluded there was no "issue" regarding the statute of limitations. The court explained, "[T]he deficiency became due in mid 2009 and [Gemini] began this action in early 2015 under the six-year statute of limitations, so that does not forego or prohibit the action."

¶11 Jones now appeals, arguing the circuit court erred by granting Gemini summary judgment.

STANDARD OF REVIEW

¶12 We independently review a grant of summary judgment, using the same methodology as the circuit court. ***Hardy v. Hoefferle***, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. "Under that methodology, the court, trial or appellate, first examines the pleadings to determine whether claims have been stated and a material factual issue is presented." ***Preloznik v. City of Madison***, 113 Wis. 2d 112, 116, 334 N.W.2d 580 (Ct. App. 1983). If so, we then examine the moving party's submissions to determine whether they establish a prima facie case for summary judgment. ***Id.*** If the moving party has made a prima facie showing, we examine the opposing party's affidavits to determine whether a genuine issue exists as to any material fact. ***Id.***

¶13 In this case, it is undisputed that Gemini's complaint stated a claim for a deficiency judgment, and that Jones' answer raised several material factual issues. The parties' arguments instead pertain to whether Gemini made a prima facie case for summary judgment and, if so, whether Jones established the existence of a genuine issue of material fact. *See* ***id.***

DISCUSSION

I. Ownership of the debt

¶14 Jones first argues the circuit court erred by granting Gemini summary judgment because Gemini failed to make a prima facie showing that "it is the real party in interest[,] as it lacks standing to seek a deficiency judgment against [Jones]." The parties appear to agree that, under either a standing analysis

or a real-party-in-interest analysis, the critical question is whether Gemini presented sufficient evidence to make a prima facie showing that it owns Jones' debt.[2]

¶15 Gemini argues the documents attached to Neustadt's affidavit establish its ownership of the debt.[3] Gemini contends these documents show the "step-by-step process" by which the debt was transferred from Timber Ford Mercury to HSBC, from HSBC to Santander, from Santander to Main Street, and, finally, from Main Street to Gemini. We conclude, however, that the documents attached to Neustadt's affidavit are insufficient to establish Gemini's ownership.

[2] *See* ***Wells Fargo Bank, N.A. v. Alexander***, No. 2012AP2236, unpublished slip op. ¶13 (WI App Aug. 15, 2013) (explaining the difference between "standing" and "real party in interest" and noting that, although they are distinct legal concepts, both are "used to designate a plaintiff who possesses a sufficient interest in the action to entitle him [or her] to be heard on the merits" (quoted source omitted)).

[3] Gemini spends a considerable portion of its respondent's brief on appeal arguing that the assignment documents attached to Neustadt's affidavit are admissible, either because: (1) they fall under the hearsay exception for records of regularly conducted activity, *see* WIS. STAT. § 908.03(6) and ***Palisades Collection LLC v. Kalal***, 2010 WI App 38, ¶11, 324 Wis. 2d 180, 781 N.W.2d 503; or (2) they are not hearsay, pursuant to ***Bank of America NA v. Neis***, 2013 WI App 89, ¶49, 349 Wis. 2d 461, 835 N.W.2d 527, and ***Lyon Financial Services, Inc. v. Dr. Manelle Fernando Medical Clinic, Inc.***, No. 2011AP222, unpublished slip op. ¶19 (WI App Nov. 10, 2011). However, Jones does not argue the documents Gemini offered to show its ownership of the debt are inadmissible. Rather, Jones argues those documents fail to make a prima facie showing that Gemini owns the debt. We therefore assume, without deciding, that the documents are admissible, and we limit our analysis to whether the documents are sufficient to establish a prima facie case regarding Gemini's ownership of the debt.

With the exception of the initial assignment from Timber Ford Mercury to HSBC,[4] none of the documents attached to Neustadt's affidavit specifically reference Jones' debt.

¶16 As the basis for his averment that ownership of Jones' debt was transferred from HSBC to Santander on or about November 9, 2009, Neustadt referenced a November 2, 2010 document entitled "Santander Consumer USA Inc. Secretary's Certificate," which was attached to his affidavit. In that document, Santander's "chief legal officer and secretary" certified that, pursuant to an "Asset Purchase Agreement" and "Servicing Agreement" dated November 9, 2009, Santander was "the assignee/servicer of [HSBC's] auto loan portfolio." However, nothing in the November 2, 2010 certificate specifically indicates that Jones' loan was part of that portfolio. Neither the "Asset Purchase Agreement" nor the "Servicing Agreement" referred to in the certificate was attached to Neustadt's affidavit.

