2019 ASSEMBLY BILL 669

December 13, 2019 - Introduced by Representatives KULP, SPIROS, TUSLER, STUCK and SKOWRONSKI, cosponsored by Senators WANGGAARD, BERNIER, OLSEN and STROEBEL. Referred to Committee on Judiciary.

AN ACT to renumber 411.103 (1) (a) and 425.202 (1); to consolidate, renumber and amend 425.206 (2) (intro.) and (a); to amend 409.609 (2) (b), 411.525 (3), 425.206 (2) (b) and 427.105 (2); and to create 409.102 (1) (bo), 411.525 (4), 425.202 (1g) and 425.206 (2m) of the statutes; relating to: repossession of collateral or leased goods.

Analysis by the Legislative Reference Bureau

This bill creates provisions governing the determination of whether a breach of the peace occurs when collateral or leased goods are repossessed, and creates immunity from liability for a person who repossesses vehicles under certain circumstances.

Under current law, a consumer credit transaction that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction, which includes consumer loans and consumer credit sales, means in part a transaction between a merchant and a customer who acquires money or personal property on credit. A merchant is defined to include a creditor or a seller of personal property on credit. The WCA includes provisions relating to enforcement of a merchant’s security interest in collateral resulting from a consumer credit transaction, including repossession of the collateral. With exceptions, a merchant may take possession of collateral or leased goods only if a judgment for the merchant has been entered for recovery of the collateral or leased goods. However, a merchant may proceed without a judgment in
repossessing collateral that is a motor vehicle if certain requirements are met, including giving notice to the debtor and law enforcement and the elapse of at least 15 days since both the debtor’s default and the merchant’s notice to the debtor. Under the WCA, “[i]n taking possession of collateral or leased goods, no merchant may . . . commit a breach of the peace.”

Current law also adopts the Uniform Commercial Code (UCC) Article 9 - Secured Transactions, which governs transactions that involve the granting of credit secured by personal property of a debtor, and UCC Article 11 - Leases, which governs the lease of movable personal property (goods). Under UCC Article 9, if a debtor defaults, the secured party may take possession of the collateral “if it proceeds without breach of the peace” or proceeds through judicial process. Under UCC Article 11, for most defaults by a lessee under a lease contract, the lessor may repossess the goods subject to the lease contract, without judicial process, “if it can be done without breach of the peace.”

This bill creates provisions that govern the determination of whether a breach of the peace occurs with respect to repossession of collateral or leased goods by, as applicable, the merchant, secured party, or lessor (together referred to as “creditor”) under the WCA and UCC. The bill specifies that the creditor or its authorized repossession may not commit a breach of the peace and that the conduct or activities of the customer, debtor, or lessee, or any bystander, may not be considered in determining whether a breach of the peace has occurred. Under the bill, an “authorized repossession” is defined as a person employed by a creditor or authorized to act as an agent by a creditor, or an independent contractor hired by a creditor or the independent contractor’s employee, for the purpose of taking possession of the collateral or leased goods.

The bill also limits liability if the repossession involves a vehicle. The bill defines a vehicle to include, among others, a motor vehicle, an all-terrain vehicle, a motorboat, and a snowmobile. Under the bill, no criminal or civil liability for wrongful repossession may be imposed against a creditor or its authorized repossession arising from the repossession of a vehicle if, in taking possession of the vehicle as authorized by law, the creditor or its authorized repossession complies with all applicable requirements. The bill also creates an additional limit on liability against an independent contractor, or its employee, hired to repossess a vehicle by a creditor that lacks authority to repossess the vehicle. Under the bill, no criminal or civil liability for wrongful repossession may be imposed against the independent contractor or its employee on the basis that the creditor was not authorized to repossess the vehicle if 1) the creditor represented to the independent contractor or its employee, or the independent contractor or its employee had a reasonable belief, that the creditor was authorized to repossess the vehicle; and 2) in repossessing the vehicle, the independent contractor or its employee complies with all applicable requirements.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
SECTION 1. 409.102 (1) (bo) of the statutes is created to read:

409.102 (1) (bo) “Authorized repossessor” of a secured party means a person employed by a secured party or authorized to act as an agent by a secured party, or an independent contractor hired by a secured party or the secured party’s forwarding agent or an employee of such an independent contractor, for the purpose of taking possession of collateral as authorized under s. 409.609 (1) (a).

