

TRANSFORMERS: THE AGE OF REPOSSESSION; HOW AUTONOMOUS SELF-DRIVING CAR TECHNOLOGY WILL AFFECT FUTURE CONSUMERS

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Abstract

This Note examines the future potential implications of autonomous self-driving cars and auto loan repossessions under the Uniform Commercial Code (UCC), particularly focusing on the self-help repossession process. While autonomous vehicles have the potential to significantly benefit lenders by reducing repossession costs and improving efficiency, this Note explores the associated risks for consumers. Current legal frameworks may become inadequate as autonomous self-repossessing vehicles emerge in the marketplace. This Note considers the possible positive impacts, such as reducing violent altercations during repossession and enhancing access to cars, while also highlighting potential harms, including the increased risk of erroneous repossessions and the proliferation of predatory subprime loans. Legislative measures can provide consumer protections in the face of these technological advancements, balancing innovation with safeguards against potential abuses.

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I. INTRODUCTION

A DeLorean with a flux capacitor and the ability to travel back in time is still a thing of imagination;¹ however, an autonomous car capable of driving itself back to the car lender is not.² Since the 1968 Disney film, *The Love Bug*, autonomous self-driving cars have been portrayed in film and media.³ Autonomous self-driving cars are portrayed in a mix of styles and genres,

1. See BACK TO THE FUTURE (Amblin Entertainment 1985) (following a teenager in 1985 accidentally sent back to 1955 in a time-travelling DeLorean automobile).

2. See e.g., Kurt Robson, *Fully Self-Driving Cars Unlikely Before 2035, Experts Predict*, VERDICT (March 9, 2023), <https://www.verdict.co.uk/fully-self-driving-cars-unlikely-before-2035-experts-predict/> [<https://perma.cc/NGH8-FB45>] (“The autonomous vehicle (AV) industry will not develop a fully self-driving car until 2035, according to a recent prediction from research firm GlobalData.”); *How Close are we to Self-Driving Cars?*, CARTELLIGENT, <https://cartelligent.com/how-close-are-we-self-driving-cars/> [<https://perma.cc/4UFG-K4B3>] (last visited Mar. 10, 2025) (“Ford, Nissan and Tesla have all announced plans to introduce self-driving cars in the next few years and by 2030, up to 15% of new cars could be fully autonomous.”); Sanyam Bhutani, *How Far Are We from a Fully Autonomous Driving World?*, TOWARDS DATA SCI. (Jan. 20, 2018), <https://medium.com/data-science/how-far-are-we-from-a-fully-autonomous-driving-world-89fde97b5352> [<https://perma.cc/K49Y-D2MY>].

3. Rudy Salo, *Hollywood and Autonomous Vehicles: How Films, Cartoons, and TV Shows have Shaped our AV Biases*, FORBES (Oct. 10, 2019, 12:05 PM), <https://www.forbes.com/sites/rudysalo/2019/10/10/hollywood-and-autonomous-vehicles-how-films-cartoons-and-tv-shows-have-shaped-our-av-biases/> [<https://perma.cc/4RHC-Q95L>] (“One of the earlier and most popular portrayals of a driverless car is Disney’s *The Love Bug*, a 1968 film featuring a lovable (but very sensitive) self-driving 1963 Volkswagen Beetle with a mind of its own named Herbie.”).

whether that be silly, scary, mysterious, heroic, and more.⁴ Although current times have not yet caught up to film and media portrayals of autonomous self-driving cars, advances in technology create more of a possibility each day.⁵ Many cars available today have some self-driving features including hands-free steering, adaptive cruise control to maintain a selectable distance between cars on the road, and lane-centering steering.⁶ While advances in autonomous cars are great for consumers who wish to operate less when they drive, car manufacturers and lenders are also excited.⁷

Article 9 of the Uniform Commercial Code (UCC) governs transactions where a borrower receives credit and, in exchange, grants a lender the right to take specific collateral in the event that the borrower defaults on the loan.⁸ For auto loans, lenders require the borrower to provide a security interest in the vehicle itself as collateral.⁹ A default is the failure to make the required payments on a debt.¹⁰ The specific amount of missed payments required to constitute a default will often be determined by the parties—the lender and borrower—and expressed in a security agreement or other document entered into for the transaction.¹¹

If a borrower defaults on the loan, the lender has two means to repossess the collateral: judicial means and nonjudicial means.¹² The judicial means for repossession occurs through the traditional court foreclosure process.¹³ A lender can seek a court order to require the borrower to turn over the collateral and empower the authorities to take possession of the collateral on behalf of the lender.¹⁴ The significant time and money costs associated with the judicial process can be a problem for lenders.¹⁵ The other route for lenders is nonjudicial

4. *Id.* (“Not all portrayals of self-driving cars are silly . . . or scary” In the 1980s, the series *Knight Rider* portrayed a heroic self-driving car.)

5. *See infra* Part II.A (discussing autonomous car technology).

6. Alexander S. Gillis & Ben Lutkevich, *Self-Driving Car (Autonomous Car or Driverless Car)*, TECHTARGET, <https://www.techtargget.com/searchenterpriseai/definition/driverless-car> [<https://perma.cc/5692-6MX7>] (last updated June 2024).

7. *See* Becky Sullivan, *A New Ford Patent Imagines a Future in Which Self-Driving Cars Repossess Themselves*, NPR (Mar. 3, 2023, 1:37 PM), <https://www.npr.org/2023/03/03/1160932390/ford-patent-repossession-self-driving-cars> [<https://perma.cc/G23R-3VUF>] (discussing a new Ford patent that would allow cars with auto loan defaults to drive itself away to the repossession lot).

8. *Secured Transaction*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/secured_transactions [<https://perma.cc/TYF8-8A95>] (last visited Mar. 10, 2025).

9. Bulletin 2022–04: Mitigating Harm From Repossession of Automobiles, 87 Fed. Reg. 11, 951 (Mar. 3, 2022) (to be codified at 12 C.F.R. ch. X).

10. James Chen, *Default: What It Means, What Happens When You Default, and Examples*, INVESTOPEDIA, <https://www.investopedia.com/terms/d/default2.asp> [<https://perma.cc/28VM-V2WE>] (last updated June 29, 2024).

11. Christopher H. Oldham & Elizabeth A. Napps, *In the Ditch: Remedies and Enforcement upon Default under the UCC*, AM. BAR ASS’N (Mar. 2, 2023), <https://businesslawtoday.org/2023/03/remedies-enforcement-upon-default-under-ucc-article-9/> [<https://perma.cc/QZ5Y-TPVZ>].

12. U.C.C. § 9-609(b) (AM. L. INST. & UNIF. L. COMM’N 1977).

13. Garry M. Graber & Steven W. Wells, *UCC Article 9 Secured Party Sales*, HODGSON RUSS LLP, https://www.hodgsonruss.com/media/publication/1758_UCC%20Article%209%20Secured%20Party%20Sales%20w-008-7326_.pdf [<https://perma.cc/BPS9-TX6M>] (last visited Mar. 10, 2025).

14. *Id.*

15. *Id.*

means whereby they use self-help remedies to repossess their property.¹⁶ “[A] self-help remedy allows a wronged party to right the wrong without resort[ing] to the courts....”¹⁷ Self-help remedies necessitate restrictions on their use to minimize harms that can arise without court oversight.¹⁸ For example, the UCC requires that secured lenders who choose to repossess property through self-help means must do so “without breach of the peace.”¹⁹

Breach of the peace is not defined by the UCC, and courts have been left to interpret this requirement.²⁰ To some courts, breach of the peace in self-help repossession is any activity that might cause violence during a vehicle repossession.²¹ The possibility of violence, however, is not the only signal to courts for when a breach of the peace may have occurred.²² Common examples of when breach of the peace occurs include taking the vehicle over oral protests, trespass, violence, breaking and entering, and police involvement.²³ In each case there is a borrower and a human repossession agent.²⁴ When a car lender wants to repossess a borrower’s delinquent car, they must pay repossession fees.²⁵ The fees include the repo agent’s services, tow trucks, and storage costs, all of which can total thousands of dollars per car.²⁶ In 2022, more than 3,000 repossessions occurred every day²⁷ and in 2023 that number increased to more than 4,000 repossessions every day.²⁸ Therefore, the cost for lenders to employ repo agents and tow trucks quickly adds up.²⁹ The repossession industry is a \$1.7 billion

16. Juliet M. Moringiello, *Automating Repossession*, 22 NEV. L. J. 563, 565 (2021).

17. *Id.* at 590.

18. *Id.*

19. U.C.C. § 9-609(b) (AM. L. INST. & UNIF. L. COMM’N).

20. Jean Braucher, *The Repo Code: A Study of Adjustment to Uncertainty in Commercial Law*, 75 WASH. U. L. Q. 549, 566 (1997); See Jaskiran Kaur, *The Uncertain Scope of the Breach of Peace Clause Under Article 9 of the Uniform Commercial Code*, NYU J. L. BUS., <https://www.nyu.edu/org/single-post/the-uncertain-scope-of-the-breach-of-peace-clause-under-article-9-of-the-uniform-commercial-code> [https://perma.cc/W6LQ-2AF6] (last visited Mar. 10, 2025) (“Because the drafters of the UCC failed to define what constituted a ‘breach of peace,’ a lack of consistency has resulted across jurisdictions, as each court attempts to craft its own interpretation of the term.”).

21. *Wrongful Repossession Attorney: Protect Your Rights*, MOISES, <https://www.moisesmoraleslaw.com/blog/wrongful-repossession-attorney-protect-your-rights/> [https://perma.cc/62UW-X473] (last visited Mar. 18, 2025); see *Droge v. AAAA Two Star Towing, Inc.*, 468 P.3d 862, 871 (Nev. App. 2020) (“For example, courts routinely conclude that a breach of the peace occurs where actual violence or physical resistance is present during a repossession.” (citation omitted)); see also Braucher, *supra* note 20, at 568 (“Most courts, however, say that risk of violence is enough to constitute a breach of the peace. Because *all* self-help repossessions risk violence to some extent, what the courts really mean is that the risk of violence cannot be *too great*.”) (citing *Davenport v. Chrysler Credit Corp.*, 818 S.W.2d 23, 28 (Tenn. Ct. App. 1991)).

22. See discussion *infra* Part II.B.1 (discussing the law of self-help repossession).

23. *Wrongful Repossession Attorney: Protect Your Rights*, *supra* note 21.

24. *Id.*

25. Serena Siew, *What Repossession Fees Mean For You*, UPSOLVE, <https://upsolve.org/learn/repossession-fees/> [https://perma.cc/BW77-R7HK] (last updated Jan. 24, 2025).

26. *Id.*

27. Alexis Bazen, *How Many Cars are Repossessed Each Year? 2025*, CONSUMER AFF. J. OF CONSUMER RSCH., <https://www.consumeraffairs.com/automotive/car-repossession-statistics.html> [https://perma.cc/TR6C-C6EF] (last updated Feb. 22, 2024).

28. Kevin Armstrong, *How Many Cars Were Repossessed in 2023?*, CU REPOSSESSION (May 3, 2024), <https://curepossession.com/how-many-cars-were-repossessioned-in-2023/> [https://perma.cc/33TY-AXHD].

