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Citation: 1978 Wis. L. Rev. 983 1978



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THE IMPACT OF JUDICIALIZING REPOSSESSION: THE WISCONSIN CONSUMER ACT REVISITED†

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INTRODUCTION

The desirability of the traditional rules permitting self-help motor vehicle repossession¹ remains a continuing source of controversy. The original efforts to reform the abuses of self-help repossession came in the form of court challenges to the constitutionality of the traditional rules.² It has become clear that judicial reform is foreclosed.³ On March 1, 1973, the Wisconsin Consumer Act⁴ became effective. This legislation requires a court judgment that the debtor is in default and that the creditor has a right to repossession before collateral can be seized, though after such judgment self-help seizure of the collateral is sometimes permitted.⁵ No other state has adopted legislation as far reaching as Wisconsin's in this respect. Such legislation was recommended by the National Commission on Consumer Finance,⁶ however, and may be considered by other state legislative bodies in the future.

Critics of the proposed changes in the traditional rules governing motor vehicle repossession have argued that such changes will affect most consumers adversely, particularly low income consumers.⁷ The gravamen of their argument has been that "judicializ-

† Financial support for this study has been provided by the Institute for Research on Poverty, University of Wisconsin, from funds made available by the Department of Health, Education and Welfare. We are grateful to the American Banking Association, and particularly to Dr. Per Lange, Director of Research and Training, for providing us with much of the data on which this article is based.

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1. See U.C.C. § 9-503, which permits secured creditors to repossess vehicles without prior notice or opportunity for a hearing to the debtor.

2. A large number of cases were stimulated by *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969). The most famous was probably *Adams v. Egly*, 338 F. Supp. 614 (S.D. Cal. 1972), *rev'd sub nom. Adams v. Southern Cal. First Nat'l Bank*, 492 F.2d 324 (9th Cir. 1973), *cert. denied*, 419 U.S. 1006 (1974).

3. See *Adams v. Southern Cal. First Nat'l Bank*, 492 F.2d 324 (9th Cir. 1973), *cert. denied*, 419 U.S. 1006 (1974). Cf. *Flagg Bros. v. Brooks*, 98 S. Ct. 1729 (1978) (enforcement of warehouseman's lien does not involve state action).

4. WIS. STAT. §§ 421-427 (1975).

5. *Id.* § 425.206 (1975).

6. THE NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE UNITED STATES 29 (1972).

7. See Johnson, *Denial of Self-Help Repossession: An Economic Analysis*, 47 S. CAL. L. REV. 82 (1973); White, *The Abolition of Self-Help Repossession: The Poor Pay Even More*, 1973 WIS. L. REV. 503.

ing" repossession—prohibiting repossession without court review and judgment and granted only after notice and opportunity for a hearing to the debtor—will increase creditors' collection costs. The most important sources of these extra costs are predicted to be increases in delinquency rates, in the time elapsed between initial delinquency and repossession, and in the direct costs of repossession, due largely to attorneys' fees. Assertedly, these costs will be passed on to consumers in the form of increased finance charges and restricted credit availability (including possible increases in the level of required downpayments). The resulting restrictions in credit availability are most likely to affect consumers who present the greatest risk of delinquency. Presumably, such restrictions would have a disproportionate impact upon the poor.

I. AN EARLIER STUDY OF THE EFFECTS OF REPOSSESSION REFORM

In an earlier study by one of the co-authors,⁸ the reasoning of these critics of "judicialized" repossession was critically examined. The article also tested the critics' position by assessing the effects of the Wisconsin Consumer Act.

On theoretical grounds the earlier study concluded that the critics have probably overestimated the impact of judicialized repossession on creditor costs.⁹ Critics generally assume no change in the incidence of repossession resulting from judicialization.¹⁰ Yet, repossession is only one of several ways in which a creditor can attempt to deal with a delinquency problem. As the costs of repossession increase (as they surely do under judicialized repossession), creditors can be expected to shift to other collection techniques—particularly refinancing agreements and other types of workouts.¹¹ Despite this anticipated shift in collection tactics, the earlier study reasoned that some increase in collection costs should be expected from judicializing repossession. The article suggested, however, that the level of increase may be considerably less than would be anticipated if the incidence of repossession were unaffected by judicialization.¹² The

8. Whitford & Laufer, *The Impact of Denying Self-Help Repossession: A Case Study of the Wisconsin Consumer Act*, 1975 WIS. L. REV. 607.

9. This is particularly true of Wisconsin because the Consumer Act has several provisions designed to minimize the costs of judicialized repossession that the critics had not anticipated. See WIS. STAT. § 425.205 (1975).

10. See Johnson, *supra* note 7.

11. "Workout" is a general term for an agreement between a creditor and a delinquent debtor in which the debtor is given an extended period of time in which to pay, in return for a renewed promise to pay and perhaps an additional finance charge as well. A workout will usually take one of two forms: an extension agreement in which one or a few payments are postponed, but without an adjustment in the size of payment, or a refinancing agreement, in which the debtor's payments are reduced in size and extended over a longer period of time.

