

2005 ASSEMBLY BILL 594

August 2, 2005 – Introduced by Representatives HUNDERTMARK, FREESE, VAN ROY, HAHN, HINES, TOWNSEND, BALLWEG, STRACHOTA, LEMAHIEU, AINSWORTH, SUDER, LAMB, SCHNEIDER and VOS, cosponsored by Senators LEIBHAM, HARSDORF, WIRCH and OLSEN. Referred to Committee on Financial Institutions.

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

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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 gives the customer 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 gives 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 given
6 under sub. (1g) shall commence, an action for replevin of the collateral or leased

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1 goods. Those actions shall be conducted in accordance with ch. 799, notwithstanding
2 s. 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered,
3 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 gives the
7 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 given 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 as specified in s. 425.205
11 (1g) (a) 3. and, no sooner than 15 days after the merchant 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.

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(END)