SECTION 2. 409.609 (2) (b) of the statutes is amended to read:

409.609 (2) (b) Without judicial process, if the secured party or authorized repossessor of the secured party proceeds without committing a breach of the peace.

SECTION 3. 409.609 (4) of the statutes is created to read:

409.609 (4) BREACH OF THE PEACE CLARIFIED; LIABILITY ARISING FROM VEHICLE REPOSESSION. (a) In this subsection, “vehicle” means any of the following:

1. A motor vehicle, as defined in s. 218.0101 (22).
2. An all-terrain vehicle, as defined in s. 340.01 (2g).
3. A utility terrain vehicle, as defined in s. 23.33 (1) (ng).
4. An off-highway motorcycle, as defined in s. 23.335 (1) (q).
5. An off-highway vehicle, as defined in s. 23.119 (1) (b).
6. A recreational vehicle, as defined in s. 340.01 (48r).
7. A motorboat, as defined in s. 30.50 (6).
8. A snowmobile, as defined in s. 340.01 (58a).

(b) In determining whether a secured party or authorized repossessor of a secured party has committed a breach of the peace under sub. (2) (b), only the conduct or activities of the secured party or authorized repossessor of the secured party is relevant. A court may not consider the conduct or activities of the debtor or any bystander at the time of the repossession in determining compliance with sub. (2) (b).
(c) No criminal or civil liability for wrongful repossession may be imposed against a secured party or authorized repossession of a secured party arising from the repossession of a vehicle if, in taking possession of the vehicle as authorized under this section, the secured party or authorized repossession of the secured party complies with the requirements of this section and all requirements applicable to the secured party or the authorized repossession under ss. 411.525, 425.205, 425.206, and 425.2065.

(d) No criminal or civil liability for wrongful repossession may be imposed against an independent contractor, or its employees, hired by a secured party to take possession of a vehicle and arising from the repossession of the vehicle on the basis that the secured party was not authorized under sub. (1) (a) to take possession of the vehicle if all of the following apply:

1. The secured party represented to the independent contractor or its employee, or the independent contractor or its employee had a reasonable belief, that the secured party was authorized to take possession of the vehicle.

2. In taking possession of the vehicle, the independent contractor or its employee complies with the requirements of this section and all requirements applicable to the independent contractor or its employee under ss. 411.525, 425.205, 425.206, and 425.2065.

SECTION 4. 411.103 (1) (a) of the statutes is renumbered 411.103 (1) (am).

SECTION 5. 411.103 (1) (ag) of the statutes is created to read:

411.103 (1) (ag) “Authorized repossession” of a lessor means a person employed by a lessor or authorized to act as an agent by a lessor, or an independent contractor hired by a lessor or the lessor’s forwarding agent or an employee of such an
independent contractor, for the purpose of taking possession of goods as authorized under s. 411.525 (2).

SECTION 6. 411.525 (3) of the statutes is amended to read:

411.525 (3) The lessor may proceed under sub. (2) without judicial process if it can be done the lessor or authorized repossessor of the lessor can do so without committing a breach of the peace or the lessor may proceed by action.

SECTION 7. 411.525 (4) of the statutes is created to read:

411.525 (4) (a) In this subsection, “vehicle” has the meaning given in s. 409.609 (4) (a).

(b) In determining whether a lessor or authorized repossessor of a lessor has committed a breach of the peace under sub. (3), only the conduct or activities of the lessor or authorized repossessor of the lessor is relevant. A court may not consider the conduct or activities of the lessee or any bystander at the time of the repossession in determining compliance with sub. (3).

(c) No criminal or civil liability for wrongful repossession may be imposed against a lessor or authorized repossessor of a lessor arising from the repossession of a vehicle if, in taking possession of the vehicle as authorized under this section, the lessor or authorized repossessor of the lessor complies with the requirements of this section and all requirements applicable to the lessor or the authorized repossessor under ss. 409.609, 425.205, 425.206, and 425.2065.