¶17 Neustadt also averred that, on or about September 7, 2012, Santander "sold the contract and the rights therein to Main Street Acquisition Corp." In support of that averment, Neustadt cited an attached document entitled "Bill of Sale and Assignment," which stated that, pursuant to the terms and

[4] A copy of the Motor Vehicle Consumer Simple Interest Installment Sale and Security Agreement between Jones and Timber Ford Mercury was attached to Neustadt's affidavit. Gemini contends this document "shows the assignment of the contract to HSBC." However, the copy of the document in the record is of such poor quality that the section entitled "Assignment" is illegible. The same is true of the copy included in the appendix to Jones' brief. Nevertheless, Jones conceded in the circuit court that HSBC "provided the financing" for the purchase of the vehicle. Consistent with that concession, and absent any appellate argument to the contrary by Jones, we assume the Motor Vehicle Consumer Simple Interest Installment Sale and Security Agreement shows that Jones' loan was assigned from Timber Ford Mercury to HSBC.

conditions of a "Purchase & Sale Agreement" dated September 7, 2012, Santander assigned to Main Street "all rights, title and interest … in and to those certain receivables, judgments or evidences of debt described in the 'Purchase and Sale Agreement' and 'Data File' attached hereto and made part hereof for all purposes."[5] The "Bill of Sale and Assignment" indicated Santander had assigned 153,062 "accounts" to Main Street, but it did not specifically reference any individual accounts or debts. Neither the "Purchase and Sale Agreement" nor the "Data File" referenced in the "Bill of Sale and Assignment" was attached to Neustadt's affidavit.

¶18 Finally, Neustadt relied on a "Bill of Sale and Assignment," dated July 16, 2014, in support of his averment that Main Street "sold the contract and the rights therein" to Gemini. The July 16, 2014 "Bill of Sale and Assignment" states that, pursuant to a "Purchase and Sale Agreement" of the same date, Main Street transferred and assigned to Gemini all of Main Street's "rights, title and

[5] As one treatise explains:

> In the typical debt buyer case, the actual assignment of ownership will be accomplished by the creation of three separate documents. First is a signed "forward flow" agreement, that is a lengthy document that will set out the terms of sale of debt in general between the creditor and debt buyer. When a particular portfolio of debt (typically thousands of accounts) are sold between those parties, the parties execute a bill or [sic] sale or other short assignment document. That document will reference the portfolio and the forward flow agreement for the terms of the sale. That short assignment document will be accompanied by a "sale data file" or "final data file" which is an electronic spreadsheet that lists the specific consumer accounts being transferred, which will typically be numbered in the thousands.

JONATHAN SHELDON ET AL., COLLECTION ACTIONS: DEFENDING CONSUMERS AND THEIR ASSETS § 4.3.4.2.1 (3d ed. 2014).

interest in and to the Accounts and any claims arising out of the Accounts described in the Agreement and contained in the electronic file provided to [Gemini] on even date herewith." Once again, this "Bill of Sale and Assignment" did not reference any individual accounts or debts, and neither the "Purchase and Sale Agreement" nor any electronic file listing specific accounts or debts was attached to Neustadt's affidavit.[6]

¶19 We believe it is self-evident that, in order to make a prima facie showing that it is the owner of Jones' debt, Gemini must present evidence indicating that it owns *that specific debt*. Gemini must present evidence showing that *Jones' specific debt* was transferred from HSBC to Santander, from Santander to Main Street, and finally from Main Street to Gemini. Merely demonstrating that multiple, unspecified debts or accounts were transferred between these entities is insufficient to make a prima facie showing that Gemini currently owns Jones' debt, such that it is the real party in interest and has standing to obtain a deficiency judgment against Jones. Cases from several other jurisdictions support this conclusion. *See* ***In re Kendall***, 380 B.R. 37, 46 (Bankr. N.D. Okla. 2007); ***Hutto v. CACV of Colo., LLC***, 707 S.E.2d 872, 875 (Ga. Ct. App. 2011); ***Arrow Fin. Servs., LLC v. Guiliani***, 32 A.3d 1055, 1058 (Me. 2011); ***Premier Capital, LLC v.***

[6] In response to Gemini's summary judgment motion, Jones' attorney submitted an affidavit, attached to which were several pages, each of which appears to contain a single line from a spreadsheet. Jones' attorney described these pages as "a true and accurate copy of a spreadsheet provided by [Gemini] to [Jones]." The spreadsheet pages refer to Jones by name, list the "original product" as "HSBC Serv Auto Loan," and list the "seller" as "Main Street Acquisition Corp." However, aside from Jones' attorney's averment that Jones received the spreadsheet pages from Gemini, there is nothing in the record to indicate which company prepared the spreadsheet or the reason for which it was prepared. There is no evidence indicating that this spreadsheet is the "electronic file" referenced in the July 16, 2014 "Bill of Sale and Assignment" from Main Street to Gemini.

