

2005 DRAFTING REQUEST

Bill

Received: **04/06/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing: **Jason Rostan**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - WCA**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Repossession of collateral; notice of customer's rights regarding court proceedings

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mkunkel 04/13/2005	lkunkel 04/13/2005	chaugen 04/14/2005	_____	sbasford 04/14/2005		
/2	mkunkel 05/17/2005	lkunkel 05/18/2005	rschluet 05/18/2005	_____	lnorthro 05/18/2005		
/3	mkunkel 06/02/2005	lkunkel 06/02/2005	chaugen 06/02/2005	_____	lemery 06/02/2005	lnorthro 06/16/2005	

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13/mk 6/2 *ch 6-2* *ch 6-2* *SK*

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Repossession of collateral; notice of customer's rights regarding court proceedings ✓

Instructions:

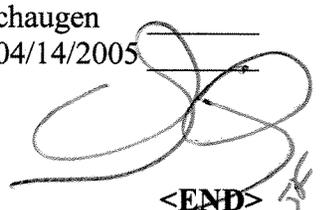
See Attached

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FE Sent For:

12/mk5/18


<END>
5-18-5

2005 DRAFTING REQUEST

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/?	mkunkel	/1 mk 4/13	ck 4-14	ck 4-14 JK			

FE Sent For:

<END>

Kunkel, Mark

From: Rostan, Jason
Sent: Wednesday, April 06, 2005 3:35 PM
To: Kunkel, Mark

- 2862

We just want two separate bills. Thanks for your help.

Jason Rostan
Research Assistant
Rep. Jean Hundertmark
40th Assembly District



Repossession.doc



Repo.doc

Possible Legislative Language
Changes to Repossession Law

1. **425.XXX Notice of Customer's Right to Require Court Proceeding.** [Creation of New Section]

(1) At least 15 days before a merchant may take possession of collateral or goods subject to a consumer lease in this state under s. 425.206(1)(d), the merchant must send the customer notice that contains the following information:

- (a) The name, address and telephone number of the merchant, a brief identification of the consumer credit transaction and a brief description of the collateral or goods subject to the consumer lease.
- (b) A notice containing substantially the following language:

- 1. As a result of default in the above consumer credit transaction with us, we have the right to take possession of the collateral securing your obligation without further notice or court proceeding.
- 2. If you are not in default under your obligation or you have an objection to our right to take possession of the collateral identified above, you may require us to proceed in court by notifying us by telephone or in writing.
- 3. We must receive your demand that we proceed in court within 15 days from the date of this notice. You may be required by the court to pay statutory court costs and attorneys fees.

(2) This notice may be combined with the notice of right to cure under 425.104 or any other notice.

2. **425.204 Voluntary surrender of collateral.** [Eliminate sub (3)]

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

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

~~(3) The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to a request or demand by the merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement or notice by the merchant that the merchant intends to take possession of the collateral.~~

3. 425.205 **Action to recover collateral.** [Insert New Reference]

(1) Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease **may commence, and if the customer demands such an action as provided in 425.XXX,** shall commence an action for replevin of the collateral or leased goods. ~~These actions~~ **Such an action** shall be conducted in accordance with ch. 799, notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered, except that:

4. 425.206 **Nonjudicial enforcement limited.** [Insert New Reference]

(1) Notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state ~~by means other than legal process in accordance with this subchapter~~ except when:

- (a) The customer has surrendered the collateral or leased goods;
- (b) Judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203 (2); or
- (c) The merchant has taken possession of collateral or leased goods pursuant to s. 425.207 (2); or
- (d) **The merchant has taken possession of collateral or goods subject to a consumer lease pursuant to sub. VI of ch. 409 and the customer has not requested that the merchant proceed by legal process after being sent the notice set forth in 425.XXX.**

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

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

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

5. 425.207 **Restraining order to protect collateral or leased goods; abandoned property.**

(1) If the court finds that the merchant probably will recover possession of the collateral or goods subject to a consumer lease, and the customer is acting, or is about to act, with respect to the collateral or leased goods in a manner which

substantially impairs the merchant's prospect for realization of the merchant's security interest or the merchant's interest in the leased goods, the court may issue an order pursuant to s. 813.02 restraining the customer from so acting with respect to the collateral or leased goods, and need not require a bond by the merchant, notwithstanding s. 813.06.

(2) A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request the customer has surrendered the collateral or leased goods; or judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or in a judgment described in s. 425.203 (2) **perfected its right to possession**. A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last-known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects the right to possession through a surrender by the customer or a judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods shall be considered collateral under s. 409.615 (1). However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects the right to possession in the manner provided in this subsection.

lmk

o-note

*Tomorrow
am
4/14*

2005 BILL

GenCat

1 **AN ACT ...; relating to:** repossession of goods in consumer credit transactions and
2 certain consumer leases. ✓

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin Consumer Act (WCA) governs certain credit transactions between merchants and customers. ✓ In general, a credit transaction is subject to the WCA if the transaction is for personal, family, or household purposes and the amount financed is \$25,000 or less. ✓ If such a transaction involves goods in which the merchant has a security interest for securing the customer's obligations in the transaction, the merchant's rights to enforce the security interest are governed by the WCA, ✓ and not the secured transaction provisions of Wisconsin's version of the Uniform Commercial Code (UCC). ✓

The WCA provides that, if a customer defaults on the transaction, the merchant may take possession of the goods only as follows: 1) the customer may voluntarily surrender the goods; 2) the merchant may bring an action for a money judgment against the customer and obtain a court order for possession of the goods; ✓ or 3) the merchant may bring a replevin ✓ action against the customer for the goods. ✓ In addition, if the customer acts in a manner that substantially impairs the merchant's interest in the goods, ✓ the merchant may obtain a restraining order for possession of the goods. ✓ Also, subject to certain requirements, if the merchant reasonably believes that the customer has abandoned the goods, ✓ the merchant may take possession of the goods. ✓ With certain exceptions, before a merchant can bring an action for a money judgment or a replevin action, ✓ the merchant must give the customer 15 ✓ days to cure the default. ✓

