

THE LAW APPLICABLE TO THE PAYMENT ASSURANCE TECHNOLOGY INDUSTRY

Introduction

Starter interrupt and GPS tracking devices can be used by dealers financing vehicles for consumers with non-prime credit histories to assist with payment collection, and to reduce the risks associated with providing financing to those consumers. These devices enable creditors to make credit available to customers who would otherwise not be able to obtain credit and provide customers with impaired credit the opportunity to re-establish their credit. In other words, the devices allow people who could not otherwise finance a car to do so.

Starter interrupt devices allow a creditor to disable the starter on a vehicle if the buyer fails to make payments under a credit agreement. *When properly installed, these devices cannot disable a vehicle in operation.* The devices typically provide an adequate warning before disabling the vehicle and include other features that ensure the customer will not be stranded. The technology used in connection with the devices is programmable so, in states where there is a pre-repossession right to cure, the devices may be programmed not to disable the vehicle until after the state mandated right to cure period.

Starter interrupt devices also benefit the consumer when the creditor is able to disable the vehicle rather than repossess it. The consumer avoids repossession costs, storage costs and the time and inconvenience of retrieving the repossessed vehicle.

The device can also be equipped with a Global Positional System (GPS). GPS is a technological system that allows a creditor to track the location of a vehicle equipped with GPS. GPS sends coordinates to a satellite to signal the location of a vehicle equipped with GPS. The satellite, in turn, relays the coordinates of the vehicle to a creditor's tracking software.

GPS allows a creditor to monitor the location of a vehicle serving as its collateral and assists the creditor in physically repossessing the vehicle upon default by locating the vehicle without having to conduct a search. Because the creditor is able to pinpoint the location of the vehicle, repossession costs are lowered. Thus, a customer who defaults in connection with collateral equipped with GPS ordinarily pays less in repossession costs when a creditor is forced to realize on its security interest.

Payment Assurance Technology Association

The Payment Assurance Technology Association (PATA) serves the starter interrupt/GPS tracking industry. PATA seeks to unify, standardize and validate the activities of the industry and markets engaged in the manufacture, sale and use of technology for monitoring or disabling vehicles. PATA has issued [PATA standards](#)

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(<http://www.patassociation.com/pdfs/Standards.pdf>) for the manufacture and use of starter interrupt/GPS tracking in consumer financial transactions. These standards include providing a disclosure to the consumer regarding the function and purpose of the device installed on the vehicle. PATA has also issued [ethical standards](http://www.patassociation.com/pdfs/EthicalStandards.pdf) (<http://www.patassociation.com/pdfs/EthicalStandards.pdf>) for its members.

Device and Their Uses Under Existing Law

Since the inception of the starter interrupt device, the courts have not directly addressed starter interrupt devices in reported decisions, though at least one reported case analyzes the use of the devices in a relatively narrow factual scenario¹ and a recent decision of the United States Supreme Court addressed tracking devices in the context of a criminal case.² No statute, regulation or reported case law expressly prohibits the use of starter interrupt devices, although at least two states – Colorado and Connecticut - effectively allow the devices by imposing potential liability on creditors and legislating certain conditions for their use, respectively.³ No executive, legislative or judicial authority has offered any formal opinion on the use of the devices, though as discussed in more detail later in this memorandum, several regulators have given informal guidance on the use of starter interrupt devices in credit transactions. How the courts will rule on the legality of the use of starter interrupt devices has yet to be determined, but if used properly, the use of the a device to disable a vehicle upon payment default should be treated no differently than today’s common, almost universally permitted practice of self-help repossession of a vehicle.

There is extensive legislation and judicial precedent regarding the process of repossession. Because the term “repossession” is seldom, if ever defined by state law in a manner that clearly includes or excludes starter interrupt devices, the most conservative approach is to treat the use of a device to render a vehicle inoperable as a repossession. Whether the use of the device to disable a vehicle is ultimately deemed to be a repossession or not, its use will be argued to be equivalent to repossession - the customer loses the ability to use the vehicle.