12. Whitford & Laufer, *supra* note 8, at 621-23.

earlier article agreed with the critics that any increase in collection costs could be expected to result in restricted credit availability and increased finance charges.¹³ Probably, these effects would have a disproportionate impact on the poor. The magnitude of these effects is dependent, however, on the extent of the increase in collection costs resulting from judicialization of repossession.

The earlier study also argued that the critics, by ignoring the effects of judicialization on the incidence of repossession and workouts, overlooked a major potential benefit of judicialization. Workouts leave the debtors with possession of the motor vehicle. By doing so, they avoid not only the direct costs of repossessing but also the many well-documented secondary consequences of such action. For example, damage to the debtor's dignity and self-esteem is a common result of involuntary deprivation of a motor vehicle.¹⁴

Because increased workouts can yield social benefits, the earlier study concluded that it is impossible to theoretically determine whether judicialization of repossession rules would be socially desirable, even assuming that judicialization results in increased collection costs and restricted credit availability.¹⁵

These hypotheses about costs and benefits of judicialized repossession were tested in the earlier article by assessing the impact of the Wisconsin Consumer Act on credit availability, delinquency rates, and repossession rates for automobile lending. Data were available only for the first 2 years of the Act's operation. These data suggested that the Act probably caused only modest restrictions on credit availability.¹⁶ During the first year after enactment, delinquency rates increased very rapidly and repossession rates declined equally drastically.¹⁷ These changes were sufficiently dramatic that they could only be attributable to the Act. During the second year of the Act, however, nearly the opposite effects were observed. Delinquency rates in Wisconsin increased less rapidly than elsewhere and repossession rates increased more rapidly. Over the entire 2-year period delinquency rates in Wisconsin rose approximately on a par

13. *Id.* at 623-26.

14. See Dauer & Gilhool, *The Economics of Constitutionalized Repossession: A Critique for Professor Johnson, and a Partial Reply*, 47 S. CAL. L. REV. 116 (1973). Other secondary costs of repossession are described in Whitford & Laufer, *supra* note 8, at 628.

15. It is widely believed that consumers cannot adequately protect themselves by contract from injuries caused by repossession. This conclusion is based on the assumptions that consumers are inadequately informed about the consequences of repossession, and that consumers frequently overly discount long-term risks. See Whitford & Laufer, *supra* note 8, at 615-17. Consequently, the failure of credit contracts to prohibit self-help repossession does not necessarily establish that providing creditors such a remedy is allocatively efficient.

16. It also seemed probable that the poor bore a disproportionate share of the consequences of restricted credit availability. Restricted credit availability primarily may have taken the form of higher downpayments, however, permitting the poor to adjust by buying cheaper cars rather than forgoing cars altogether. *Id.* at 630-37.

17. Delinquency rates increased, and repossession rates declined, not only absolutely but also relative to experience nationally and in each of three contiguous states (Illinois, Iowa, Minnesota). *Id.* at 638-46.

with experience in other states, while repossession rates declined slightly relative to experience elsewhere.¹⁸

The study suggested partial explanations for the widely varying shifts in delinquency and repossession rates between the first and second years of the Act. Probably most persuasive was the suggestion that the rapid increase in delinquencies and decline in repossessions during the first year of the Act could be attributed to temporary responses to the Act. Perhaps intimidated by the newness of so many of the Act's provisions, creditors may have relaxed collection efforts considerably, leading to a decline in repossessions and an increase in delinquencies.¹⁹ The radical reversals in the second year might then be explained by tightened creditor collection efforts.

The results of the earlier study were consistent with the hypothesized effects of judicialization of repossession. The incidence of repossession declined modestly over the 2-year period, even though delinquency rates remained relatively unchanged. The evidence available suggested a restriction in credit availability of considerably more modest proportions than the critics of judicialization apparently anticipated. However, the long-term impact of the Wisconsin Consumer Act was impossible to predict on the basis of the earlier study, primarily because of the marked shift in delinquency and repossession rates from the first to second year of the Act's operation. The decline in delinquency rates during the second year may have reflected a belated creditor decision to restrict credit to the marginally creditworthy because of the Consumer Act's restrictions on collection. The increase in repossession rates during the second year might have resulted from belated creditor rejection of workouts as an alternative to repossession, despite the latter's higher cost under the Act. Both explanations are inconsistent with the theorized effects of the Act.