29. See Siew, *supra* note 25 (discussing the costs associated with repossessions).

sector.³⁰ Lenders are enthusiastic about the innovation of autonomous car technology because it could cut out the need for a third-party repo agent and save costs that go into repossessing a car.³¹ Furthermore, autonomous cars that are self-repossessing can strengthen lenders' monetary interests.³² Car lenders are not the only parties to the transaction who could benefit from this future technology.³³ Other benefits from autonomous car technology include enhanced road safety, increased mobility for the elderly and disabled, accessible transportation, and enhanced transportation for rural areas.³⁴ Autonomous car technology can further help consumers who own or wish to own cars because there may be less risk of harm in repossessions and less auto loan rejections; however, this must be balanced with potential harm, such as erroneous repossessions.³⁵ Advances in automotive technology will reshape how cars are repossessed, public safety during repossession, and monetary interests in the relationship between consumers and lenders in the automotive industry.³⁶

This Note explores the upside of autonomous car technology and its potential negative impact on defaulting auto loan borrowers. Part II discusses existing autonomous car technology, what technology lenders have accessible to help with repossession when a purchaser defaults on their auto loan, and provides background on the current legal framework of self-help repossession that car lenders must navigate. Part III analyzes how autonomous car technology used in repossessions can play out for consumers and lenders, and what potential benefits or obstacles this future technology holds. Autonomous car technology could limit public safety concerns arising from self-help repossessions and allow more individuals access to cars.³⁷ The benefits, however, are weighed against the potential harm of subprime loans and erroneous repossessions that borrowers face.³⁸ Part IV proposes various actions that can be taken to address concerns consumers may have with how autonomous cars will change the landscape of self-help repossession for lenders. Action can be taken by states themselves or through federal government agencies.³⁹ Part V concludes.

30. *Repo Companies Predict Boom as Consumers Miss Car Payments*, PYMNTS (Apr. 19, 2023), <https://www.pymnts.com/economy/2023/repo-companies-predict-boom-as-consumers-miss-car-payments/> [<https://perma.cc/M4DK-NVBY>].

31. See Siew, *supra* note 25 (discussing the costs associated with repossessions).

32. *The Future of repossession: Self-Driving Cars Take Center Stage*, ROYAL EXAMINER (July 16, 2023), <https://royalexaminer.com/the-future-of-repossession-self-driving-cars-take-center-stage/> [<https://perma.cc/EEQ4-YXWU>] [hereinafter Royal Examiner].

33. See *infra* Section III.A (discussing consumer benefits of autonomous self-driving cars in the lending and repossession world).

34. *What Are the Benefits of Autonomous Cars?*, SIMPLY FLEET (Jan. 27, 2025), <https://www.simplyfleet.app/blog/benefits-of-autonomous-cars> [<https://perma.cc/N39J-JTRJ>].

35. See discussion *infra* Part III (detailing how autonomous self-driving cars will bring both consumer benefit and concern).

36. See discussion *infra* Part III (balancing the good and the bad of self-repossession technology); ROYAL EXAMINER *supra* note 31; Simply Fleet *supra* note 34.

37. *Id.*

38. *Id.*

39. See discussion *infra* Part IV.B (discussing federal government agencies ability to protect consumers); Mark MacCarthy, *The Evolving Safety And Policy Challenges of Self-driving Cars*, BROOKINGS (July 31, 2024), <https://www.brookings.edu/articles/the-evolving-safety-and-policy-challenges-of-self-driving-cars/> [<https://perma.cc/XD9K-GYZ4>] (detailing the policy challenges surrounding autonomous cars).

II. BACKGROUND

A. *Autonomous Cars*

An autonomous car is a vehicle that can travel without direct operation by a human driver.⁴⁰ In an autonomous car, there is no human driver who controls the steering, acceleration, or braking.⁴¹ Furthermore, there is no human driver who needs to monitor the road around the car.⁴² This technology has been around for years in varying degrees.⁴³ In 2012, automotive supply giant Continental demonstrated many remarkable systems it planned to utilize for driverless cars.⁴⁴ Continental demonstrated advanced technology, including: “360-degree cameras; adaptive cruise control; emergency brake assist using radar and camera options; and emergency brake assist pedestrian protection, in which the car can make an evasive maneuver by steering itself out and back into a lane.”⁴⁵ The public continues to see the feasibility of autonomous cars, evidenced by public excitement and concern as companies develop such technology.⁴⁶

The question of whether a car is autonomous is not a binary one; instead, there are six levels of categorization for autonomous ground vehicles.⁴⁷ The six levels were defined by SAE International (formerly named the Society of Automotive Engineers) to provide clarification across the world for automakers, suppliers, and policymakers to uniformly classify an automated-driving system’s sophistication.⁴⁸ The categorizations are: Level 0 No Automation; Level 1 Driver Assistance; Level 2 Partial Automation; Level 3 Conditional Automation; Level 4 High Automation; and Level 5 Full Automation.⁴⁹ Currently, Level 3 Conditional Automation is the highest category of vehicles available for consumers to own themselves and Level 4 High Automation is being tested by companies.⁵⁰

40. *Autonomous Vehicles*, NAIC, <https://content.naic.org/cipr-topics/autonomous-vehicles> [<https://perma.cc/NCR4-RLCJ>] (last updated Dec. 17, 2024).

41. *Id.*

42. *Id.*

43. *A Brief History of Autonomous Vehicle Technology*, WIRED, <https://www.wired.com/brandlab/2016/03/a-brief-history-of-autonomous-vehicle-technology/> [<https://perma.cc/Z9VM-EXPL>] (last visited Oct. 8, 2023).

44. Todd Lassa, *The Beginning of the End of Driving*, MOTOR TREND GRP. (Nov. 27, 2012), <https://www.motortrend.com/news/the-beginning-of-the-end-of-driving/> [<https://perma.cc/8E5W-E2HG>].

45. *Id.*

46. Laurel Rosenhall, *Gavin Newsom is Mesmerized by the Growth of Driverless Cars. Other California Democrats, Not so Much*, L.A. TIMES (Nov. 12, 2023), <https://www.latimes.com/california/story/2023-11-12/gavin-newsom-driverless-cars-autonomous-vehicles-california-democrats> [<https://perma.cc/2W9D-6KSE>].

47. *Path to Autonomy: Self-Driving Car Levels 0 to 5 Explained*, CAR AND DRIVER (Oct. 3, 2017), <https://www.caranddriver.com/features/a15079828/autonomous-self-driving-car-levels-car-levels/> [<https://perma.cc/X5WT-UUSP>].

48. *Id.*; see also *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles*, SAE INT’L (Apr. 30, 2021), https://www.sae.org/standards/content/j3016_202104/ [<https://perma.cc/8DWG-QF2S>].

49. *Path to Autonomy: Self-Driving Car Levels 0 to 5 Explained*, *supra* note 47.

50. See discussion *infra* Part II.A.1 (discussing the state of autonomous car technology).

1. *Current Autonomous Car Technology*

Corporations in the robotic, technology, and automaking spaces continuously work to develop autonomous car technology.⁵¹ As of today, consumers want cars that can drive themselves.⁵² Although consumer trust in self-driving cars has decreased, at least one-third of the public is still comfortable with self-driving cars.⁵³ The global autonomous vehicles market is predicted to grow sevenfold from 2022 to 2030.⁵⁴ Tesla is a car manufacturer well known for offering autonomous car functionality to consumers.⁵⁵ In 2016, Tesla's CEO, Elon Musk, announced that the company would ship all cars with "full self-driving" technology for consumers.⁵⁶ The full self-driving technology would supposedly allow drivers to take a nap on the way to work, or even have the car drive cross-country with nobody inside.⁵⁷ What should have been a roll-out of autonomous cars turned out to be false.⁵⁸ Since the announcement, Tesla's cars have not surpassed being rated at Level 2 by SAE International definition.⁵⁹ Current Teslas can navigate on and off highway ramps, lane change, and self-park.⁶⁰ The driver is expected to be fully attentive and to have their hands on the wheel in order to take over at any moment.⁶¹ Thus, one of the few autonomous cars available to consumers in the United States, and one of the most anticipated, is only capable of partial automation.⁶²

51. *The Rise of Autonomous Vehicles*, DIGIT. WATCH, <https://dig.watch/trends/rise-autonomous-vehicles> [<https://perma.cc/J4CT-VWQF>] (last visited Mar. 6, 2025).

52. *See The Self-Driving Future: Consumer Views on Letting Go of the Wheel and What's Next for Autonomous Cars*, ERICSSON, <https://www.ericsson.com/en/reports-and-papers/consumerlab/reports/self-driving-future> [<https://perma.cc/SUJ8-XDHM>] (last visited Jan. 31, 2024) ("Already, one in four smartphone users states that they would prefer an autonomous car to one they drive themselves . . .").

53. *See Susan Carpenter, Consumers Losing Confidence in Self-Driving Cars, Study Says*, SPECTRUM NEWS 1 (Oct. 4, 2023, 12:40 PM), <https://spectrumnews1.com/ca/southern-california/transportation/2023/10/04/consumers-losing-confidence-in-self-driving-cars--study-says> [<https://perma.cc/D7TD-Z4X8>] ("Just 37% of the public said they would be comfortable riding in such a vehicle—down from 39% in 2022 and 44% in 2021.").

54. Martin Placek, *Number of Autonomous Vehicles Globally 2022–2030*, STATISTA (Dec. 25, 2024), <https://www.statista.com/statistics/1230664/projected-number-autonomous-cars-worldwide/> [<https://perma.cc/U7Y7-3EPP>].

55. *See Statista Research Department, Most Valuable Automotive Brands Worldwide by Brand Value 2024*, STATISTA (June 14, 2024), <https://www.statista.com/statistics/267830/brand-values-of-the-top-10-most-valuable-car-brands> [<https://perma.cc/6FMG-UR43>] ("The Tesla marque was ranked as the world's most valuable car brand in 2024 . . .").

56. Robert Ferris, *All Tesla Vehicles Being Produced Now Have Full Self-Driving Hardware*, CNBC (Oct. 21, 2016, 1:21 PM), <https://www.cnbc.com/2016/10/19/all-tesla-vehicles-being-produced-now-have-full-self-driving-hardware.html> [<https://perma.cc/NZ44-GHUH>].

57. Andrew J. Hawkins, *The False Promises of Tesla's Full Self-Driving*, THE VERGE (AUG. 23, 2023, 7:00 AM), <https://www.theverge.com/2023/8/23/23837598/tesla-elon-musk-self-driving-false-promises-land-of-the-giants> [<https://perma.cc/EM82-B7M8>].

58. *Id.*

59. Cherise Threewitt, *What Does Tesla's Full Self-Driving Mode Do?*, U.S. NEWS (Mar. 4, 2024, 4:00 PM), <https://cars.usnews.com/cars-trucks/advice/tesla-full-self-driving> [<https://perma.cc/C6UK-MJ8N>].

60. *Id.*

61. *Autopilot and Full Self-Driving (Supervised)*, TESLA, <https://www.tesla.com/support/autopilot> [<https://perma.cc/5ZSJ-YZ76>] (last visited Feb. 5, 2024).

62. Joe Young, *Tesla Recall Highlights More Widespread Issue with Partial Automation*, IIHS HLDI (Feb. 17, 2023), <https://www.iihs.org/news/detail/tesla-recall-highlights-more-widespread-issue-with-partial-automation> [<https://perma.cc/WP8B-NE46>].