Baker, 972 N.E.2d 1125, 1134 (Ohio Ct. App. 2012); ***Kenny v. Portfolio Recovery Assocs., LLC***, 464 S.W.3d 29, 33-34 (Tex. App. 2015); *see also* JONATHAN SHELDON ET AL., COLLECTION ACTIONS: DEFENDING CONSUMERS AND THEIR ASSETS § 4.3.4.2.2 (3d ed. 2014) (stating a "debt buyer's documentation of an assignment must reference the specific account at issue" and collecting cases in support of that proposition).

¶20 Gemini asserts a recent Georgia Court of Appeals case "held that the type of affidavit relied on by Gemini [in the instant case] was sufficient to prove it was the real party in interest." *See* ***Rutledge v. Gemini Capital Grp., LLC***, 757 S.E.2d 893 (Ga. Ct. App. 2014). In ***Rutledge***, however, each "Bill of Sale" memorializing the transfer of multiple accounts from one entity to another was accompanied by "a single-line-item attachment" that "listed [the debtor's] personal information, account balance, and the last four digits of his account number." ***Id.*** at 894. Gemini did not submit any similar evidence in this case indicating that *Jones' specific debt* was transferred from HSBC to Santander, from Santander to Main Street, and from Main Street to Gemini. ***Rutledge*** is therefore distinguishable.

¶21 Gemini argues that, even if the documents attached to Neustadt's affidavit are insufficient to make a prima facie showing that Gemini owns Jones' debt, Neustadt's averments alone are sufficient to make that showing. As discussed above, Neustadt averred that HSBC transferred Jones' debt to Santander on or about November 9, 2009, that Santander "sold the contract and the rights therein" to Main Street on or about September 7, 2012, and that Main Street "sold the contract and the rights therein" to Gemini on or about July 16, 2014. Gemini asserts these averments establish that Jones' debt "was assigned various times until finally being assigned to Gemini."

¶22 We do not agree that Neustadt's averments, standing alone, establish a prima facie showing that Gemini owns Jones' debt. Affidavits in support of summary judgment "shall be made on personal knowledge." WIS. STAT. § 802.08(3). Affidavits "made by persons who do not have personal knowledge" are insufficient to support summary judgment "and will be disregarded." ***Leszczynski v. Surges***, 30 Wis. 2d 534, 538, 141 N.W.2d 261 (1966).

¶23 Neustadt averred in the first paragraph of his affidavit that he had "personal knowledge of the facts stated herein." He subsequently averred that he is a custodian of records for Gemini, and that the "facts recited herein are based upon [his] personal knowledge of the electronic business records of the account in question, which are part of [Gemini's] regular business records." However, despite these averments, nothing in Neustadt's affidavit reasonably implies that Neustadt, as a records custodian for Gemini, would have had personal knowledge of the prior assignments of Jones' debt from HSBC to Santander and from Santander to Main Street based on any source other than the documents attached to his affidavit. We have already concluded those documents are insufficient to make a prima facie showing that Jones' debt, specifically, was transferred between the listed entities. Because the documents themselves are insufficient to make a prima facie showing that Gemini owns the debt, Neustadt's averments based on those documents are also insufficient.

¶24 Our decision in ***Palisades Collection LLC v. Kalal***, 2010 WI App 38, 324 Wis. 2d 180, 781 N.W.2d 503, is instructive on this point. The primary issue in ***Palisades*** was whether account statements attached to the affidavit of a Palisades employee were admissible under the hearsay exception for records of regularly conducted activity. ***Id.***, ¶1; *see also* WIS. STAT. § 908.03(6). We concluded the account statements were inadmissible because the affidavit

"present[ed] no facts that show[ed] [the affiant] ha[d] personal knowledge of how the account statements were prepared and whether they were prepared in the ordinary course of [the original creditor's] business." ***Palisades***, 324 Wis. 2d 180, ¶23. We then stated:

> Because the affidavit does not set forth facts that would make the account statements admissible in evidence, the averment in the affidavit on the balance due is not admissible. Nothing in the affidavit shows that [the affiant] has personal knowledge of the amount owed if the account statements are inadmissible to prove the amount.

Id. Similarly, in this case, there is nothing in Neustadt's affidavit to show that, without the attached documents, Neustadt would have personal knowledge that Jones' debt was transferred from HSBC to Santander and from Santander to Main Street. Simply declaring he has personal knowledge of these events does not make it so. In other words, nothing in the affidavit "reasonably implies" that Neustadt would have any personal knowledge regarding those transfers absent the documents attached to his affidavit. *See* ***id.***, ¶24.

¶25 Because neither the averments in Neustadt's affidavit nor the attached documents establish a prima facie showing that Gemini owns Jones' debt, the circuit court erred by granting Gemini summary judgment. We therefore reverse and remand for further proceedings. Although our reversal based on Jones' first argument technically makes it unnecessary for us to address his remaining arguments, *see* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716, we choose to address those arguments in the interest of judicial efficiency because they are likely to arise again on remand, *see* ***State v. Temby***, 108 Wis. 2d 521, 527, 322 N.W.2d 522 (Ct. App. 1982).