II. THE CURRENT STUDY

A. *Hypotheses and Sources of Data*

The purpose of this study is to examine available data concerning the Wisconsin Consumer Act during the third, fourth, and fifth years of its operation. Drawing on the theoretical analysis of the earlier article, the primary hypothesis tested here is that the incidence of repossession will decline when repossession is judicialized. If the in-

18. *Id.*

19. Relaxed collection activity is likely to result in increased delinquency rates because the data available to us record as delinquent only accounts more than 30 days overdue. Similarly, a tightening of collection activity can reduce delinquency rates, *see* text accompanying notes 30-35 *infra*, by causing many overdue accounts to be brought current before becoming 30 days overdue.

vidence of repossession has not declined, as predicted, it would strongly suggest that creditors are not partially substituting workouts for repossession. This substitution was the principal hypothesized benefit of judicialization of repossession.

This study also attempts to ascertain the effects of the Consumer Act on credit availability.²⁰ The Act's effect on credit availability is significant for two reasons. First, restricted credit availability can be seen as one cost of judicializing repossession.²¹ Hence, one question is whether the restriction of credit availability, if any, has been as extensive as the critics of judicialized repossession apparently anticipated. Secondly, since reduction in the credit extended to the marginally creditworthy can be expected to result in a lowering of both delinquency and repossession rates, data about credit availability may help determine the extent to which any reduction in these rates should be attributed simply to restricted credit availability. If reductions in delinquency and repossession rates cannot be plausibly attributed to restricted credit availability, the hypothesis that judicializing repossession causes greater reliance on workouts and less on repossession appears more probable.

Two readily available sources of reasonably reliable data for measuring the incidence of repossession exist: data about frequency of repossession by banks, published by the American Banking Association (hereinafter the ABA);²² and statistics on the number of repossessions, maintained by the Wisconsin Department of Motor Vehicles (hereinafter the MVD). Reliable data about credit availability is more difficult to obtain. We rely here on two sources of data to estimate relative changes in credit availability over time. The MVD maintains statistics on the number of liens on motor vehicles²³ and total new car sales.²⁴ The ABA maintains statistics on delinquency rates for banks in motor vehicle lending. Since a decline in

20. One limitation on the results of this study is that the Consumer Act made many other legal changes along with the judicialization of repossession. Many of these changes can also be expected to have affected credit availability. It is practically impossible to isolate the extent to which each of these legal changes actually "caused" observed reductions in credit availability.

21. Restricted credit availability can be seen as a benefit rather than a cost, if one presumes consumers in general already possess a hyperproclivity to purchase credit. See Wallace, *The Logic of Consumer Credit Reform*, 82 YALE L.J. 461 (1973); Whitford & Laufer, *supra* note 8, at 617-18.

22. The ABA delinquency and repossession data are obtained from a weighted sample of banks in each state. Banks provide nearly three-fourths of new automobile credit in Wisconsin. Whitford & Laufer, *supra* note 8, at 631. The sample in each state is sufficiently large that substantial shifts in the data over longer periods of time are statistically significant. *Id.* at 638-39.

23. Motor vehicle liens must be registered with the MVD by state law. WIS. STAT. § 342.06(1)(c) (1975).

24. Total new car sales is a useful measure primarily because it helps explain the significance in lien recordings, *i.e.*, whether an increase (or decrease) in lien recordings is attributable to increased (or decreased) car sales or is suggestive of increased (or decreased) credit availability. Total car sales would be a more useful figure, but unfortunately this datum was not available to us.

delinquency rates in Wisconsin relative to experience elsewhere suggests restricted credit availability, these data can be seen as a surrogate measure of credit availability. Since the Wisconsin Consumer Act became effective on March 1, 1973, data from 1972 are deemed representative of pre-Act experience.²⁵ Data for 1973-1977 are presumed to reflect the impact of the Act. The limitations of these data were fully explained in the earlier article²⁶ and will be noted here when relevant.

B. *The Data and Their Implications*

Over the long term, each source of data indicates that the incidence of repossession has declined since the enactment of the Wisconsin Consumer Act. The available MVD data provide the absolute number of repossessions reported to the Department between July 1 and January 31 of each year.²⁷ As illustrated in Figure I below, in 1977-1978 there were only eighty-eight percent as many repossessions as in 1972-1973.

One limitation on these data is that the decline in the absolute number of repossessions might mask an increase in the repossession rate. The MVD data report only the absolute number of repossessions and not repossession rates—that is, repossessions as a percent of total motor vehicle credit sales. If the number of automobile credit sales declined more than the number of repossessions, then the repossession rate would have increased. Both the number of motor vehicle liens recorded with MVD and the number of new car sales have increased substantially since the passage of the Act, however, indicating that this effect is not likely to be present.²⁸

Unlike the MVD data, the ABA repossession data are expressed as rates.²⁹ These data are consistent with the MVD data. They indicate that repossession rates in Wisconsin decreased while the na-

25. Unfortunately, data from before 1972 are not available to us, but we have no reason to suspect the representativeness of the 1972 data.