Despite the similarities to repossession, there are significant differences between an actual physical repossession and the use of a device. These differences are that the device limits the confrontation that can occur during repossession and reduces or eliminates the towing, storage and repossession charges that a consumer could incur in an actual repossession. The vehicle is rendered inoperable and the customer has the opportunity to cure the delinquent balance and take steps in order to activate the vehicle, without having to pick up the car at a storage facility or pay the charges associated with the creditor’s collection efforts.

The Uniform Commercial Code (hereinafter the “UCC”) regulates the manner in which secured creditors exercise self-help to recover collateral after a default.

¹ *In re Hampton*, 319 B.R. 163 (Bankr. E.D. Ark. 2005), discussed later in this memorandum.

² *U.S. v. Jones*, 2012 U.S. LEXIS 1063, discussed later in this memorandum.

³ See Colo. Rev. Stat. §§ 4-9-609(e); 4-9-629; Conn. Gen. Stat. Ann. §§ 42-419; 42a-2A-702; 42a-9-609.

Additionally, many states have enacted statutes governing the notice requirements in consumer credit transactions that may require the creditor to send notices in connection with a repossession. The following is an analysis of the existing laws as they relate to repossessions and the use of the devices.

Pursuant to UCC § 9-609, after default, a secured party may take possession of the collateral. In taking possession, a secured party may proceed pursuant to judicial process or without judicial process if it proceeds without breach of the peace.⁴ Accordingly, treating the disablement of the vehicle as a repossession, the use of the device must not result in a breach of the peace. UCC Article 9 does not define or explain conduct that constitutes a breach of the peace, leaving that matter to be determined by the courts.⁵

Using a device to render a moving vehicle inoperable could result in a “breach of the peace” and create additional exposure to the creditor using the device for any resulting harm. However, if a device is properly installed and not altered, it is only capable of preventing a vehicle from being started and will not stop a vehicle from operating once the vehicle has been started. We note that the proper use of a device, when compared to a traditional repossession, substantially reduces the likelihood of a “breach of the peace”. The device simply prevents the customer from restarting the vehicle. There is no confrontation whatsoever, and consequently, scarce opportunity to breach the peace.

The term “repossession” is generally not defined by state law in a manner that clearly includes or excludes starter interrupt devices. Alternatively, the use of a device can be compared to rendering equipment unusable under UCC Article 9. UCC § 9-609 (a)(2) provides that creditors may render equipment that serves as collateral unusable. This right is created separately from the creditor’s right to take possession, for situations where the removal and storage of the collateral, such as heavy equipment, may be impractical or unduly expensive.⁶ While the definition of “equipment” generally does not include motor vehicles, this provision in the UCC most accurately describes the actions taken by a creditor with the use of a device. Arguably, the use of a device is not a repossession of a motor vehicle, but simply the rendering a motor vehicle unusable. The creditor has not taken possession of the collateral but the debtor no longer has the ability to start the motor vehicle.

⁴ UCC 9-609(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.

⁵ See Official Comment 3 to UCC 9-609.

⁶ See Official Comment 6 to UCC 9-609.

Regardless of whether the use of a device is most like a repossession or more resembles rendering collateral unusable, the existence of the statutory right to render equipment unusable suggests that there is no public policy against the use of the devices in vehicles.⁷ A creditor may disable equipment when the removal of such equipment may be impractical or unduly expensive. The costs of repossession are incurred by the secured creditor, but are generally passed along to the customer.⁸ The use of the device reduces the cost of repossession, towing and storage, and offers the customer an immediate opportunity to cure the default without having to pay these costs. Further, the devices allow customers who might not otherwise qualify for credit to obtain credit, and allow customers to obtain credit at less expensive rates than would be offered by creditors without an effective way to limit their credit risk.