II. WISCONSIN STAT. § 425.209(1)

¶26 Jones' second argument on appeal is that the circuit court erred by granting Gemini summary judgment because Gemini failed to establish that Jones' vehicle was sold in a commercially reasonable manner, as required by WIS. STAT. § 425.209(1).

¶27 As a threshold matter, we observe that Gemini argues Jones forfeited this argument by raising it for the first time during the hearing on Gemini's summary judgment motion. Gemini apparently believes that, in order to preserve this argument for appeal, Jones was required to raise it in his brief in opposition to Gemini's motion. However, the single, unpublished case Gemini cites in support of that proposition simply restates the well-established principle that a party forfeits its right to raise an argument on appeal by failing to first raise that argument in the circuit court. *See* ***Peterson v. Stevens***, No. 2013AP709, unpublished slip op. ¶16 (WI App Oct. 24, 2013) (citing ***Shadley v. Lloyds of London***, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838). The record here indisputably shows that Jones raised his argument regarding WIS. STAT. § 425.209(1) in the circuit court. Although Gemini noted during the summary judgment hearing that Jones had not raised § 425.209(1) in his brief, Gemini did not argue Jones had forfeited that argument and did not request additional time to brief and address the issue. Gemini cites no authority supporting its assertion that raising an argument during a motion hearing in the circuit court is insufficient to preserve that argument for appeal. We therefore reject Gemini's forfeiture argument.

¶28 Turning to the merits, WIS. STAT. § 425.209(1) provides:

> This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408); *a customer is not liable for a deficiency unless*

> *the merchant has disposed of the goods in good faith and in a commercially reasonable manner*.[7]

(Emphasis added.) This court has previously held that a merchant's "failure to dispose of the goods as required under [§ 425.209(1)]" is not an affirmative defense that must be raised and proved by the customer. *See* ***Shoeder's Auto Center, Inc. v. Teschner***, 166 Wis. 2d 198, 200, 479 N.W.2d 203 (Ct. App. 1991). Rather, "it is the merchant's duty to prove as part of its prima facie case that it disposed of the goods in a commercially reasonable manner before it is entitled to recover a deficiency judgment." ***Id.***

¶29 Jones asserts Gemini "has not provided any evidence … that would prove the vehicle for which it seeks a deficiency judgment has been sold in a commercially reasonable manner." Gemini does not dispute this assertion.[8] Instead, Gemini argues it was merely required, under ***Shoeder's Auto Center***, to prove as part of its prima facie case that Jones' vehicle was sold before Gemini filed suit. We disagree. Although the court in ***Shoeder's Auto Center*** initially framed the issue on appeal as whether, "under sec. 425.209(1), a merchant must dispose of the goods before it is entitled to recover a deficiency judgment," ***Shoeder's Auto Center***, 166 Wis. 2d at 199, in resolving that issue the court ultimately concluded "it is the merchant's duty to prove as part of its prima facie case that it disposed of the goods in a commercially reasonable manner before it is entitled to a deficiency judgment," ***id.*** at 200. Consistent with ***Shoeder's Auto Center***, we conclude that, in order to make a prima facie case for summary

[7] It is undisputed that WIS. STAT. § 425.209(1) applies to this lawsuit.

[8] Gemini notes on appeal that Jones' vehicle was sold for $5,400. Gemini does not, however, develop any argument that the sale of the vehicle was "commercially reasonable."

judgment, Gemini was required to present evidence demonstrating that Jones' vehicle was disposed of in a commercially reasonable manner. Because it is undisputed Gemini failed to present any evidence on that issue, we agree with Jones that the circuit court erred by granting Gemini summary judgment.[9]

III. Statute of limitations

¶30 Finally, Jones argues the circuit court erred by granting Gemini summary judgment because a disputed issue of material fact exists regarding whether Gemini's complaint was timely filed. The parties agree the applicable statute of limitations is WIS. STAT. § 893.43(1), which provides that an "action upon any contract, obligation, or liability … shall be commenced within 6 years after the cause of action accrues or be barred." The parties further agree that "[a] partial payment on the contractual obligation made before the statute of limitations has run tolls the statute and sets it running from the date of payment." *See* ***Liberty Credit Servs., Inc. v. Quinn***, 2004 WI App 202, ¶6, 276 Wis. 2d 826, 688 N.W.2d 768. The disputed issue is whether the evidence shows that a partial payment was made on Jones' debt within six years before Gemini filed this lawsuit—that is, at any time after March 23, 2009.

