Van H. Wanggaard
Wisconsin State Senator

TESTIMONY ON SENATE BILL 613

Thank you Mr. Chairman and committee members for today's hearing on SB 613, which seeks to address some of the unfair treatment towards individuals repossessing property.

Repossessors may be the one of the few professions less popular than politicians and lawyers, but they are entitled to be treated fairly by the public and the law. Unfortunately, that's not the case. Every repossession agent could probably tell you horror stories, and I won't share some of the ones I've witnessed. There will likely be others who will tell you those stories.

I understand how someone who is having property repossessed may feel like they are being targeted, stolen from, and like they are losing their property. Losing their leased property is likely not the only difficult thing that the person is facing. It can be a very stressful time for the individual, and the repossession agent is an easy target.

As legislators, we can't change the way people react and feel in these stressful situations, but can make sure the law is fair to everyone. And that is what this bill attempts to do.

I want to make one thing very clear. This bill does not change any of Wisconsin's laws about who can repossess property, when property can be repossessed, or the procedures that must be followed. Those are governed by the Uniform Commercial Code (UCC), and the Wisconsin Consumer Act.

As required under current law, a repossessor may only act without legal process if he or she does so without committing a "breach of the peace." However, the law doesn't put this burden solely on the repossession agent. Rather, any other person can act in a manner which causes a breach of the peace, and it would prevent an agent from acting. For example, a person could yell "Stop taking my car!," and that would be considered a breach of the peace, making the repossession illegal. And, yes, that example has actually occurred. An agent could do everything by the book, acting calmly, rationally, and without incident, and if someone tells them to stop, they've committed a breach of the peace.

This bill changes that backward dynamic. Under the bill, only the actions of the repossessor may be used to determine if there has been a breach of the peace. The actions of others is not a factor.
The second aspect of the bill is to provide criminal and civil liability immunity from wrongful repossession if the repossessor has complied with the existing requirements of the UCC or Wisconsin Consumer Act, including 15-day overdue debt, acting without a breach of the peace, notice to the individual and law enforcement, and a 15 day waiting period. Note this does not exempt from liability other actions by the repossessor, only for wrongful repossession.

This bill allows people to do their jobs without fear of liability if they follow the law. That's what everyone should want in their careers, and repossession agents should be no different.

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BOB KULP

STATE REPRESENTATIVE • 69TH ASSEMBLY DISTRICT

TO: Senate Committee on Government Operations, Technology & Consumer Protection
FROM: State Representative Bob Kulp / 69th Assembly District
RE: Support For Senate Bill 613 / Repossession of Collateral or Leased Goods
DATE: January 14, 2020

Thank you Chair Stroebel and fellow committee members for holding a public hearing today on Senate Bill 613 ("SB 613"). I appreciate having the opportunity to express my support for SB 613 relating to repossession of collateral or leased goods.

Three overlapping provisions of current law prohibit a "breach of the peace" in a creditor's repossession of collateral or leased goods when the debtor defaults on payment obligations. Under the WI Consumer Act ("WCA"), the creditor is referred to as a "merchant" and, in taking possession of collateral or leased goods, "*no merchant* may ... commit a breach of the peace." Under different provisions of the Uniform Commercial Code ("UCC"), a *secured creditor* may take possession of collateral if the creditor "proceeds without breach of the peace" and a *lessor* can repossess the leased goods "if it can be done without breach of the peace."

Recently, a constituent of mine who works in the vehicle repossession industry provided feedback regarding Wisconsin's repossession laws. The individual indicated that currently, *customers* (the debtors) may verbally halt an on-going repossession and he requested that we research current statutes. Our research confirmed that under current statutes *a merchant* may not commit a "breach of the peace" in the course of executing a repossession. Currently, the statute does not define "breach of the peace." However, it has been interpreted by a court to include a situation in which the customer tells the merchant (or whoever is attempting the repossession) not to take the vehicle. Thus a merchant would be committing a "breach of the peace" if the merchant continued to haul away a vehicle after the customer verbally objected to the repossession.

In response to our research findings, and at the request of our constituent, we have introduced Senate Bill 613 that creates provisions relating to the determination of whether a breach of peace occurs when collateral or leased goods are repossessed by the merchant, secured party or lessor (together referred to as the "creditor") under the WCA and UCC. In short, the bill clarifies how a breach of the peace can and should be addressed. Senate Bill 613 clearly specifies that the *creditor or its authorized repossessor* 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. Specifically, Senate Bill 613 will override the court's decision in *Hollibush v. Ford Motor Credit Company*. In the *Hollibush* case the court ignored key language in the applicable WCA statute that "*no merchant* may commit a breach of peace." Senate Bill 613 will clarify this language. Since the existing statutory language is not limited to vehicle repossession, the clarification is also not limited to vehicle repossession. The legislation also defines an authorized repossessor, and limits liability if the repossession involves a vehicle.