There are other limited options for consumers who wish to purchase an autonomous car.⁶³ One option for consumers who wish to purchase a Level 3 autonomous car is in Japan.⁶⁴ The Honda SENSING Elite qualifies for Level 3 automated driving due to its “Traffic Jam Pilot” technology,⁶⁵ which allows a vehicle caught in expressway congestion to have its system “take control of acceleration, braking and steering while monitoring the vehicle’s surroundings on behalf of the driver.”⁶⁶ While this highlights how the technology is progressing, Honda only released 100 of these vehicles.⁶⁷ In Europe, Mercedes-Benz has a Level 3 car with an autonomous driving system.⁶⁸ That Mercedes-Benz car meets the Level 3 definition because while it “can, on suitable highway sections and where traffic density is high, offer to take over the driving, leaving the driver free to do something else,”⁶⁹ it still requires a driver to be present and available to take over at any time.⁷⁰ This will likely be the first Level 3 car to become available in the United States because the state of Nevada approved the system used by Mercedes-Benz.⁷¹ Although limited, varying levels of autonomous driving continues to be developed and sold to consumers.⁷²

Autonomous driving technology is also being developed for businesses to use.⁷³ At the end of 2020, California permitted Nuro, Inc. (Nuro), a robotics company, to test its driverless vehicles fleet in certain portions of the Bay Area.⁷⁴ Two years later, Nuro struck a 10-year agreement with Uber to have its autonomous delivery vehicles provide Uber Eats users with their food in

63. iSeeCars, *The Best (Almost) Self-Driving Cars Available Today*, 12 WBOY (Jan. 18, 2025, 2:01 PM), <https://www.wboy.com/automotive/the-best-almost-self-driving-cars-available-today/> [https://perma.cc/NA2P-7R55].

64. *Honda to Begin Sales of Legend with New Honda SENSING Elite*, HONDA (Mar. 4, 2021), <https://global.honda/en/newsroom/news/2021/4210304eng-legend.html> [https://perma.cc/4ZVR-KKJF].

65. *Honda Unveils Next-generation Technologies of Honda SENSING 360 and Honda SENSING Elite*, HONDA (Dec. 1, 2022), <https://global.honda/en/newsroom/news/2022/c221201eng.html> [https://perma.cc/NQE5-2WSL].

66. *Honda SENSING Elite Traffic Jam Pilot*, HONDA, https://global.honda/en/tech/Traffic_Jam_Pilot_TJP/ [https://perma.cc/PEL7-VMA6] (last visited Dec. 15, 2024).

67. Murray Slovick, *World’s First Level 3 Self-Driving Production Car Now Available in Japan*, ELEC. DESIGN (Mar. 19, 2021), <https://www.electronicdesign.com/markets/automotive/article/21158656/electronic-design-worlds-first-level-3-self-driving-production-car-now-available-in-japan> [https://perma.cc/VXK6-JVAS].

68. Iulian Dnistran, *Mercedes is the First Automaker to Offer Level 3 Self-Driving in the US*, INSIDEEVS (Jan. 9, 2023, 4:49 AM), <https://insideevs.com/news/630075/mercedes-first-to-offer-level-3-self-driving-in-the-us/> [https://perma.cc/MHG3-YZVE].

69. *Id.*

70. *Id.*

71. *Id.*

72. Marc Saltzman, *Self-Driving Cars Are a Thing of the Future. But Is That Future Right Around the Corner?*, USA TODAY (Aug. 29, 2022, 4:32 PM), <https://www.usatoday.com/story/tech/2022/08/29/self-driving-cars-future-gm-tesla/7896389001/> [https://perma.cc/LE4A-VDJE].

73. Lawrence Nga, *Autonomous Driving is Going to be the Next Big Trend. Here are 2 Tech Companies to Keep an Eye On*, THE MOTLEY FOOL (Mar. 6, 2025, 6:00 AM), <https://www.fool.com/investing/2025/03/06/autonomous-driving-is-going-to-be-the-next-big/> [https://perma.cc/9M6M-NTX9].

74. *California’s First Deployment Permit Allows for Driverless Delivery Business in Portion of Bay Area*, STATE OF CALIF. DEP’T OF MOTOR VEHICLES (Dec. 23, 2020), <https://www.dmv.ca.gov/portal/news-and-media/dmv-approves-nuro-to-use-autonomous-vehicles-for-commercial-service/> [https://perma.cc/KZ2E-FFPC].

Houston, Texas and Mountain View, California.⁷⁵ Nuro’s driverless vehicle falls within the Level 4 definition by SAE International.⁷⁶

Besides delivering food, companies use autonomous cars to transport people.⁷⁷ For instance, Waymo, an autonomous driving technology company, offers its “robotaxi” service in three cities with operations expected in two more cities by early 2025.⁷⁸ These “robotaxis” utilize autonomous technology to provide a driverless ride-hail option for consumers.⁷⁹ Similar to Nuro, Waymo’s “robotaxi” service operates vehicles that fall within the Level 4 definition by SAE International because these “robotaxis” are driverless.⁸⁰ Nuro’s driverless vehicles and Waymo’s “robotaxis” do not fall within the Level 5 definition because they cannot operate “on any road and in any conditions a human driver could negotiate.”⁸¹

Manufacturers are continuously developing car technology to provide consumers and businesses with autonomous cars.⁸² Indeed, the 2030 market forecast for how many autonomous cars there will be globally is seven times larger than the 2022 market size.⁸³ Concern for consumer safety is important as this technology emerges to ensure physical harm and death is prevented.⁸⁴ The future of self-driving car technology, however, goes beyond safety concerns and has a plethora of effects on future autonomous car purchasers.⁸⁵

B. Auto Lender Repossession

There is adverse potential for this autonomous technology to make the car owner’s vehicle more susceptible to repossession.⁸⁶ Across the United States, a payment default can allow for a lender to repossess a borrower’s vehicle without

75. Andrew J. Hawkins & Alan Ohnsman, *Uber Taps Nuro’s Street-Legal Robots for Food Deliveries*, FOOD HQ (Nov. 2022), <http://foodhq.world/issue-sections/articles/automation/uber-taps-nuro-s-street-legal-robots-for-food-deliveries> [<https://perma.cc/GE4T-6NWN>].

76. Jay Ramey, *Nuro Reveals Production-Ready Delivery Robot*, AUTOWEEK (Jan. 13, 2022, 3:43 PM), <https://www.autoweek.com/news/technology/a38759917/nuro-autonomous-delivery-robot-ev/> [<https://perma.cc/F59R-UR2X>].

77. Andrew J. Hawkins, *Waymo’s Robotaxis are Now Available to Tens of Thousands of People Across All of San Francisco*, THE VERGE (Oct. 10, 2023, 10:20 AM), <https://www.theverge.com/2023/10/10/23911190/waymo-robotaxi-san-francisco-customers-waitlist> [<https://perma.cc/3DAT-UAL6>].

78. Christian Britschgi, *2024: The Year of the Driverless Car*, REASON (Dec. 2024), <https://reason.com/2024/11/21/2024-the-year-of-the-driverless-car/> [<https://perma.cc/N4A3-KV2X>].

79. Hawkins, *supra* note 77.

80. Kirsten Korosec, *Waymo Picks Detroit Factory to Build Self-Driving Cars*, TECHCRUNCH (Apr. 23, 2019, 12:03 PM), <https://techcrunch.com/2019/04/23/waymo-picks-detroit-factory-to-build-self-driving-cars/> [<https://perma.cc/6C59-E3RY>].

81. *Path to Autonomy: Self-Driving Car Levels 0 to 5 Explained*, *supra* note 47.

82. Robert Krohn & Anamika Sarkar, *More Automakers are Collaborating with Technology Companies*, ISG, <https://isg-one.com/advisory/sourcing/articles/more-automakers-are-collaborating-with-technology-companies> [<https://perma.cc/LF65-BJH3>] (last visited Mar. 9, 2025).

83. Placek, *supra* note 54.

84. *See Autonomous and Self-Driving Car Accidents*, CAVANAUGH & THICKENS, (Sept. 12, 2023), <https://www.ctlawsc.com/autonomous-and-self-driving-car-accidents/> [<https://perma.cc/2E7A-AQTB>] (discussing automated vehicle accident statistics and facts).

85. *See* discussion *infra* Part III (analyzing the various effects—both the good and the bad—that autonomous car technology will have on consumers).

86. *See* discussion *supra* Part II.A (discussing autonomous car technology); *see also infra* text accompanying notes 87-102 (discussing repossession and autonomous vehicles).

a court order.⁸⁷ After a default, a lender has a couple options to repossess the vehicle, including the ability to enter onto another's property to take the vehicle or by using electronic disabling devices to prevent the vehicle from turning on.⁸⁸ Both options have one key limitation: the lender cannot "breach the peace" when they take the vehicle.⁸⁹

The UCC was established in 1953 to help businesses transact across the various state laws more easily.⁹⁰ Although not federal law, the UCC is a uniformly adopted state law.⁹¹ There are nine separate articles in the UCC.⁹² Important for this Note is Article 9, Secured Transactions.⁹³

UCC Article 9 governs secured transactions, which are transactions where credit is granted to secure personal property.⁹⁴ A secured transaction occurs when someone borrows money to acquire property, such as cars.⁹⁵ For example, customers who purchase a car through financing can do so through a secured transaction.⁹⁶ "The buyer receives the vehicle, but the lender retains the title to the car as security" in case the buyer cannot make the loan payments.⁹⁷ "If the buyer defaults on the payments, the lender, called the secured party, may repossess the car to recover losses from the default."⁹⁸

When a car purchaser defaults on their loan, the UCC provides the legal right for the lender to repossess the car.⁹⁹ While the lender can go through the court system, UCC Article 9 also allows a nonjudicial option for creditors.¹⁰⁰ Rather than get a court order, the nonjudicial option allows secured lenders to exercise "self-help,"¹⁰¹ whereby they can repossess the car without a court order so long as there is no "breach of the peace."¹⁰²

87. U.C.C. § 9-609 (AM. L. INST. & UNIF. L. COMM'N 1977); *see also Vehicle Repossession*, FED. TRADE COMM'N CONSUMER ADVICE (2023), <https://consumer.ftc.gov/articles/vehicle-repossession> [<https://perma.cc/S46U-3L9K>] (discussing options for a lender to recover a vehicle when there is a default in payments).

88. *Vehicle Repossession*, *supra* note 87.

89. *Id.*

90. Daniel Liberto, *Uniform Commercial Code (UCC): Definition, Purpose, and History*, INVESTOPEDIA (Feb. 8, 2022), <https://www.investopedia.com/terms/u/uniform-commercial-code.asp> [<https://perma.cc/ZA58-KGFG>].

91. *Uniform Commercial Code*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/ucc> [<https://perma.cc/PG3V-YSMG>] (last visited Dec. 29, 2024) [hereinafter ULC].

92. Liberto, *supra* note 90.

93. UNIF. L. COMM'N, *supra* note 91.

94. *Id.*

95. *Secured Transactions Law & the UCC*, JUSTIA, <https://www.justia.com/business-operations/docs/secured-transactions/> [<https://perma.cc/C5A8-4MZW>] (last updated Oct. 2024).

96. *Secured Transaction: Common Forms of Secured Transactions, Common Forms of Collateral, the Formalities, Satisfaction of the Secured Debt*, JRANK: L., <https://law.jrank.org/pages/10095/Secured-Transactions.html> [<https://perma.cc/N89T-HL2D>] (last visited Oct. 10, 2023).

97. *Id.*

98. *Id.*

99. U.C.C. § 9-609 (AM. L. INST. & UNIF. L. COMM'N 1977).

100. U.C.C. § 9-609(b) (AM. L. INST. & UNIF. L. COMM'N 1977).

101. Ken Weinberg, *A Little Something About Breaching the Peace*, RIMON (Jan. 15, 2020) <https://www.rimonlaw.com/a-little-something-about-breaching-the-peace/> [<https://perma.cc/HPG2-F5TX>].