BILL

If certain requirements are satisfied, this bill allows a merchant to take possession of the goods under the UCC, in addition to taking possession as described above. For a merchant to take action under the UCC, the merchant must first provide the customer with a notice that the customer has a 15-day deadline to demand that the merchant bring a replevin action for the goods under the WCA. If the customer makes such a demand no later than 15 days after receipt of the notice, the merchant must bring a replevin action for the goods. If the customer does not make such a demand, the merchant may proceed under the UCC. Under the UCC, the merchant may take possession of the goods with or without judicial process. However, the merchant may take possession without judicial process only if the merchant does not breach the peace.

The bill also changes the requirements that apply to a customer's voluntary surrender of goods in which the merchant has a security interest. Current law provides that surrender of goods is not voluntary if the surrender is made pursuant to a request or demand by a merchant for the surrender, or if the surrender is made pursuant to a threat, statement, or notice that the merchant intends to take possession of the goods. This bill eliminates these provisions. As a result, under the bill, a surrender is voluntary even if it is made pursuant to such a request, demand, threat, statement, or notice.

In addition, the bill changes to the requirements that apply to a merchant's possession of goods upon the customer's abandonment of the goods. Under current law, if a merchant reasonably believes that a customer has abandoned goods that are subject to the merchant's security interest, or subject to a consumer lease, the merchant may take possession of the goods. However, the customer may subsequently recover the goods, unless one of the following conditions apply: 1) customer has voluntarily surrendered the goods; or 2) the merchant has obtained a judgment in an action for a money judgment or a replevin action. In addition, if the merchant has perfected its right to possession of the goods through the customer's voluntary surrender of the goods or by obtaining a judgment in one of the foregoing actions, the customer is liable for the merchant's expenses in taking possession.

This bill changes the 2nd condition described above that prohibits a customer from subsequently recovering goods. Under this bill, the 2nd condition is that the merchant has perfected its right to possession of the goods. Also, the bill provides that a customer is liable for the expenses described above if the merchant has perfected its right to possession, but the bill does not require the perfection to be accomplished through the customer's voluntary surrender or by obtaining a judgment in one of the foregoing actions.

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

X
SECTION 1. 425.204 (3) of the statutes is repealed.

BILL

1 **SECTION 2.** 425.205 (1) (intro.) of the statutes is renumbered 425.205 (1) (am)

2 1. and amended to read:

3 425.205 (1) (am) 1. Except as provided in s. 425.206, a creditor seeking to obtain
4 possession of collateral or goods subject to a consumer lease shall commence an
5 action for replevin of the collateral or leased goods. Those actions

6 (1r) An action under par. (am) shall be conducted in accordance with ch. 799,
7 notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought
8 to be recovered, except that:

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

9 **SECTION 3.** 425.205 (1) (a) to (e) of the statutes are renumbered 425.205 (1r) (a)
10 to (e).

11 **SECTION 4.** 425.205 (1) (am) 2. of the statutes is created to read:

12 425.205 (1) (am) 2. Except as provided in s. 425.206, a creditor seeking to obtain
13 possession of collateral may commence, and if the customer demands such an action
14 in response to a notice provided under sub. (1g) shall commence, an action for
15 replevin of the collateral.

16 **SECTION 5.** 425.205 (1g) of the statutes is created to read:

17 425.205 (1g) (a) A merchant may not take possession of collateral under s.
18 425.206 (1) (d), unless the merchant provides the customer a notice containing all of
19 the following:

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

23 2. A statement that, as a result of the customer's default on the consumer credit
24 transaction, the merchant may have the right to take possession of the collateral

BILL

INSERT 4-10

1 securing the customer's obligation under the transaction without further notice or
2 court proceeding. ✓

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

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

9 (b) A notice under par. (a) may be combined with any other notice, including
10 a notice of right to cure under s. 425.104.

SECTION 6. 425.206 (1) (c) of the statutes is amended to read:

12 425.206 (1) (c) The merchant has taken possession of collateral or leased goods
13 pursuant to s. 425.207 (2). ~~or~~

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

SECTION 7. 425.206 (1) (d) of the statutes is created to read:

15 425.206 (1) (d) The customer has not made a demand specified in s. 425.205 (1g)
16 (a) 3. and, no sooner than 15 days after the customer's receipt of the notice specified
17 in s. 425.205 (1g) (a), the merchant has taken possession of collateral pursuant to
18 subch. ^e ch. VI of ch. 409. ✓

SECTION 8. 425.207 (2) of the statutes is amended to read:

20 425.207 (2) A merchant who reasonably believes that a customer has
21 abandoned collateral or goods subject to a consumer lease may take possession of
22 such collateral or leased goods and preserve it. However, the customer may recover
23 such collateral or leased goods upon request unless at the time of request the
24 customer has surrendered the collateral or leased goods, or judgment [✓] for the

BILL

1 merchant has been entered in a proceeding for recovery of collateral or leased goods
2 under s. 425.205 or in a judgment described in s. 425.203 (2) perfected its right to
3 possession. A merchant taking possession of collateral or leased goods pursuant to
4 this section shall promptly send notification to the customer's last-known address
5 of such action and of the customer's right to recover such collateral or leased goods
6 under this section. If the collateral or leased goods are recovered by the customer
7 pursuant to this section, it shall be returned to the customer at the location where
8 the merchant took possession of such collateral or leased goods pursuant to this
9 section or, at the option of the merchant, at such other location designated by the
10 customer; and any expense incurred by the merchant in taking possession of, holding
11 and returning the collateral or leased goods to the customer shall be borne by the
12 merchant. If after taking possession of collateral or leased goods pursuant to this
13 subsection, the merchant perfects the right to possession ~~through a surrender by the~~
14 ~~customer or a judgment under s. 425.203 (2) or 425.205~~, the customer is liable for the
15 expenses set forth in s. 409.615 (1). In determining such expenses, leased goods shall
16 be considered collateral under s. 409.615 (1). However, a customer is not liable for
17 expenses of holding the collateral or leased goods from the time the merchant takes
18 possession until the merchant perfects the right to possession in the manner
19 provided in this subsection.