¶31 In opposition to Gemini's summary judgment motion, Jones filed affidavits averring that he "did not make a payment for the truck in question in

[9] Jones appears to assert that, if he prevails on appeal with respect to his argument regarding WIS. STAT. § 425.209(1), he is entitled to the remedies set forth in WIS. STAT. § 425.305. However, the issue of remedies is premature. We merely conclude in this opinion that Gemini failed to demonstrate as part of its prima facie case for summary judgment that Jones' vehicle was disposed of in a commercially reasonable manner. On remand, further proceedings will be necessary to determine whether the sale of the vehicle was, in fact, commercially reasonable.

2009." In support of that averment, Jones submitted his banking records from January 1, 2009, through June 30, 2009. Jones contends these records show that he did not make any payment toward the debt during that time period.

¶32 Gemini, however, asserts a partial payment was made toward Jones' debt on July 29, 2009. Gemini relies on an account statement from Santander, dated August 17, 2015, which shows a July 29, 2009 payment of $249.90. The account statement provides two descriptors regarding that payment: "User allocated payment" and "Gap Insurance Cancellation/Refund."[10]

¶33 Jones asserts the July 29, 2009 payment shown on the August 17, 2015 account statement was likely an insurance refund and was not a payment made by Jones himself. However, citing ***St. Mary's Hospital Medical Center v. Tarkenton***, 103 Wis. 2d 422, 427, 309 N.W.2d 14 (Ct. App. 1981), Gemini asserts that the six-year statute of limitations for a contract claim is tolled "based on a payment made by someone other than a debtor if made on behalf of the debtor." Gemini contends:

> Here, [Jones'] testimony that [he] did not personally make a payment in 2009 failed to raise a genuine dispute as [he] did not also testify that [he has] personal knowledge that no one else made a payment on [his] behalf. In fact, [Jones'] brief admits there was a July 29, 2009 payment by someone else that was credited towards the loan, likely associated with insurance. Under ***St. Mary's***, the payment from the insurance company tolled the statute of limitations.

[10] In addition to the August 17, 2015 account statement, Gemini relies, in part, on Neustadt's averment that "[t]he last payment made by or on behalf of [Jones] occurred on July 29, 2009, in the amount of $249.90." However, Neustadt's affidavit does not indicate that averment is based on anything other than the attached account statement. We therefore focus our analysis on whether the account statement shows that a partial payment was made on July 29, 2009.

¶34 ***St. Mary's*** involved a hospital's attempt to collect unpaid medical bills from Tarkenton, a former patient. ***Id.*** at 423-24. At the time of his hospitalization, Tarkenton was insured against some hospitalization costs under a policy issued by Republic National Life Insurance Company. ***Id.*** at 423. On July 18, 1972, Tarkenton "authorized Republic to pay the benefits due him under that policy to St. Mary's." ***Id.*** Republic subsequently made nine payments to St. Mary's, the last of which occurred on October 31, 1972. ***Id.*** Just under six years later, on October 24, 1978, St. Mary's sued Tarkenton seeking to recover the remainder of his unpaid medical bills. ***Id.***

¶35 On appeal, we concluded Republic's October 31, 1972 payment to St. Mary's qualified as a partial payment on Tarkenton's debt and therefore tolled the six-year statute of limitations on St. Mary's claim. ***Id.*** at 427. We noted that, in order for a partial payment to "operate as a new promise and avoid the bar of the statute of limitations," it must "be made under such circumstances as to warrant a clear inference that the debtor recognized the debt as an existing liability, and indicated his [or her] willingness, or at least an obligation, to pay the balance." ***Id.*** at 426 (quoting ***Davison v. Hocking***, 3 Wis. 2d 79, 86, 87 N.W.2d 811 (1958)). We reasoned that, in Tarkenton's case, the undisputed facts showed Tarkenton "recognized his obligation to pay St. Mary's and consented to the manner in which that obligation was partially paid"—i.e., through Republic's direct payment of Tarkenton's insurance benefits to St. Mary's. ***Id.*** at 427.

¶36 In this case, the record indicates that some type of insurance payment was applied to Jones' debt on July 29, 2009. However, unlike in ***St. Mary's***, there is no evidence here that Jones authorized any insurer to make payments toward the debt on his behalf. The record contains no evidence regarding who purchased the insurance policy under which the July 29, 2009

payment was made, or what terms that policy contained regarding how or under what circumstances the insurer would make refund payments. If Jones did not purchase the policy or someone did not purchase it on his behalf with Jones' knowledge and agreement, it is difficult to comprehend how any refund payment to a creditor under the policy could be said to have been made with Jones' consent. If Jones did take out the policy, one would expect that any refund would have been paid directly to Jones. If the policy instead required that any refund be paid to a creditor, an argument could be made that Jones consented to that procedure by accepting the policy's terms. Under those circumstances, a refund made to a creditor under the policy might be sufficient to trigger the partial payment doctrine. Here, though, there is no evidence that the policy under which the July 29, 2009 payment was made contained such a requirement.

