



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4849/1
ARG:skw&cjs

2019 SENATE BILL 613

December 6, 2019 - Introduced by Senators WANGGAARD, BERNIER, OLSEN and STROEBEL, cosponsored by Representatives KULP, SPIROS, TUSLER, STUCK and SKOWRONSKI. Referred to Committee on Government Operations, Technology and Consumer Protection.

1 **AN ACT to renumber** 411.103 (1) (a) and 425.202 (1); **to consolidate, renumber**
2 **and amend** 425.206 (2) (intro.) and (a); **to amend** 409.609 (2) (b), 411.525 (3),
3 425.206 (2) (b) and 427.105 (2); and **to create** 409.102 (1) (bo), 409.609 (4),
4 411.103 (1) (ag), 411.525 (4), 425.202 (1g) and 425.206 (2m) of the statutes;
5 **relating to:** repossession of collateral or leased goods.

Analysis by the Legislative Reference Bureau

This bill creates provisions governing the determination of whether a breach of the peace occurs when collateral or leased goods are repossessed, and creates immunity from liability for a person who repossesses vehicles under certain circumstances.

Under current law, a consumer credit transaction that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction, which includes consumer loans and consumer credit sales, means in part a transaction between a merchant and a customer who acquires money or personal property on credit. A merchant is defined to include a creditor or a seller of personal property on credit. The WCA includes provisions relating to enforcement of a merchant's security interest in collateral resulting from a consumer credit transaction, including repossession of the collateral. With exceptions, a merchant may take possession of collateral or leased goods only if a judgment for the merchant has been entered for recovery of the collateral or leased goods. However, a merchant may proceed without a judgment in

SENATE BILL 613

repossessing collateral that is a motor vehicle if certain requirements are met, including giving notice to the debtor and law enforcement and the elapse of at least 15 days since both the debtor's default and the merchant's notice to the debtor. Under the WCA, "[i]n taking possession of collateral or leased goods, no merchant may . . . [c]ommit a breach of the peace."

Current law also adopts the Uniform Commercial Code (UCC) Article 9 - Secured Transactions, which governs transactions that involve the granting of credit secured by personal property of a debtor, and UCC Article 11 - Leases, which governs the lease of movable personal property (goods). Under UCC Article 9, if a debtor defaults, the secured party may take possession of the collateral "if it proceeds without breach of the peace" or proceeds through judicial process. Under UCC Article 11, for most defaults by a lessee under a lease contract, the lessor may repossess the goods subject to the lease contract, without judicial process, "if it can be done without breach of the peace."

This bill creates provisions that govern the determination of whether a breach of the peace occurs with respect to repossession of collateral or leased goods by, as applicable, the merchant, secured party, or lessor (together referred to as "creditor") under the WCA and UCC. The bill specifies that the creditor or its authorized reposessor may not commit a breach of the peace and that the conduct or activities of the customer, debtor, or lessee, or any bystander, may not be considered in determining whether a breach of the peace has occurred. Under the bill, an "authorized reposessor" is defined as a person employed by a creditor or authorized to act as an agent by a creditor, or an independent contractor hired by a creditor or the independent contractor's employee, for the purpose of taking possession of the collateral or leased goods.

The bill also limits liability if the repossession involves a vehicle. The bill defines a vehicle to include, among others, a motor vehicle, an all-terrain vehicle, a motorboat, and a snowmobile. Under the bill, no criminal or civil liability for wrongful repossession may be imposed against a creditor or its authorized reposessor arising from the repossession of a vehicle if, in taking possession of the vehicle as authorized by law, the creditor or its authorized reposessor complies with all applicable requirements. The bill also creates an additional limit on liability against an independent contractor, or its employee, hired to repossess a vehicle by a creditor that lacks authority to repossess the vehicle. Under the bill, no criminal or civil liability for wrongful repossession may be imposed against the independent contractor or its employee on the basis that the creditor was not authorized to repossess the vehicle if 1) the creditor represented to the independent contractor or its employee, or the independent contractor or its employee had a reasonable belief, that the creditor was authorized to repossess the vehicle; and 2) in repossessing the vehicle, the independent contractor or its employee complies with all applicable requirements.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SENATE BILL 613

1 **SECTION 1.** 409.102 (1) (bo) of the statutes is created to read:

2 409.102 (1) (bo) “Authorized reposessor” of a secured party means a person
3 employed by a secured party or authorized to act as an agent by a secured party, or
4 an independent contractor hired by a secured party or the secured party’s forwarding
5 agent or an employee of such an independent contractor, for the purpose of taking
6 possession of collateral as authorized under s. 409.609 (1) (a).