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This bill will alleviate the problems of lenders and repossession agents that arise out of the lack of a definition of "breach of the peace" in the current statute and the interpretation of the phrase "breach of the peace" in the *Hollibush* case. This bill will allow lenders and repossession agents to perform their jobs without the fear of facing litigation based on after the fact claims of vague "protest" or "objection."

I respectfully ask committee members to join me in supporting SB 613. Thank you again for scheduling the public hearing today, and thank you for your time and consideration. I would be happy to answer any questions you may have.

TO: Senate Committee on Government Operations, Technology & Consumer Protection

FROM: Mr. Michael Hughes

RE: Support for Senate Bill 613/Repossession of Collateral or Leased Goods

DATE: January 14, 2020

Thank you Chair Senator Stroebel, Vice Chair Senator Kapenga and fellow committee members for holding a public hearing today on Senate Bill 613 ("SB 613"). I appreciate having the opportunity to express my support for SB 613 relating to repossession of collateral or leased goods.

Since the original statutes were enacted in early 2002, there has been a significant change in technology and a wide array of interpretation of the laws regarding the repossession process, protection of the recovery agent and what constitutes fair practices and breach of peace.

Divulging into technology, think about the jobs of repossessors and what it takes to safely secure a vehicle. In the last 20 years, we have come a long ways in technology of automobiles such as all wheel drive vehicles, vehicles with electronic braking systems, Onstar and GPS in which all instances increases the on scene time of a repossessor all greatly impacting the chance of communication with a consumer/debtor and or third party.

The proposed bill would help to clarify some of those interpretable laws and at the same time continue to protect the consumer as well as the repossesor from undefendable lawsuits. In my experience, the undefendable breach of peace lawsuits have cost my company several paid out settlements and exploding insurance rates due to the inability to defend against the beach of peace law as it currently reads.

Example #1

My wife had repossessed a vehicle at a consumer/debtor's address, his mother and father were the only persons present at the time. The vehicle was fully loaded and secured onto our truck when the mother made contact and asked if she could retrieve the personal items out of the vehicle and did so without incident. While the father was cleaning out the vehicle, my wife and the mother turned discussion from the repossession to gardening in which was a very kind discussion and then she left the scene without incident. Approximately 6 months later, my company was served with a breach of peace lawsuit by the debtor/consumer in which was not present at the time of repossession. Long story short the vehicle in question had already been legally sold at auction by the lienholder and we were forced to settle with the debtor in which a $5000 settlement to the debtor with our total cost of $15,000 with legal fees.

Example #2

After lawfully repossessing a vehicle in Forest County, I was apprehended by law enforcement for vehicle theft as well as other charges. In this instance, I had no contact with the consumer/debtor or third party during my repossession until I was apprehended by the Forest County Sheriffs Department. Upon my attorney contacting the judge in this matter, I was

released. Approximately two months later I was served on the exact same charges now facing up to 25 years in prison. This suit was because there are no provisions in the current law regarding criminal charges even if all said statutes are followed. Again, after legal assistance from my attorney and thousands of dollars later, the charges were dismissed by the court.

Example #3

Following lawfully securing a vehicle that was sitting on the city street, the repossessor noticed childrens' carseats in the back of the vehicle and felt it was important to knock and allow the debtor and/or third party the opportunity to get the carseats from the vehicle. Because of this contact, weeks later, we were served with a breech of peace suit even though the vehicle was already in the possession of the agent on the city street.

In closing the current repossession laws in which were written approximately 18 years ago need some updating. We need to ensure that all parties are adequately protected from being faced with undefendable suites which are costing small business like myself thousands of dollars annually and even putting many out of business due to the costs of defense and insurance rates.

I respectfully ask committee members to join me in supporting SB 613. Thank you again for scheduling the public hearing today, I thank you for your time and consideration. I would be happy to answer any questions you may have.