¶37 Under these circumstances, we conclude there is a genuine issue of material fact as to whether Jones consented to the July 29, 2009 payment being made on his behalf, such that the payment triggered operation of the partial payment doctrine and therefore tolled the statute of limitations. Accordingly, the circuit court erred by concluding, as a matter of law, that Gemini's claim against Jones was timely filed.

By the Court.—Order reversed and cause remanded for further proceedings.

SAMPLE:

STATE OF WISCONSIN KENOSHA COUNTY CIRCUIT COURT

DEFENDANT'S MOTION TO DISMISS FOR LACK OF STANDING

COMES NOW Defendant, by and through counsel, Attorney Theresa Anne Carey, who hereby moves this Court for orders dismissing Plaintiff's claim with prejudice, and denying Plaintiff the relief requested in their moving documents, based on the following:

INTRODUCTION

Plaintiff brought suit herein based on a credit card debt allegedly owed by Defendant herein. Defendant disputes the debt and asserts no proof of ownership from Plaintiff has been forthcoming. At issue is whether or not Plaintiff is the real party in interest and has standing to bring this suit at all, as Defendant contends Plaintiff lacks standing to seek a judgment against Defendant, and Plaintiff has failed to establish ownership of the debt.

I. Plaintiff Lacks Standing to Sue

i. Requirement of Standing under Wisconsin Law

Standing to sue is a threshold issue that must be resolved prior to proceeding on the merits of the case. Standing is a concept that "restricts access to judicial remedy to those who have suffered some injury because of something that someone else has either done or not done." *Three T's Trucking v. Kost*, 2007 WI App 158, ¶16, 303 Wis. 2d 681, 736 N.W.2d 239.

The standing requirement serves two purposes. It ensures only litigants who have a lawful interest in the matter in controversy are entitled to be awarded judicial relief. *State ex rel. State Bar of Wisconsin v. Bonded Collections, Inc.*, 154 N.W.2d 250, at 254. It also ensures that

defending parties are protected from having to defend against litigants who cannot demonstrate a lawful interest in the matter in controversy.

Analysis of standing takes into account: (1) whether a party has asserted a personal interest or stake in the controversy; (2) whether the asserted interest of the party would be adversely affected; and (3) whether judicial policy calls for protecting the party's asserted interest. *Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc.*, 2011 WI 36, ¶40, 333 Wis. 2d 402, 797 N.W.2d 789. A real party in interest is "one who has a right to control and receive the fruits of the litigation." *Mortgage Assocs., Inc. v. Monona Shores, Inc*., 47 Wis. 2d 171, 179, 177 N.W.2d 340 (1970).

The requirements for standing must be established prior to proceeding with dispositive proceedings, including summary judgment or trial. On the issue of standing, the Wisconsin circuit courts must determine whether certain threshold requirements are met prior to proceeding to an evidentiary hearing on the merits. In this manner Wisconsin courts act as gatekeepers determining whether pleadings sufficiently meet threshold requirements necessary to maintain litigation. The requirements for establishing standing have not been met by Plaintiff, and they cannot rely on relaxed evidentiary standards when addressing the issue of standing.

ii. **Establishing Standing on Assigned Contract**

To establish standing under Wisconsin law on a contract, the litigant bringing suit must demonstrate the litigant lies in contractual privity with the defending party. *Badger State, Inc. v. Keller Constr. Co.*, 820 N.W.2d 155 (Wis. Ct. App., Dist. 3., 2012). Contractual privity establishes that the party bringing suit has a lawfully enforceable interest in the contract, and therefore, will suffer harm from damages that arise from breach of said contract.

With respect to contracts having been assigned to another party after first being entered into, the Wisconsin Supreme Court has held that litigants bringing suit on such contracts **must** offer proof there was a valid assignment of said contract. *Felger v. Kozlowski,* 130 N.W.2d 758, at 759 (1964), [emphasis added]. This is an essential element that must be established, even in small claims matters. If evidence of a valid assignment cannot be substantiated, then proof of contractual privity between the parties cannot be demonstrated. A court must then dismiss the matter on jurisdictional grounds for lack of standing. By failing to establish contractual privity on an assigned contract, the party bringing suit has not satisfied whether the party has an actual interest in said contract, and thus, is not entitled to be awarded judicial relief.

While evidentiary standards in small claims matters are often relaxed, the requirement to prove standing is not subject to the relaxed small claims evidentiary standard. In *Gemini Capital Group, LLC., v. Leroy Jones and Roger Jones*, 904N.W.2d 131 (2017), 378 Wis.2d 614, 2017 WI App 77, the Court of Appeals held that an alleged successor in interest Plaintiff must establish proof of ownership of a specific debt in order to have standing to bring suit on said alleged debt, and that ownership of the debt is required to establish a prima facie case in both large and small claims matters. (emphasis added).

