



**State of Wisconsin**  
*Department of Financial Institutions*

Tony Evers, **Governor**

Kathy Blumenfeld, **Secretary**

April 13, 2020

**EMERGENCY GUIDANCE ON PROHIBITED DEBT COLLECTION PRACTICES**

The Wisconsin Department of Financial Institutions administers the Wisconsin Consumer Act, which has governed consumer credit transactions in this State for the past 49 years. At the time of its enactment, the Act was heralded as going “further to protect consumer interests than any other such legislation in the country.”<sup>1</sup>

Chapter 427 of the Act specifies prohibited practices when attempting to collect payments under consumer credit transactions, including any “conduct which can reasonably be expected to threaten or harass the customer or a person related to the customer.” Wis. Stat. § 427.104(1)(h). The drafters of the Act did not define “harass,” but dictionaries at the time of its enactment<sup>2</sup> defined it as “to annoy continually”<sup>3</sup> or “disturb persistently.”<sup>4</sup> This broad, context-dependent meaning allows flexibility for courts and this Department to account for new economic conditions.

Those new conditions have arrived. More than 100 countries and billions of people are living under full or partial lockdown<sup>5</sup> in a global effort to cage a new threat to our species. Many consumers who made pre-pandemic credit purchases were planning to make payments with revenue earned this spring. For millions, that work has now been cancelled or indefinitely postponed. Affected families are rationing financial resources until this crisis abates, reserving them for food, medicine, and other essentials. They’re going to miss payments on consumer credit transactions, through no fault of their own, because that is the rational thing for them to do.

Debt collectors aren’t going to be able to talk people into behaving irrationally, no matter how many times they call. To repeatedly “disturb” or “annoy” them anyway is the definition of harassment. Further, during this public health emergency, telephone communications are far too

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<sup>1</sup> JEFFREY DAVIS, *Legislative Restriction of Creditor Powers and Remedies: A Case Study of the Negotiation and Drafting of the Wisconsin Consumer Act*, 72 MICH. L. REV. 3, 6 (1973).

<sup>2</sup> Unless otherwise defined in the statute itself, Wisconsin courts (and this Department) give statutory language “its common, ordinary, and accepted meaning,” which can be “ascertainable by reference to the dictionary definition.” *State ex rel. Kalal v. Circuit Ct. for Dane County*, 2004 WI 58, §§ 45, 53, 271 Wis. 2d 633, 681 N.W.2d 110.

<sup>3</sup> Webster’s New Collegiate Dictionary 379 (7<sup>th</sup> ed. 1971).

<sup>4</sup> AMERICAN COLLEGE DICTIONARY 550 (1967); *see also* 1 FUNK & WAGNALL’S STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 574 (Int’l ed. 1968) (“to trouble or worry persistently with cares, annoyances, etc.; to torment”).

<sup>5</sup> [BBC News, Coronavirus: A visual guide to the world in lockdown](#) (Apr. 7, 2020).

vital to be wasted on futile debt-collection calls—a practice that leads people to ignore calls from unfamiliar numbers, missing some that may be critical.

The Wisconsin Consumer Act cannot solve a global economic problem, but it can deter pointlessly harmful responses to it. Debt collectors who routinely rely on telephone calls as a debt-collection tactic should be forewarned: whether conduct “can reasonably be expected to threaten or harass a consumer” depends on the context, and the worldwide context just shifted dramatically. Practices that may have been typical or customary under normal conditions may be deemed harassment under conditions of a global pandemic.

We cannot draw a precise boundary between permitted or prohibited communications with debtors, because each must “be considered in context.”<sup>6</sup> Solicited follow-up communications are different than unsolicited threats to sue, and calls made in a good faith effort to compromise a debt are different than efforts to be the “squeakiest wheel” among a debtor’s creditors.

But debt collectors who assume that business as usual will be acceptable during this public health emergency do needless harm to both consumers and themselves. Juries can impose severe consequences against those who engage in prohibited debt practices under the Wisconsin Consumer Act, including punitive damages and damages for mental anguish and emotional distress.<sup>7</sup> Jurors too will have lived through this crisis, and will judge debt collection practices through the lens of this period of shared global hardship and sacrifice. Debt collectors who fail to respect those hardships should expect to be judged harshly.

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To provide further guidance, the Department has also attached an interpretive letter issued today regarding impermissible pre-crisis calls to a debtor’s friends and family, as well as a full copy of the Wisconsin Consumer Act chapter governing debt-collection practices.

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<sup>6</sup> *Assocs. Fin. Servs. Co. v. Hornik*, 114 Wis. 2d 163, 167, 336 N.W.2d 395 (Ct. App. 1983).

<sup>7</sup> Wis. Stat. §§ 425.301(1), 427.105(1).