TO: Senate Committee on Governmental Operations, Technology & Consumer Protection

FROM: Attorney William W. Ehrke

RE: Support For Senate Bill 613—Repossession of Collateral or Leased Good

DATE: January 14, 2020

Chair Strobel and Vice-Chair Kapenga:

I would like to thank you and the committee for conducting a public hearing today on Senate Bill 613 ("SB 613"). I appreciate the opportunity to express my support for SB 613 as it relates to the repossession of collateral or leased goods.

I present this support from the perspective of an attorney who has had the opportunity to represent and defend parties involved in these matters around the State of Wisconsin, and as one who frequently provides training on this subject for those parties.

SB 613 endeavors to clarify and specify how a potential breach of the peace can be evaluated and assessed while at the same time fairly treating consumers as well as those entities that provide them auto loans under $25,000.00 and those who are tasked with repossessing the vehicles after consumers have failed to meet their obligations on these loans.

It does so in the framework of a statute that already imposes very specific and strict notice and procedural requirements on lenders and their agents before a vehicle can be repossessed, and provides significant protections and remedies for the consumer if a lender lacks the legal ability to repossess collateral or fails to follow the rules relating to notice to the consumer and the opportunity for the consumer to catch up on their loans. These remedies already include the forgiveness of an entire loan balance, the release of the lender's lien on the vehicle, a return of all payments made by the consumer to that point, and the consumer's attorneys' fees in the event that a consumer shows a violation of the statute. This bill does not adversely affect or dilute those consumer remedies in any way.

What SB 613 does do, along with clarifying the relationship between lenders and their independent contract repossession agents, is to properly focus the issue of a breach of the peace on the behavior of the repossession agent at the time of a repossession when there is an encounter between the agent and the consumer.

To date, even if a consumer is well behind in his or her payments, and has received proper notice of his or her default (and in most cases, numerous opportunities to catch up on payments or work out an agreement with their lender) all he or she has to do is to "unequivocally object" to a repossession before it is completed in order to force an agent to unhook a vehicle and abandon the repossession. If an agent takes a vehicle after the

consumer simply objects, that, presently is considered a breach of the peace, even if the agent acts appropriately and professionally during the repossession. In other words, if a delinquent consumer says "No, you can't take my car", without any justification, further reasoning or discussion, and the vehicle is taken, it is the agent, then, who is considered to have "breached the peace."

The present bill, SB 613 clarifies how a breach of the peace can and should be assessed—i.e. it focuses on the acts of the agent during the repossession process. As a result, should the agent act inappropriately so as to create a breach of the peace—typically considered to be a threat of violence, they can still be held accountable, and the consumer is then entitled to all of those remedies mentioned above.

Repossessions can be stressful and emotional events. If an agent acts appropriately and with respect to the consumer, and the lender is properly justified in having the vehicle repossessed, the agent has complied with the statute that says "no merchant may commit a breach of the peace." With this emphasis, then, it is appropriate to exclusively focus on and consider the behavior and actions of the merchant. Doing otherwise actually rewards a delinquent consumer for simply objecting to a repossession, even though the consumer is delinquent on the loan and their loan contract clearly allows for repossession of the vehicle.

In addition, the bill provides protections for repossession agents in the form of the right to rely on a lender's representations that it (the lender) has the legal right to repossession of the vehicle. Presently, consumers typically sue repossession agents if a lender does not, ultimately, have the right to repossess the vehicle (e.g. where there is no default, or where proper notice of default has not been given. This bill, as phrased, places the appropriate responsibility on the proper parties in that instance. It fits in with the original language of "no merchant" may breach the peace.

Under these circumstances, then, it is proper to adopt this statute with the proposed language to clarify its application while still protecting all of the parties involved.

I would ask the committee to support SB 613, as I do believe it clarifies the statutory framework that applies to these specific issues in the context of the statute's goal of protecting consumers.

Thank you for your time and consideration of this matter.

LEGAL Action OF WISCONSIN

TO: Senate Committee on Committee on Government Operations, Technology and Consumer Protection

FROM: Jessica Roulette, Staff Attorney, Legal Action of Wisconsin; Abby Bar-Lev Wiley, Legislative Director, Legal Action of Wisconsin

RE: Impact of SB 613 on Legal Action's Clients

DATE: January 14, 2020

My name is Jessica Roulette. I am a staff attorney with Legal Action of Wisconsin, a nonprofit law firm that provides free legal services to low-income people in 39 Wisconsin counties. I currently serve as the Consumer Law Priority Coordinator for our firm. I advise and represent low-income Wisconsin residents, and I have done so for the last 22 years. Thank you for the opportunity to provide testimony on SB 613.