102. U.C.C. § 9-609(b)(2) (AM. L. INST. & UNIF. L. COMM'N 1977).

1. *The Law of Self-Help Repossession*

UCC Section 9-609 establishes a secured lender's ability to use self-help to reclaim property that a borrower defaulted on.¹⁰³ The UCC also establishes limits on these secured lenders.¹⁰⁴ In the United States, self-help repossession is codified in UCC Section 9-609:

§ 9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT.

(a) [Possession; rendering equipment unusable; disposition on debtor's premises.]

After default, a secured party:

- (1) may take possession of the collateral; and
- (2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 9-610.

(b) [Judicial and nonjudicial process.]

A secured party may proceed under subsection (a):

- (1) pursuant to judicial process; or
- (2) **without judicial process, if it proceeds without breach of the peace.**

(c) [Assembly of collateral.]

If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.¹⁰⁵

The term "breach of the peace" is undefined by the statute.¹⁰⁶ Yet, the limitations placed on self-help repossession by the UCC "are designed to minimize the harm that can occur in a contact interference with possession."¹⁰⁷ To this cause, the UCC drafters intentionally left flexibility for future jurisdictions to define breach of the peace.¹⁰⁸

Case law on breach of the peace presents three broad categories for when breach of the peace may occur in a repossession action including violence or the threat of violence, when the debtor verbally protests, and whether the repossessing agent trespasses.¹⁰⁹ First, the most prevalent example of when breach of the peace can occur is cases that involve violence or the threat of violence that makes a breach reasonably likely.¹¹⁰ A second set of cases for when breach of the peace may occur is if the creditor or its agent repossesses the

103. Weinberg, *supra* note 101.

104. U.C.C § 9-609(b) (AM. L. INST. & UNIF. L. COMM'N 1977); Weinberg, *supra* note 101.

105. UCC § 9-609 (AM. L. INST. & UNIF. L. COMM'N 1977) (emphasis added).

106. Graber & Wells, *supra* note 13, at 2.

107. Moringiello, *supra* note 16, at 590.

108. *Id.* at 590-91.

109. See discussion *infra* Part III.C (discussing the law of self-help repossession).

110. *Salisbury Livestock Co. v. Colo. Cent. Credit Union*, 793 P.2d 470, 474 n.3 (Wyo. 1990) (noting that in the repossession of vehicles context, "although actual violence is not required to find a breach of the peace, a disturbance or violence must be reasonably likely, and not merely a remote possibility.").

collateral over the debtor's oral protest.¹¹¹ Courts are divided on whether an unequivocal oral protest will amount to a breach of the peace.¹¹² A third and final category of cases is when the creditor or its agent enters onto the debtor's property without consent.¹¹³ When no physical confrontation occurs, courts often focus on the debtor's reaction to the repossession as it occurs.¹¹⁴ Courts will not find breach of the peace if the debtor is not present during the repossession.¹¹⁵

2. *Technology Used for Disablement to Aid Car Repossessions*

Creditors use technology to increase their ability to collect collateral when debtors default on loans.¹¹⁶ Repossession vehicles advanced from regular cars to the use of tow trucks.¹¹⁷ There are several different types of tow trucks which can be used for different needs, whether that be moving disabled vehicles, providing roadside assistance, or repossessing vehicles.¹¹⁸ For each type the result is the same: a truck is operated to move another vehicle.¹¹⁹ Tow truck technology is advancing too with computers and cameras.¹²⁰ Other technologies that assist in locating a car for repossession include GPS¹²¹ and license plate readers.¹²² Another example is starter interrupt devices.¹²³ When the borrower makes a car payment, they receive a code.¹²⁴ This code enables them to start their car for that payment period.¹²⁵ Now, starter interrupt devices can automatically and remotely disable cars.¹²⁶ There is no need for the lender to use a code.¹²⁷ Instead, the device is employed when a borrower's scheduled payment is not received.¹²⁸ Lenders utilize this disablement technique to provide auto

111. *E.g.* *Clarín v. Minnesota Repossessors, Inc.*, 198 F.3d 661, 664 (8th Cir. 1999).

112. *See id.* (comparing cases for when an unequivocal oral protest constitutes breach of the peace and when it does not).

113. Moringiello, *supra* note 16, at 591 (citing James J. White & Robert S. Summers, *Uniform Commercial Code* § 26-7 (6th ed. 2010)).

114. Laura Harper, *Did the Repo Man Just Ghost Me? Technology's Contribution to Vehicle Repossession and How It Impacts the UCC*, 38 REV. LITIG. 373, 376 (2019).

115. *Id.* at 377.

116. *See* Thomas B. Hudson & Daniel J. Laudicina, *The Emerging Law of Starter Interrupt Devices*, 61 THE BUS. LAW. 843 (2006) (detailing an emerging technology in repossession).

117. Nick Zulovich, *The Evolution of the Repossession Industry*, SUBPRIME (Aug. 26, 2008), <https://www.autoremarketing.com/subprime/evolution-repossession-industry/> [https://perma.cc/NDQ6-S6QZ].

118. *Guide to the 4 Main Types of Tow Trucks*, LIFT AND TOW <https://liftandtow.com/guide-to-the-4-main-types-of-tow-trucks/> [https://perma.cc/XPY3-SA8X] (last visited Jan. 3, 2025).

119. *Id.*

120. Zulovich, *supra* note 117.

121. *Id.*

122. *License Plate Readers in Use By Repo Agents*, FOX 5 ATLANTA (Feb. 16, 2016), <https://www.fox5atlanta.com/news/license-plate-readers-in-use-by-repo-agents> [https://perma.cc/AZ33-PEKN].

123. Moringiello, *supra* note 16, at 568.

124. *Id.*

125. *Id.*

126. *What Is a GPS Disabler or Starter Interrupt Device?*, SHABANA MOTORS (Dec. 5, 2018), <https://my.shabanamotors.com/blog/what-is-a-gps-disabler-or-starter-interrupt-device> [https://perma.cc/5AEC-7B7H].

127. *Id.*

128. Hudson & Laudicina, *supra* note 116, at 843–44.

loans to subprime borrowers.¹²⁹ The risk brought on by lending to subprime borrowers is supposedly offset by the ability to disable and then collect the collateral—the car.¹³⁰

III. ANALYSIS

A. *How Autonomous Technology will Affect Consumers: The Good*

1. *How Public Safety Concerns Arising from Self-Help Repossessions Could be Mitigated*

The breach of the peace standard is intended in part to help prevent violent confrontation as a result of self-help repossessions.¹³¹ The public safety intention behind the breach of the peace standard does not always align with what happens in practice.¹³² When repossession agents come to take away an individual's car, "reports of incidents in which individuals are killed, injured or traumatized appear with disturbing regularity."¹³³ In one example, an agent repossessed a car from a public street.¹³⁴ Although the owner was not present, children were in the vehicle while it was being moved by the repossession agent.¹³⁵ The type of violence that emerges from self-help repossessions can also be seen from several news headlines, such as *Repossession Agent Shot – In Critical Condition, Shots Fired on NY Repo Agent, Repo Man vs. Hatchet Man*, and *Repo Man vs. Machete Man*.¹³⁶ The dangers associated with self-help repossession are of particular concern today because Americans in 2023 defaulted on their auto loans at levels not seen since the financial crisis in the early 2000s.¹³⁷ Auto loan delinquency rates are at their highest level in over fifteen years.¹³⁸

129. Moringiello, *supra* note 16, at 568.

130. Michael Corkery & Jessica Silver-Greenberg, *Miss a Payment? Good Luck Moving That Car*, N.Y. TIMES (Sept. 24, 2014, 9:33 PM), <https://archive.nytimes.com/dealbook.nytimes.com/2014/09/24/miss-a-payment-good-luck-moving-that-car/> [<https://perma.cc/SBY3-9M88>].

131. See John Van Alst et al., *Making Repossessions Safer and Fairer: Model Consumer Amendments to Uniform Commercial Code Article 9*, NAT'L CONSUMER L. CTR, at 8-9 (June 1, 2026) ("One of the most effective ways to reduce physical confrontations is to require the repossession agent to discontinue any attempt to repossess the collateral if an individual appears on the scene and objects.")

132. John W. Van Alst & Rick Jurgens, *Repo Madness: How Automobile Repossession Endanger Owners, Agents and the Public*, NCLC (Mar. 2010), https://www.nclc.org/wp-content/uploads/2022/09/repo_madness_rpt.pdf [<https://perma.cc/2P68-UNJS>].

133. *Id.*

134. *Chapa v. Traciers & Assocs.*, 267 S.W. 3d 386, 389 (Tex. App. 2008).

135. *Id.*

136. See *Repossession Violence*, CU REPOSSESSION, <https://curepossession.com/hot-topics/11592-2/repossession-violence/> [<https://perma.cc/3N7X-EXK7>] (last visited Feb. 9, 2023) (discussing how borrowers often resort to physical altercations to protect their vehicles from repossession and including related articles).

137. Lisa Fickenscher, *Credit Card and Car Loan Defaults Hit 10-Year High as Inflation Squeezes Families*, N.Y. POST (Sept. 4, 2023, 4:16 PM), <https://nypost.com/2023/09/04/credit-card-and-car-loan-defaults-hit-10-year-high-as-inflation-squeezes-families/> [<https://perma.cc/49H7-6483>].

138. David Straughan, *Negative Equity Surges: Millions of Americans Now Underwater on Auto Loans*, AUTOMOBLOG (Sept. 12, 2023), <https://www.automoblog.net/negative-equity-surge-auto-loans/> [<https://perma.cc/JB3N-5ZML>].

Car lenders are already using technology to aid their repossession efforts.¹³⁹ For example, Tesla is able to easily locate a car with delinquent payments through a GPS system and then can send the location to a repo agent.¹⁴⁰ In one instance, Tesla went further and remotely honked the car to assist in discovery, then unlocked the car to help the repo agent.¹⁴¹ Tesla's technology still requires a third-party repo agent to physically repossess the car, which could result in an altercation between the parties involved.¹⁴²

As described above, the current state of self-help repossession contains public safety concerns to car owners and other individuals due to the involvement of third-party repo agents.¹⁴³ Substituting autonomous car technology for a third-party repo agent has the ability to lessen current safety issues and concerns.¹⁴⁴ Car companies are aware of technology's potential to assist in self-help repossessions and have taken active steps to capitalize on it.¹⁴⁵ In 2023, a patent application by Ford Motor Company (Ford) revealed the company's awareness of the potential for future technology to assist in repossession.¹⁴⁶ "Ford applied for a patent on a system that would use connected car technology to better aid in vehicle repossession."¹⁴⁷ The system included the ability to enable an autonomous car to drive to an impound lot.¹⁴⁸ This technology would thus take away the risk of escalation and provide a safer repossession environment.¹⁴⁹

2. *Increased Consumer Access to Cars*

Consumers can benefit when lenders are better protected in the case of default.¹⁵⁰ This is important in the context of the United States where consumers have a high demand for car ownership.¹⁵¹ In 2021, 91.7% of households had at

139. Karen Townsend, *How Technology is Driving Advancements in Repossession*, CUIINSIGHT (Dec. 17, 2018), <https://www.cuinsight.com/how-technology-is-driving-advancements-in-repossession/> [https://perma.cc/N39X-RP3S].

140. Paulo Acoba, *Tesla Allegedly Remotely Unlocks Model 3 Owner's Car, Uses Smart Summon to Help Repo Agent*, TIRE MEETS ROAD (Mar. 18, 2021), <https://tiremeetsroad.com/2021/03/18/tesla-allegedly-remotely-unlocks-model-3-owners-car-uses-smart-summon-to-help-repo-agent/> [https://perma.cc/CAB5-2R8C].

