

Clearinghouse Rule 06-123**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
OFFICE OF CONSUMER AFFAIRS
ADOPTING RULES**

1 The Wisconsin Department of Financial Institutions, Office of Consumer Affairs proposes an
2 order to amend s. DFI—Bkg 80.68 relating to non-judicial enforcement and surrender of
3 collateral.

Analysis Prepared by the Office of Consumer Affairs

Statute(s) interpreted: s. 425.206(1)(d), Stats.

Statutory authority: ss. 426.104 (1) (e) and 227.11 (2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to s. 426.104, Stats., the department administers the Wisconsin Consumer Act.

Summary of proposed rule: The objective of the rule is to amend s. DFI—Bkg 80.86. The purpose of this rule is to bring s. DFI—Bkg 80.68 into conformity with newly created s. 425.206(1)(d), Stats. Under the current s. DFI—Bkg 80.68, where a merchant requests or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the customer is not a surrender under ss. 425.204(3) and 425.206(1), Stats., if the merchant fails to provide a notice to the customer which clearly informs the customer of the right to a hearing on the issue of default before any repossession. 2005 Wisconsin Act 255, s. 8 created s. 425.206(1)(d), Stats. This statute section provides that notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state except when, for motor vehicle collateral or goods subject to a motor vehicle consumer lease, the customer has not made a demand as specified in s. 425.205(1g)(a)3., Stats., and, no sooner than 15 days after the merchant gives the notice specified in s. 425.205(1g)(a), Stats., the merchant has taken possession of the collateral or goods in accordance with s. 425.206 (2), Stats. The rule amends s. DFI—Bkg 80.68 to incorporate the provisions of s. 425.206(1)(d), Stats. The rule provides that

where a merchant requests or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the customer is not a surrender under ss. 425.204(3) and 425.206(1), Stats., if the merchant fails to provide a notice to the customer which clearly informs the customer of the right to a hearing on the issue of default before any repossession unless the creditor has perfected its right to repossession under s. 425.206(1)(d), Stats.

Summary of and preliminary comparison with existing or proposed federal regulation: There are no existing or proposed federal regulations.

Comparison with rules in adjacent states: Similar laws do not exist in adjacent states.

Summary of factual data and analytical methodologies: The department merely incorporated the newly created s. 425.206(1)(d), Stats., into the amended rule.

Analysis and supporting documentation used to determine effect on small business: The rule places no additional burden on small business. The rule merely incorporates newly created s. 425.206(1)(d), Stats., into existing regulations.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments regarding the proposed rule may also be submitted via the department's website contact page, e-mail the secretary. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Paul Egide, Director, Department of Financial Institutions, Office of Consumer Affairs, P.O. Box 8041, Madison, WI 53708-8041, tel. (608) 267-3518.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Office of Consumer Affairs, adopts the following:

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- 4 SECTION 1. Section DFI—Bkg 80.68 is amended to read:
- 5 **DFI-Bkg 80.68 Nonjudicial enforcement limited; surrender of collateral.** Where a merchant
- 6 requests or demands the return of collateral, after providing the customer with notice of default
- 7 and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the

8 customer is not a surrender under ss. 425.204 (3), and 425.206 (1) (a), Stats., if the merchant; 1)
9 fails to provide a notice to the customer which clearly informs the customer of the right to a
10 hearing on the issue of default before any repossession, unless the creditor has perfected its right
11 to repossession under s. 425.206 (1) (d), Stats.; 2) misrepresents any material fact or state of the
12 law to the customer; or 3) violates any provision of ch. 427, Stats. The notice contained in s.
13 425.105 (1), Stats., is not required if the collateral has been abandoned by the customer

14 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____