26. Whitford & Laufer, *supra* note 8, at 638-40.

27. The MVD data report only forceful repossessions and not voluntary surrenders, which is desirable for testing our hypotheses. The data include, however, a number of involuntary title transfers not governed by the Wisconsin Consumer Act, such as repossessions of commercial vehicles and execution sales pursuant to mechanic's liens. We do not believe the number of non-Act transfers reported by the MVD data is either large or variable enough to affect the trends revealed by the data. For a more complete description of the origins and limitations of the MVD data, see Whitford & Laufer, *supra* note 8, at 643-45.

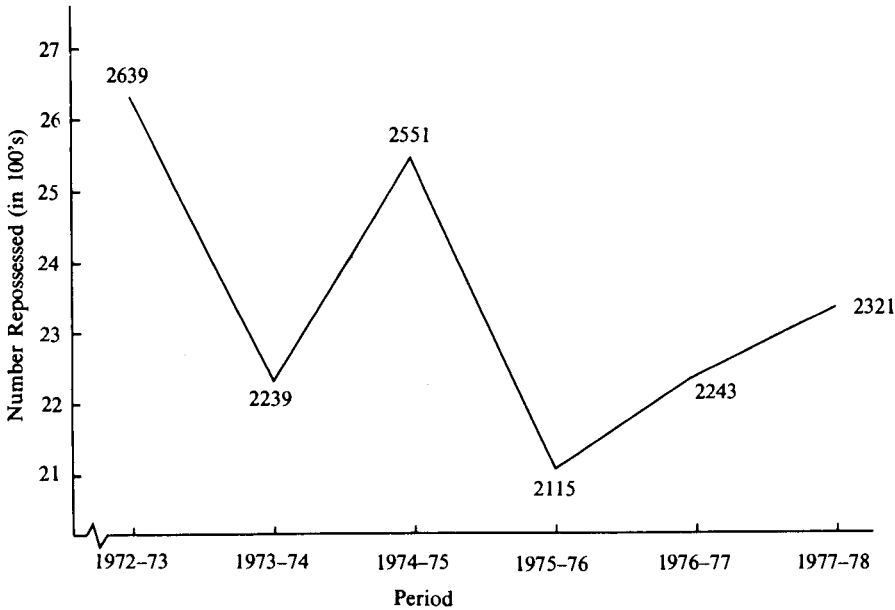
28. See Tables II, III *infra* and accompanying text.

29. See Figures II, III *infra*.

The ABA repossession data include voluntary surrenders as well as forceful surrenders and in this respect are not comparable to the MVD data. Under the Consumer Act, however, voluntary surrenders should increase. See Whitford & Laufer, *supra* note 8, at 623. Therefore, it seems safe to conclude that the decline in the repossession rate revealed by the ABA data reflects a decrease in forceful repossessions.

We have chosen the March 1 to October 31 period for reporting ABA repossession and delinquency data in order to be consistent with the time periods analysed in the earlier study. Other limitations on the ABA data are also explained there. *Id.* at 638-40.

FIGURE I
FREQUENCY OF AUTOMOBILE REPOSSESSIONS IN WISCONSIN,
1972-1977



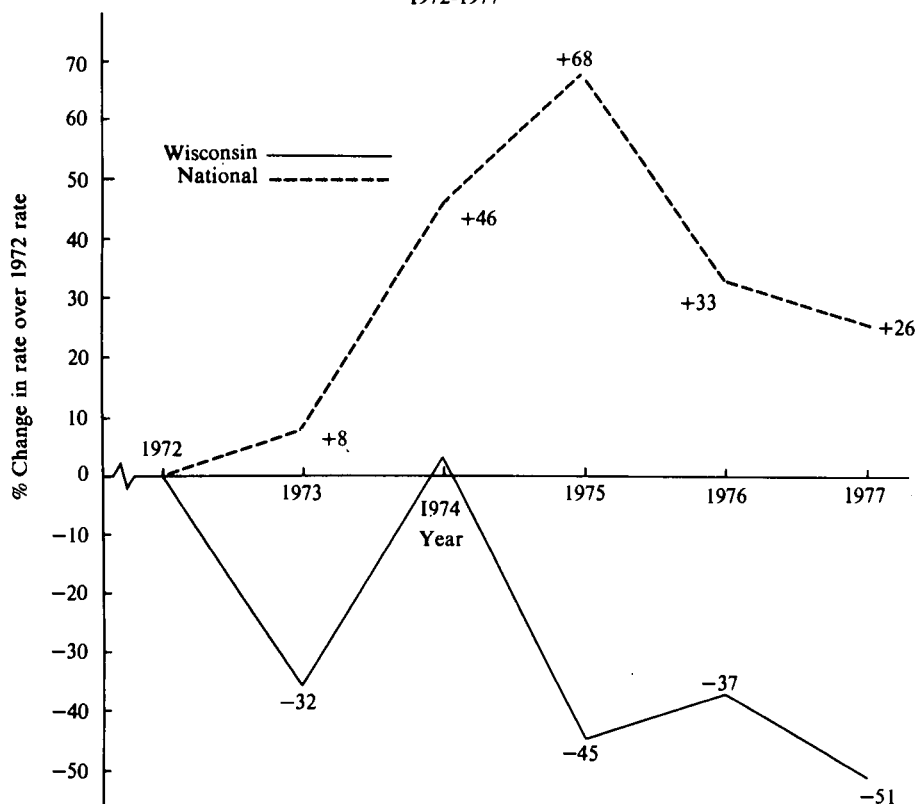
Source: Wisconsin Department of Motor Vehicles
Period: July 1 - January 31

