

Wisconsin Debt Collection Law

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Rausch, Sturm, Israel, Enerson & Hornik, LLC (RSIEH) was founded in 1977, It is headquartered in Brookfield, Wisconsin. With offices in 13 other states, its practice is dedicated to creditors' rights, with the predominant portion being related to retail and student loan collections. The firm's legal network, CAPPs, was created in 2008.

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Debt Collection Licensing

A foreign corporation may not transact business in Wisconsin until it obtains a certificate of authority. [Wis. Stat. 180.1501\(a\)](#). However, maintaining, defending, or settling a civil action, or securing or collecting debts, enforcing mortgages and security interests in property securing debts are not activities that constitute transacting business. [Wis. Stat. 180.1501\(2\)\(a\) and \(h\)](#).

Collection agencies are regulated under Subchapter III of the Wisconsin Statutes Chapter 218, and the corresponding regulations under Chapter DFI-Bkg 74. A "collection agency" is defined as any person engaging in collecting or receiving payments for others of any indebtedness. [Wis. Stat. 218.04\(1\)\(a\)](#). A collection agency does not include attorneys authorized to practice law in Wisconsin¹, and resident banks, express companies, health care billing companies, state savings banks, state savings and loan associations, insurers and their agents, trust companies, real estate brokers and agents, and district attorneys. *Id.* While a person may not operate as a collection agency without having obtained a license, a nonresident is not required to obtain a license, if the person conducts collection business with state residents solely by means of interstate telecommunications or interstate mail. [Wis. Stat. 218.04\(2\)\(a\)-\(b\)](#). But if the nonresident physically enters Wisconsin to solicit accounts from creditors or to collect on accounts, the person is required to obtain a license and have a physical office in this state. *Id.*, DFI-Bkg 74.02.

At the time of making an application, the applicant shall pay a nonrefundable \$1000 fee to the division to cover the cost of its investigation, and a \$200 annual fee. [Wis. Stat. 218.04\(3\)\(b\)](#). If the cost of the division's

¹ An attorney not licensed to practice law in Wisconsin must obtain a license to collect, unless the person does not enter the state and conducts collection business solely by means of interstate telecommunications or interstate mail. The non-licensed attorney cannot have a physical presence in this state. Finally, even if the attorney is licensed, he or she cannot maintain or defend a civil action without being authorized to practice law in this state and being in good standing with the Wisconsin State Bar.

investigation exceeds the \$1000 initial deposit, the applicant shall pay the excess cost upon demand of the division. *Id.* The division may also require the licensee to file and maintain a bond in an amount deemed sufficient to safeguard the interests of the public. [Wis. Stat. 218.04\(3\)\(d\)](#). The licensee shall also establish and maintain a trust, and maintain in said account all money collected and due to any claimant or forwarder, and file annual reports. [Wis. Stat. 218.04\(9g\)](#); [Wis. Stat. 218.04\(10\)](#), see also DFI-Bkg 74.06 and 74.12. Subchapter III also provides for penalties for violating any section thereof. A person in violation shall be guilty of a misdemeanor and fined up to \$1,000 or serve up to 6 months in the county jail. [Wis. Stat. 218.04\(12\)](#).

Wisconsin Consumer Act

Regardless of whether a person must obtain a collection agency license, all debt collectors must comply with the provisions of the Wisconsin Consumer Act (“WCA”) (Chapters 421-427 of the Wisconsin Statutes). Although generally not cited as part of the WCA, the provisions of the WCA also apply to Chapter 429: Motor Vehicle Consumer Leases. The Chapters relevant to debt collection are; Chapter 421: Consumer Credit – General Provisions and Definitions; Chapter 422: Consumer Credit Transactions; Chapter 423: Consumer Approval Transactions and Other Consumer Rights; Chapter 425: Consumer Transactions – Remedies and Penalties; and Chapter 427: Consumer Transactions – Debt Collection².

The WCA applies to consumer transactions made in Wisconsin and to modifications including refinancings, consolidations and deferrals, made in this state, of consumer credit transactions wherever made. [Wis. Stat. 421.201](#). A consumer transaction is a transaction in which one or more of the parties is a customer for purposes of the transaction. [Wis. Stat. 421.301\(13\)](#). Other relevant definitions include:

- **Consumer credit sale** – a sale of goods, services, or an interest in land to a consumer 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...the owner of the goods or real property upon full compliance with the terms of the agreement. [Wis. Stat. 421.301\(9\)](#).
- **Consumer credit transaction** – 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. [Wis. Stat. 421.301\(10\)](#).