141. *Id.*

142. *Id.*

143. *See infra* Part III.C.1 (discussing violence in self-help repossessions).

144. *See supra* Part III.A.1 (discussing how public safety concerns from self-help repossessions can be mitigated by autonomous self-driving car technology).

145. Patrick George, *Ford's Self-Repossessing Car Patent is a Nightmare of the Connected-Car Future*, THE VERGE (Mar. 3, 2023, 9:46 PM), <https://www.theverge.com/2023/3/3/23624328/ford-self-repossessing-car-patent-connected-car-nightmare> [https://perma.cc/Q6ES-X3P4].

146. *Id.*

147. *Id.*

148. *Id.*

149. *See id.* (describing how Ford's patent for autonomous cars might allow them to repossess themselves without the need for human input).

150. *See supra* text accompanying notes 137–64 (finding the ways increased repossession technology will potentially allow lenders to provide more loans to borrowers).

151. *See* Ashlee Tilford, *Car Ownership Statistics 2025*, FORBES ADVISOR, (Oct. 5, 2023, 7:23 AM), <https://www.forbes.com/advisor/car-insurance/car-ownership-statistics/> [https://perma.cc/CN8T-GHMN] ("Americans place a high value on car ownership . . .").

least one car.¹⁵² Consumer need drives the demand for cars because “91% of adults commute to work using personal vehicles.”¹⁵³ Yet the rejection rate for auto loans in June 2023 was 14.2%.¹⁵⁴ Therefore, amidst high consumer demand for cars, lenders are currently rejecting auto loans at the highest level since 2013.¹⁵⁵ The use of creditor friendly repossession technology has already gained attention in Nevada.¹⁵⁶ In 2017, Nevada passed a new law that provides oversight and rules in the application of certain technology to help creditors repossess cars.¹⁵⁷ The law impacts how auto lenders can use GPS devices and starter interrupt devices.¹⁵⁸ GPS devices are used by creditors to locate and monitor the cars they lend.¹⁵⁹ Starter interrupt devices, as the name suggests, are capable of halting a vehicle’s mobility.¹⁶⁰ The Nevada law limits the use of GPS and starter interrupt devices in an effort to protect consumers.¹⁶¹ Ultimately, lawmakers may be limiting consumer access to cars too.¹⁶²

Car consumers can benefit when lenders have ways to protect their collateral.¹⁶³ This was the argument auto lenders made against the bill introduced in Nevada.¹⁶⁴ The strongest argument Nevada lenders made was the claim that “[l]ess risk to the creditor often translates to lower interest rates, higher loan-to-value ratios and longer termed notes[.]”¹⁶⁵ Lenders in Nevada first used repossession technology with starter interrupt devices in 2011.¹⁶⁶ Over the next five years, one company increased loans made to customers by 1,000%.¹⁶⁷ It appears that members of society who otherwise could not buy a car became qualified for a loan because the lender had an extra set of protections.¹⁶⁸ On the

152. *Id.*

153. Joanna Moody et al., *The Value of Car Ownership and Use in the United States*, 4 NATURE SUSTAINABILITY 769, 769 (2021).

154. Medora Lee, *Dealers Have Cars and Prices are Stabilizing, but People Still Can’t Buy a Car. Here’s Why*, USA TODAY (July 20, 2023, 10:52 AM), <https://www.usatoday.com/story/money/personalfinance/2023/07/19/car-loans-harder-to-get-lenders-cautious/70425646007/> [<https://perma.cc/UV2-7GVQ>].

155. *Id.*

156. See Nick Zulovich, *New Nevada Law Greatly Impacts GPS & Starter Interrupt Usage*, BPH (June 29, 2017), <https://www.autoremarketing.com/bhph/new-nevada-law-greatly-impacts-gps-starter-interrupt-usage/> [<https://perma.cc/JJZ5-JT6T>] (describing a new creditor-friendly law in Nevada).

157. *Id.*

158. *Id.*

159. Harper, *supra* note 114, at 383.

160. *Id.* at 378.

161. Zulovich, *supra* note 156.

162. See *id.* (stating concern that “there is a strong possibility that [Nevada] will see an increase in the number of repossessions . . . which is the worst-case scenario for dealers, lenders and consumers.”).

163. See *id.* (discussing the lender perspective in favor of technology that assists in car repossession).

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*; see also Kwesi D. Atta-Krah, *Preventing a Boom from Turning Bust: Regulators Should Turn Their Attention to Starter Interrupt Devices Before the Subprime Auto Lending Bubble Bursts*, 101 IOWA L. REV. 1187, 1190 (2016) (“While SIDs [(starter-interrupter devices)] are unconnected with the borrower’s objective creditworthiness (as measured by factors like credit history and financial status), lenders regard SIDs equally favorably because they lower the repossession risk.”).

one hand, this could be a predatory loan,¹⁶⁹ but on the other hand, this could be a necessity for car consumers.¹⁷⁰ For the riskiest borrowers, interest rates for car loans can range between twenty to thirty percent.¹⁷¹ High prices deter and limit who can, or should, be borrowers.¹⁷² Therefore, these lenders find ways to increase their chance of recovering the cars by reducing repossession costs.¹⁷³ This is done through GPS tracking and starter interrupt devices.¹⁷⁴ If lenders can repossess defaulted cars more easily with autonomous car technology, they may feel as though their asset, the car, is better protected.¹⁷⁵ Lenders who believe they are more protected against defaults, or that the car is cheaper to recover, may increase the range of potential borrowers who they will enter into a transaction with.¹⁷⁶ As automotive technology develops and cars come equipped with self-driving capabilities, these lenders will be able to maintain lower prices because the repossession costs will be minimal.¹⁷⁷ While lender protections provide more access to car loans for borrowers seeking to purchase a car, there is still a dark side to the emerging technology used to assist repossessions.¹⁷⁸

B. *How Autonomous Technology Will Affect Consumers: The Bad*

1. *The Increased Consumer Access to Cars Argument Comes at a Cost*

Consumer rights lawyers and lawmakers have concerns over how future technology will assist lenders in repossessions.¹⁷⁹ One view of current repossession techniques, such as GPS and starter interrupt devices, and future autonomous car technology that can repossess itself, is that they will provide easier access to loans for consumers.¹⁸⁰ Although lenders take the stance that this benefits borrowers, it does so to the detriment of borrowers, especially

169. Ronald P. Hill & John C. Kozup, *Consumer Experiences with Predatory Lending Practices*, 41 J. CONSUMER AFFS. 29, 29 (2007) (“Predatory lending is defined as consumer loans with any or all of the following characteristics: aggressive and deceptive marketing, lack of concern for the borrower’s ability to pay, high interest rates and excessive fees, unnecessary provisions that do not benefit the borrower (e.g., balloon payments or single-premium credit life insurance), large prepayment penalties, or faulty underwriting[.]”) (citations omitted).

170. See Andrew Schmidt, *Pump the Brakes*, 4 CAL. L. REV. 1345, 1357 (2019) (discussing that additional security for lenders makes them more willing to lend).

171. *Id.*

172. *Id.* at 1357–58.

173. *Id.* at 1357.

174. *Id.*

175. See *id.* (explaining the use of newer technologies and their use by repossessors).

176. See *id.* (discussing how lenders can reduce repossession costs by using GPS technology).

177. *Id.*

178. See *infra* Section III.B (discussing the negative consequences autonomous technology will have on consumers).

179. See Lily Hay Newman, *Lenders Can Remotely Disable Cars if People Don’t Pay Their Loan Bills*, SLATE (Sept. 25, 2014, 6:29 PM), <https://slate.com/technology/2014/09/to-insure-subprime-auto-loans-companies-are-installing-starter-interrupt-devices-on-millions-of-cars.html> [<https://perma.cc/QM36-5MW9>] (“Consumer rights lawyers and lawmakers are beginning to lobby against the devices or in favor of stricter regulations. Accountability for loans is important, but starter-interrupt devices are certainly a dark passenger.”).

180. See *supra* Section III.A.2 (analyzing how repossession technology can benefit consumers by increasing access to car loans).

subprime ones.¹⁸¹ Subprime borrowers are individuals who represent a relatively high credit risk for lenders.¹⁸² While these borrowers may be able to get an auto loan thanks to technology that protects lenders, they will not benefit as much as the lenders.¹⁸³

The idea that consumers have more access to cars thanks to subprime lending is only partially correct.¹⁸⁴ While subprime lending has increased, so too have default rates.¹⁸⁵ Subprime lending and default rates likely go hand-in-hand because subprime lending takes advantage of unsophisticated and desperate borrowers who have limited choice.¹⁸⁶ Thus, subprime borrowers are more likely to default.¹⁸⁷ Therefore, as more car consumers are able to get loans through subprime lending, they also increasingly default and have their cars repossessed.¹⁸⁸ Further, the idea that this repossession technology allows more access to cars may be the wrong way to look at the issue because the technology also helps lenders with predatory lending tactics.¹⁸⁹ An example of predatory lending tactics is where a lender creates a loan with “no reasonable expectation that the borrowers can repay them.”¹⁹⁰ Due to the high need for cars in the United States,¹⁹¹ consumers are forced into a loan which the lender already expects them to default on.¹⁹² These tactics reduce the welfare of the borrower who initially needed a car, but is left with a predatory loan.¹⁹³ Although they receive a car, it will soon be repossessed, and the borrower will be stuck with debt and no car to show for it.¹⁹⁴

2. *Technology Creates More Opportunity for Erroneous Repossessions*

Mistakes happen, but consumers should not have to bear the brunt of these mistakes and erroneously lose possession of their car.¹⁹⁵ Unfortunately,

181. Erica N. Sweeting, *Disabling Disabling Devices: Adopting Parameters for Addressing a Predatory Auto-Lending Technique on Subprime Borrowers*, 59 HOW. L.J. 817, 829 (2016).

182. Julia Kagan, *Subprime Borrower: Definition, Credit Score Range, and Impact*, INVESTOPEDIA (Aug. 29, 2023), <https://www.investopedia.com/terms/s/subprime-borrower.asp> [<https://perma.cc/G8MT-NKXJ>].

183. Corkery & Silver-Greenberg, *supra* note 130.

184. Sweeting, *supra* note 181, at 825, 830.

185. *Id.* at 829.

186. *Id.* at 828–29.

187. *Id.* at 829.

188. *Id.*

189. *Id.* at 830.

190. *Id.* at 825.

191. See Tilford, *supra* note 151 (describing current car ownership statistics in the United States).

192. Sweeting, *supra* note 181, at 830.

193. *Id.*; see also DONALD P. MORGAN, STAFF REPORT: DEFINING AND DETECTING PREDATORY LENDING, FED. RES. BANK. N.Y. NO. 273 (2007) (“We define predatory lending as a welfare *reducing* provision of credit.”).

