

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0335/3dn
MDK:lmk:rs

December 12, 2005

Rep. Hundertmark:

This version makes the changes you requested, except that this version does not affect s. 425.205 (1) (intro.). After reviewing the issue, I concluded that it is not necessary to affect s. 425.205 (1) (intro.) to satisfy your intent.

Under current law, there are 3 options for a merchant to get possession of collateral or leased goods: 1) the consumer can voluntarily surrender them; 2) the merchant can obtain a judgment in a replevin action under s. 425.205 or in an action for a money judgment under s. 425.203 (2); or 3) if the consumer has abandoned the collateral or goods, the merchant can take possession under s. 425.207 (2).

This version adds a 4th option: self-help repossession. However, the 4th option applies only to motor vehicle collateral or goods subject to a motor vehicle consumer lease. In addition, a merchant can use the 4th option only if the merchant sends the consumer a notice and the consumer does not subsequently demand that the merchant proceed in court. If the consumer fails to make the demand, the merchant may use the 4th option and repossess. However, if the consumer makes the demand, the merchant is limited to the 3 options under current law described above. Furthermore, if the consumer has not abandoned the collateral or goods, the merchant is limited to the first 2 options described above: 1) voluntary surrender; or 2) judgment in a replevin action or action for a money judgment.

There is no need to amend s. 425.205 (1) (intro.) to accomplish the above. Please let me know if this is okay.

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