² Chapter 427 applies to conduct and practices in connection with the collection of obligations arising from consumer credit transaction, including transactions that are primarily for an agricultural purpose. Wis. Stat. 427.102. A creditor collecting its own debt is subject to Chapter 427, whereas it is not subject to the FDCPA. See Wis. Stat. 427.104 for a list of prohibited practices.

- **Creditor** – a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit or by procuring consumer credit from third parties. [Wis. Stat. 421.301\(16\)](#).
- **Customer** - a 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 agricultural purposes under Chapter 427 only) and the same is used 50 percent or more for one or more of these purposes. [Wis. Stat. 421.301\(17\)](#).
- **Merchant** – a person who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit or by procuring consumer credit from third parties. [Wis. Stat. 421.301\(25\)](#).

While the definitions and territorial reach of the WCA are quite broad, the WCA does provide several exclusions – notably consumer credit transactions in which the amount financed exceeds \$25,000 and transactions secured by a first lien real estate mortgage or equivalent security interest. [Wis. Stat. 421.201\(6\) and \(7\)](#).

Under 425.308, a customer who prevails in an action arising from a consumer credit transaction may recover attorneys fees. But the award of attorneys fees is limited by [Wis. Stat. 814.045\(2\)](#).

By statute, the WCA is to be liberally construed and applied to promote its purpose and policies. [Wis. Stat. 421.102\(1\) and \(2\)](#). And its remedies are to liberally administered. [Wis. Stat. 425.301\(1\)](#). There are limits, however. A person who violates the WCA will not be liable for penalties provided in sections [425.302\(1\)\(a\)](#), [425.303\(1\)](#), [425.304\(1\)](#), or [425.305\(1\)](#) if the person can show beyond a preponderance of the evidence that the violation was unintentional and resulted from a bona fide error. [Wis. Stat. 425.301\(3\)](#). Liability under the WCA is also in lieu of and not in addition to liability under federal consumer protection act, and if there are multiple obligors, there may be no more than one recovery of civil penalties for each violation. [Wis. Stat. 425.301\(4\) and \(5\)](#).

Costs and Fees

The costs and fees associated with engaging the Wisconsin courts are provided in Chapter 814 (foreclosures are addressed in Chapter 846). In an action for the recovery of money, the clerk of court shall charge the party paying the fee a court support service charge (CSS) in the amount of \$51 for claims under \$10,000, and \$169 for claims over \$10,000. [Wis. Stat. 815.85\(1\)](#). The clerk shall also charge a justice information surcharge (JINFO) of \$21.50 (\$25.00 in Milwaukee County) in nearly all actions. [Wis. Stat. 814.86\(1\) and \(1m\)](#). Effective July 1, 2011, the relevant costs and fees, inclusive of the CSS and JINFO, are as follows:

- Filing a civil action : \$269.00 Milwaukee County (Wis. Stat. 814.61(1))
: \$265.50 in all other counties (Wis. Stat. 814.61(1))
- Personal service : \$45.00-\$120.00
- Publication (civil) : \$85.00-\$300.00
- Publication (small claims) : \$20.00-\$100.00
- Jury fee : \$36.00-\$72.00 (\$6/juror) (Wis. Stat. 814.61(4))

- Filing a small claims action : \$98.00 Milwaukee County (Wis. Stat. 814.62(3))
: \$94.50 in all other counties (Wis. Stat. 814.62(3))
- Service by mail (small claims) : \$2.00 (Wis. Stat. 814.62(4))
- Demand for jury trial : \$89.00 (Wis. Stat. 814.62(3) and 814.61(4))
- Docketing : \$5.00 (Wis. Stat. 814.61(5))
- Garnishment (civil) : \$210.50 (Wis. Stat. 814.62(1))
- Garnishment (small claims) : \$92.50 (Wis. Stat. 814.62(1))
- Filing a foreign judgment : \$15.00 (Wis. Stat. 814.61(6) and 806.24)
- Transcription of judgment : \$5.00 (Wis. Stat. 814.61(5))

Limitations on Actions

A creditor or assignee thereof, seeking to collect a debt in Wisconsin, can generally initiate suit within 6 years from the date the cause of action accrues. Limitations on actions are addressed in Chapter 893 of the Wisconsin Statutes, and are as follows:

- Confirmation of Arbitration Award: 1 year (Wis. Stat. 788.09)
- Bank deposits and Collections: 3 years (Wis. Stat. 404.111)
- Auto lease deficiencies: 4 years (Wis. Stat. 411.506)
- Action on contract: 6 years (Wis. Stat. 893.43)
- Auto loan deficiencies: 6 years (Wis. Stat. 893.43)
- Action on contract for sale: 6 years (Wis. Stat. 402.725)
- Action to recover personal property: 6 years (Wis. Stat. 893.35 and 893.51)
- Action on a judgment of court not of record: 6 years (Wis. Stat. 893.42)
- Personal actions on any contract not limited by Ch. 893 or any other law of the State: 10 years (Wis. Stat. 893.50)
- Action on a judgment or decree of court of record: 20 years (Wis. Stat. 893.40)
- Negotiable instruments: Varies (Wis. Stat. 403.118)

Pursuant to [Wis. Stat. 893.05](#), the expiration of the statute of limitations eliminates the creditor's right to collect on the debt as well as any available legal remedies. Attempting to collect on a time barred debt will most likely be a violation of the Wisconsin Consumer Act.

After determining the cause of action, the inquiry necessarily shifts to establishing when the cause of action accrued. Actions on a judgment accrue on the date the judgment or decree is entered, regardless of whether it is a domestic or foreign judgment. [Wis. Stat. 893.40](#). An action upon an open account is deemed to have accrued at the time of the last item proved on the account. [Wis. Stat. 893.64](#). A partial payment made before the statute of limitations expires tolls the statute and sets it running from the date of the payment. [St. Mary's Hospital Medical Center v. Tarkenton, 103 Wis.2d 422, 309 N.W.2d 14 \(Ct. App. 1981\)](#).

In Wisconsin it is well settled that when a debtor makes a payment on a credit card, the payment not only tolls the statute of limitations, but also sets it running anew from the date on which the payment was made. It is

equally settled that funds do not need to be transferred. All that is required is that the payment be accepted and negotiated by the creditor or real party in interest. Therefore, if the debtor makes a partial payment on the debt, the creditor does not lose the right to pursue the outstanding, unpaid balance.

In *Liberty Credit Services* the Court of Appeals held that a partial payment on a contractual obligation made before the statute of limitations has run tolls the statute and sets it running from the date of payment. [Liberty Credit Services, Inc. v. Quinn, 276 Wis.2d 826, 830, 688 N.W.2d 768, 770 \(Wis.App., 2004\)](#).³ The court reasoned that a payment on a contract claim extends the statute of limitations to encourage settlement agreements without litigation. *Id.* at 831. The court also addressed payments made outside the original statutory period and held that “periodic partial payments on a debt may be made beyond the ordinary statutory limitation period without the creditor losing the right to pursue the unpaid balance.” *Id.* The court concluded that a payment is not conditioned on the actual transfer of funds, but upon the recipient’s action of negotiating the instrument. *Id.* at 831. “It is not necessary for the funds to have actually transferred...to constitute payment.... [A] subsequent cancellation does not detract from the fact that a payment was made...” *Id.* The test in Wisconsin is not whether funds were transferred to satisfy a debt, either in part or in whole, but whether the debtor tendered and the creditor negotiated the payment in good faith. Under this reasoning, even a bad (bounced or worthless) check will set the statute running anew.

Worthless Checks

In addition to facing criminal penalties, an adult or emancipated minor who issues a worthless check may also be subject to civil liability. [Wis. Stat. 943.24](#), [Wis. Stat. 943.245](#). A person who issues a worthless check not more than \$2,500 is guilty of a Class A misdemeanor. [Wis. Stat. 943.24\(1\)](#). And a person who issues a single worthless check in excess of \$2,500 or who issues any number of checks totaling in excess of \$2,500 within a 90 day period is guilty of a Class I felony. [Wis. Stat. 943.24\(2\)](#). However, a conviction under 943.25 is not a condition precedent to obtaining a judgment under 943.245. [Wis. Stat. 943.245\(5\)](#).

If the person seeking to collect under 943.245 proves beyond a preponderance of the evidence that the defendant issued a check in violation of 943.24 and should have known or recklessly disregarded the fact that the check was drawn on an account that did not exist, was drawn on an account with insufficient funds, or was otherwise worthless, the plaintiff is entitled to the following: the face value of the check, actual damages not covered under [943.245\(1\)\(a\)](#), exemplary damages not more than 3 times the value of the check and actual damages, and the actual cost of filing the action plus attorney fees. [Wis. Stat. 943.245\(1m\), \(2\) and \(5\)](#). However, the amount awarded for exemplary damages and attorney fees may not exceed \$500. [Wis. Stat. 943.245\(3\)](#).

³ See also; *Schneider v. Anderson*, 227 Wis. 212, 278 N.W. 460 (1938) (interest payment on note starts new six year period beginning on first day of last payment); *Meyer v. Selover*, 225 Wis. 389, 273 N.W. 544 (1937) (payment on open account served to keep account open and enforceable through 18 year period which elapsed).