7 **SECTION 2.** 409.609 (2) (b) of the statutes is amended to read:

8 409.609 (2) (b) Without judicial process, if ~~it~~ the secured party or authorized
9 reposessor of the secured party proceeds without committing a breach of the peace.

10 **SECTION 3.** 409.609 (4) of the statutes is created to read:

11 409.609 (4) BREACH OF THE PEACE CLARIFIED; LIABILITY ARISING FROM VEHICLE
12 REPOSSESSION. (a) In this subsection, “vehicle” means any of the following:

- 13 1. A motor vehicle, as defined in s. 218.0101 (22).
- 14 2. An all-terrain vehicle, as defined in s. 340.01 (2g).
- 15 3. A utility terrain vehicle, as defined in s. 23.33 (1) (ng).
- 16 4. An off-highway motorcycle, as defined in s. 23.335 (1) (q).
- 17 5. An off-highway vehicle, as defined in s. 23.119 (1) (b).
- 18 6. A recreational vehicle, as defined in s. 340.01 (48r).
- 19 7. A motorboat, as defined in s. 30.50 (6).
- 20 8. A snowmobile, as defined in s. 340.01 (58a).

21 (b) In determining whether a secured party or authorized reposessor of a
22 secured party has committed a breach of the peace under sub. (2) (b), only the conduct
23 or activities of the secured party or authorized reposessor of the secured party is
24 relevant. A court may not consider the conduct or activities of the debtor or any
25 bystander at the time of the repossession in determining compliance with sub. (2) (b).

SENATE BILL 613**SECTION 3**

1 (c) No criminal or civil liability for wrongful repossession may be imposed
2 against a secured party or authorized reposessor of a secured party arising from the
3 repossession of a vehicle if, in taking possession of the vehicle as authorized under
4 this section, the secured party or authorized reposessor of the secured party
5 complies with the requirements of this section and all requirements applicable to the
6 secured party or the authorized reposessor under ss. 411.525, 425.205, 425.206, and
7 425.2065.

8 (d) No criminal or civil liability for wrongful repossession may be imposed
9 against an independent contractor, or its employees, hired by a secured party to take
10 possession of a vehicle and arising from the repossession of the vehicle on the basis
11 that the secured party was not authorized under sub. (1) (a) to take possession of the
12 vehicle if all of the following apply:

13 1. The secured party represented to the independent contractor or its employee,
14 or the independent contractor or its employee had a reasonable belief, that the
15 secured party was authorized to take possession of the vehicle.

16 2. In taking possession of the vehicle, the independent contractor or its
17 employee complies with the requirements of this section and all requirements
18 applicable to the independent contractor or its employee under ss. 411.525, 425.205,
19 425.206, and 425.2065.

20 **SECTION 4.** 411.103 (1) (a) of the statutes is renumbered 411.103 (1) (am).

21 **SECTION 5.** 411.103 (1) (ag) of the statutes is created to read:

22 411.103 (1) (ag) "Authorized reposessor" of a lessor means a person employed
23 by a lessor or authorized to act as an agent by a lessor, or an independent contractor
24 hired by a lessor or the lessor's forwarding agent or an employee of such an

SENATE BILL 613

1 independent contractor, for the purpose of taking possession of goods as authorized
2 under s. 411.525 (2).

3 **SECTION 6.** 411.525 (3) of the statutes is amended to read:

4 411.525 (3) The lessor may proceed under sub. (2) without judicial process if
5 ~~it can be done~~ the lessor or authorized reposessor of the lessor can do so without
6 committing a breach of the peace or the lessor may proceed by action.

7 **SECTION 7.** 411.525 (4) of the statutes is created to read:

8 411.525 (4) (a) In this subsection, "vehicle" has the meaning given in s. 409.609
9 (4) (a).

10 (b) In determining whether a lessor or authorized reposessor of a lessor has
11 committed a breach of the peace under sub. (3), only the conduct or activities of the
12 lessor or authorized reposessor of the lessor is relevant. A court may not consider
13 the conduct or activities of the lessee or any bystander at the time of the repossession
14 in determining compliance with sub. (3).

