

State of Wisconsin



2019 Senate Bill 613

Date of enactment:
Date of publication*:

2019 WISCONSIN ACT

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), 409.609 (4), 411.103 (1) (ag), 411.525 (4), 425.202 (1g) and 425.206 (2m) of the statutes; **relating to:** repossession of collateral or leased goods.

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 reposessor" 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 it the secured party or authorized reposessor 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 REPOSSESSION. (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 reposessor 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 reposessor 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 reposessor 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 reposessor of the secured party complies

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

with the requirements of this section and all requirements applicable to the secured party or the authorized reposessor 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 reposessor” 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 reposessor 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 reposessor of a lessor has committed a breach of the peace under sub. (3), only the conduct or activities of the lessor or authorized reposessor 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 reposessor 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 reposessor of the lessor complies with the requirements of this section and all requirements applicable to the lessor or

the authorized reposessor 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 reposessor” 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 reposessor of the merchant may do any of the following: (a) ~~Commit~~ 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 reposessor 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 (~~4~~) (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.

SECTION 14. Initial applicability.

(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.