Quoting from *Gemini* on the issue of what is required to make a prima facie showing that a debt-purchasing plaintiff has standing (and referencing several small claims cases upon which they relied):

> We believe it is self-evident that, in order to make a prima facie showing that it is the owner of Jones' debt, Gemini must present evidence indicating that it owns that specific debt. Gemini must present evidence showing that Jones' specific debt was transferred from HSBC to Santander, from Santander to Main Street, and finally from Main Street to Gemini. Merely demonstrating that multiple, unspecified debts or accounts were transferred between these entities is insufficient to make a prima facie showing that Gemini currently owns Jones'debt, such that it is the real party in interest and has standing to obtain a

> deficiency judgment against Jones. Cases from several other jurisdictions support this conclusion. See *In re Kendall*, 380 B.R. 37, 46 (Bankr. N.D. Okla. 2007); *Hutto v. CACV of Colo., LLC*, 707 S.E.2d 872, 875 (Ga. Ct. App. 2011); *Arrow Fin. Servs., LLC v. Guiliani*, 32 A.3d 1055, 1058(Me. 2011); Premier Capital, LLCv. Baker, 972 N.E.2d 1125, 1134 (Ohio Ct. App. 2012); *Kenny v. Portfolio Recovery Services., LLC,* 464 S.W.3d 29, 33-34 (Tex. App. 2015); See also JONATHAN SHELDON ET AL.,COLLECTION ACTIONS: DEFENDING CONSUMERS AND THEIR ASSETS§4.3.4.2.2 (3d ed. 2014).

and further quoting from *Gemini Capital Group, LLC., v. Leroy Jones and Roger Jones,* supra*:*

> In response to Gemini's summary judgment motion, Jones' attorney submitted an affidavit, attached to which were several pages, each of which appears to contain a single line from a spreadsheet. Jones' attorney described these pages as "a true and accurate copy of a spreadsheet provided by [Gemini] to [Jones]." The spreadsheet pages refer to Jones by name, list the "original product" as "HSBC Serv Auto Loan," and list the "seller" as "Main Street Acquisition Corp." However, aside from Jones' attorney's averment that Jones received the spreadsheet pages from Gemini, there is nothing in the record to indicate which company prepared the spreadsheet or the reason for which it was prepared. <u>There is no evidence indicating that this spreadsheet is the "electronic file" referenced in the July 16, 2014 "Bill of Sale and Assignment" from Main Street to Gemini.</u> (emphasis added)

In the case at bar, Plaintiff has failed to establish it has standing to proceed in this matter, in fact they failed to disclose that they are not the creditor which is actionable, and no competent evidence has been submitted by Plaintiff to establish ownership of the debt such that Plaintiff is the real party in interest and would have standing to collect on a judgment against Defendant herein.

The rationale for requiring proof of ownership is based on the fact that after uncollectable credit card debt is discharged, lists are then generated of "junk debt", and these lists - but not necessarily the debt - are then sold, often to multiple buyers. Terms and conditions of these sales are rarely, if ever, disclosed by the buyers and there is generally no indication whatsoever of what, <u>if anything</u>, was actually sold/purchased.

Palisades Collection LLC v. Kalal, 2010 WI App 38, 781 N.W.2d 503, 324 Wis. 2d 180 (Wis. App. 2010), requires a showing that the witness has personal knowledge of how the documents in question were created, which becomes relevant at trial if Plaintiff attempts to bring a witness from "XXX" , who does not have such personal knowledge. Any witness presented by the Plaintiff will be required to meet this standard.

Plaintiff has submitted no reliable records/proof of ownership, and no relevant nor authenticated exhibits. But even if they had, as *Palisades* further correctly points out, having copies of records in and of itself does not meet the requirements of WIS.STAT. §908.03(6), without otherwise being a qualified witness, which requires the affiant have personal knowledge of how the (original) records were prepared.

Quoting further from *Palisade* relying on *In re Denslow*, 104 B.R. 761 (E.D. Virginia, 1989) "courts have held that the witness must have personal knowledge of how the records were made so that the witness is qualified to testify that they were made at or near the time of the event by, or from information transmitted by, a person with knowledge" and "in the course of a regularly conducted activity.

Plaintiff "CS I", as the moving party, in order to make a prima facie case, must provide proof of ownership via admissible evidence. *Gross*, 259 Wis.2d 181, 1131, 655 N.W.2d 718. Plaintiff may argue that a relaxed small claim evidentiary standard applies under §799.209, to the issue of standing to bring suit. However, the relaxed small claim evidentiary rules[1] only apply to evidentiary hearings, NOT to the threshold issue of whether or not a party, here the Plaintiff, has standing to bring suit in the first place.