194. Sweeting, *supra* note 181, at 837–38, 842.

195. Chris Willis, *CFPB Warns Auto Finance Companies About Inadvertent Repossessions*, TROUTMAN PEPPER: CONSUMER FIN. SERVS. L. MONITOR (Mar. 2, 2022), <https://www.consumerfinancialserviceslawmonitor.com/2022/03/cfpb-warns-auto-finance-companies-about-inadvertent-repossessions/> [<https://perma.cc/Z9FM-8GKU>].

erroneous repossessions occur frequently¹⁹⁶ and technological advancements will only cause more reason for concern.¹⁹⁷

Erroneous repossession occurs when a lender fails to prevent repossession in a situation where they are otherwise supposed to.¹⁹⁸ Situations where the lender is supposed to prevent repossession arise when a borrower, facing repossession due to being in default, works with the lender to create a solution.¹⁹⁹ Examples include lenders who told borrowers they would not repossess vehicles when an agreement was made to extend the loan, where a future date for payment was set and not yet passed, or when lenders communicated to consumers that they would not repossess vehicles less than sixty days past due.²⁰⁰ There are numerous instances where borrowers acted to prevent repossession, came to a solution with the lender, and their vehicles were nonetheless repossessed due to error.²⁰¹ Such errors included incorrectly listing borrowers as delinquent when they are not and lenders' failure to cancel repossession orders.²⁰²

Although an optimist might not believe a creditor would wrongfully repossess a vehicle when a debtor is not in default, this practice is a reality.²⁰³ Erroneous repossession does not only occur in isolated and individual events either.²⁰⁴ Such erroneous repossessions also occur at an institutional level.²⁰⁵ Wells Fargo, the fourth largest bank in the United States,²⁰⁶ "harmed over 16 million consumer accounts" and the company was described as a "repeat offender."²⁰⁷ Part of the problem was how Wells Fargo operated its auto loan business.²⁰⁸ The Consumer Financial Protection Bureau (CFPB) described what happened as "systemic failures."²⁰⁹ These failures led to borrowers' cars being erroneously repossessed.²¹⁰ Those borrowers properly made their payments or

196. *Id.*

197. Jim Sandy, McGlinchey, *CFPB Eyes Unfair, Deceptive Acts: Technology and Repossession*, AUTO FIN. NEWS (Apr. 5, 2022), <https://www.autofinancenews.net/allposts/compliance/cfpb-eyes-unfair-deceptive-acts-technology-and-repossessions/> [<https://perma.cc/T8KR-9XGF>].

198. Bulletin 2022-04: Mitigating Harm From Repossession of Automobiles, *supra* note 9, at 11951.

199. *Id.*

200. *Id.* at 11951-52.

201. *Id.* at 11952.

202. *Id.*

203. William Morris, *A Decorah Woman Wins an Appeal in Fight Over Car That Was Wrongly Repossessed for More Than 6 Months*, DES MOINES REG. (Mar. 12, 2021, 9:26 AM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2021/03/12/iowa-courts-decorah-woman-sues-ford-car-repossession-2010/6838374002/> [<https://perma.cc/5YYJ-ZENF>].

204. Dane Fowle, *Illegal Vehicle Repossession on the Rise, Government Reports*, FOX 5 ATLANTA (May 13, 2022, 9:49 AM), <https://www.fox5atlanta.com/news/illegal-vehicle-repossessions-on-the-rise-government-reports> [<https://perma.cc/6WFA-EHQD>].

205. Matt Egnan, *Wells Fargo Ordered to Pay \$3.7 Billion for 'Illegal Activity' Including Unjust Foreclosures and Vehicle Repossession*, CNN BUS. (Dec. 20, 2022, 11:56 AM), <https://www.cnn.com/2022/12/20/investing/wells-fargo-cfpb-foreclosure-fine/index.html> [<https://perma.cc/N8N6-TB7A>].

206. Cassidy Horton, *Largest Banks in the U.S. 2025*, FORBES (Mar. 27, 2024, 8:29 AM), <https://www.forbes.com/advisor/banking/largest-banks-in-the-us/> [<https://perma.cc/J9DK-FXAH>] ("Headquartered in San Francisco, Wells Fargo is the fourth largest bank in the U.S. . . .").

207. Egnan, *supra* note 205.

208. *Id.*

209. *Id.*

210. *Id.*

worked with Wells Fargo to arrange a plan to stall repossession, and yet, the systemic failures nonetheless led to the erroneous repossession of their cars.²¹¹

Erroneous repossessions come as a surprise to consumers who typically took action to prevent such an event.²¹² In an instant, they wrongfully lose their personal property, incur unnecessary costs, and could lose their job.²¹³ Cars often are a sign of independence and freedom.²¹⁴ To have this wrongfully taken away is a concern that will occur more often with autonomous self-driving cars.²¹⁵ For instance, erroneous repossessions happen when loan servicers incorrectly list consumers as delinquent or fail to cancel repossession orders.²¹⁶ Currently, repossession requires an additional step, namely a repo agent to find and repossess the car.²¹⁷ Since self-driving cars can repossess themselves, a repo agent step will no longer be needed.²¹⁸ Thus, service lenders will have less time to fix mistakes.²¹⁹ Therefore, because erroneous repossession can occur quicker, it will happen more often.²²⁰

C. *How Autonomous Car Technology Will Fit Within the Current Breach of the Peace Framework*

Future self-driving repossession technology will change the relationship between automotive lenders and consumers, for better or for worse.²²¹ From a consumer standpoint, the technology brings a lot of risk and uncertainty.²²² Future self-driving repossessing cars will have difficulties falling clearly within current breach of the peace parameters established by courts; allowing lenders to more easily repossess vehicles within the broad language of the UCC.²²³ The

211. Emma Ockerman, *CFPB's Allegation Against Wells Fargo: Illegal Fees, Wrongful Car Repossessions and Misapplied Payments*, MARKET WATCH (Dec. 21, 2022, 10:55 AM), <https://www.marketwatch.com/story/cfpbs-allegations-against-wells-fargo-illegal-fees-wrongful-car-repos-and-misapplied-payments-11671567492>.

212. *CFPB Supervisory Report Finds Unlawful Auto Repossessions, Breakdowns in Credit Report Disputes*, CFPB (May 2, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervisory-report-finds-unlawful-auto-repossessions-breakdowns-in-credit-report-disputes/> [<https://perma.cc/RU9L-R94W>].

213. *Id.*

214. Eduardo Zepeda, *What Could Go Wrong with Ford's AI-Enabled EV Repossession Plans*, TOPSPEED (Mar. 27, 2023) <https://www.topspeed.com/fords-ai-enabled-ev-repossession-plans/> [<https://perma.cc/WP9H-84ZY>].

215. *See id.* (“[C]ritics have pointed out that this technology could be used for repossession and other purposes, such as tracking the vehicle’s movements or even spying on its occupants.”).

216. Bulletin 2022–04, *supra* note 9, at 11, 952.

217. Thomas J. Pearson, *How does the Repo Man find your Car?*, UPSOLVE (Dec. 13, 2024), <https://upsolve.org/learn/how-does-repo-man-find-your-car/> [<https://perma.cc/9UZK-8JG6>].

218. Rose White, *Ford Patent Suggests Self-Driving Cars Could Repossess Themselves*, MLIVE (Mar. 7, 2023, 3:18 PM), <https://www.mlive.com/public-interest/2023/03/ford-patent-suggests-self-driving-cars-could-repossess-themselves.html> [<https://perma.cc/384D-HFSP>].

219. *See* Bulletin 2022–04, *supra* note 9, at 11, 952 (discussing the mistakes made by service lenders leading to wrongful repossession).

220. Zepeda, *supra* note 214.

221. *See* discussion *supra* Section III.A–B (exploring the good and bad of self-repossessing technology).

222. *See* discussion *supra* Section III.A–B (exploring the good and bad of self-repossessing technology).

223. James Hardman, *Dude, Where’s My (Self-Driving) Car? The Legal Implications of the Self-Repossessing Automobile Under Article 9 of the U.C.C.*, 91 UNIV. CINCINNATI L. REV. <https://uclawreview.org/2023/07/12/legal-implications-of-the-self-repossessing-automobile/> [<https://perma.cc/NGT7-LR6H>] (last visited Feb. 5, 2024).

way autonomous self-driving car repossessions fit within the current self-help framework of UCC Section 9-609 is important because as technology matures, so too must the law.²²⁴

The majority of jurisdictions analyze whether a repossession breached the peace through a fact-specific inquiry.²²⁵ Courts “engage in fact-specific inquiries for each case,” and while the courts generally consider the same factors, they are weighed differently.²²⁶ In particular, three factors courts consider when analyzing a breach of the peace claim are violence or the threat of it, oral protest, and trespass.²²⁷

1. *Violence or the Threat of It*

When courts assess breach of the peace, some facts lend themselves more easily to finding that a breach of the peace occurred.²²⁸ Courts always hold an act of violence to be a breach of the peace.²²⁹ Physical violence will always breach the peace regardless of whether the debtor or creditor acts as an instigator.²³⁰ There is a distinction by courts in whether actual violence must occur in order to have a breach of the peace.²³¹ In Tennessee for example, a breach of the peace “must involve some violence or threat of violence.”²³² Violence can occur through a physical altercation, using or threatening to use an object, or when someone uses their body in a physically threatening way.²³³ Courts interpret the possibility of violence on a spectrum.²³⁴ In one instance, three men surrounded the debtor’s son to repossess a heavy duty rotary mower.²³⁵ The court perceived that there was likely going to be violence because the debtor’s son was afraid of being beaten.²³⁶ Therefore, the court held the reposessor’s action constituted a breach of the peace.²³⁷

224. David D. Friedman, *Does Technology Require New Law?*, 25 HARV. J. L. & PUB. POL’Y 71, 85 (2001–2002) (“In these cases and many others, new technology requires new law.”).

225. Ryan McRobert, *Defining “Breach of the Peace” in Self-Help Repossessions*, 87 WASH. L. REV. 569, 580 (2012) (“[T]hey engage in fact-specific inquiries for each case.”).

226. *Id.*

227. *Id.*

228. Asress Adimi Gikay & Catalin Gabriel Stanescu, *The Reluctance of Civil Law Systems in Adopting the UCC Article 9 “Without Breach of Peace” Standard – Evidenced from National and International Legal Instruments Governing Secured Transactions*, 10 J. CIV. L. STUD. 99, 110 (2017) (“There are circumstances where the determination of breach of peace is easier and clear cut, such as cases involving physical assault by the reposessor.”).

229. McRobert, *supra* note 225, at 581 (“No reported case had held that an act of violence was not a breach of the peace in the context of self-help repossession.”).

230. *See, e.g., Ivy v. Gen. Motors Acceptance Corp.*, 612 So. 2d 1108, 1112 (Miss. 1992).

231. McRobert, *supra* note 225, at 581–82.

232. *McCall v. Owens*, 820 S.W.2d 748, 751 (Tenn. Ct. App. 1991).

233. McRobert, *supra* note 225, at 589.

234. *See id.* at 582 (describing the various ways courts analyze a threat to determine whether a breach of the peace occurred).

235. *Morris v. First Nat’l Bank & Tr. Co. of Ravenna*, 21 Ohio St. 2d 25, 26–27 (1970).

236. *Id.* at 29.

237. *Id.*

2. *Oral Protest*

Courts are inconsistent on whether the verbal objection by a debtor during repossession constitutes a breach of the peace.²³⁸ In some jurisdictions, oral protest will not constitute a breach of the peace on its own.²³⁹ For example, one debtor who heard their car being repossessed rushed outside and yelled “[d]on’t take it” to the reposessor.²⁴⁰ The debtor claimed that repossessing the car over his oral protest constituted breach of the peace.²⁴¹ However, without any element of violence, the court rejected the creditor’s claim.²⁴² The court held that oral protest alone does not constitute a breach of the peace.²⁴³

In other jurisdictions, oral protest will constitute a breach of peace if it is unequivocal.²⁴⁴ In Wisconsin, a creditor attempted to repossess a debtor’s Ford Bronco II and was told, “[y]ou are not going to take the Bronco.”²⁴⁵ The statement made to creditors was unequivocal; there was no doubt an oral protest against the repossession was made.²⁴⁶ The court held there was a breach of the peace because the creditors repossessed the debtor’s car after an unequivocal oral protest was made.²⁴⁷

3. *Trespass*

Courts are unanimous that the entry into a debtor’s home without contemporaneous consent results in a breach of the peace.²⁴⁸ One reason is due to the high risk of violence from a person entering another’s home without permission.²⁴⁹ Trespass outside the debtor’s home creates more room for interpretation and courts will consider many factors, including: “(1) proximity to the debtor’s household (e.g., whether the creditor trespassed inside or outside the home, in the yard, or driveway), and (2) efforts by the debtor to protect the repossessed property (e.g., closed doors, locks, and signs).”²⁵⁰ Therefore,

238. *Clarín v. Minn. Repossessors, Inc.*, 198 F.3d 661, 664 (8th Cir. 1999) (“Courts are divided on the issue of whether an unequivocal oral protest amounts to a breach of the peace.”) (citations omitted).