15 (c) No criminal or civil liability for wrongful repossession may be imposed
16 against a lessor or authorized reposessor of a lessor arising from the repossession
17 of a vehicle if, in taking possession of the vehicle as authorized under this section,
18 the lessor or authorized reposessor of the lessor complies with the requirements of
19 this section and all requirements applicable to the lessor or the authorized
20 reposessor under ss. 409.609, 425.205, 425.206, and 425.2065.

21 (d) No criminal or civil liability for wrongful repossession may be imposed
22 against an independent contractor, or its employees, hired by a lessor to take
23 possession of a vehicle and arising from the repossession of the vehicle on the basis
24 that the lessor was not authorized under sub. (2) to take possession of the vehicle if
25 all of the following apply:

SENATE BILL 613**SECTION 7**

1 1. The lessor represented to the independent contractor or its employee, or the
2 independent contractor or its employee had a reasonable belief, that the lessor was
3 authorized to take possession of the vehicle.

4 2. In taking possession of the vehicle, the independent contractor or its
5 employee complies with the requirements of this section and all requirements
6 applicable to the independent contractor or its employee under ss. 409.609, 425.205,
7 425.206, and 425.2065.

8 **SECTION 8.** 425.202 (1) of the statutes is renumbered 425.202 (1m).

9 **SECTION 9.** 425.202 (1g) of the statutes is created to read:

10 425.202 (1g) “Authorized reposessor” of a merchant means a person employed
11 by a merchant or authorized to act as an agent by a merchant, or an independent
12 contractor hired by a merchant or the merchant’s forwarding agent or an employee
13 of such an independent contractor, for the purpose of taking possession of collateral
14 or leased goods as authorized under s. 425.206 (1) and (2).

15 **SECTION 10.** 425.206 (2) (intro.) and (a) of the statutes are consolidated,
16 renumbered 425.206 (2) (a) and amended to read:

17 425.206 (2) (a) In taking possession of collateral or leased goods, no merchant
18 or authorized reposessor of the merchant may do any of the following: ~~(a) Commit~~
19 commit a breach of the peace.

20 **SECTION 11.** 425.206 (2) (b) of the statutes is amended to read:

21 425.206 (2) (b) ~~Enter~~ In taking possession of collateral or leased goods, no
22 merchant or authorized reposessor of the merchant may enter a dwelling used by
23 the customer as a residence except at the voluntary request of a customer.

24 **SECTION 12.** 425.206 (2m) of the statutes is created to read:

25 425.206 (2m) (a) In this subsection, “vehicle” means any of the following:

SENATE BILL 613

- 1 1. A motor vehicle.
- 2 2. An all-terrain vehicle, as defined in s. 340.01 (2g).
- 3 3. A utility terrain vehicle, as defined in s. 23.33 (1) (ng).
- 4 4. An off-highway motorcycle, as defined in s. 23.335 (1) (q).
- 5 5. An off-highway vehicle, as defined in s. 23.119 (1) (b).
- 6 6. A recreational vehicle, as defined in s. 340.01 (48r).
- 7 7. A motorboat, as defined in s. 30.50 (6).
- 8 8. A snowmobile, as defined in s. 340.01 (58a).

9 (b) In determining whether a merchant or authorized reposessor of a
10 merchant has committed a breach of the peace under sub. (2) (a), only the conduct
11 or activities of the merchant or authorized reposessor of the merchant is relevant.
12 A court may not consider the conduct or activities of the customer or any bystander
13 at the time of the repossession in determining compliance with sub. (2) (a).

14 (c) No criminal or civil liability for wrongful repossession may be imposed
15 against a merchant or authorized reposessor of a merchant arising from the
16 repossession of a vehicle if, in taking possession of the vehicle as authorized under
17 this section, the merchant or authorized reposessor of the merchant complies with
18 the requirements of this section and all requirements applicable to the merchant or
19 the authorized reposessor under ss. 409.609, 411.525, 425.205, and 425.2065.

20 (d) No criminal or civil liability for wrongful repossession may be imposed
21 against an independent contractor, or its employees, hired by a merchant to take
22 possession of a vehicle and arising from the repossession of the vehicle on the basis
23 that the merchant was not authorized under subs. (1) and (2) to take possession of
24 the vehicle if all of the following apply:

