CHAPTER 421

CONSUMER TRANSACTIONS — GENERAL PROVISIONS AND DEFINITIONS

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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 (No. 3 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.

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 consumer act may constitutionally regulate sales to residents by out−of−state mail order retailer. Aldens, Inc. v. LaFollette, 552 F.2d 745.

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

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

Protection for consumers against unfair and deceptive business. Jeffries, 57 MLR 559.

An overview of the Wisconsin consumer act. Stute, 1973 WBB No. 1.

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

Wisconsin consumer credit laws before and after the consumer act. Crandall, 1973 WLR 334.

Usury and the time−price differential. 1975 WLR 246.

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

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 (1) Unless superseded by the particular provisions of chs. 421 to 427, chs. 401 to 411 and the principles of law and equity, including the law relative to capacity to contract,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.

An arbitration provision explicitly prohibiting a consumer from proceeding as part of a class was unconscionable. Permitting predispute waivers of class proceedings would be contrary to the Wisconsin Consumer Act's purpose of protecting consumers from unfair practices. Cottonwood Financial, LTD v. Estes, 2010 WI App 75, 325 Wis. 2d 749, 784 N.W.2d 726, 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 transactions 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 com-

mercial 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.

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 WCA is applicable, no choice−of−law provisions are effective. Credit Acceptance Corporation 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 (No. 1 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 $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.

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 involved 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 exceed 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 restaurant 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, 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 244, 510 N.W.2d 789 (Ct. App. 1993).

If a lessor of personal property is bound for a period exceeding 4 months, a consumer lease under sub. (11) exists even though the lessee may exercise an option to purchase the leased goods less than 4 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 her 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 Company, LLC, 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, LLC v. Michaud, 2006 WI App 164, 295 Wis. 2d 585, 721 N.W.2d 718, 05−1299.

The applicability of the consumer act to rent−to−own contracts is discussed. Burny v. Thorn, 944 F. Supp. 762 (1996).

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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 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 s. 421.401 applies. Brunton v. Nuvell Credit Corporation, 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 Corporation, 2010 WI 50, 325 Wis. 2d 135, 785 N.W.2d 302, 07−1253.