

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 594**

January 24, 2006 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY.

1 **AN ACT** *to renumber and amend* 425.202 and 425.401; *to amend* 425.204 (3),
2 425.205 (1) (intro.), 425.206 (1) (intro.), 425.206 (1) (a), 425.206 (1) (b), 425.207
3 (2) and 427.105 (2); and *to create* 425.202 (2), 425.205 (1g), 425.206 (1) (d),
4 425.2065 and 425.401 (2) of the statutes; **relating to:** repossessions of motor
5 vehicles and providing a penalty.

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

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

8 **425.202 Definition: “collateral” Definitions.** (intro.) For purposes of this
9 chapter, “collateral”:

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

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

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

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

4 425.204 **(3)** The surrender of collateral by a customer is not a voluntary
5 surrender if it is made pursuant to a request or demand, other than a notice under
6 s. 425.205 (1g) (a), by the merchant for the surrender of the collateral, or if it is made
7 pursuant to a threat, statement, or notice, other than a notice under s. 425.205 (1g)
8 (a), by the merchant that the merchant intends to take possession of the collateral.

9 **SECTION 4.** 425.205 (1) (intro.) of the statutes is amended to read:

10 425.205 **(1)** (intro.) Except as provided in s. 425.206, a creditor seeking to
11 obtain possession of collateral or goods subject to a consumer lease ~~shall~~ may
12 commence, and, for a consumer credit transaction for the acquisition or use of a motor
13 vehicle, if the customer demands such an action in response to a notice given under
14 sub. (1g) shall commence, an action for replevin of the collateral or leased goods.
15 Those actions shall be conducted in accordance with ch. 799, notwithstanding s.
16 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered,
17 except that:

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

19 425.205 **(1g)** (a) A merchant may not take possession of collateral or goods
20 subject to a consumer credit transaction for the acquisition or use of a motor vehicle
21 under s. 425.206 (1) (d), unless the merchant gives, by mail, the customer a notice
22 containing all of the following information:

23 1. The name, address, and telephone number of the merchant, a brief
24 identification of the consumer credit transaction, and a brief description of the
25 collateral or goods.

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

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

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

10 (b) The information required under par. (a) may be combined with any other
11 notice, except that if the customer has a right to cure under s. 425.105, the
12 information required under par. (a) shall be combined with the notice of right to cure
13 under s. 425.104.

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

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

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

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

25 425.206 (1) (a) The customer has surrendered the collateral or leased goods;

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

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

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

6 425.206 (1) (d) For a consumer credit transaction for the acquisition or use of
7 a motor vehicle, the customer has not made a demand as specified in s. 425.205 (1g)
8 (a) 3. and, no sooner than 15 days after the merchant gives the notice specified in s.
9 425.205 (1g) (a), the merchant has taken possession of the collateral or goods in
10 accordance with sub. (2).

11 **SECTION 10.** 425.2065 of the statutes is created to read:

12 **425.2065 Notice to law enforcement. (1)** In this section, “law enforcement
13 agency” means the police department, combined protective services department
14 under s. 61.66, or sheriff, that has primary responsibility for providing police
15 protection services in the city, village, or town in which a repossession is expected to
16 occur.

17 **(2)** A merchant who repossesses collateral or goods subject to a consumer credit
18 transaction for the acquisition or use of a motor vehicle under s. 425.206 (1) (d), or
19 a person who repossess the collateral or goods on behalf of the merchant, shall notify,
20 verbally or in writing, the law enforcement agency about the repossession. The
21 notification shall include the names of the customer, merchant, and, if applicable, the
22 person who repossesses the collateral or goods on behalf of the merchant. The
23 notification shall also include a description of the collateral or goods. Notification
24 under this subsection shall be made before the repossession occurs.

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

3 **SECTION 11.** 425.207 (2) of the statutes is amended to read:

4 425.207 **(2)** A merchant who reasonably believes that a customer has
5 abandoned collateral or goods subject to a consumer lease may take possession of
6 such collateral or leased goods and preserve it. However, the customer may recover
7 such collateral or leased goods upon request unless at the time of request the
8 ~~customer has surrendered the collateral or leased goods, or judgment for the~~
9 ~~merchant has been entered in a proceeding for recovery of collateral or leased goods~~
10 ~~under s. 425.205 or in a judgment described in s. 425.203 (2) perfected the right to~~
11 ~~possession under s. 425.206 (1) (a), (b), or (d).~~ A merchant taking possession of
12 collateral or leased goods pursuant to this section shall promptly send notification
13 to the customer's last-known address of such action and of the customer's right to
14 recover such collateral or leased goods under this section. If the collateral or leased
15 goods are recovered by the customer pursuant to this section, it shall be returned to
16 the customer at the location where the merchant took possession of such collateral
17 or leased goods pursuant to this section or, at the option of the merchant, at such
18 other location designated by the customer; and any expense incurred by the
19 merchant in taking possession of, holding and returning the collateral or leased
20 goods to the customer shall be borne by the merchant. If after taking possession of
21 collateral or leased goods pursuant to this subsection, the merchant perfects the
22 right to possession ~~through a surrender by the customer or a judgment under s.~~
23 ~~425.203 (2) or 425.205~~ under s. 425.206 (1) (a), (b), or (d), the customer is liable for
24 the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods
25 shall be considered collateral under s. 409.615 (1). However, a customer is not liable

1 for expenses of holding the collateral or leased goods from the time the merchant
2 takes possession until the merchant perfects the right to possession in the manner
3 provided in this subsection.

4 **SECTION 12.** 425.401 of the statutes is renumbered 425.401 (1) and amended
5 to read:

6 425.401 (1) ~~A~~ Except as provided in sub. (2), a person who willfully and
7 knowingly engages in any conduct or practice in violation of chs. 421 to 427 may be
8 fined not more than \$2,000.

9 **SECTION 13.** 425.401 (2) of the statutes is created to read:

10 425.401 (2) A person who intentionally violates s. 425.2065 (2) may be fined not
11 more than \$500.

12 **SECTION 14.** 427.105 (2) of the statutes is amended to read:

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

21 (END)