The UCC also allows for the parties to contract independently of their rights and obligations under the UCC so long as the parties continue to observe good faith, diligence, reasonableness and care as required under the UCC.⁹ The UCC envisions the need for independent provisions based on the individual needs of creditors and debtors. In a typical scenario where a device would be used, the customer is unable to secure credit. The dealer may be willing to extend the financing if he has the benefits provided by a device, and is unwilling to do so otherwise. The device enables the customer to secure the otherwise unattainable credit, while the dealer, as the secured creditor, retains the protections afforded by a device.

Certain UCC states, such as Connecticut, have implemented provisions that provide for the use of new technology, so long as it is agreed to separately in writing.¹⁰

⁷ UCC 9-102(33) states, "(e)quipment" means goods other than inventory, farm products, or consumer goods.

⁸ UCC 9-615 allows for the creditor to apply the proceeds of a sale to be applied first to the costs of repossession.

⁹ UCC 1-302 states:

"(a) Except as otherwise provided in subsection (b) or elsewhere in [the Uniform Commercial Code], the effect of provisions of [the Uniform Commercial Code] may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by [the Uniform Commercial Code] may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever [the Uniform Commercial Code] requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement."

(c) The presence in certain provisions of [the Uniform Commercial Code] of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section."

¹⁰ Connecticut adds a subsection [designated (d) in the Connecticut act], which provides:

"(d)(1) In this subsection, 'electronic self-help' means the use of electronic means to exercise a secured party's rights pursuant to subsection (a) of this section with respect to the security agreement, and 'electronic' means relating to technology that has electrical, digital, magnetic or wireless optical electromagnetic properties or similar capabilities. 'Electronic self-help' includes the use of electronic means to locate the collateral.

In addition, Connecticut law requires the creditor to give notice to the customer before interrupting the starter on a vehicle. The notice must include a disclosure that the creditor intends to use electronic self-help on or after 15 days from the notice, the nature of the breach, and contact information for a person with whom the customer may communicate concerning the security interest.¹¹ In addition, Connecticut prohibits a creditor from disabling a vehicle if the creditor has reason to know that substantial harm may result to public health or safety.¹² Thus, so long as the parties enter into the contract, and voluntarily agree to the use of a device, and comply with the other limitations imposed upon starter interrupt devices under Connecticut law, such use should comply with the UCC's repossession provisions.

Colorado also enacted non-uniform provisions to its version of the UCC. Under Colorado's UCC, a secured party, in exercising its right to render equipment unusable, may not disable or render unusable any computer program or other similar device embedded in the collateral if immediate injury to any person or property is a reasonably foreseeable consequence of such action.¹³ Any person who disables a vehicle is liable to any person who sustains injury or for any property damage reasonably foreseeable as a result of that action.¹⁴

Finally, individual states and jurisdictions have enacted a variety of laws to govern consumer credit transactions and retail installment sale contracts. These laws supplement, and to the extent of any inconsistencies, supersede UCC provisions

"(2) Electronic self-help is permitted only if the debtor separately agrees to a term of the security agreement authorizing electronic self-help that requires notice of exercise as provided in subdivision (3) of this subsection.

"(3) Before resorting to electronic self-help authorized by a term of the security agreement, the secured party shall give notice to the debtor stating:

"(A) That the secured party intends to resort to electronic self-help as a remedy on or after fifteen days following communication of the notice to the debtor;

"(B) The nature of the claimed breach which entitled the secured party to resort to self-help; and

"(C) The name, title, address and telephone number of a person representing the secured party with whom the debtor may communicate concerning the security interest.

"(4) A debtor may recover direct and incidental damages caused by wrongful use of electronic self-help. The debtor may also recover consequential damages for wrongful use of electronic self-help even if such damages are excluded by the terms of the security agreement.

"(5) Even if the secured party complies with subdivisions (2) and (3) of this subsection, electronic self-help may not be used if the secured party has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third parties not involved in the dispute."

¹¹ Conn. Gen. Stat. Ann. §§ 42-419; 42a-2A-702, 42a-9-609.