tional rates increased. For direct loans, repossession rates in Wisconsin fell 51% between 1972 and 1977. The comparable national rate during the same period increased 26%. For indirect loans the Wisconsin rate decreased 5% between 1972 and 1977. The national rate increased by 11%.

As we hypothesized, the data suggest that the critics have underestimated the benefits of judicialized repossession by ignoring the likelihood of a resulting lower incidence of repossession. A possible alternative explanation of the repossession data is that the Consumer Act has caused a substantial restriction in credit availability and a resulting increase in the risk quality of the debtor pool. A better risk quality debtor pool would presumably experience fewer delinquencies and repossessions.

Reliable data comparing credit availability over time are difficult to obtain. For this and other reasons to be explained below, we cannot completely discount the possibility that the reduction in repossession rates is attributable to a restriction in credit availability. The available evidence suggests, however, that any reduction in credit availability has been modest and probably insufficient to account fully for the reduction in repossession. One source of data

FIGURE II
NATIONAL AND WISCONSIN AUTOMOBILE REPOSSESSIONS (DIRECT LOANS)
1972-1977



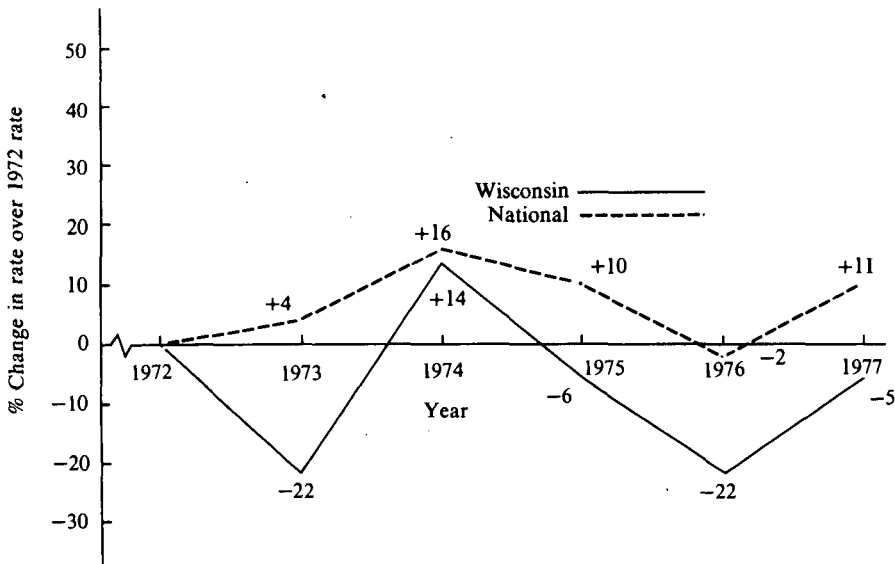
Source: American Banking Association
Period: March 1 - October 31

bearing on credit availability is the ABA delinquency rate data concerning automobile lending by banks. As reported in Table I and Figures IV and V below, between 1972 and 1977, delinquency rates for direct and indirect loans increased substantially *less* in Wisconsin than they did nationally and in contiguous states.³⁰

One explanation for the failure of Wisconsin delinquency rates to match the rate of increase elsewhere is that there has been some restriction in credit availability. Higher credit standards result in a better quality risk debtor pool, and better credit risks can be ex-

30. Another recent study, based exclusively on a survey of the experiences of three sales finance companies specializing in automobile credit, reported an increase in delinquency rates relative to national rates. Banks provide nearly three-fourths of new automobile credit in Wisconsin; consequently, the ABA data is a much more reliable indicant of total delinquency experience. See Whitford & Laufer, *supra* note 8, at 631. Perhaps the sales finance companies surveyed in the other study have an aberrational experience because of changes in the risk quality of their debtor pool, occasioned by the Consumer Act or economic conditions. See Peterson, *The Impact of Restricted Creditors' Remedies on Automobile Finance Companies in Wisconsin 28* (1977) (unpublished manuscript on file at Wisconsin Law Review).