[1] Ch. 799 distinguishes general civil procedure from the small claims evidentiary standard, which is set forth in Section 799.04 Relation of this chapter to other procedural rules. (1) General. Except as otherwise provided in this chapter, the general rules of" nctice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under this chapter.

It should be noted that the *Gemini* court relied in part on multiple small claims cases in other jurisdictions, and Gemini is frequently cited in third party debt buyer small claim cases throughout the State of Wisconsin:

> *Gemini must present evidence showing that Jones' specific debt was transferred from HSBC to Santander, from Santander to Main Street, and finally from Main Street to Gemini. Merely demonstrating that multiple, unspecified debts or accounts were transferred between these entities is insufficient to make a prima facie showing that Gemini currently owns Jones' debt, such that it is the real party in interest and has standing to obtain a deficiency judgment against Jones. Cases from several other jurisdictions support this conclusion. See In re Kendall, 380 B.R. 37, 46 (Bankr. N.D. Okla. 2007); Hutto v. CACV of Colo., LLC, 707 S.E.2d 872, 875 (Ga. Ct. App. 2011); Arrow Fin. Servs., LLC v. Guiliani, 32 A.3d 1055, 1058(Me. 2011); Premier Capital, LLCv. Baker, 972 N.E.2d 1125, 1134 (Ohio Ct. App. 2012); Kenny v. Portfolio Recovery Assocs., LLC, 464 S.W.3d 29, 33-34 (Tex. App. 2015)* (emphasis added)

Plaintiff has completely failed to meet the standards set forth in *Gemini* and in *Palisade*, as set forth above. In fact, they failed completely to even disclose that they are not the original creditor and have made no showing of standing whatsoever. Failure to disclose they are a third party debt buyer is tantamount to fraud.

II. Plaintiff's Argument for Account Stated Fails Under Wisconsin Law

Plaintiff may assert a cause of action that an "account stated" arose on the credit account fails under Wisconsin law. According to the Supreme Court of Wisconsin a claim for an "account stated" will arise when there "is *an agreement between debtor and creditor that the items of the transaction between them are correctly stated in a statement rendered, that the balance shown is owing by the one party to the other, and that the one* [party] *promises to pay that balance to the other*[party]." Estate of Vixen,1 Wis.2d 193, at 199 (1957).

To better summarize - a claim for an "account stated" will arise under Wisconsin law only if all parties to an account assent to the correctness of a particular balance. If, however, one

of the parties to an account notifies the other party(ies) they disagree with the alleged balance, then a dispute over the alleged balance will then arise. Once a dispute over an account balance arises any claim for an "account stated" will cease.

The Defendant, acting through his/her official representative, gave notice to Plaintiff that Defendant disputes the balance on the alleged account in its entirety. This written notice disputing the alleged credit account balance is evidence that a mutually agreed upon balance was ***never struck*** between Plaintiff and Defendant. It also served to revoke any promise Defendant may have allegedly made to Plaintiff (although in reality no such promise was ever forthcoming as Plaintiff is not a party in interest and has no standing in this case) to make payments on the alleged balance, neither express nor implied.

Defendant's written notice disputing the account altogether, as well as the alleged balance or any debt whatsoever, is evidence to the contrary that an account stated ever arose under Wisconsin law.

Wisconsin law is clear - ***all parties*** to an account must accept the correctness of a balance for an "account stated" to come into existence. Owing to Defendant's evidence disputing the alleged account balance, the Court should respectfully deny Plaintiff's request and dismiss this matter.

III. The Credit Account Balance Remains in Dispute

Defendant disputes any evidence of account stated. Plaintiff failed to provide statements showing a starting balance of zero ($0.00) balance, and failed to submit a transaction history for the alleged credit account beginning from a starting balance of zero and its failure to state when the alleged credit account was first opened and when it was closed/charged-off, denies Defendant the ability to conduct a full and thorough audit of the Credit Account. Thus

Defendant is unable to cross-check the balance that Plaintiff claims is due and owing with the findings from Defendant's audit. This inability to conduct a full and thorough audit essentially deprives Defendant of due process for this matter.

Defendant respectfully requests the Court find the alleged credit accountt balance is unsubstantiated, and Plaintiff has no basis upon which to assert an account stated base

CLOSING

The burden is on Plaintiff to establish standing and they have failed to meet their burden. Without standing, Plaintiff has no claim upon which it can receive relief, and thus Plaintiff's claim must be dismissed with prejudice.

Dated this 16th day of September, 2026

Respectfully submitted,

The People's Law Clinic

[electronically signed by *Theresa Anne Carey*]

Theresa Anne Carey, SBN 1115684
Attorney for Defendants