¹² *Id.*

¹³ Colo. Rev. Stat. §§ 4-9-609(e); 4-9-629(g).

¹⁴ *Id.*

governing rights upon default.¹⁵ Many of these laws grant consumers a right to cure a default before a secured party may repossess collateral.¹⁶

Not in its UCC, but in its Civil Code, in the fall of 2012, the California legislature enacted legislation authorizing starter interrupt and GPS devices.¹⁷ After a cooperative effort between legislators and the payment assurance technology industry, the California legislature added Section 2983.37 to its Civil Code providing for the use of starter interrupt and GPS technology by buy here pay here dealers to disable and locate a vehicle so long as the buy here pay here dealers provide certain disclosures to the buyer, obtain the consent of the buyer to the use of the technology, and comply with certain substantive requirements related to the use of the technology.¹⁸

In other states that have enacted consumer protection laws, regulators have issued informal advice with respect to whether starter interrupt devices comply with the consumer protection laws the regulators administer. In Kansas, the Office of the State Bank Commissioner has responded on at least two occasions to requests for informal advice on whether starter interrupt devices comply with state law. In both instances, when asked to comment on specific devices, the regulator opined that the devices fail to comply with Kansas law because they do not provide consumers with the right to cure as required under Kansas law. Additionally, the devices “present[ed] a serious public safety concern”, and may constitute an unconscionable act or practice for purposes of Kansas law. While the Office of the State Bank Commissioner admittedly has no enforcement authority over product safety or in determining of whether an act is unconscionable under Kansas law, the regulator indicated that the device could foreseeably malfunction and result in traffic accidents and disruptions affecting people other than the consumer. The regulator also noted the possibility of emergency situations where a borrower might need to use a vehicle that has been disabled.

However, as of November 8, 2005, in what appears to be a movement away from this position, the Kansas Office of the State Bank Commissioner has issued informal advice that starter interrupt devices may be permissible where equipped with the ability to ensure compliance with rights to cure. The regulator opined that the device he reviewed did not appear to constitute a public safety concern if properly used. However, the regulator

¹⁵ UCC § 9-201

¹⁶ See, for example, Ala. Code §§ 5-19-1 *et seq.*; Alaska Stat. §§ 45.10.010 *et seq.*; Cal. Civ. Code § 2981 *et seq.*; Colo. Rev. Stat. §§ 5-1-101 *et seq.*; Conn. Gen. Stat. Ann. §§ 36a-770 *et seq.*; Conn. Gen. Stat. Ann. §§ 36a-535 *et seq.*; Del. Code Ann. tit. 5, §§ 2901 *et seq.*; D.C. Code § 50-601 *et seq.*; Fla. Stat. Ann. §§ 520.01 *et seq.*; GA Stat. §§ 10-1-30 *et seq.*; HI Stat. §§ 476-1 *et seq.*; Idaho Code §§ 28-41-101 *et seq.*; 815 IL CS 375/1 *et seq.*; 205 IL CS 660/1 *et seq.*; Ind. Code Ann. §§ 24-4.5-1-101 *et seq.*; Iowa Code §§ 537.1101 *et seq.*; Kan. Stat. Ann. §§ 16a-1-101 *et seq.*; Ky. Rev. Stat. Ann. §§ 190.090 *et seq.*; La. Rev. Stat. Ann. § 6:969.1 *et seq.*; Me. Rev. Stat. Ann. tit. 9-A, §§ 1-101 *et seq.*; Mich. Comp. Laws Ann. §§ 492.101 *et seq.*; Minn. Stat. §§ 53C.01 *et seq.*; Miss. Code Ann. §§ 63-19-1 *et seq.*; N.M. Stat. Ann. §§ 58-19-1 *et seq.*; N.Y. Pers. Prop. Law §§ 301 *et seq.*; OK Stat. Title 14A, § 1-101 *et seq.*; Or. Rev. Stat. §§ 83.510 *et seq.*; 69 Pa. Stat. §§ 601 *et seq.*; SC Stat. §§ 37-1-101 *et seq.*; Utah Code Ann. §§ 70C-1-101 *et seq.*; Vt. Stat. Ann. tit. 9, §§ 2351 *et seq.*; W. Va. Code §§ 46A-1-101 *et seq.*; Wis. Stat. Ann. §§ 421.101 *et seq.*; Wyo. Stat. §§ 40-14-101 *et seq.*

¹⁷ See 2012 AB 1447 codified as Cal. Civ., Code § 2983.37.