FIGURE III
NATIONAL AND WISCONSIN AUTOMOBILE REPOSSESSIONS (INDIRECT LOANS)
1972 - 1977



Source: American Banking Association
Period: March 1 - October 31

pected to default less frequently than poorer credit risks.³¹ Another explanation is suggested by qualitative evidence reported in the earlier study that Wisconsin creditors have “tightened up” their formal collection practices considerably since the Consumer Act became effective. Probably this tightening up occurred to a greater extent in Wisconsin than in other states. If so, it is probable that a greater number of Wisconsin delinquencies are resolved within 30 days of initial nonpayment.³² Since such delinquencies do not appear in the ABA data, this phenomenon may account for part of the relative decline in Wisconsin delinquency rates.

We doubt, however, that the tightening up of collection practices fully accounts for the relative decline in Wisconsin delinquency rates. Some restriction in credit availability is the other apparent explanation for the decline. Moreover, on theoretical grounds such restriction is an expected result from judicialization of repossession.

Another source of data on credit availability strongly suggests that any restriction of credit availability has been modest. Motor vehicle liens recorded with MVD have increased over 26% between

31. The same effect on delinquency rates should be expected if the restriction in credit availability takes the form of higher downpayments. It is axiomatic in the credit industry that downpayment size is inversely correlated with default rate. See G. MOORE & P. KLEIN, *THE QUALITY OF CONSUMER INSTALLMENT CREDIT* 82 (1967).

32. Whitford & Laufer *supra* note 8, at 640-41.

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TABLE I
Changes in Automobile Credit Delinquency Rules
(Figures expressed in % changes in rates)

	Direct	Indirect
Wisconsin		
1973/1972	+35	+25
1974/1972	+42	+56
1975/1972	+33	+28
1976/1972	+19	+22
1977/1972	+21	+ 6
National		
1973/1972	+ 7	+16
1974/1972	+48	+39
1975/1972	+54	+44
1976/1972	+37	+23
1977/1972	+47	+29
Illinois		
1973/1972	0	- 4
1974/1972	+81	+34
1975/1972	+ 6	+37
1976/1972	+65	+38
1977/1972	+75	+69
Iowa		
1973/1972	+26	- 3
1974/1972	+70	+ 6
1975/1972	+107	+81
1976/1972	+26	- 7
1977/1972	+48	- 9
Minnesota		
1973/1972	- 1	- 5
1974/1972	+63	+25
1975/1972	+74	+57
1976/1972	+58	+82
1977/1972	+56	+43

Source: American Banking Association
Period: March 1 - October 31

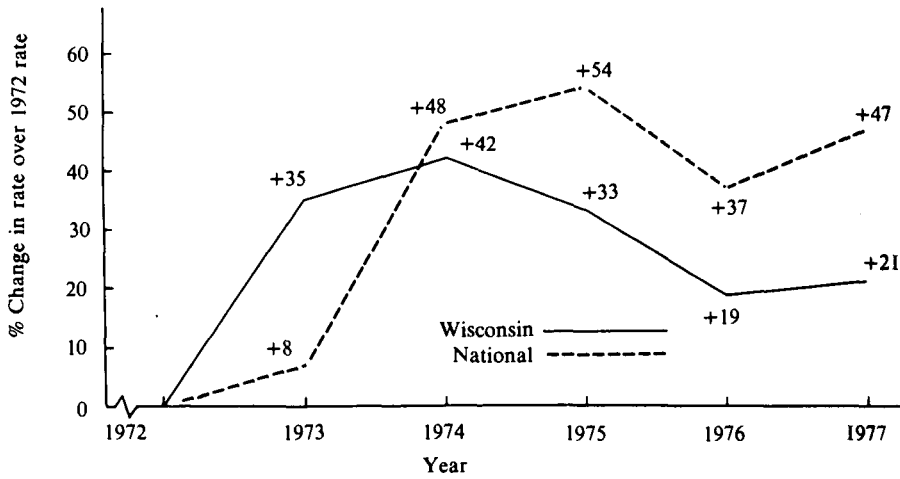
1972 and 1977.³³ Over the same period of time, new car sales increased in Wisconsin by only 10%. These data are reported in Tables II and III.

These data strongly suggest that a higher percentage of car sales in Wisconsin are being financed now than before the Consumer Act. Motor vehicle lien data include liens on used cars, but data on used car sales are not available. Nonetheless, it seems very unlikely that used car sales have increased relative to new car sales at a rate high enough to account for the increase in motor vehicle liens.³⁴

33. Motor vehicle lien recording data include liens filed with respect to vehicles not covered by the Consumer Act, such as commercial vehicles. It seems very unlikely, however, that commercial vehicle lien recordings can fully account for the overall increase in lien recordings. For a more complete description of the MVD data, the reasons why and how they are collected, and why we report the lien recording data for a March-October period, see *id.* at 632-33.