Before filing an action under 943.245, the plaintiff must give 20 days' written notice to the defendant. Wis. Stat. 943.245(4). If the defendant pays the check in full before the 20 days expires then he or she is not liable *Id.* A plaintiff acting in good faith, who commences an action to collect a worthless check, is protected from criminal penalties for threatening to accuse another of a crime under 943.30. Finally, nothing in 943.245 prevents a plaintiff from bringing the action in small claims court (see Chapter 799), provided that the jurisdictional limits are met. [Wis. Stat. 943.245\(8\)](#).

Replevin

Replevins are generally governed by Chapter 810 of the Wisconsin Statutes, unless the collateral securing the obligation arise from a consumer credit transaction. If the property is not abandoned⁴ or voluntarily surrendered⁵ by the debtor, a creditor can elect one of three ways to enforce its security interests in collateral: non-judicial enforcement (self help), a replevin judgment, or a combination judgment. All are controlled by Chapter 425, Subchapter II (Enforcement of Security Interests in Collateral). Non-judicial enforcement is permitted under [Wis. Stat. 425.205\(1g\)](#), but that section carries specific notice requirements and is further limited by [Wis. Stat. 425.206](#). The combination judgment, like non-judicial enforcement, is also rarely used. Under [Wis. Stat. 425.203\(2\)](#), the judgment may provide for the right to possession of the collateral and for a deficiency. However, no deficiency shall be sought where the deficiency is less than \$1,000. [Wis. Stat. 425.209\(2\)](#).

The most common method of securing the creditor's rights in the collateral is through a replevin judgment. Under [Wis. Stat. 425.206](#), no merchant may take possession of collateral or goods subject to a consumer lease other than by exercise of legal process; subject to the exceptions previously mentioned. This applies even if the debtor takes the collateral and moves to another state ([First Wisconsin Nat'l. Bank v. Nicolau](#), 113 Wis. 2d 524, 335 N.W.2d 390 (1983)), or if the contract was entered into in another state by a Wisconsin resident or the debtor later becomes a resident at the time of default. [Walser Leasing, Inc. v. Simonson](#), 120 Wis.2d 458, 355 N.W.2d 545 (Wis. App. 1984).

Pursuant to [Wis. Stat. 425.205](#), replevin actions are conducted under the small claims rules and procedures prescribed by Chapter 799 of the Wisconsin Statutes, regardless of the value of the collateral. The replevin judgment only determines the right to possession of the collateral. [Wis. Stat. 425.205\(1\)\(e\)](#). A deficiency judgment is not waived, but simply sought in a separate action. *Id.* Once the creditor has obtained its replevin judgment and takes steps to repossess the collateral, the creditor cannot commit a breach of the peace or enter the customer's residence, unless at his or her request. [Wis. Stat. 425.206\(2\)](#). Finally, the collateral must be sold in a commercially reasonable manner. [Wis. Stat. 409.610 and 409.627](#).

⁴ See Wis. Stat. 425.207

⁵ See Wis. Stat. 425.204

Post Judgment Remedies and Exemptions

Docketing a judgment grants the creditor (thereafter judgment creditor) a lien on the debtor's real estate in the county where the judgment was docketed ([Wis. Stat. 806.15\(1\)\(a\)](#)), but a creditor must take other affirmative steps if it wants to collect the value of its judgment. The primary post judgment remedies are garnishment (Chapter 812) and execution (Chapter 815).

There are 3 kinds of executions: one against the property of the judgment debtor, another against the judgment debtor's person, and the 3rd for the delivery of property belonging to the judgment debtor. [Wis. Stat. 815.03](#). The process for issuing an execution is prescribed by under [Wis. Stat. 815.05](#), and in most instances the clerk in the county where the judgment was originally docketed issues the writ of execution. [Wis. Stat. 815.05\(1g\)\(a\)](#). Notably, an execution against property may only be issued in a county where the judgment is docketed. [Wis. Stat. 815.07](#). If debtor moves to a new county, the judgment must be transcribed in that new county.

A judgment creditor who wishes to execute, but has waited more than five years after the judgment is rendered must seek leave of the court before proceeding. [Wis. Stat. 815.04\(1\)\(b\)](#). And while the ten year limit on a judgment lien ([Wis. Stat. 806.15\(1\)](#)) does not apply to executions, no execution is permitted after 20 years from the date the judgment is rendered. [Wis. Stat. 815.04\(1\)\(c\)](#). Lastly, a judgment creditor should expect the possibility it will have to provide security (usually in the form of a bond) to indemnify the officer levying on property. [Wis. Stat. 815.24](#).