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

20 **SECTION 9.** 427.105 (2) of the statutes is amended to read:

21 427.105 (2) If a customer establishes that the customer was induced to
22 surrender collateral (s. 425.202) by conduct of the merchant which violates this
23 chapter, the customer shall be entitled to a determination of the right to possession
24 of the collateral pursuant to s. 425.205 (1) (1r) (e) in any action brought under this

BILL

1 subchapter, and if the customer prevails on such issue, in addition to any other
2 damages under this subchapter, the customer shall be entitled to recover possession
3 of the collateral if still in the merchant's possession, together with actual damages
4 for the customer's loss of use of the collateral.

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

5

(END)



2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2682/lins
MDK:.....

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INSERT 4-10:

SECTION 1. 425.206 (1) (intro.) of the statutes is amended to read:

425.206 (1) (intro.) Notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state by means other than legal process in accordance with this subchapter except when any of the following apply:

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

SECTION 2. 425.206 (1) (a) of the statutes is amended to read:

425.206 (1) (a) The customer has surrendered the collateral or leased goods;

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

SECTION 3. 425.206 (1) (b) of the statutes is amended to read:

425.206 (1) (b) Judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203 (2); ~~or~~.

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

end of insert 4-10

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2682/1dn

MDK:.....

Imk

(date)

✓
Rep. Hundertmark:

✓
Please note the following about this bill:

1. Unless I am mistaken, consumer leases are not subject to ch. 409. Therefore, except for the changes to s. 425.207[✓](2), I made changes to the requested language that limit the bill to repossession of collateral subject to a security interest under ch. 409.✓
2. It isn't necessary to delete "by means other than legal process in accordance with this subchapter" in s. 425.206 (1) (intro.) because new s. 425.206 (1) (d) provides an exception to this requirement. ✓
3. I made the 15-day notice period more specific by tying it to the customer's receipt of the notice. Is that okay? ✓
4. What if a merchant is not able to provide the notice specified in proposed s. 425.204 (1g) (a)? For example, what if a notice is returned as undeliverable? ✓ As drafted, if the customer does not receive the notice, the merchant is not able to take possession under the UCC. Is that okay? ✓
5. I drafted the notice so that it provides that the merchant "may" have the right to possession. ✓ I made this change because the merchant's right to possession under the UCC is contingent on not breaching the peace. ✓ See s. 409.609 (2) (b), stats. ✓
6. The bill does not have a delayed effective date? Do you want to include one? ✓
7. It is not clear to me why the changes to s. 425.207[✓] (2) are necessary. Also, will the bill create confusion by not specifying how perfection should be accomplished? ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2682/1dn
MDK:lmk:ch

April 14, 2005

Rep. Hundertmark:

Please note the following about this bill:

1. Unless I am mistaken, consumer leases are not subject to ch. 409. Therefore, except for the changes to s. 425.207 (2), I made changes to the requested language that limit the bill to repossession of collateral subject to a security interest under ch. 409.
2. It isn't necessary to delete "by means other than legal process in accordance with this subchapter" in s. 425.206 (1) (intro.) because new s. 425.206 (1) (d) provides an exception to this requirement.
3. I made the 15-day notice period more specific by tying it to the customer's receipt of the notice. Is that okay?
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5. I drafted the notice so that it provides that the merchant "may" have the right to possession. I made this change because the merchant's right to possession under the UCC is contingent on not breaching the peace. See s. 409.609 (2) (b), stats.
6. The bill does not have a delayed effective date? Do you want to include one?
7. It is not clear to me why the changes to s. 425.207 (2) are necessary. Also, will the bill create confusion by not specifying how perfection should be accomplished?

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

2005 BILL

AN ACT *to repeal* 425.204(3); *to renumber* 425.205(1)(a) to (e); *to renumber and amend* 425.205(1) (intro.); *to amend* 425.206(1) (intro.), 425.206(1)(a), 425.206(1)(b), 425.207(2) and 427.105(2); and *to create* 425.205(1)(am)2., 425.205(1g) and 425.206(1)(d) of the statutes; **relating to:** repossession of goods in consumer credit transactions and certain consumer leases.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin Consumer Act (WCA) governs certain credit transactions between merchants and customers. In general, a credit transaction is subject to the WCA if the transaction is for personal, family, or household purposes and the amount financed is \$25,000 or less. If such a transaction involves goods in which the merchant has a security interest for securing the customer's obligations in the transaction, ~~the merchant's rights to enforce the security interest are governed by the WCA, and not the secured transaction provisions of Wisconsin's version of the Uniform Commercial Code (UCC).~~ The or goods subject to a consumer lease the WCA provides that, if a customer defaults upon default on the transaction by the customer, the merchant may take possession of the goods only as follows: 1) the customer may voluntarily surrender the goods; 2) the merchant may bring an action for a money judgment against the customer and obtain a court order for possession of the goods; or 3) the merchant may bring a replevin action against the customer for the goods. ~~In addition, if the customer acts in a manner that substantially impairs the merchant's interest in the goods, the merchant may obtain a restraining order for possession of~~ Once judgment is obtained, the creditor can proceed on its own to recover the goods. Also, subject to certain requirements, if the merchant reasonably believes that the customer has abandoned the goods, the merchant may take possession of the goods. With certain exceptions, before a merchant can bring an action for a money judgment or a replevin action, the merchant must give the customer ~~15 days~~ a 15-day notice of right to cure the default.

