



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Senate Bill 387	Senate Substitute Amendment 1
<i>Memo published:</i> November 29, 2005	
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Senate Substitute Amendment 1 regulates repossessions under motor vehicle consumer leases.

Current Law

Wisconsin's Consumer Act generally provides that a merchant may not take possession of collateral or goods subject to a consumer lease by means other than legal process, except in any of the following circumstances:

1. The customer has surrendered the collateral or leased goods.
2. Judgment for the merchant has been entered in a replevin action or in a legal action in which the judgment provides for the right to possession of the collateral or leased goods by the merchant.
3. The merchant has taken possession of the collateral or leased goods when they have been abandoned.

[See ss. 425.203 (1) and (2), 425.205 (1), and 425.206 (1), Stats.]

In taking possession of collateral or leased goods, a merchant may not commit a breach of the peace or enter a dwelling used by the customer as a residence except at the voluntary request of a customer. Surrender of collateral by a customer is not voluntary 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. [See ss. 425.204 (3) and 425.206 (2), Stats.]

A person who willfully and knowingly engages in any conduct or practice in violation of chs. 421 to 427, Stats., may be fined not more than \$2,000. If a merchant violates the laws relating to nonjudicial repossession of collateral or leased goods, the customer is entitled to retain the goods,

services, or money received without an obligation to pay any amount. Also, the customer may recover any sums paid to the merchant under the transaction. [See ss. 425.305 and 425.401, Stats.]

Senate Substitute Amendment 1 to Assembly Bill 387

The substitute amendment creates a new method by which a merchant may take possession of collateral or goods subject to a motor vehicle consumer lease without undertaking judicial proceedings. To do this, a merchant must mail to the customer a notice that, among other things, includes the following information:

1. A statement that, as a result of the customer's default on the motor vehicle consumer lease, the merchant may have the right to take possession of the collateral or goods without further notice or court proceeding.
2. 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.
3. A statement that if the merchant proceeds in court, the customer may be required to pay court costs and attorney fees.

The above-described notice may be combined with any other notice, except that if the customer has a right to cure the default under s. 425.105, Stats., the notice must be combined with a notice of the right to cure.

The merchant is presumed to have given notice if the merchant sends the notice by certified or registered mail. The failure to give notice by certified or registered mail subjects the merchant to a liability in favor of the customer of \$100.

In a transaction involving a motor vehicle consumer lease, if the customer has not demanded that the merchant begin legal proceedings against the customer, the merchant may take possession of the collateral or goods subject to the consumer lease as long as the merchant: (a) does not commit a breach of the peace; and (b) does not enter a dwelling used by the customer as a residence except at the voluntary request of the customer. However, with respect to the meaning of the term "voluntary request," the substitute amendment repeals the provision in s. 425.204 (3), Stats., stating that the surrender of collateral by a customer is not voluntary 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. The repeal of this provision applies to all nonjudicial repossessions; that is, the repeal does not apply only to nonjudicial repossessions undertaken by a merchant pursuant to a motor vehicle consumer lease.

The substitute amendment also provides that a merchant who repossess collateral or goods under a consumer motor vehicle lease must notify, verbally or in writing, the local law enforcement agency about the repossession. The notice must include the names of the customer, merchant, and, if applicable, the person who acts on behalf of the merchant. The notification also must include a description of the collateral or goods and must be made before the repossession occurs. A person who

intentionally violates this provision may be fined not more than \$500, an exception to the general maximum fine of \$2,000 currently found in s. 425.401, Stats.

Legislative History

On November 22, 2005, the Senate Committee on Judiciary, Corrections and Privacy introduced and adopted Senate Substitute Amendment 1 to Senate Bill 387 and recommended the bill for passage, as amended. Both actions were taken on votes of Ayes, 3; Noes, 2.

RS:tlu