Chapter 812 is separated into two parts; Subchapter I, Garnishment of Property Other than Earnings, and Subchapter II, Earnings Garnishments. Regardless of which subchapter the creditor relies on, Wisconsin courts do not have jurisdiction over a foreign garnishee based solely on the garnishment's employment of the debtor. The jurisdictional ([Wis. Stat. 801.05](#)) and venue ([Wis. Stat. 801.50](#)) requirements apply to both the debtor and the garnishee.

While both pre and post judgment non-earnings garnishments are contemplated under [Wis. Stat. 812.02](#), pre-judgment garnishments are rare, and prohibited in consumer credit transactions. [Wis. Stat. 425.111](#). A non-earnings garnishment is commenced by filing a summons and complaint, and serving both the debtor and the garnishee. [Wis. Stat. 812.07\(1\)](#). Because Wisconsin is a marital property state (see Chapter 799), the debtor's spouse may also be a defendant if the property being sought is marital property. [Wis. Stat. 812.01\(1\)](#), 812.02(2e). Under Wisconsin's marital property laws, marital property of either spouse is available to satisfy a judgment in a garnishment action. [Wis. Stat. 812.02\(1\)](#).

Once the creditor successfully obtains an order directing the garnishee to turn over specific property or pay money to the creditor, the garnishee become liable to the creditor for the property or funds in its possession up to the amount of the claim, less amounts exempt from execution. [Wis. Stat. 812.18\(1\)](#). In addition to the exemptions below, no garnishee is liable by having drawn, accepted, made, endorsed, or guaranteed a negotiable instrument; by having collected any amount through its own execution; by holding money as a public officer; or by anything owed upon a contingency. [Wis. Stat. 812.19\(1\)](#). Furthermore, property held in a safe deposit box is not property in possession or control of the bank. [Wis. Stat. 812.19\(5\)](#).

An earnings garnishment is an action to collect an unsatisfied civil judgment for money damages, plus statutory interest and costs from earnings payable by the garnishee to the debtor. [Wis. Stat. 812.32](#). The creditor can only commence an earnings garnishment in a county where the judgment was entered or has been transcribed. [Wis. Stat. 812.31\(3\)](#). An earnings garnishment lasts for a period of 13 weeks (Wis. Stat. 812.35(5)), unless the parties stipulate to an extension (Wis. Stat. 812.4), or the debtor is a state employee. The wages paid to debtors employed by a state or political subdivision thereof shall be garnished until the judgment is satisfied. [Wis. Stat. 812.42\(2\)\(b\)](#).

As an alternative to garnishment, the creditor and debtor may agree for the debtor to pay a fixed amount or percentage of his or her wages until the judgment is paid. [Wis. Stat. 241.09](#). A wage assignment is generally effective for a period not to exceed six months (Id.), but if the debt arose out of a consumer credit transaction, then the wage assignment must be terminable at will by the debtor. [Wis. Stat. 422.404\(1\)](#).

Lastly, a garnishee who fails to pay funds over to the creditor within the time period prescribed by [Wis. Stat. 812.39\(1\)](#) may be held liable directly to the creditor. If payment is not made, the creditor may move the court for judgment against the garnishee for amount of the unsatisfied judgment, plus interests and fees. [Wis. Stat. 812.41](#).

Chapter 816 of the Wisconsin Statutes permits a judgment creditor to compel the debtor to answer concerning his or her property. [Wis. Stat. 816.03](#). A judgment debtor is also required by small claims procedure to complete and return to the creditor a financial disclosure statement. [Wis. Stat. 799.26](#). A judgment debtor who does not appear for a supplemental exam, does not return the financial disclosure statement, or violates any other order of the court, may be compelled by the court's contempt powers to appear and answer. *Smith v. Burns*, 65 Wis.2d 638, 223 N.W.2d 562 (1974). An arrest warrant under Chapter 816, however, is not an available remedy for creditors under the Wisconsin Consumer Act. Wis. Stat. 425.113(1).

Judgment debtors facing garnishment or execution are not left without protection, however. Unless a court otherwise grants relief after a hearing on the matter, 80 percent of the debtor's disposable income is exempt from an earnings garnishment under [Wis. Stat. 812.30](#) et. seq. (discussed above). [Wis. Stat. 812.34\(2\)\(a\)](#). His

or her earnings are totally exempt if the debtor's household income is below the poverty guidelines (updated annually) or the debtor receives need-based public assistance. [Wis. Stat. 812.34\(2\)\(b\)](#). In any case, the garnishment is limited to the debtor's income in excess of the poverty guidelines before the garnishment is in effect. [Wis. Stat. 812.34\(2\)\(c\)](#).