If certain requirements are satisfied, this bill allows a merchant to take possession of the goods ~~under the UCC, in addition to taking possession as described above by non-judicial recovery without the necessity of first obtaining a judgment unless a judicial proceeding is requested by the customer.~~ For a merchant to take action under the UCC non-judicial recovery, the merchant must first provide the customer with a notice that the customer has a 15-day deadline to demand that the merchant bring a replevin or other court action for the goods under the WCA. If the customer makes such a demand no later than 15 days after receipt of the notice is given, the merchant must bring a replevin court action for possession of the goods. If the customer does not make such a demand, the merchant may proceed under the UCC. Under the UCC, the merchant may take possession of the goods with or without judicial process. However,

the merchant may take possession without judicial process only if the merchant does not breach the peace and does not enter the customer's residence unless voluntarily requested by the customer.

~~The~~Because the bill requires a notice indicating repossession may occur unless the customer demands that the merchant proceed in court, the bill also changes the requirements that apply to a customer's voluntary surrender of goods in which the merchant has a security interest. Current law provides that surrender of goods collateral is not voluntary if the surrender is made pursuant to a request or demand by a merchant for the surrender, or if the surrender is made pursuant to a threat, statement, or notice that the merchant intends to take possession of the goods. This bill eliminates these provisions. As a result, under the bill, a surrender is voluntary even if it is made pursuant to such a request, demand, threat, statement, or a notice such as the new notice required by the bill.

In addition, the bill ~~changes~~revises the requirements that apply to a merchant's possession of goods upon the customer's abandonment of the goods to reflect the changes in this bill. Under current law, if a merchant reasonably believes that a customer has abandoned goods that are subject to the merchant's security interest, or subject to a consumer lease, the merchant may take possession of the goods. However, the customer may subsequently recover the goods, unless one of the following conditions apply: 1) customer has voluntarily surrendered the goods; or 2) the merchant has obtained a judgment in an action for a money judgment or a replevin action. ~~In addition, if the merchant has perfected its right to possession of the goods through the customer's voluntary surrender of the goods or by obtaining a judgment in one of the foregoing actions, the customer is liable for the merchant's expenses in taking possession.~~

~~This~~The bill ~~changes~~expands the ~~second condition~~conditions described above that ~~prohibits~~prohibit a customer from subsequently recovering goods. ~~Under this bill, the second condition is that the merchant has perfected its right to possession of the goods. Also, the bill provides that a customer is liable for the expenses described above to include the non-judicial repossession procedure permitted in this bill. Under the bill, the customer will not be able to recover the goods if the merchant has perfected its right to possession, but the bill does not require the perfection to be accomplished through the customer's voluntary surrender or by obtaining a judgment in one of the foregoing actions of the goods, whether by judicial or non-judicial recovery, as permitted under the WCA.~~

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

SECTION 1. 425.204(3) of the statutes is repealed.

SECTION 2. [Deleted]. 425.205(1) (intro.) of the statutes is renumbered 425.205(1)(am)1. and amended to read:

SECTION 3. [Deleted].

~~425.205(1)(am)1. Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease shall commence an action for replevin of the collateral or leased goods. Those actions~~

~~(1r) An action under par. (am). shall be conducted in accordance with ch. 799, notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered, except that:~~

~~**SECTION 3.** 425.205(1)(a) to (e) of the statutes are renumbered 425.205(1r)(a) to (e).~~

[NOTE: Sections 2 and 3 are not necessary as the suggested revisions set forth below will allow non-judicial recovery of goods subject to a consumer lease as well as goods subject to a security interest.]

SECTION 4. 425.205(1)(am)2. of the statutes is ~~ereated~~amended to read:

425.205(1)(am)2. Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease may commence, and if the customer demands such an action in response to a notice provided under sub. (1g) shall commence, an action for replevin of the collateral or leased goods.

SECTION 5. 425.205 (1g) of the statutes is created to read:

425.205(1g)(a). A merchant may not take possession of collateral under s. 425.206(1)(d), unless the merchant provides the customer a notice containing all of the following:

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

of goods subject to consumer lease?
D-NOTE
and see clamps in 1. → 4.
This change is not consistent with the rest of the paragraph. D-NOTE

[NOTE: The reference to “creditor” parallels the language in the Notice of Right to Cure in § 425.104(2).] ✓

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

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

[NOTE: The Notice of Right to Cure allows contact by telephone, so the customer can call to find out information about bringing the obligation current if desired. Experience has shown, however, that to avoid any misunderstanding of the customer’s intent, a notice should be in writing to make sure the request for court action is clearly communicated to the creditor.]

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

(b) The information required in the notice under par. (a) may be combined with any other notice, including a notice of right to cure under s. 425.104.

[NOTE: This wording makes it clear that the information required by this notice can be integrated with other notices, such as the notice of right to cure, and avoids an interpretation that information must be repeated.]

SECTION 6. 425.206(1) (intro.) of the statutes is amended to read:

425.206(1) (intro.) Notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state by means other than legal process in accordance with this subchapter except when any of the following apply:

Should also be struck - D-NOTE

[NOTE: This revision eliminates the confusing phrase from the introductory language – the reference to repossession by legal procedure is properly set forth in subd (1)(b) as being one of the permitted methods for repossessions.]