(d) No criminal or civil liability for wrongful repossession may be imposed against an independent contractor, or its employees, hired by a lessor to take possession of a vehicle and arising from the repossession of the vehicle on the basis that the lessor was not authorized under sub. (2) to take possession of the vehicle if all of the following apply:
1. The lessor represented to the independent contractor or its employee, or the independent contractor or its employee had a reasonable belief, that the lessor was authorized to take possession of the vehicle.

2. In taking possession of the vehicle, the independent contractor or its employee complies with the requirements of this section and all requirements applicable to the independent contractor or its employee under ss. 409.609, 425.205, 425.206, and 425.2065.

**SECTION 8.** 425.202 (1) of the statutes is renumbered 425.202 (1m).

**SECTION 9.** 425.202 (1g) of the statutes is created to read:

425.202 (1g) “Authorized repossessor” of a merchant means a person employed by a merchant or authorized to act as an agent by a merchant, or an independent contractor hired by a merchant or the merchant’s forwarding agent or an employee of such an independent contractor, for the purpose of taking possession of collateral or leased goods as authorized under s. 425.206 (1) and (2).

**SECTION 10.** 425.206 (2) (intro.) and (a) of the statutes are consolidated, renumbered 425.206 (2) (a) and amended to read:

425.206 (2) (a) In taking possession of collateral or leased goods, no merchant or authorized repossessor of the merchant may do any of the following: (a) Commit a breach of the peace.

**SECTION 11.** 425.206 (2) (b) of the statutes is amended to read:

425.206 (2) (b) Enter In taking possession of collateral or leased goods, no merchant or authorized repossessor of the merchant may enter a dwelling used by the customer as a residence except at the voluntary request of a customer.

**SECTION 12.** 425.206 (2m) of the statutes is created to read:

425.206 (2m) (a) In this subsection, “vehicle” means any of the following:
1. A motor vehicle.

2. An all-terrain vehicle, as defined in s. 340.01 (2g).

3. A utility terrain vehicle, as defined in s. 23.33 (1) (ng).

4. An off-highway motorcycle, as defined in s. 23.335 (1) (q).

5. An off-highway vehicle, as defined in s. 23.119 (1) (b).

6. A recreational vehicle, as defined in s. 340.01 (48r).

7. A motorboat, as defined in s. 30.50 (6).

8. A snowmobile, as defined in s. 340.01 (58a).

(b) In determining whether a merchant or authorized repossessor of a merchant has committed a breach of the peace under sub. (2) (a), only the conduct or activities of the merchant or authorized repossessor of the merchant is relevant. A court may not consider the conduct or activities of the customer or any bystander at the time of the repossession in determining compliance with sub. (2) (a).

(c) No criminal or civil liability for wrongful repossession may be imposed against a merchant or authorized repossessor of a merchant arising from the repossession of a vehicle if, in taking possession of the vehicle as authorized under this section, the merchant or authorized repossessor of the merchant complies with the requirements of this section and all requirements applicable to the merchant or the authorized repossessor under ss. 409.609, 411.525, 425.205, and 425.2065.

(d) No criminal or civil liability for wrongful repossession may be imposed against an independent contractor, or its employees, hired by a merchant to take possession of a vehicle and arising from the repossession of the vehicle on the basis that the merchant was not authorized under subs. (1) and (2) to take possession of the vehicle if all of the following apply:
1. The merchant represented to the independent contractor or its employee, or
the independent contractor or its employee had a reasonable belief, that the
merchant was authorized to take possession of the vehicle.

2. In taking possession of the vehicle, the independent contractor or its
employee complies with the requirements of this section and all requirements
applicable to the independent contractor or its employee under ss. 409.609, 411.525,
425.205, and 425.2065.

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) (1m), by conduct of the merchant
which violates 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.


(1) This act first applies to repossessions occurring on the effective date of this
subsection.

SECTION 15. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after
publication.