A debtor may also claim certain reasonable exemptions as allowed under [Wis. Stat. 815.18\(3\)](#). With that said, it is the debtor's responsibility to affirmatively claim the exempt property as exempt. [Wis. Stat. 815.18\(6\)](#). A debtor may claim the exemption at the time of seizure or within a reasonable time thereafter, but before disposition by sale or court order. *Id.* A resident debtor may also exempt his or her interest in the following, where a nonresident is entitled to the exemptions provided by the laws of his or her state of residence.⁶ [Wis. Stat. 815.18\(5\)](#).

1. Provisions for burial of the debtor or the debtor's family.
2. Business and farm property, including equipment, inventory, farm products and professional books used in the business of the debtor or dependant of the debtor, and not exceeding \$15,000.
3. Child or family support, or maintenance payments to the extent that said payments are reasonably necessary for the support of the debtor and his or her dependants.
4. Certain consumer goods not to exceed \$12,000 in aggregate value.
5. All sums paid as state aid under [Wis. Stat. 93.23\(1\)](#) to county fairs and agricultural societies.
6. Federal disability and insurance benefits under 42 USC 401 to 433.
7. For 2 years after the date of receipt, insurance proceeds on exempt property payable to or received by the debtor if the property was destroyed by fire or casualty of any nature
8. All money paid or ordered to be paid to any member of any fire or police department or surviving spouse or guardian of the minor children of a deceased or retired member.
9. All fire engines and equipment belonging to or which may belong to any town, city, or village in this state
10. Life insurance and annuities owned by the debtor and insuring the debtor, debtor's dependant, or an individual of whom the debtor is a dependant, up to \$150,000. However, if the insurance contract was issued less than 24 months before the exemption is claimed, then this subsection is limited to \$4,000.
11. Motor vehicles not to exceed \$4,000 in aggregate value. However, any unused portion of the aggregate value under [Wis. Stat. 815.18\(3\)\(d\)](#) may be added to increase this exemption.
12. 75 percent of the debtor's net income for each one week pay period, limited to the extent reasonably necessary for the support of the debtor and the debtor's dependants, but not less than 30 times the greater of the state or federal minimum wage.
13. Payments under a life insurance contract, resulting from a wrongful death or personal bodily injury, or in compensation for the loss of future earnings. Payments resulting from personal bodily injury

⁶ A debtor may claim either the exemptions listed in Wis. Stat. 425.106 or the exemptions under Wis. Stat. 815.18(3) for obligations arising from a consumer credit transaction.

are only exempt up to \$50,000, however. Any property traceable to payments under this section is also exempt.

14. Assets held or amount payable under most retirement plans, provided that the plan or contract complies with the provisions of the IRS, or the plan was created for the exclusive benefit of the employer, if self employed, or of some or all of the employees or their dependants or beneficiaries. The plan must also require the employer or employees or both to make contributions for the purpose of making distributions, and makes it impossible for any part of the principal or income to be diverted for any other purpose than for the exclusive benefit of the beneficiaries.
15. Depository accounts in the aggregate value of \$5,000, but only to the extent that the account is for the debtor's personal use and not a business account.
16. All money received by a resident of Wisconsin on account of military or naval service as pension, compensation or government insurance, and all other money received by a person on account of military or naval service from the U.S. Government
17. Tuition units purchased under Wis. Stat. 16.64.
18. An interest in a college savings account under Wis. Stat. 16.641.

With the exception of subsection (3)(h) (net income), each spouse is entitled to and may claim the exemptions listed above. [Wis. Stat. 815.18\(8\)](#). If the exemption is limited to a specified dollar amount, each spouse is entitled to one exemption. *Id.* A recent amendment to the exemption statutes extended marital property rights to the homestead exemption, and permits each spouse to claim that exemption. [Wis. Stat. 815.20\(1\)](#).

