



State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

January 5, 2007

Senate Chief Clerk
Office of the Senate Chief Clerk
B20 Southeast, State Capitol
Madison, Wisconsin 53707-7882

Assembly Chief Clerk
Office of the Assembly Chief Clerk
17 West Main Street
Room 401
Madison, WI 53703

VIA HAND-DELIVERY

Re: Notice of Proposed Rule

Dear Chief Clerks:

Pursuant to ss. 227.19(2) and (3), Stats., notice is hereby given that CR 06-123 (proposed rule amending s. DFI—Bkg 80.68 relating to non-judicial enforcement and surrender of collateral) is in final draft form.

1. STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES.

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

Office of the Secretary

Mail: PO Box 8861 Madison, WI 53708-8861
Voice: (608) 264-7800

Fax: (608) 261-4DFI

Courier: 345 W. Washington Ave. 5th Floor Madison, WI 53703
TTY: (608) 266-8818
Internet: www.wdfi.org

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.

2. SUMMARY OF PUBLIC COMMENTS TO THE PROPOSED RULE AND THE AGENCY'S RESPONSE TO THOSE COMMENTS, AND AN EXPLANATION OF ANY MODIFICATION MADE IN THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENTS OR TESTIMONY RECEIVED AT THE PUBLIC HEARING

John Knight, Wisconsin Bankers Association, stated he supported the rule because it resolved a conflict between statute and rule. Mr. Knight suggested a change in the tense of the amended language, which the office agreed with and subsequently modified.

Ed Heiser, Whyte Hirschboeck Dudek S.C. submitted written comments suggesting language changes. The office rejected the suggestions as not adding clarity to the rule and potentially creating unforeseen consequences in a complicated area. However, the office agreed with the suggestion that for consistency throughout the rule, the word "merchant" should be inserted in the amended language in lieu of "creditor," and subsequently modified the proposed rule to reflect this.

3. LIST OF PERSONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARING

Chris Snyder, Wisconsin Automobile and Truck Dealers Association, registered in favor.
John Knight, Wisconsin Bankers Association, spoke in favor.

4. ANY CHANGES TO THE ANALYSIS PREPARED UNDER S. 227.14(2), STATS., OR THE FISCAL ESTIMATE PREPARED UNDER S. 227.14(4), STATS.

None.

5. RESPONSE TO LEGISLATIVE COUNCIL RECOMMENDATIONS

The Legislative Council had no comments on the rule, so no responses were required.

6. FINAL REGULATORY FLEXIBILITY ANALYSIS

Pursuant to s. 227.19(3m), a final regulatory flexibility analysis is not required.

The following documentation accompanies this notice in triplicate: proposed rule with analysis, fiscal estimate and recommendations of legislative council staff.

If you have any questions regarding this matter, please do not hesitate to contact me at tel. (608) 267-1705.

Sincerely,

Mark Schlei
Deputy General Counsel

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c: Legislative Council (via hand-delivery and e-mail, w/encls)