SECTION 7. 425.206(1)(a) of the statutes is amended to read:

425.206 (1) (a) The customer has surrendered the collateral or leased goods;

SECTION 8. 425.206(1)(b) of the statutes is amended to read:

425.206(1)(b). Judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203(2); or

SECTION 9. 425.206 (1) (d) of the statutes is created to read:

425.206(1)(d). The customer has not made a demand specified in s. 425.205(1g)(a)3.

and, no sooner than 15 days after the customer's receipt of the notice specified in s. 425.205(1g)(a), is given, the merchant has taken possession of collateral pursuant to subch. VI of ch. 409 or goods subject to a consumer lease in accordance with subd (2).

[NOTE: Conforms to other two changes: non-judicial recovery is allowed for goods subject to a consumer lease and the notice is effective 15-days after it is sent.]

SECTION 10. 425.207 (2) of the statutes is amended to read:

425.207(2). A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request the ~~customer has surrendered the collateral or leased goods; or judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or in a judgment described in s. 425.203(2)~~ merchant has perfected its right to possession under § 425.206(1)(a) (b) or (d). A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last-known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by

NOTE

*NOTE
change to
425.205
(1g)(a)
3.*

*NOTE
problem
with
timing*

*not (g)?
O-NOTE*

the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects ^{US. ITS? → D-NOTE} the right to possession ~~through a surrender by the customer or a judgment under s. 425.203(2) or 425.205, under § 425.206(1)(a) (b) or (d),~~ the customer is liable for the expenses set forth in s. 409.615(1). In determining such expenses, leased goods shall be considered collateral under s. 409.615(1). However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects the right to possession in the manner provided in this subsection.

[NOTE: Section 425.206(1)(a) (b) and, as amended by this bill, subd (1)(d) provides the three methods by which a merchant will be able to perfect its right to possession to abandoned property. Inserting a reference to those provisions seems the clearest way to set forth what the creditor must do to prevent a customer from recovering abandoned collateral.]

SECTION 11. 427.105 (2) of the statutes is amended to read:

427.105(2). If a customer establishes that the customer was induced to surrender collateral (s. 425.202) by conduct of the merchant which violates this chapter, the customer shall be entitled to a determination of the right to possession of the collateral pursuant to s. 425.205(1)(1r)(e) in any action brought under this subchapter, and if the customer prevails on such issue, in addition to any other damages under this subchapter, the customer shall be entitled to recover possession of the collateral if still in the merchant's possession, together with actual damages for the customer's loss of use of the collateral.

(END)

D - NOTE

2005 BILL

wanted by
Wed
5/11/8
AM

Keep
RM has
been
pun

or involves goods subject
to a lease for a term
exceeding four months

Repeal

1 AN ACT to repeal 425.204 (3); to renumber 425.205 (1) (a) to (e); to renumber
2 and amend 425.205 (1) (intro.); to amend 425.206 (1) (intro.), 425.206 (1) (a),
3 425.206 (1) (b), 425.207 (2) and 427.105 (2); and to create 425.205 (1) (am) 2.,
4 425.205 (1g) and 425.206 (1) (d) of the statutes; relating to: repossession of
5 goods in consumer credit transactions and certain consumer leases.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin Consumer Act (WCA) governs certain credit transactions between merchants and customers. In general, a credit transaction is subject to the WCA if the transaction is for personal, family, or household purposes and the amount financed is \$25,000 or less. If such a transaction involves goods in which the merchant has a security interest for securing the customer's obligations in the transaction, ~~the merchant's rights to enforce the security interest are governed by the WCA, and not the secured transaction provisions of Wisconsin's version of the Uniform Commercial Code (UCC).~~

~~The WCA provides that, if a customer defaults on the transaction, the merchant may take possession of the goods only as follows: 1) the customer may voluntarily surrender the goods; 2) the merchant may bring an action for a money judgment against the customer and obtain a court order for possession of the goods; or 3) the merchant may bring a replevin action against the customer for the goods. In addition, if the customer acts in a manner that substantially impairs the merchant's interest in the goods, the merchant may obtain a restraining order for possession of~~

Same
41

INSERT 1A

the WCA provides that

for recovery

BILL

INSERT 2A

use judicial process of the goods

the goods. Also, subject to certain requirements, if the merchant reasonably believes that the customer has abandoned the goods, the merchant may take possession of the goods. With certain exceptions, before a merchant can bring an action for a money judgment or a replevin action, the merchant must give the customer 15 days to cure the default.

If certain requirements are satisfied, this bill allows a merchant to take possession of the goods under the UCC, in addition to taking possession as described above. For a merchant to take action under the UCC, the merchant must first provide the customer with a notice that the customer has a 15-day deadline to demand that the merchant bring a replevin action for the goods under the WCA. If the customer makes such a demand no later than 15 days after receipt of the notice, the merchant must bring a replevin action for the goods. If the customer does not make such a demand, the merchant may proceed under the UCC. Under the UCC, the merchant may take possession of the goods with or without judicial process. However, the merchant may take possession without judicial process only if the merchant does not breach the peace.

without judicial process if

merchant provides the

but

in writing

The bill also changes the requirements that apply to a customer's voluntary surrender of goods in which the merchant has a security interest. Current law provides that surrender of goods is not voluntary if the surrender is made pursuant to a request or demand by a merchant for the surrender, or if the surrender is made pursuant to a threat, statement, or notice that the merchant intends to take possession of the goods. This bill eliminates these provisions. As a result, under the bill, a surrender is voluntary even if it is made pursuant to such a request, demand, threat, statement, or notice.