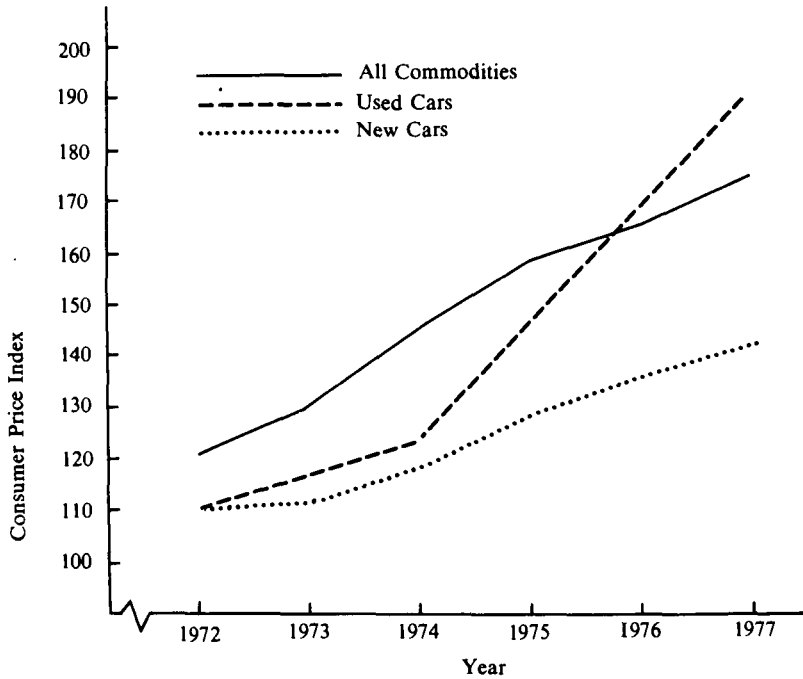
34. As illustrated in the figure below, used car prices have increased more rapidly than new car prices over the relevant time period:

FIGURE IV
 NATIONAL AND WISCONSIN AUTOMOBILE CREDIT DELINQUENCY RATES
 (DIRECT LOANS) 1972-1977



Source: American Banking Association
 Period: March 1 - October 31

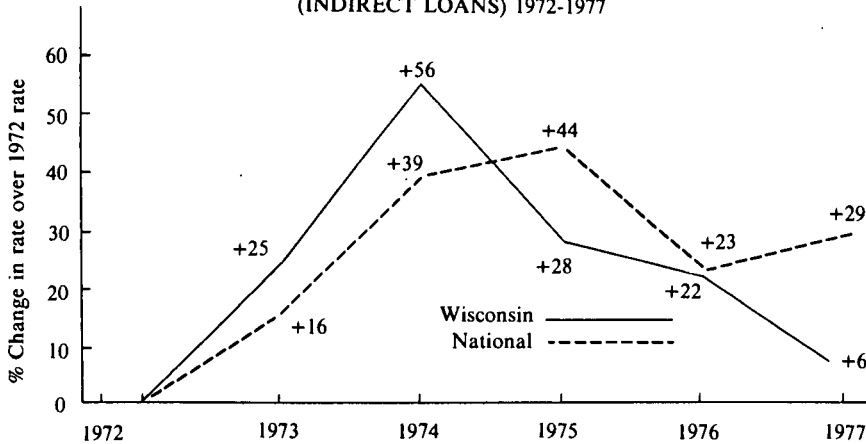
COMPARISON OF CONSUMER PRICE INDICES FOR NEW CARS,
 USED CARS, AND ALL OTHER COMMODITIES
 1972-1977



Source: U.S. Statistical Abstract 1977, at 478-79.

The relative increase in used car prices may suggest an increasing demand for used cars, probably resulting in increased used car sales, though it is possible a decline in supply accounted

FIGURE V
NATIONAL AND WISCONSIN AUTOMOBILE CREDIT DELINQUENCY RATES
(INDIRECT LOANS) 1972-1977



Source: American Banking Association
Period: March 1 - October 31

While it seems safe to conclude that a higher percentage of car sales are now being financed in Wisconsin, it does not necessarily follow that there has been no restriction of credit availability. For example, it is possible that the dollar amount of loans declined as a percentage of sales price due to higher required downpayments. This would represent a restriction in credit availability which would not appear in the data, though it is a form of credit restriction that affected consumers can adapt to more easily than outright credit denial.³⁵ Certainly the increase in the percentage of car sales that are financed suggests that restriction of credit availability, if any, has been modest.

III. CONCLUSION

Since Wisconsin is the only state to judicialize motor vehicle repossession, its regulation of creditor remedies is instructive. Critics of this reform have suggested that it would have catastrophic consequences. They contend that the costs of repossession would increase

for the increased prices. To fully account for the increase in motor vehicle lien recordings, however, we would have to assume that used car sales increased well in excess of 26%, which seems unlikely given only the 10% increase in the sale of new cars. Hence, it seems very likely that the increase in lien recordings reflects an increase in the percentage of motor vehicle sales being financed.

35. A recent study of the impact of the Wisconsin Consumer Act on automobile credit was based on a survey of the experiences of three sales finance companies specializing in automobile credit. That study found that, in the companies concerned, there had been an increase in the size of the downpayments as a proportion of the total sales price. However, there was not conclusive evidence of other forms of restricted credit availability. Peterson, *supra* note 30, at 25.

