



State of Wisconsin
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 387**

December 2, 2005 - Offered by COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY.

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

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

6 **SECTION 1.** 425.204 (3) of the statutes is repealed.

7 **SECTION 2.** 425.205 (1) (intro.) of the statutes is amended to read:

8 425.205 (1) (intro.) Except as provided in s. 425.206, a creditor seeking to
9 obtain possession of collateral or goods subject to a consumer lease ~~shall~~ may
10 commence, and, for a motor vehicle consumer lease, if the customer demands such
11 an action in response to a notice given under sub. (1g) shall commence, an action for
12 replevin of the collateral or leased goods. Those actions shall be conducted in

1 accordance with ch. 799, notwithstanding s. 799.01 (1) (c) and the value of the
2 collateral or leased goods sought to be recovered, except that:

3 **SECTION 3.** 425.205 (1g) of the statutes is created to read:

4 425.205 (1g) (a) A merchant may not take possession of collateral or goods
5 subject to motor vehicle a consumer lease under s. 425.206 (1) (d), unless the
6 merchant gives, by mail, the customer a notice containing all of the following
7 information:

8 1. The name, address, and telephone number of the merchant, a brief
9 identification of the motor vehicle consumer lease, and a brief description of the
10 collateral or goods.

11 2. A statement that, as a result of the customer's default on the motor vehicle
12 consumer lease, the merchant may have the right to take possession of the collateral
13 or goods without further notice or court proceeding.

14 3. A statement that if the customer is not in default or objects to the merchant's
15 right to take possession of the collateral or goods, the customer may, no later than
16 15 days after the merchant has given the notice, demand that the merchant proceed
17 in court by notifying the merchant in writing.

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

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

24 (c) A merchant is presumed to have given notice under par. (a) if the merchant
25 sent the notice by certified or registered mail. A merchant who fails to give notice

1 under par. (a) by certified or registered mail is subject to the penalties specified in
2 s. 425.302 (1), but such failure does not constitute a failure to comply with s. 425.206
3 (1) (d).

4 **SECTION 4.** 425.206 (1) (intro.) of the statutes is amended to read:

5 425.206 (1) (intro.) Notwithstanding any other provision of law, no merchant
6 may take possession of collateral or goods subject to a consumer lease in this state
7 ~~by means other than legal process in accordance with this subchapter~~ except when
8 any of the following apply:

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

10 425.206 (1) (a) The customer has surrendered the collateral or leased goods;

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

12 425.206 (1) (b) Judgment for the merchant has been entered in a proceeding
13 for recovery of collateral or leased goods under s. 425.205, or for possession of the
14 collateral or leased goods under s. 425.203 (2); ~~or.~~

15 **SECTION 7.** 425.206 (1) (d) of the statutes is created to read:

16 425.206 (1) (d) For a motor vehicle consumer lease, the customer has not made
17 a demand as specified in s. 425.205 (1g) (a) 3. and, no sooner than 15 days after the
18 merchant gives the notice specified in s. 425.205 (1g) (a), the merchant has taken
19 possession of the collateral or goods in accordance with sub. (2).

20 **SECTION 8.** 425.2065 of the statutes is created to read:

21 **425.2065 Notice to law enforcement.** (1) In this section, “law enforcement
22 agency” means the police department, combined protective services department
23 under s. 61.66, or sheriff, that has primary responsibility for providing police
24 protection services in the city, village, or town in which a repossession is expected to
25 occur.

1 **(2)** A merchant who repossesses collateral or goods subject to a consumer motor
2 vehicle lease under s. 425.206 (1) (d), or a person who repossess the collateral or goods
3 on behalf of the merchant, shall notify, verbally or in writing, the law enforcement
4 agency about the repossession. The notification shall include the names of the
5 customer, merchant, and, if applicable, the person who repossesses the collateral or
6 goods on behalf of the merchant. The notification shall also include a description of
7 the collateral or goods. Notification under this subsection shall be made before the
8 repossession occurs.

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

11 **SECTION 9.** 425.207 (2) of the statutes is amended to read:

12 **425.207 (2)** A merchant who reasonably believes that a customer has
13 abandoned collateral or goods subject to a consumer lease may take possession of
14 such collateral or leased goods and preserve it. However, the customer may recover
15 such collateral or leased goods upon request unless at the time of request the
16 ~~customer has surrendered the collateral or leased goods, or judgment for the~~
17 ~~merchant has been entered in a proceeding for recovery of collateral or leased goods~~
18 ~~under s. 425.205 or in a judgment described in s. 425.203 (2)~~ perfected the right to
19 possession under s. 425.206 (1) (a), (b), or (d). A merchant taking possession of
20 collateral or leased goods pursuant to this section shall promptly send notification
21 to the customer's last-known address of such action and of the customer's right to
22 recover such collateral or leased goods under this section. If the collateral or leased
23 goods are recovered by the customer pursuant to this section, it shall be returned to
24 the customer at the location where the merchant took possession of such collateral
25 or leased goods pursuant to this section or, at the option of the merchant, at such

1 other location designated by the customer; and any expense incurred by the
2 merchant in taking possession of, holding and returning the collateral or leased
3 goods to the customer shall be borne by the merchant. If after taking possession of
4 collateral or leased goods pursuant to this subsection, the merchant perfects the
5 right to possession ~~through a surrender by the customer or a judgment under s.~~
6 ~~425.203 (2) or 425.205~~ under s. 425.206 (1) (a), (b), or (d), the customer is liable for
7 the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods
8 shall be considered collateral under s. 409.615 (1). However, a customer is not liable
9 for expenses of holding the collateral or leased goods from the time the merchant
10 takes possession until the merchant perfects the right to possession in the manner
11 provided in this subsection.

12 **SECTION 10.** 425.401 of the statutes is renumbered 425.401 (1) and amended
13 to read:

14 425.401 (1) ~~A~~ Except as provided in sub. (2), a person who willfully and
15 knowingly engages in any conduct or practice in violation of chs. 421 to 427 may be
16 fined not more than \$2,000.

17 **SECTION 11.** 425.401 (2) of the statutes is created to read:

18 425.401 (2) A person who intentionally violates s. 425.2065 (2) may be fined not
19 more than \$500.

20 (END)