Such

Such as the notice described

In addition, the bill changes the requirements that apply to a merchant's possession of goods upon the customer's abandonment of the goods. Under current law, if a merchant reasonably believes that a customer has abandoned goods that are subject to the merchant's security interest, or subject to a consumer lease, the merchant may take possession of the goods. However, the customer may subsequently recover the goods, unless one of the following conditions apply: 1) customer has voluntarily surrendered the goods; or 2) the merchant has obtained a judgment in an action for a money judgment or a replevin action. In addition, if the merchant has perfected its right to possession of the goods through the customer's voluntary surrender of the goods or by obtaining a judgment in one of the foregoing actions, the customer is liable for the merchant's expenses in taking possession.

above that is required under the bill for recovering goods without judicial process

Same

expands

This bill changes the second condition described above that prohibits a customer from subsequently recovering goods. Under this bill, the second condition is that the merchant has perfected its right to possession of the goods. Also, the bill provides that a customer is liable for the expenses described above if the merchant has perfected its right to possession, but the bill does not require the perfection to be

INSERT 2B

by the customer

and the merchant does not enter the customer's residence unless voluntarily requested

BILL

~~accomplished through the customer's voluntary surrender or by obtaining a judgment in one of the foregoing actions.~~

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

INSERT 3-1

1 SECTION 1. 425.204 (3) of the statutes is repealed.

2 SECTION 2. 425.205 (1) (intro.) of the statutes is renumbered 425.205 (1) (am)

3 1. and amended to read:

4 425.205 (1) (am) 1. Except as provided in s. 425.206, a creditor seeking to obtain
5 possession of collateral or goods subject to a consumer lease shall commence an
6 action for replevin of the collateral or leased goods. Those actions

7 (1r) An action under par. (am) shall be conducted in accordance with ch. 799,
8 notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought
9 to be recovered, except that:

10 SECTION 3. 425.205 (1) (a) to (e) of the statutes are renumbered 425.205 (1r) (a)
11 to (e).

12 SECTION 4. 425.205 (1) (am) 2. of the statutes is created to read:

13 425.205 (1) (am) 2. Except as provided in s. 425.206, a creditor seeking to obtain
14 possession of collateral may commence, and if the customer demands such an action
15 in response to a notice provided under sub. (1g) shall commence, an action for
16 replevin of the collateral.

17 SECTION 5. 425.205 (1g) of the statutes is created to read:

18 425.205 (1g) (a) A merchant may not take possession of collateral under s.
19 425.206 (1) (d), unless the merchant provides the customer a notice containing all of
20 the following: information

or goods subject to a
consumer lease

BILL

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

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

8 3. A statement that if the customer is not in default or objects to the merchant's
9 right to take possession of the collateral, *merchant has provided* the customer may, no later than 15 days
10 after the customer's receipt of the notice, demand that the merchant proceed in court
11 by notifying the merchant by telephone *or goods* or in writing. *(Leased)*

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

14 (b) ~~A notice~~ *The information required* under par. (a) may be combined with any other notice, including
15 a notice of right to cure under s. 425.104.

16 **SECTION 6.** 425.206 (1) (intro.) of the statutes is amended to read:

17 425.206 (1) (intro.) Notwithstanding any other provision of law, no merchant
18 may take possession of collateral or goods subject to a consumer lease in this state
19 ~~by means other than legal process in accordance with this subchapter~~ except when
20 any of the following apply: *strike*

21 **SECTION 7.** 425.206 (1) (a) of the statutes is amended to read:

22 425.206 (1) (a) The customer has surrendered the collateral or leased goods;

23 **SECTION 8.** 425.206 (1) (b) of the statutes is amended to read:

BILL

1 425.206 (1) (b) Judgment for the merchant has been entered in a proceeding
2 for recovery of collateral or leased goods under s. 425.205, or for possession of the
3 collateral or leased goods under s. 425.203 (2); or,

4 **SECTION 9.** 425.206 (1) (d) of the statutes is created to read:

5 425.206 (1) (d) The customer has not made a demand specified in s. 425.205 (1g)
6 (a) 3. and, no sooner than 15 days after the ^{merchant provides} customer's receipt of the notice specified
7 in s. 425.205 (1g) (a), the merchant has taken possession of collateral pursuant to
8 ~~subch. VI of ch. 409.~~ INSERT 5-8

9 **SECTION 10.** 425.207 (2) of the statutes is amended to read:

10 425.207 (2) A merchant who reasonably believes that a customer has
11 abandoned collateral or goods subject to a consumer lease may take possession of
12 such collateral or leased goods and preserve it. However, the customer may recover
13 such collateral or leased goods upon request unless at the time of request ~~the~~ ^{statute}
14 ~~customer has surrendered the collateral or leased goods, or judgment for the~~
15 ~~merchant has been entered in a proceeding for recovery of collateral or leased goods~~
16 ~~under s. 425.205 or in a judgment described in s. 425.203 (2) perfected ~~his~~ right to~~ ^{has} ~~possession.~~ ^{the}
17 possession. A merchant taking possession of collateral or leased goods pursuant to
18 this section shall promptly send notification to the customer's last-known address
19 of such action and of the customer's right to recover such collateral or leased goods
20 under this section. If the collateral or leased goods are recovered by the customer
21 pursuant to this section, it shall be returned to the customer at the location where
22 the merchant took possession of such collateral or leased goods pursuant to this
23 section or, at the option of the merchant, at such other location designated by the
24 customer; and any expense incurred by the merchant in taking possession of, holding
25 and returning the collateral or leased goods to the customer shall be borne by the

under s. 425.206 (1) (a), (b), or (d)

BILL

1 merchant. If after taking possession of collateral or leased goods pursuant to this
 2 subsection, the merchant perfects the right to possession through a surrender by the
 3 customer or a judgment under s. 425.203 (2) or 425.205, the customer is liable for the
 4 expenses set forth in s. 409.615 (1). In determining such expenses, leased goods shall
 5 be considered collateral under s. 409.615 (1). However, a customer is not liable for
 6 expenses of holding the collateral or leased goods from the time the merchant takes
 7 possession until the merchant perfects the right to possession in the manner
 8 provided in this subsection.

