

2005 Assembly Bill 594

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2005 WISCONSIN ACT 255

AN ACT *to renumber and amend* 425.202 and 425.401; *to amend* 425.204 (3), 425.206 (1) (intro.), 425.206 (1) (a), 425.206 (1) (b), 425.207 (2) and 427.105 (2); and *to create* 425.202 (2), 425.205 (1g), 425.206 (1) (d), 425.2065 and 425.401 (2) of the statutes; **relating to:** repossessions of motor vehicles and providing a penalty.

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

SECTION 1. 425.202 of the statutes is renumbered 425.202 (intro.) and amended to read:

425.202 Definition: “collateral” Definitions. (intro.) For purposes of this chapter, “collateral”:

(1) “Collateral” means goods subject to a security interest in favor of a merchant which secures a customer’s obligations under a consumer credit transaction.

SECTION 2. 425.202 (2) of the statutes is created to read:

425.202 (2) “Motor vehicle” has the meaning given in s. 218.0101 (22).

SECTION 3m. 425.204 (3) of the statutes is amended to read:

425.204 (3) The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to a request or demand, other than a notice under s. 425.205 (1g) (a), by the merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement, or notice, other than a notice under s. 425.205 (1g) (a), by the merchant that the merchant intends to take possession of the collateral.

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

425.205 (1g) (a) A merchant may not take possession of motor vehicle collateral or goods subject to a motor vehicle consumer lease under s. 425.206 (1) (d), unless the merchant gives, by mail, the customer a notice containing all of the following information:

1. 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.

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 or goods 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 or goods, the customer may, no later than 15 days after the merchant has given the notice, demand that the merchant proceed in court by notifying the merchant in writing.

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

(b) The information required under par. (a) may be combined with any other notice, except that if the customer has a right to cure under s. 425.105, the informa-

* Section 991.11, WISCONSIN STATUTES 2003–04 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tion required under par. (a) shall be combined with the notice of right to cure under s. 425.104.

(c) A merchant is presumed to have given notice under par. (a) if the merchant sent the notice by certified or registered mail. A merchant who fails to give notice under par. (a) by certified or registered mail is subject to the penalties specified in s. 425.302 (1), but such failure does not constitute a failure to comply with s. 425.206 (1) (d).

SECTION 5. 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:

SECTION 6. 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 7. 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 8. 425.206 (1) (d) of the statutes is created to read:

425.206 (1) (d) For motor vehicle collateral or goods subject to a motor vehicle consumer lease, the customer has not made a demand as specified in s. 425.205 (1g) (a) 3. and, no sooner than 15 days after the merchant gives the notice specified in s. 425.205 (1g) (a), the merchant has taken possession of the collateral or goods in accordance with sub. (2).

SECTION 9. 425.2065 of the statutes is created to read:

425.2065 Notice to law enforcement. (1) In this section, "law enforcement agency" means the police department, combined protective services department under s. 61.66, or sheriff, that has primary responsibility for providing police protection services in the city, village, or town in which a repossession is expected to occur.

(2) A merchant who repossesses motor vehicle collateral or goods subject to a motor vehicle consumer lease under s. 425.206 (1) (d), or a person who repossess such collateral or goods on behalf of the merchant, shall notify, verbally or in writing, the law enforcement agency about the repossession. The notification shall include the names of the customer, merchant, and, if applicable, the person who repossesses the collateral or goods on behalf of the merchant. The notification shall also include a description of the collateral or goods. Notification under this subsection shall be made before the repossession occurs.

(3) Failure to comply with this subsection does not constitute a failure to comply with s. 425.206 (1) (d).

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) perfected the right to possession under s. 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 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 under s. 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.

SECTION 11. 425.401 of the statutes is renumbered 425.401 (1) and amended to read:

425.401 (1) ~~A~~ Except as provided in sub. (2), a person who willfully and knowingly engages in any conduct or practice in violation of chs. 421 to 427 may be fined not more than \$2,000.

SECTION 12. 425.401 (2) of the statutes is created to read:

425.401 (2) A person who intentionally violates s. 425.2065 (2) may be fined not more than \$500.

SECTION 13. 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 ~~(, as defined in s. 425.202) (1),~~ by conduct of the merchant which vio-

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lates this chapter, the customer shall be entitled to a determination of the right to possession of the collateral pursuant to s. 425.205 (1) (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.
