



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 255
[2005 Assembly Bill 594]

Repossessions of Motor Vehicles

Current Law, Except as Provided by 2005 Wisconsin Act 255

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.]

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

2005 Wisconsin Act 255

Act 255 creates a new method by which a merchant may take possession of motor vehicle 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 consumer credit transaction, 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 \$25 plus actual damages.

In a consumer credit transaction under Act 255, if the customer has not demanded that the merchant begin legal proceedings against the customer, the merchant may take possession of the motor vehicle collateral or goods subject to the motor vehicle 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.

Act 255 also provides that a merchant who repossesses motor vehicle collateral or goods under a motor vehicle consumer 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 found in s. 425.401, Stats.

Effective Date: The Act takes effect on April 13, 2006.

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