9 **SECTION 11.** 427.105 (2) of the statutes is amended to read:

10 427.105 (2) If a customer establishes that the customer was induced to
 11 surrender collateral (s. 425.202) by conduct of the merchant which violates this
 12 chapter, the customer shall be entitled to a determination of the right to possession
 13 of the collateral pursuant to s. 425.205 (1) (1r) (e) in any action brought under this
 14 subchapter, and if the customer prevails on such issue, in addition to any other
 15 damages under this subchapter, the customer shall be entitled to recover possession
 16 of the collateral if still in the merchant's possession, together with actual damages
 17 for the customer's loss of use of the collateral.

18 (END)

(dn)

under s. 425.206 (1) (a), (b) or (d)

1

INSERT 1A:

2

109
In addition, the merchant may use judicial process for recovery of the goods as follows: 1)

3

4

INSERT 2A:

5

109
If the merchant ~~obtains~~ recovers the goods through judicial process, the merchant may take possession, but only without breaching the peace and only if any entry of the customer's residence by the merchant is at the voluntary request of the customer. Alternatively, the merchant may require the sheriff to recover the goods. ✓

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8

9

INSERT 2B:

10

109
so that it includes the merchant taking possession of the goods without judicial process as allowed under the bill. ✓

11

12

INSERT 3-1:

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SECTION 1. 425.205 (1) (intro.) of the statutes is amended to read:

14

15

16

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425.205 (1) (intro.) Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease shall may commence, and if the customer demands such an action in response to a notice provided under sub. (1g) shall commence, an action for replevin of the collateral or leased goods. Those actions shall be conducted in accordance with ch. 799, notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered, except that:

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

21

INSERT 5-8:

22

or leased goods in accordance with sub. (2) ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2682/2dn

MDK:.....

Imk

(date)

✓
Rep. Hundertmark:

Please note the following about this redraft:

1. The revisions to the analysis that you provided suggest that the customer should be allowed to require a replevin action *or* an action for money damages. ✓ However, the additional instructions suggest that the customer should only be allowed to require a replevin action. This version limits the customer to requiring a replevin action. Is that okay? ✓

2. The instructions change "merchant" to "creditor" in proposed s. 425.205 (1g) (a) 1. and 4., without changing other references to "merchant" in proposed s. 425.205 (1g) (a) (intro.), 2, and 3. Therefore, for the sake of consistency, I retained the references to "merchant".

3. In the amendment of s. 425.206 (1) (intro.), I ^{have} ~~strike~~ the phrase "by means". This phrase ^{was} ~~is~~ not stricken in the instructions.

4. The instructions for s. 425.206 (1) (d) suggest that the 15-day deadline should begin to run on the date that the merchant provides notice. Therefore, I also revised proposed s. 425.205 (1g) (a) 3. However, I think these revisions create a problem. ✓ As revised, this version of the bill requires the customer to make a written demand no later than 15 days after the merchant provides the notice. ✓ How do you determine when the customer "makes" the written demand? ✓ For example, if the demand is mailed, is it the date of mailing or the date of receipt of the mailing? ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2682/2dn

MDK:lmk:rs

May 18, 2005

Rep. Hundertmark:

Please note the following about this redraft:

1. The revisions to the analysis that you provided suggest that the customer should be allowed to require a replevin action *or* an action for money damages. However, the additional instructions suggest that the customer should only be allowed to require a replevin action. This version limits the customer to requiring a replevin action. Is that okay?
2. The instructions change "merchant" to "creditor" in proposed s. 425.205 (1g) (a) 1. and 4., without changing other references to "merchant" in proposed s. 425.205 (1g) (a) (intro.), 2., and 3. Therefore, for the sake of consistency, I retained the references to "merchant."
3. In the amendment of s. 425.206 (1) (intro.), I have stricken the phrase "by means." This phrase was not stricken in the instructions.
4. The instructions for s. 425.206 (1) (d) suggest that the 15-day deadline should begin to run on the date that the merchant provides notice. Therefore, I also revised proposed s. 425.205 (1g) (a) 3. However, I think these revisions create a problem. As revised, this version of the bill requires the customer to make a written demand no later than 15 days after the merchant provides the notice. How do you determine when the customer "makes" the written demand? For example, if the demand is mailed, is it the date of mailing or the date of receipt of the mailing?

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Today
2pm

2005 - 2006 LEGISLATURE

LRB-2682/2-3
MDK:lmk:rs
keep
RM
run
over
run

2005 BILL

BeGen

1 AN ACT *to repeal* 425.204 (3); *to amend* 425.205 (1) (intro.), 425.206 (1) (intro.),
2 425.206 (1) (a), 425.206 (1) (b) and 425.207 (2); and *to create* 425.205 (1g) and
3 425.206 (1) (d) of the statutes; **relating to:** repossession of goods in consumer
4 credit transactions and certain consumer leases.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin Consumer Act (WCA) governs certain credit transactions between merchants and customers. In general, a credit transaction is subject to the WCA if the transaction is for personal, family, or household purposes and the amount financed is \$25,000 or less. If such a transaction involves goods in which the merchant has a security interest for securing the customer's obligations in the transaction or involves goods subject to a lease for a term exceeding four months, and that customer defaults on the transaction, the WCA provides that the merchant may take possession of the goods if the customer voluntarily surrenders the goods. In addition, the merchant may use judicial process for recovery of the goods as follows: 1) the merchant may bring an action for a money judgment against the customer and obtain a court order for possession of the goods; or 2) the merchant may bring a replevin action against the customer for the goods. With certain exceptions, before a merchant can use judicial process for the recovery of the goods merchant must give the customer 15 days to cure the default. If the merchant recovers the goods through judicial process, the merchant may take possession, but only without breaching the peace and only if any entry of the customer's residence

BILL

by the merchant is at the voluntary request of the customer. Alternatively, the merchant may require the sheriff to recover the goods.