¹⁸ *Id.*

cautioned that a provision in the agreement between the creditor and customer that tampering with the device would be deemed an event of default violated Kansas law.

The Maine Office of Consumer Credit Regulation expressed similar concerns as those initially voiced by the Kansas regulators, noting that a consumer could be stranded in unsafe circumstances by virtue of the inability to restart a vehicle. Additionally, as in Kansas, the regulator indicated that the use of a starter interrupt device could be a constructive repossession and that a right to cure must be given before the device disables a vehicle. Likewise, in Missouri, the Department of Economic Development opined that disabling a vehicle would have the same effect as repossession and would thus require notice of default and a right to cure under Missouri law. In Iowa, the Consumer Protection Division of the Department of Justice issued informal advice with respect to a device that would not be activated until after notice and cure rights were given to the consumer. The Department stated,

“In our view, it does not violate Iowa law to install the device pursuant to the terms stated in your correspondence providing that it does not interrupt the vehicle’s starter under any circumstance prior to expiration of the 10-day period necessary for a consumer to be in default, plus the actual 20-day period during which the consumer has a right to cure the default.”¹⁹

In Maryland, the Department of Labor, Licensing, and Regulation issued an informal opinion in 2006 that reads, in pertinent part,

“We find nothing in either the Retail Installment Sales Act or the Provisions of the Credit Grantor Statute that would preclude the use of this device. Our analysis assumes that all required notices both prior to and after repossession are properly delivered to the consumer. Note that our analysis was confined to the repossession sections of these two statutes and is not intended to cover other sections of these statutes or other statutes over which the Commissioner of Financial [Institutions] has no jurisdiction. Therefore no opinion is being offered on tort liability or whether the use of this device could violate other statutes such as those dealing with privacy.”

In Michigan, Michigan Chief Deputy Attorney General, Carol Isaacs, released an informational letter dated January 22, 2007 and sent to Representative Gaffney regarding starter interrupt devices, including starter interrupt devices with global positioning system tracking devices (“Informational Letter”). The Informational Letter provides that Michigan law does not speak directly to the legality of such devices and that it was impossible to render a definitive opinion on the legality of starter interrupt devices in all situations. Isaacs did conclude that a starter interrupt device may not be used in a manner that would violate state law, such as discriminating against a protected class of individuals. Implicit in this conclusion is that in some instances the use of a starter interrupt device is legal.

¹⁹ The regulator also stated that in the Department took into account that the consumer was not required to physically go to the premises of the creditor to obtain codes and, therefore, was not required to incur a cost in order to avoid interruption of the starter.

The Informational Letter also provides facts to consider in determining the legality of starter interrupt devices used by a finance company or an auto dealer. The letter listed the following non-exclusive list of factors:

- (1) how the company determines what vehicles or customers will use the device;
- (2) how the device is used;
- (3) what and how disclosures are made to the consumer;
- (4) the precise contract terms provided and even the location of those terms in the contract documents; and
- (5) what safeguards are in place to prevent risk to public safety (such as whether the consumer was provided with functioning emergency codes).

Isaacs also found that additional factors could raise issues bearing on the legality of the use of a starter interrupt device for repossession that are not present in a typical repossession. However, Isaacs's analysis does not state that the use of the device itself is illegal, but instead questions liability for damage to the vehicle or injury to the driver after such a device is used in certain situations.

