

**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 by this order
2 amends s. DFI—Bkg 80.68 relating to non-judicial enforcement and surrender of 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.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No comments were received.

Agency Contact Persons

To obtain a copy of the rule or fiscal estimate at no charge or for questions regarding the agency's internal processing of the 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. A copy of the rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org.

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:

3 SECTION 1. Section DFI—Bkg 80.68 is amended to read:

4 **DFI-Bkg 80.68 Nonjudicial enforcement limited; surrender of collateral.** Where a merchant

5 requests or demands the return of collateral, after providing the customer with notice of default

6 and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the

7 customer is not a surrender under ss. 425.204 (3), and 425.206 (1) (a), Stats., if the merchant; 1)

8 fails to provide a notice to the customer which clearly informs the customer of the right to a

9 hearing on the issue of default before any repossession, unless the merchant perfects its right to
10 take possession under s. 425.206(1)(d), Stats.; 2) misrepresents any material fact or state of the
11 law to the customer; or 3) violates any provision of ch. 427, Stats. The notice contained in s.
12 425.105 (1), Stats., is not required if the collateral has been abandoned by the customer

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

Dated: _____

Agency: _____

Paul Egide, Director
Department of Financial Institutions
Office of Consumer Affairs