This bill allows a merchant to take possession of the goods without judicial process if the merchant first ~~provides~~ ^{gives} the customer ~~with~~ ^{gives} a notice that the customer has a 15-day deadline to demand in writing that the merchant bring a replevin action for the goods under the WCA. If the customer makes such a demand no later than 15 days after the merchant ~~provides~~ the notice, the merchant must bring a replevin action for the goods. If the customer does not make such a demand, the merchant may take possession of the goods without judicial process, but only if the merchant does not breach the peace and the merchant does not enter the customer's residence unless voluntarily requested by the customer.

The bill also changes the requirements that apply to a customer's voluntary surrender of goods in which the merchant has a security interest. Current law provides that surrender of such goods is not voluntary if the surrender is made pursuant to a request or demand by a merchant for the surrender, or if the surrender is made pursuant to a threat, statement, or notice that the merchant intends to take possession of the goods. This bill eliminates these provisions. As a result, under the bill, a surrender is voluntary even if it is made pursuant to such a request, demand, threat, statement, or notice, such as the notice described above that is required under the bill for recovering goods without judicial process.

In addition, the bill changes the requirements that apply to a merchant's possession of goods upon the customer's abandonment of the goods. Under current law, if a merchant reasonably believes that a customer has abandoned goods that are subject to the merchant's security interest, or subject to a consumer lease, the merchant may take possession of the goods. However, the customer may subsequently recover the goods, unless one of the following conditions apply: 1) customer has voluntarily surrendered the goods; or 2) the merchant has obtained a judgment in an action for a money judgment or a replevin action. This bill expands the second condition so that it includes the merchant taking possession of the goods without judicial process as allowed under the bill.

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

1 SECTION 1. 425.204 (3) [✓] of the statutes is repealed.

2 SECTION 2. 425.205 (1) [✓] (intro.) of the statutes is amended to read:

3 425.205 (1) (intro.) Except as provided in s. 425.206, a creditor seeking to
4 obtain possession of collateral or goods subject to a consumer lease ~~shall~~ may
5 commence, and if the customer demands such an action in response to a notice
6 provided under sub. (1g) shall commence, an action for replevin of the collateral or

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

4 **SECTION 3.** 425.205 (1g) of the statutes is created to read:

5 425.205 (1g) (a) A merchant may not take possession of collateral or goods
6 subject to a consumer lease under s. 425.206 (1) (d), unless the merchant provides
7 the customer a notice containing all of the following information:

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

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

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

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

21 (b) The information required under par. (a) may be combined with any other
22 notice, including a notice of right to cure under s. 425.104.

23 **SECTION 4.** 425.206 (1) (intro.) of the statutes is amended to read:

24 425.206 (1) (intro.) Notwithstanding any other provision of law, no merchant
25 may take possession of collateral or goods subject to a consumer lease in this state

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1 by means other than legal process in accordance with this subchapter except when
2 any of the following apply:

3 **SECTION 5.** 425.206 (1) (a) of the statutes is amended to read:

4 425.206 (1) (a) The customer has surrendered the collateral or leased goods;

5 **SECTION 6.** 425.206 (1) (b) of the statutes is amended to read:

6 425.206 (1) (b) Judgment for the merchant has been entered in a proceeding
7 for recovery of collateral or leased goods under s. 425.205, or for possession of the
8 collateral or leased goods under s. 425.203 (2); or,

9 **SECTION 7.** 425.206 (1) (d) of the statutes is created to read:

10 425.206 (1) (d) The customer has not made a demand specified in s. 425.205 (1g)
11 (a) 3. and, no sooner than 15 days after the merchant ~~provides~~ ^{as} gives the notice specified
12 in s. 425.205 (1g) (a), the merchant has taken possession of the collateral or leased
13 goods in accordance with sub. (2).

14 **SECTION 8.** 425.207 (2) of the statutes is amended to read:

15 425.207 (2) A merchant who reasonably believes that a customer has
16 abandoned collateral or goods subject to a consumer lease may take possession of
17 such collateral or leased goods and preserve it. However, the customer may recover
18 such collateral or leased goods upon request unless at the time of request the
19 customer has surrendered the collateral or leased goods, or judgment for the
20 merchant has been entered in a proceeding for recovery of collateral or leased goods
21 under s. 425.205 or in a judgment described in s. 425.203 (2) perfected the right to
22 possession under s. 425.206 (1) (a), (b), or (d). A merchant taking possession of
23 collateral or leased goods pursuant to this section shall promptly send notification
24 to the customer's last-known address of such action and of the customer's right to
25 recover such collateral or leased goods under this section. If the collateral or leased

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1 goods are recovered by the customer pursuant to this section, it shall be returned to
2 the customer at the location where the merchant took possession of such collateral
3 or leased goods pursuant to this section or, at the option of the merchant, at such
4 other location designated by the customer; and any expense incurred by the
5 merchant in taking possession of, holding and returning the collateral or leased
6 goods to the customer shall be borne by the merchant. If after taking possession of
7 collateral or leased goods pursuant to this subsection, the merchant perfects the
8 right to possession ~~through a surrender by the customer or a judgment under s.~~
9 ~~425.203 (2) or 425.205~~ under s. 425.206 (1) (a), (b), or (d), the customer is liable for
10 the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods
11 shall be considered collateral under s. 409.615 (1). However, a customer is not liable
12 for expenses of holding the collateral or leased goods from the time the merchant
13 takes possession until the merchant perfects the right to possession in the manner
14 provided in this subsection.

15

(END)

Northrop, Lori

From: Rostan, Jason
Sent: Thursday, June 16, 2005 9:46 AM
To: LRB.Legal
Subject: Draft review: LRB 05-2682/3 Topic: Repossession of collateral; notice of customer's rights regarding court proceedings

It has been requested by <Rostan, Jason> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2682/3 Topic: Repossession of collateral; notice of customer's rights regarding court proceedings