TABLE II

Monthly Average Motor Vehicle Liens Recorded, as Percent of 1972 Monthly Average

(Wisconsin)

Year	Monthly Ave. of Liens Recorded	% of 1972 monthly average
1972	33,967	--
1973	33,741	99
1974	35,339	104
1975	34,927	102
1976	38,283	113
1977	43,068	127

TABLE III

Monthly Average New Car Sales, as Percent of 1972 Monthly Average

(Wisconsin)

Year	New Car Sales	% of 1972 monthly average
1972	18,262	--
1973	19,963	109
1974	16,789	92
1975	14,112	77
1976	17,764	97
1977	20,065	110

significantly, thereby restricting credit availability to those least able to afford it. These critics have consistently overlooked a major potential benefit of judicialized repossession. Reform of repossession practices induces creditors to rely more on workouts and less on repossession as a collection technique. This shift in collection tactics can benefit both consumers and the general public by avoiding a variety of costs commonly associated with repossession. The earlier study developed the theoretical grounds for anticipating this effect of judicialized repossession. Unfortunately, the data available at the time of the earlier study did not establish whether the anticipated effects of judicialized repossession on repossession rates had actually occurred. The purpose of this study has been to determine whether data subsequently available established the predicted decline in repossession rates.

The data reported in this article leave no doubt that the long-term trend has been a decline in repossession rates in Wisconsin since the enactment of the Consumer Act.³⁶ This decline has been

36. It is worth noting that there is one provision of the Consumer Act which probably tends to encourage repossessions and discourage refinancing agreements. Under the Act, a 55-day period must elapse after initial nonpayment of an installment before the creditor can initiate a repossession proceeding. This provision applies to nonpayment under a refinancing agreement as well as under an original credit contract. Wis. STAT. §§ 425.103-105 (1975);

both absolute and relative to experience elsewhere. As a result we can conclude that the data are consistent with our primary hypothesis. That is, the prediction that judicialization of repossession will induce greater reliance on workouts and less on repossession as a means of collection has not been disproved.

Since we cannot fully determine the degree to which reduction in repossession rates is attributable to restriction of credit availability, the data cannot completely prove the validity of the hypothesis. Although it seems likely that there has been some restriction of credit availability since the enactment of the Consumer Act, there are indications that the restriction has been modest in magnitude. Especially persuasive in this respect is the rapid rise in motor vehicle lien recordings. Consequently, we doubt that the decline in repossession rates should be fully attributed to restricted credit availability.³⁷

By themselves, theory and empirical evidence that judicialized repossession will lessen reliance on repossession as a means of collection do not establish the desirability of the judicialization of repossession. While judicialization provides benefits, it will, undoubtedly, exact costs as well. It is beyond the capability of the data to assess whether those costs outweigh the benefits. It is worth noting, however, that the Wisconsin experience suggests the critics of judicialized repossession have tended to overestimate costs.³⁸

Whitford & Laufer, *supra* note 8, at 645 n.133. Consequently, as the 55-day period after the original breach draws to a close, a lender faces a considerable disincentive to enter into refinancing agreements. By entering such an agreement, the lender risks having to wait out another 55-day period before repossession is possible.

Judicialized repossession systems without this particular provision may yield a greater reduction in the incidence of repossessions than experienced in Wisconsin. The earlier study recommended that the Wisconsin Consumer Act be amended to reduce the waiting period for refinancing agreements. *Id.* at 656.

37. It makes some sense to compare the differences between Wisconsin and national rates of change for delinquency and repossession rates respectively (as illustrated by the ABA data). The 1977 national repossession rates were 26% higher than 1972 national repossession rates. The 1977 Wisconsin repossession rates were 51% below 1972 Wisconsin repossession rates. The repossession rate divergence, therefore, is 77 percentage points. For delinquency rates, 1977 national rates were 47 percentage points higher than 1972 rates. The 1977 Wisconsin rates were 21 percentage points higher than the 1972 rates. This divergence is only 26 percentage points.

This comparison is consistent with the hypothesis that factors other than restriction of credit availability have contributed to the decline in repossession rates. Because of the possibility that pre-Act repossessions were more heavily concentrated among the marginally creditworthy than pre-Act delinquencies, the comparison cannot prove the hypothesis. If pre-Act repossessions were so concentrated, restriction of credit to the most marginally creditworthy would have greater impact on repossession than delinquency rates.

38. Somewhat foolishly, some critics predicted that judicialized repossession would simultaneously increase delinquencies while restricting credit availability. Obviously delinquency rates have declined. Because of the possibility of restricted credit availability, however, the data we have leave open the possibility that delinquency rates have increased within particular creditworthy classes, and if so, this could be considered a cost of judicialized repossession. We hasten to add that we are not aware of evidence that delinquency rates have increased in this fashion.