A homestead selected by the debtor and occupied by him or her is exempt from execution, from every lien of judgment, and from liability for the debts of the owner to the amount of \$75,000; excluding mortgages, mechanics', laborers' and purchase money liens, taxes and except as otherwise provided. [Wis. Stat. 815.20\(1\)](#). The exemption extends to the proceeds derived from the sale of the property for up to two years provided that they are held with the intent to acquire another homestead. *Id.*

Furthermore, any owner of an exempt homestead against whom a judgment has been rendered, and any heir, devisee, or grantee of the owner, or any mortgagee of the homestead may seek declaratory relief if the owner of the judgment fails, after 10 days demand, to execute a recordable release of judgment lien. [Wis. Stat. 815.20\(2\)](#). When the equity in the homestead exceeds the maximum exemption, the homestead is partially exempt, and a properly docketed judgment is a lien on the excess equity. *Rumage v. Gullberg*, 2000 WI 53, 235 Wis. 2d 279, 611 N.W.2d 458. If the equity is less than \$75,000, the homestead is fully exempt and no judgment attaches. *Id.*

Case Law

Wisconsin Consumer Act

[*American Industrial Leasing Co. v. Geiger*](#), 345 N.W.2d 527, 118 Wis.2d 140 (1984): Consumer leases are subject to the exclusionary provision of Wis. Stat. 421.201(6). "Amount financed" means the purchase price or cash price for property leased.

[*Bank One v. Ofojebe*](#), 284 Wis.2d 510, 702 N.W.2d 456 (2005): Under Wis. Stat. 425.109, judgment may not be entered on a complaint that does not comply with the statute. The creditor must provide the "figures necessary" for the debtor to compute the amount owed. (Compare and contrast with *Estate of Newgard* and *Michaud*).

[*Brunton v. Nuvel Credit Corporation*](#), 785 N.W.2d 302, 2010 WI 50 (2010): Wis. Stat. 421.401(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 subsection (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.

[*Community Credit Plan, Inc. v. Johnson*](#), 596 N.W.2d 799, 228 Wis.2d 30 (1999): 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.

[*Credit Acceptance Corporation v. Woodard*](#), 812 N.W.2d 525, 340 Wis.2d 548 (Ct. App., 2012): A party moving for attorneys 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.

[*Dean Medical Center, S.C. v. Conners*](#), 618 N.W.2d 194, 238 Wis.2d 636 (2000): An agreement necessary to establish that there is an obligation "payable in installments" under Wis. Stat. 421.301(30), which is required for there to be a "consumer credit transaction" under subsection (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.

[*Estate of Newgard v. Bank of America*](#), 735 N.W.2d 578, 2007 WI App 161, (2007): Wis. Stat. 425.109(2) requires a creditor to document any transaction it wishes to collect upon. (Compare and contrast with *Ofojebe* and *Michaud*).

[*First Wisconsin Nat'l. Bank v. Nicolau*](#), 113 Wis. 2d 524, 335 N.W.2d 390 (1983): WCA applied where contract was entered into in Wisconsin, and debtor later took collateral and moved to another state. The bona fide error defense does not apply to mistakes of law.

[*Footville State Bank v. Harvell*](#), 432 N.W.2d 122, 146 Wis.2d 524 (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.

[*Hartman v. Meridian Financial Services, Inc.*](#), 191 F.Supp.2d 1031 (W.D. Wis., 2002): violation of the WCA for attempting to enforce a non-existent right since the debt collection was collecting under a false name.

[*Hollibush v. Ford Motor Company*](#), 508 N.W.2d 449, 179 Wis.2d 799 (1993): A "breach of the peace" under Wis. Stat. 425.206(2) has the same meaning as in Wis. Stat. 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.

[*Homa v. East Towne Ford, Inc.*](#), 370 N.W.2d 592, 125 Wis.2d 73 (1985): the notice of right to cure default under 425.104 is deemed given on the date the notice is mailed and the date of tender of performance by the debtor shall be deemed given on the date of mailing.

[Household Finance Corp. v. Kohl](#), 173 Wis.2d 798 (1993): Further discussion of the pleading requirements of Wis. Stat. 425.109.

[Indianhead Motors v. Brooks](#), 726 N.W.2d 352, 2006 WI App 266: Complaint dismissed for failure to give debtor the required notice of right to cure default as required by Wis. Stat. 425.104.

[Kett v. Community Credit Plan, Inc.](#), 228 Wis.2d 1, 596 N.W.2d 786 (1999): A replevin action is an attempt to collect a debt. The lenders obtained default judgments in the wrong venue, as prescribed by Wis. Stat. 421.401(1), and relied on non-judicial enforcement of their security interests to repossess the vehicles. The judgments were reopened as void, and the takings were found to be a violation of the WCA, Chapter 427.

[Mercado v. GE Money Bank](#), 768 N.W.2d 53, 2009 WI App 73 (2009): 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.

[Rent-A-Center v. Hall](#), 510 N.W.2d 789, 181 Wis.2d 243 (1993): provides two part test to determine whether a rent to own transaction is subject to the WCA.