239. *See, e.g.*, *Gill v. Bd. Nat’l Credit Union Admin. for Sikh Fed. Credit Union*, No. CV 93-1597 (MDG), 2018 WL 5045755, at *10–11 (E.D.N.Y. Oct. 16, 2018) (Repossessing a vehicle over the oral objection of the debtor is not a breach of the peace “unless accompanied by factors indicating that the activities of the repossession agent are of a kind likely to cause violence, or public distress and/or consternation”).

240. *Chrysler Credit Corp. v. Koontz*, 277 Ill. App. 3d 1078, 1080 (1996).

241. *Id.*

242. *Id.* at 1082.

243. *See id.* (“Therefore, we reject [debtor’s] invitation to define “an unequivocal oral protest,” without more, as a breach of the peace.”); *see also* *Teeter Motor Co. v. First Nat. Bank Hot Springs*, 260 Ark. 764, 767 (1976) (telling the creditor “I wish you wouldn’t” repossess the car will not constitute a breach of the peace without evidence of force or intimidation).

244. *See, e.g.*, *Hollibush v. Ford Motor Credit Co.*, 179 Wis. 2d 799, 811–12 (Ct. App. 1993); *Dixon v. Ford Motor Credit Co.*, 72 Ill. App. 3d 983, 988 (1979).

245. *Hollibush*, at 803–04.

246. *Id.* at 812.

247. *Id.* at 802.

248. *Moringiello*, *supra* note 16, at 591.

249. *McRobert*, *supra* note 225, at 582–83 (2012).

250. *Id.* at 582 (2012).

outside of entering a debtor's home, trespass alone will not necessarily constitute a breach of the peace.²⁵¹

The farther away from the home a creditor repossesses the vehicle, the harder it will be to show a breach of the peace.²⁵² When a creditor enters a debtor's driveway to repossess a car, courts have held that there was not a breach of the peace.²⁵³ In Ohio for example, entering onto someone's private property to repossess a car will be insufficient by itself to constitute a breach of the peace.²⁵⁴

The additional factor courts analyze to determine whether the trespass constituted a breach of the peace is what actions the debtor took to protect their property.²⁵⁵ Many debtors will protect their property behind a lock or chain.²⁵⁶ In the majority of cases, cutting a chain used to lock a fence and protect property will constitute a breach of the peace.²⁵⁷ There are a line of cases in New York holding that a creditor did not breach the peace by cutting the lock to gain access to property.²⁵⁸ These cases all deal with the creditor taking some type of action by cutting locks or chains.²⁵⁹ The law is less developed for when a creditor simply disregards a debtor's "No Trespassing" sign.²⁶⁰ Only one reported case has dealt with a creditor's disregard for such a sign, and the court held it was not sufficient by itself to constitute a breach of the peace.²⁶¹

4. *Future Self-Repossessing Technology Fitting Within the Current Breach of the Peace Framework is Problematic*

Future self-driving cars that can repossess themselves will not fit neatly within the current breach of the peace parameters established by courts.²⁶² First, without the need for repo agents, lenders will not find themselves in trouble for breaching the peace due to violence.²⁶³ Actual violence will not occur because there is only a car.²⁶⁴ Furthermore, the threat of violence will diminish because

251. See e.g., *Salisbury Livestock Co. v. Colo. Cent. Credit Union*, 793 P.2d 470, 474–75 (Wyo. 1990) (“A trespass breaches the peace only if certain types of premises are invaded, or immediate violence is likely.”); *Ford Motor Credit Co. v. Ryan*, 189 Ohio App.3d 560, 583 (2010) (holding that generally “a mere trespass, standing alone, does not automatically constitute a breach of the peace”).

252. McRobert, *supra* note 225, at 583.

253. *Id.*

254. E.g., *Ford Motor Credit Co.*, 189 Ohio App.3d at 583.

255. McRobert, *supra* note 225, at 582.

256. E.g., *Martin v. Dorn Equip. Co.*, 250 Mont. 422 (1991).

257. *Id.* at 427.

258. E.g., *Glob. Casting Indus., Inc. v. Daley-Hodkin Corp.*, 105 Misc. 2d 517, 520, 521 (Sup. Ct. 1980).

259. *Id.*

260. McRobert, *supra* note 225, at 583.

261. *Id.*

262. See analysis *supra* Section III.C (detailing how a court will analyze a breach of the peace claim); *Hardman*, *supra* note 223 (“[A] new nonprovisional patent application filed by Ford Global Technologies LLC, a wholly owned subsidiary of the Ford Motor Company, for a self-driving car to autonomously repossess itself steers the law into uncharted territory.”).

263. *White*, *supra* note 218.

264. See *Hardman*, *supra* note 223 (“[A] car driving itself away from an owner's property in a manner calculated to avoid a confrontation (such as in the middle of the night when the owner is not detected in the vicinity) would likely not breach the peace.”).

there is not a person who can threaten the debtor.²⁶⁵ For example, the three men who surrounded the debtor's son to repossess the mower are no longer in the picture.²⁶⁶ Therefore, lenders can be less worried about one of the factors a court will look at in determining whether a breach of the peace occurred.²⁶⁷ Similarly, without a repo agent on-site to repossess a car, there will be no party for the debtor to protest at.²⁶⁸ Therefore, self-driving car repossessions will make a debtor's oral protest less relevant to courts.²⁶⁹ There will be no party for the debtor to protest at.²⁷⁰ Instead, they will be protesting at a car and not a person.²⁷¹

Finally, with respect to trespass, there could be future scenarios where a self-driving car repossesses itself by driving away from a debtor's home.²⁷² The law will be unchanged when courts look at the proximity factor.²⁷³ First, creditors will not need a car key, so there will be no need to enter a debtor's home without permission.²⁷⁴ Without the need to enter a debtor's home for the repossession, there will be no breach of the peace.²⁷⁵ Second, if a car repossesses itself from the driveway, courts will need to consider additional factors present to determine whether a breach of the peace occurred.²⁷⁶ Regarding actions taken by debtors, courts will use the same framework they currently do.²⁷⁷ In some jurisdictions, an autonomous car going through enclosures, fences, or chains will likely not constitute a breach of the peace, whereas in other jurisdictions such action may constitute a breach of the peace.²⁷⁸

Future self-driving car technology will not fit well within the current framework for determining whether a breach of the peace occurred.²⁷⁹ The protections of UCC Section 9-603 in balancing how self-help repossessions occur between lenders and borrowers will diminish; lenders will be better able to perpetuate consumer harms with fewer protections.²⁸⁰ As the technology advances and makes it easier for lenders to repossess valuable individual personal property, the law should also advance and reevaluate itself in order to

265. White, *supra* note 218.

266. *Morris v. First Nat. Bank & Tr. Co. of Ravenna*, 21 Ohio St. 2d 25, 26–27 (1970).

267. *Id.* at 684.

268. White, *supra* note 218.

269. See discussion *supra* Section III.C.2 (describing scenarios when oral protest will constitute a breach of the peace involve debtors directing their oral protest at a creditor or repo agent in-person).

270. White, *supra* note 218.

271. *Id.*

272. Hardman, *supra* note 223.

273. McRobert, *supra* note 225 (“Courts assessing whether a creditor’s trespass during self-help repossession constituted a breach of the peace consider many factors, including: (1) proximity to the debtor’s household . . .”).

274. See, e.g., *Girard v. Anderson*, 219 Iowa 142, 257 N.W. 400, 402 (1934) (discussing reposseors’ legal right to enter debtors’ homes without permission).

275. *Id.*

276. Hardman, *supra* note 223.

277. *Id.*

278. McRobert, *supra* note 225; *Martin v. Dorn Equip. Co.*, 250 Mont. 422 (1991); *Glob. Casting Indus., Inc. v. Daley-Hodkin Corp.*, 105 Misc. 2d 517, 520, 521 (Sup. Ct. 1980); see *supra* Section III.C (discussing the two ways courts will view action taken by the creditor against a debtor who attempts to protect their property).

279. See *supra* Section III.B (analyzing the negative consequences self-driving cars can have on consumers).

280. See *supra* Section III.B (analyzing the negative consequences self-driving cars can have on consumers).

ensure the power dynamic between creditors and debtors does not become too uneven.²⁸¹

IV. RECOMMENDATIONS

Self-repossessing cars will create an intersection of technology, finance, and consumer rights.²⁸² Autonomous car technology that can drive itself back to lenders will create problems that cannot be corrected by the current breach of the peace framework.²⁸³ Advancement in technology requires advancement in law.²⁸⁴ Consumers need protection through the continued proactive initiative by state legislatures and federal agencies.²⁸⁵ Careful and prudent steps are needed “to strike a balance that safeguards both consumer interests and the business needs of lenders.”²⁸⁶ Otherwise, one side of the transaction will face an excess windfall in the face of self-help automotive repossession.²⁸⁷

A. *State Legislation to Restrict Repossession Technology*

The UCC is not well positioned as a consumer statute and cannot be amended well-enough to address these concerns.²⁸⁸ States have the ability to enact and amend legislation to protect their citizens.²⁸⁹ States have already taken such action by restricting remote disablement in vehicles.²⁹⁰ Rather than wait for remote disablement technology to play out in practice, Connecticut’s legislature created a statute to restrict how these devices are used.²⁹¹ Although the statute allows the devices to be used, the consumer must first be given the opportunity to agree to a security agreement with an electronic self-help provision, and then the lender must provide notice before they use the device.²⁹² Connecticut is not alone; Colorado, California, Nevada, New Jersey, and New York have also either created or adapted statutes to regulate automated disablement devices.²⁹³ These states include additional requirements in their statutes that protect the public from harms unique to remote disablement.²⁹⁴

281. Hardman, *supra* note 223.

282. ROYAL EXAMINER, *supra* note 32.

283. *See supra* Section III (discussing the breach of peace standard currently adopted by courts).

284. Friedman, *supra* note 224.

285. Maria Fritzsche, *The Global Importance of Consumer Protection*, CUBE (June 6, 2023), <https://cube.global/resources/blog/the-global-importance-of-consumer-protection> [https://perma.cc/A9S9-QSVH].

286. ROYAL EXAMINER, *supra* note 32.

287. *Id.*

288. *See* Charles W. Mooney, Jr., *The Consumer Compromise in Revised U.C.C. Article 9: The Shame of it All*, 68 OHIO ST. L. J. 215, 216, 220 (2007) (explaining how revision of the U.C.C. in the 1980s and 1990s took long periods of time and balances needed to be stricken between consumers and creditors).

289. Moringiello, *supra* note 16, at 585–87.

290. *Id.*

291. *Id.* at 585.

292. *Id.* at 586.

293. *Id.* at 586–88.

294. *Id.*

States should follow this practice and adopt statutory frameworks that acknowledge the unique harms arising out of autonomous self-driving cars.²⁹⁵ While a complete prohibition may not be necessary, there are still ways to protect consumers on future unchartered roads.²⁹⁶ State statutes should, at a minimum, require additional acknowledgement forms that consumers have to sign separate from the standard security agreement used.²⁹⁷ This separate form would then provide consumers with a more robust understanding that their car can, and will, drive itself away as a form of repossession²⁹⁸ if they default on the loan. Another way to create protections already seen is to require advanced notice to the consumer that the car will be repossessing itself.²⁹⁹ This notice will help mitigate any potential harms associated with a consumer's immediate loss of a car.³⁰⁰

Consumers would also benefit from state statutes requiring lenders to wait a certain period of time between a borrower becoming delinquent and using autonomous self-repossessing technology.³⁰¹ As described above, a potential problem with autonomous self-driving repossession is the increased risk of erroneous repossessions.³⁰² Self-driving technology can exacerbate the existing risk of erroneous repossession because it will take lenders less time to initiate a repossession.³⁰³ For example, when a borrower and lender come to an agreement to postpone a repossession, an erroneous repossession can still occur when the lender incorrectly lists the borrower as delinquent or fails to cancel repossession orders.³⁰⁴ Yet, in such cases there is still time for the lender to learn of their mistake and correct it before the car is repossessed.³⁰⁵ Autonomous self-repossessing cars would limit this buffer time and the ability for lenders to learn

295. Gregory C. Maddaleni, *Autonomous Vehicle Statutes and Regulations Across the 50 States*, BAKER DONELSON (Sept. 20, 2024), <https://www.bakerdonelson.com/autonomous-vehicle-statutes-and-regulations-across-the-50-states> [https://perma.cc/J3X6-545E].

296. See John Van Alst, *Principles for Laws Permitting Electronic Repossession of Vehicles*, NAT'L CONSUMER L. CTR. (Jan. 1, 2020), <https://www.nclc.org/resources/principles-for-laws-permitting-electronic-repossession-of-vehicles/> [https://perma.cc/P445-EUJ4] (calling for state legislation to regulate rather than a prohibition).

297. Maddaleni, *supra* note 295. See *id.* (calling for dealerships to post a sign that vehicles sold there may be subject to the use of electronic possession, yet this Note calls for a higher degree of notice and acknowledgement).

298. See Tori Bramble, *Consumers' Rights – Repossession Notices*, UPSOLVE (Jan. 30, 2025), <https://upsolve.org/learn/repossession-notice/> [https://perma.cc/N8EF-6VBL] (stating that state repossession laws varying widely concerning necessary notice to consumers, making it necessary to unify the notice required for self-repossessing cars).

299. Alst, *supra* note 296, at 3.

300. See *id.* (highlighting that this tactic offers “greater transparency for consumers”).

301. James Hardman, *Dude, Where's My (Self-Driving) Car? The Legal Implications of the Self-Repossessing Automobile Under Article 9 of the U.C.C.*, 91 UNIV. CIN. L. REV. (2023).

302. *Supra* Section III.B.2. (discussing how autonomous self-driving repossessions allow for a greater likelihood of erroneous repossessions).

303. Stafford, *supra* note 298. See White, *supra* note 218 (detailing how Ford's proposed patent removes the need for a human repossession agent to review the lender's defaulted payments).

304. See Bulletin 2022-04: Mitigating Harm From Repossession of Automobiles, *supra* note 9 (stating that the Consumer Financial Protection Bureau has held auto lenders accountable for erroneous repossessions that occurred after “consumers followed any instructions the company said would result in avoiding repossession”).

305. See *id.* (calling for entitles to “ensure prompt communication between the servicers and repossession service providers when the servicer cancels a repossession”).

of and correct mistakes.³⁰⁶ Thus, statutes that add in a required waiting time before lenders can use autonomous self-repossessing technology could help decrease the percentage of borrowers who face an erroneous repossession.³⁰⁷

While state enacted statutes could provide protection for consumers and guidance to lenders, there is a potential issue of harmonization.³⁰⁸ If the way states implement and enforce laws vary, even if slightly, then lenders could face difficulties.³⁰⁹ The result of a state-by-state patchwork approach to regulating autonomous self-repossession technology could be compliance and liability risks for lenders who operate across state lines.³¹⁰

B. Federal Government Agencies Ability to Protect Consumers

There are also federal government agencies dedicated to protecting consumers.³¹¹ The Consumer Financial Protection Bureau (CFPB) implements and enforces federal consumer financial laws.³¹² The CFPB's job is to supervise credit institutions and educate consumers.³¹³ In doing so, the CFPB "ensures that markets for consumer financial products are fair, transparent, and competitive."³¹⁴ The CFPB is new, only created in 2010, but since then it has worked aggressively to uphold federal consumer financial protection laws.³¹⁵

The CFPB reviews financial products and services in order to analyze the risks and potential harms to consumers.³¹⁶ This is done by making it illegal for the provider of a consumer financial product or service "to engage in any unfair, deceptive, or abusive act or practice."³¹⁷ In 2022, the CFPB announced they will hold lenders accountable for UDAPPs related to the repossession of consumers'

306. *See id.* (discussing how the lack of interaction with a repossession agent is likely to become more frequent, thereby increasing the chances of erroneous repossessions).

307. *See Alst, supra* note 296, at 2 (calling for a 30 day right to cure any default to allow for consumers to avoid loss of property).

308. Darrell M. West, *Securing The Future Of Driverless Cars*, BROOKINGS (Sept. 29, 2016) <https://www.brookings.edu/articles/securing-the-future-of-driverless-cars/> [<https://perma.cc/K589-Z7R7>]. *See Moringiello, supra* note 16, at 585–88.

309. West, *supra* note 308 (explaining how varying state legislations makes it difficult for manufactures to create vehicles that may be sold across various states).

310. *Id.*

311. Daniel Liberto, *What Are Consumer Protection Laws?*, INVESTOPEDIA (Nov. 16, 2024), <https://www.investopedia.com/articles/pf/10/know-your-consumer-protection-laws.asp> [<https://perma.cc/ZS8R-589S>].

312. *About Us*, CFPB <https://www.consumerfinance.gov/about-us/> [<https://perma.cc/HY4C-NHZH>] (last visited Mar. 10, 2025).

313. *Consumer Financial Protection Bureau (CFPB)*, USAGov <https://www.usa.gov/agencies/consumer-financial-protection-bureau> [<https://perma.cc/5BYP-H6XD>] (last visited Mar. 10, 2025).

314. *About Us, supra* note 312.

315. Schmidt, *supra* note 171, at 1362.

316. *Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs) Examination Procedures*, CFPB (Oct. 1, 2012), <https://www.consumerfinance.gov/compliance/supervision-examinations/unfair-deceptive-or-abusive-acts-or-practices-udaaps-examination-procedures/> [<https://perma.cc/88RD-JF6U>].

317. *Overview*, NAT'L CREDIT UNION ADMIN. <https://ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/unfair-deceptive-or-abusive-acts-or-practices-udaap> [<https://perma.cc/7WCQ-5TAU>] (last visited Mar. 10, 2025).

vehicles.³¹⁸ The CFPB is concerned because of the illegal repossessions in the auto market.³¹⁹

Action taken by the CFPB through its UDAAP standard has already been seen to protect against auto lenders who wrongfully repossess vehicles.³²⁰ The future of technology will not make this problem go away³²¹ and, therefore, the CFPB will need to remain vigilant.

V. CONCLUSION

The evolution of technology brings along good and bad changes. The future of autonomous self-driving cars should be viewed hesitantly as there are many changes the consumers of these cars will face.³²² For those who face repossession, the current breach of the peace standard framework within Section 9-609 of the UCC will become inadequate.³²³ On one hand this could be fine, possibly even good. Self-driving cars bring peace of mind to auto lenders and increased success for repossession.³²⁴ In turn, there could be a decrease in dangerous altercations associated with repossession and an increase in consumer access to cars.³²⁵ Alternatively, the future of driving, or not driving, could bring with it more harm. Consumers who want access to cars will only be able to get risky subprime loans.³²⁶ If their cars are not repossessed through failure to pay predatory loan interest rates, then they could be erroneously repossessed by the auto lenders.³²⁷ In order to protect the interests of consumers, state legislatures

318. *CFPB Guidance on Automobile Repossession Warns on UDAAPs*, ORRICK (Mar. 3, 2022) <https://infobytes.orrick.com/2022-03-03/cfpb-guidance-automobile-repossession-warns-udaaps/> [<https://perma.cc/KA4N-RSFU>].

319. John L. Culhane, Jr., *CFPB Issues Compliance Bulletin on Auto Repossession*, BALLARD SPAHR LLP (Mar. 3, 2022), <https://www.consumerfinancemonitor.com/2022/03/03/cfpb-issues-compliance-bulletin-on-auto-repossession> [<https://perma.cc/SWQ4-KJGA>].

320. *Supra* Section III.B.2 (discussing instances of wrongful repossession and illegal practices by auto lenders).

321. *See Laws in the Driverless Future: What to Expect*, BD. OF INNOVATION, <https://www.boardofinnovation.com/blog/laws-in-the-driverless-future-what-to-expect/> [<https://perma.cc/EF3Q-G5V2>] (last visited Mar. 10, 2025) (exploring the long-term legal implications of autonomous cars).

322. *See id.* (detailing the possibilities of changes regarding drivers' licenses, traffic laws, and vehicle safety inspections).

323. Ken Weinberg, *A Little Something About Breaching the Peace*, RIMON (Jan. 15, 2020) <https://www.rimonlaw.com/a-little-something-about-breaching-the-peace/> [<https://perma.cc/AB32-LKRC>]. *Supra* Section III.C (detailing how current breach of the peace parameters fail to clearly align with new self-repossessing cars).

324. Becky Sullivan, *A New Ford Patent Imagines A Future in Which Self-Driving Cars Repossess Themselves*, NPR (Mar. 3, 2023), <https://www.npr.org/2023/03/03/1160932390/ford-patent-repossession-self-driving-cars> [<https://perma.cc/DVL9-2UWS>]; *supra* Section III.A.1 (exploring the upsides of self-repossessing vehicles and their ability to preserve peace and security).

325. Javon L. Harris, *As Car Repossessions Increase, SC Tow Truck Driver Speaks out on the Dangers He Faces* (June 21, 2024, 11:56 AM), <https://www.thestate.com/news/local/crime/article289408772.html> [<https://perma.cc/DWT5-JQYY>].

326. *See* Corkery & Silver-Greenberg, *supra* note 130 (“The growth in the subprime market has been good for the devices’ manufacturers.”).

327. *Supra* Section III.B.2 (discussing how autonomous self-driving repossessions allow for a greater likelihood of erroneous repossessions).

and federal agencies need to remain up to date on the autonomous car space.³²⁸ By updating current statutory frameworks and remaining vigilant in prosecuting unlawful lenders,³²⁹ consumers will be able to welcome autonomous self-driving vehicles without as many potential risks from the technology.

328. See West, *supra* note 308 (calling for countries to regulate the issues posed by autonomous vehicles).

329. See, e.g., *AVIA Publishes Federal Policy Framework for Autonomous Vehicles*, Morgan Lewis (Jan. 23, 2025), <https://www.morganlewis.com/pubs/2025/01/avia-publishes-federal-policy-framework-for-autonomous-vehicles> [<https://perma.cc/TZX5-4RY2>] (“The Autonomous Vehicle Industry Association on January 7 released a federal policy framework to accelerate the deployment and commercialization of autonomous vehicle technology....”).