



# WISCONSIN STATE LEGISLATURE

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**Cross-reference:** See definitions in s. 421.301.

## SUBCHAPTER I POWERS AND FUNCTIONS OF ADMINISTRATOR

- 426.101 Short title.** This chapter shall be known and may be cited as Wisconsin consumer act — administration.  
**History:** 1971 c. 239.

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

- (1) Make or solicit consumer approval transactions (s. 423.201) or consumer credit transactions or modifications thereof.
- (2) Directly collect payments from or enforce rights against customers arising from consumer approval transactions or consumer credit transactions, wherever made.
- (3) Act as a credit services organization, as defined in s. 422.501 (2).

**History:** 1971 c. 239; 1991 a. 244.



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

**History:** 1971 c. 239; 1995 a. 27, 216.

**426.104 Powers of administrator; duty to report.**

- (1)** In addition to other powers granted by chs. 421 to 427 and 429, the administrator within the limitations provided by law shall:
  - (a)** Receive and act on complaints, take action designed to obtain voluntary compliance with chs. 421 to 427 and 429, commence administrative proceedings on his or her own initiative and commence civil actions solely through the department of justice;
  - (b)** Counsel persons and groups on their rights and duties under chs. 421 to 427 and 429;
  - (c)** Make studies appropriate to effectuate the purposes and policies of chs. 421 to 427 and 429 and make the results available to the public;
  - (d)** Hold such public or private hearings as the administrator deems necessary or proper to effectuate the purposes and policies of chs. 421 to 427 and 429;
  - (e)** Adopt, amend and repeal rules to carry out the purposes and policies of chs. 421 to 427 and 429, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.
- (2)** The administrator shall report annually on practices in consumer transactions, on the use of consumer credit in the state, on problems attending the collection of debts, on the problems of persons of limited means in consumer transactions, and on the operation of chs. 421 to 427 and 429. For the purpose of making the report, the administrator may conduct research and make appropriate studies. The report shall be given to the division of banking for inclusion in the report of the division of banking under s. 220.14 and shall include:
  - (a)** A description of the examination and investigation procedures and policies of the administrator's office;
  - (b)** A statement of policies followed in deciding whether to investigate or examine the offices of persons subject to chs. 421 to 427 and 429;
  - (c)** A statement of policies followed in deciding whether to bring any action authorized under chs. 421 to 427 and 429;
  - (d)** Such recommendations for modifications or additions to chs. 421 to 427 and 429 as in the experience and judgment of the administrator are necessary; and
  - (e)** Such other statements as are necessary or proper to achieve the purposes or policies of this section or to effectuate the purposes or policies of chs. 421 to 427 and 429.
- (3)** The administrator shall make available upon request a list of all persons against whom complaints have been filed and the results of all investigations completed or not being actively pursued along with a brief description of the facts of each case and the action taken in each.
- (4)**
  - (a)** No provision of chs. 421 to 427 and 429 or of any statute to which chs. 421 to 427 and 429 refer which imposes any penalty shall apply to any act done or omitted to be done in conformity with any rule or order of the administrator or any written opinion, interpretation or statement of the administrator, notwithstanding that such rule, order, opinion, interpretation or statement may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.
  - (ab)**
    1. Upon the request of any person, the administrator shall review any act, practice, procedure or form that has been submitted to the administrator in writing to determine whether the act, practice, procedure or form is consistent with chs. 421 to 427 and 429.
    2. The administrator may charge the person making a request under subd. 1. for necessary expenses incurred in conducting the review, except the administrator may not charge any of the following persons:
      - a.** A person registered under s. 426.201.
      - b.** A trade organization, if a majority of the members of the trade organization are registered under s. 426.201.
    3. Any charge assessed under subd. 2. shall be paid within 30 days after the date on which the administrator assesses the charge.
  - (b)** Any act, practice or procedure which has been submitted to the administrator in writing and either approved in writing by the administrator or not disapproved by the administrator within 60 days after its submission to the administrator shall not be deemed to be a violation of chs. 421 to 427 and 429 or any other statute to which chs.

421 to 427 and 429 refer notwithstanding that the approval of the administrator or nondisapproval by the administrator may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

**History:** 1971 c. 239; 1977 c. 196 s. 131; 1979 c. 89; 1983 a. 524; 1985 a. 256; 1991 a. 316; 1995 a. 27, 216, 329; 1997 a. 35.

Sub. (4) (b) creates a safe harbor for people who act in ways approved by the Administrator of the Department of Financial Institutions (DFI) — and treats the absence of a response within 60 days of a request as equivalent to approval. The debt collectors in this case sent the administrator a letter asking if they are entitled to add 5 percent interest to debts created by the provision of medical services under s. 138.04, the administrator requested further information, which the debt collectors provided, and DFI did not reply. Thus, when the defendants sent letters demanding payment, they were entitled to demand payment of both the principal amounts and interest under s. 138.04. *Aker v. Americollect, Inc.* 854 F.3d 397 (2017).

Sub. (4) (b) is not about deference. It is a safe harbor, providing that the practices presented to the administrator for opinion “shall not be deemed to be a violation” of other state laws, unless the administrator later announces a different view or a court holds the administrator's position to be invalid. *Aker v. Americollect, Inc.* 854 F.3d 397 (2017).

Power and duties of the administrator under the Wisconsin consumer act. *Mildenberg*, 1973 WBB No. 1.

#### 426.105 Administrative powers with respect to supervised financial organizations.

- (1) All powers and duties of the administrator under chs. 421 to 427 and 429 shall be exercised by the administrator with respect to a supervised financial organization.
- (2) If the administrator receives a complaint or other information concerning noncompliance with chs. 421 to 427 and 429 by a supervised financial organization, the administrator shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.
- (3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization shall consult and assist one another in maintaining compliance with chs. 421 to 427 and 429. They may jointly pursue investigations, prosecute suits and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

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

#### 426.106 Investigatory powers.

- (1) At any time that the administrator has reason to believe that a person has engaged in or is about to engage in an act which is subject to action by the administrator, the administrator may make an investigation and, with respect thereto, may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence, and the administrator shall have the right of access to and of examination of such books, documents or other tangible things. In any civil action brought on behalf of the administrator following such an investigation, the administrator may recover the administrator's costs of making the investigation if the administrator prevails in the action.
- (2) If 5 or more persons file a verified complaint with the administrator alleging that a person has engaged in an act which is subject to action by the administrator, the administrator shall immediately commence an investigation pursuant to sub. (1).
- (3) If the person's records are located outside this state, the person at the person's option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.
- (4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to any court of record for an order compelling compliance.

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

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

#### 426.107 Application of chapter 227. Except as otherwise provided, ch. 227 applies to and governs all administrative action taken by the administrator pursuant to chs. 421 to 427 and 429. Notwithstanding s. 227.52, the decisions of the administrator are subject to judicial review as provided in ch. 227.