[Rosendale State Bank v. Schultz](#), 365 N.W.2d 911, 123 Wis.2d 195 (1985): if the obligation is entirely past due and fully owed, therefore making it impossible for the customer to restore the loan to a current status, the notice of right to cure default under Wis. Stat. 425.104 need not be given.

[Rsidue, LLC v. Michaud](#), 2006 WI App 164 (2006): 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 Wis. Stat. 421.301(16) and not subject to the pleading requirements of Wis. Stat. 425.109(1). (Compare and contrast with *Estate of Newgard* and *Ofojebe*).

[Smith v. Burns](#), 65 Wis.2d 638, 223 N.W.2d 562 (1974): Wis. Stat. 425.113 prohibits arrest warrants under Chapter 273 of the Wisconsin Statutes, but does not prohibit the court from exercising its contempt powers and issuing a body attachment for the debtor.

[Walsler Leasing, Inc. v. Simonson](#), 120 Wis.2d 458, 355 N.W.2d 545 (Wis. App. 1984): WCA applies where the contract was entered into in another state by a Wisconsin resident or the debtor later becomes a resident at the time of default.

[Zehetner v. Chrysler Financial Co., LLC](#), 679 N.W.2d 919, 272 Wis.2d 628 (2004): a customer is not limited to a person who is liable on the debt, and may include a person who signs the application for credit.

[Capital One USA Bank, NA v. Summers](#), 2009AP1337 and 2009AP1338 (unpublished): the billing statements, and not the terms or cardmember agreement, are the “writings” contemplated under subsection (2) and provide the debtor with the figures necessary to calculate the amount owed. See, Wis. Stat. 425.109(1)(d) and (2).

Other Case Law

[Liberty Credit Services, Inc. v. Quinn](#), 276 Wis.2d 826, 830, 688 N.W.2d 768, 770 (Wis.App., 2004): a payment made, and subsequently withdrawn, was sufficient to toll the applicable statute of limitations.

[Palisades Collection, LLC v. Kalal](#), 781 N.W.2d 503, 2010 WI App 38 (2010): provides a detailed discussion of the business records exception, concluding that without more, the of the assignee’s custodian of the records does not have the requisite personal knowledge to lay the foundation for the business records exception when the relevant documents were created by the assignor.

[Rumage v. Gullberg](#), 611 N.W.2d 458, 235 Wis. 2d 279 (2000): when equity in a homestead exceeds the exemption under Wis. Stat. 815.20, the homestead is partially exempt, and the docketed judgment is a lien upon the debtor’s excess equity. If the debtor has less than the \$75,000 in equity, the homestead is fully exempt, and the debtor has no interest to which the judgment lien may attach.

[St. Mary's Hospital Medical Center v. Tarkenton](#), 103 Wis.2d 422, 309 N.W.2d 14 (Ct. App. 1981): partial payment on a hospitalization bill starts statute running anew.

[Stan's Lumber, Inc. v. Fleming](#), 196 Wis.2d 554, 565, 538 N.W.2d 849, 853 (Wis. App., 1995): There are at least two ways that an account stated can arise, the retention of statements by a party without objecting within a reasonable time and when a debtor makes partial payment on an account or accompanies partial payment with an agreement to pay the remaining balance.

[Tickanen v. Harris & Harris, Ltd.](#), 461 F.Supp.2d 863 (7th Cir., 2006): even though the cardholders did not sign an agreement, they were bound to arbitration because both their failure to take affirmative action to not accept and their continued use of the card constituted an acceptance of the amended terms.

[Waushara County v. Graf](#), 166 Wis. 2d 442, 452, 480 N.W. 2d 16 (1992): It is a general principal that pro se litigants "must satisfy all procedural requirements" and courts are not required to cut them any slack in complying with procedural rules.

Additional Links

Wisconsin Legislative Reference Bureau: click on links along the left side of the page to access the Wisconsin Statutes Annotated, Code and Register. <http://legis.wisconsin.gov/lrb/>

Wisconsin Department of Financial Institutions: links to corporate records search, UCC filings, and banking and consumer information. <http://www.wdfi.org/>

Wisconsin Administrative Code – DFI-Bkg: regulations related to banking, collection agencies, and consumer law. <http://docs.legis.wisconsin.gov/code/toc/dfi-bkg>

CCAP and WSCCA: Access to Wisconsin circuit, appeal and supreme court filings. <http://wcca.wicourts.gov/index.xsl> and <http://wscca.wicourts.gov/index.xsl>.

Wisconsin Circuit Court Forms: <http://www.wicourts.gov/forms1/index.htm>

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