SB 613 would cause a great deal of harm to Legal Action's clients. It proposes to change the Uniform Commercial Code (UCC) to make it an outlier and no longer uniform. It also proposes to change Wisconsin's Consumer Act (WCA), which applies to transactions of $25,000 or less. The WCA used to only allow repossession via a judicial order, recognizing the seriousness of seizing an individual's private property—a principle that dates all the way back to Blackstone's Commentaries on the Laws of England. This process allowed consumers notice and a court hearing so that a judge could review the arguments by the creditor and the consumer and decide if a repossession was appropriate. Then, in 2006, the legislature amended the WCA to make vehicle repossessions in cases where the consumer does not object easier for creditors, by allowing repossessions to occur after sending a written notice to a consumer. These are "extra-judicial repossessions." If a creditor sends a written notice to a consumer and the consumer does not respond, the creditor can engage in extra-judicial repossessions, provided it does not breach the peace. If the consumer receives the notice and does not agree to the repossession, the consumer can write to the creditor to ask to be sued. If the consumer never receives the notice sent by the creditor, they can still preserve their right to a hearing under current Wisconsin law by informing the tow truck driver that they do not consent to the repossession. Under current Wisconsin law, the tow truck driver must stop the attempted repossession at the point that the consumer makes his or her oral objection. SB 613 would rob our clients of even that modicum of agency over their possessions, because it gives repossessers a carte blanche to take people's vehicles even if the repossession is illegal, in error, occurs in the middle of the night, or if the individual never received the notice. With the changes proposed in this one bill, thousands of low-income consumers could lose important rights over their motor vehicles which they need to go to work, transport themselves and family members to school, medical appointments and community activities.

Imagine you are lying in bed, and you hear scraping outside the window. You go to the window and see a truck parked next to your car in the driveway. You run outside, and there is a tow truck driver, trying to get your car hooked up to his tow truck. You are shocked and panicked—after all, you need your car to get to work in five hours. You just moved into a new home after staying with relatives for awhile while securing new employment, and you believe you are up to date on all your car payments—after all, you never saw a notice or any communication telling you otherwise. You tell the repo man that you do not consent to the repossession, and under

current law, you can take a breath: the repossession has to pause just until a court can decide if the merchant has a right to repossess your vehicle.

This scenario is one we are familiar with at Legal Action. In fact, most of the calls we receive regarding repossessed vehicles involve late-night/early morning repossessions. The process for extra-judicial repossessions has a disproportionate impact on people with low incomes, who tend to move frequently. If the letter sent by the creditor is not forwarded promptly by the post office, the first notice that a consumer may have that their car is subject to repossession is when they are woken in the middle of the night by the sound of the "repo" truck approaching their vehicle. Restricting a consumer's rights under the "breach of peace" provision in the WCA and the UCC means that many low-income individuals will have nowhere to turn if a repossession is occurring illegally.

To fully understand the risks this legislation poses, it is important to note that repo men only get paid when they actually get the vehicle. This payment scheme incentivizes bad behavior, and it is crucial to societal peace that there be a meaningful countervailing brake or financial penalty to ensure that only appropriate extra-judicial repossessions take place. Without the specter of accountability in court, Wisconsin would likely start to see the kind of disturbances around repossessions that other states see routinely. Moreover, illegal repossessions in Wisconsin in border areas of the state are at times conducted using repo men from our border states of Illinois, Iowa and Minnesota. The changes in SB 613 would make illegal repossessions much easier to complete, and the ability of our court system and regulatory agencies to deal with rogue operators will be extremely curtailed.

The changes to current law proposed by SB 613 would be devastating to Legal Action's clients, many of whom are living paycheck to paycheck and rely on their cars to get to their jobs. Losing access to their cars can quickly mean losing their jobs, snowballing into eviction and homelessness. SB 613 would take away our clients' right to participate in making any objection to the repossession on the spot, no matter how valid the consumer's objections may be. Their voices would be silenced, and only the merchant and the repo man would decide whether to conduct the repossession. Everyone is capable of error. Banks are capable of error. Rewriting Wisconsin law to make it harder for poor people to keep their vehicles and go to work, even when those people are the innocent victims of a bank error, could create consequences for individuals and families that cannot be undone. Current law allows for a brief pause in the process to ensure that the dramatic act of repossession is occurring rightly and legally. SB 613 would allow the process to rush through at the benefit of merchants and tow-truck drivers, allowing them to benefit on the backs of poor people.