Isaacs stated that a dealer or financing company that uses a starter interrupt device should "ensure that advertisements and employee representations give full, unambiguous, and accurate disclosures regarding its use." In fact, to further support the position that these devices are not per se illegal in Michigan, Michigan enacted a law effective 2010 that creates criminal liability for installing or using a tracking device without the knowledge and consent of the owner or authorized operator of that motor vehicle.²⁰ This law, enacted after the Informational Letter, suggests that starter interrupt devices are permitted if, at a minimum, the consumer consents to their installation and use.

Creditors in these states and states with similar laws should use the devices in such a way as to address each of the concerns expressed by these regulators. A creditor should provide the customer with a right to cure a default prior to disablement by the device in those states requiring notice before repossession. Under some of these "right-to-cure" statutes, pre-repossession notices must be issued, and the device must not be used to render a vehicle inoperable prior to the expiration of any applicable statutory cure or grace period.

Creditors can address safety concerns by more accurately explaining how the device works. As noted above, the devices, when installed correctly, cannot disable a running vehicle. In addition, by providing emergency codes and other protective measures to consumers in the event regular codes expire and the vehicle will not start, creditors avoid many of the safety concerns voiced by regulators and some consumer advocates. Finally, the Payment Assurance Protection Association has adopted as a "standard" that creditors provide customers full written disclosure of the terms governing the device's use and obtain the customer's consent to use the device, thereby

²⁰ Mich. Comp. Laws Ann. § 750.539l.

significantly reducing or eliminating unconscionability and privacy²¹ concerns.

Even still, in Wisconsin, the Office of Consumer Affairs of the Department of Financial Institutions issued an informal opinion that the Office takes the position that the use of payment protection devices, which includes starter interrupt devices, is an unfair collection practice under the Consumer Act. In light of this opinion, it is unclear whether creditors may install and use starter interrupt devices in Wisconsin, even if the creditors were to adopt the precautions and recommendations noted above.

Special Circumstance – Bankruptcy

Though starter interrupt devices generally have not been addressed in reported case law, the United States Bankruptcy Court for the Eastern District of Arkansas addressed the devices in a relatively narrow factual context. In *In re Hampton (Hampton v. Yam's Choice Plus Autos, Inc.)*,²² the court concluded that a creditor violated the automatic stay in a Chapter 13 bankruptcy case when the creditor failed to take appropriate action to ensure that the Chapter 13 debtor always had correct codes to start her car. The court concluded that the creditor, who had installed the starter interrupt device before the bankruptcy was filed, willfully exercised control over estate property, and thus willfully violated the automatic stay. The court suggested that the creditor could have avoided this result had the creditor removed the device upon issuance of the automatic stay.

The approach of the *Hampton* court is consistent with the treatment of the use of these devices as a kind of repossession. In light of the case, creditors should ensure that the device would not prohibit starting of the vehicle after the automatic stay goes into effect.

GPS And Its Use Under Existing Law

To date, only a handful of states directly limit the use of GPS tracking or similar devices in connection with the extension of consumer credit. Where states do not directly regulate GPS in connection with consumer transactions, some consumer advocates have argued that the use of a GPS component is an impermissible invasion of a consumer's privacy.

The privacy argument, however, appears flawed in that it seems highly questionable that a person driving a car on a public highway or on private property has a right to privacy concerning the location of their car. Regardless, even if there were such a right, a creditor using a device can significantly reduce or eliminate the privacy concern by obtaining from the customer a signed writing agreeing to the use of the GPS component and a knowing waiver of any right to privacy concerning the location of the vehicle. Consumers are generally permitted to knowingly surrender any rights to privacy.

²¹ See also, "GPS And Its Use Under Existing Law" in this memo for a discussion of privacy concerns.

²² *In re Hampton* 319 B.R. 163 (Bankr. E.D. Ark. 2005).

Nevertheless, at least one case suggests that a customer does not waive his or her privacy right by executing a written agreement that disclosed the existence of a GPS component. The case involved a claim for attorneys' fees after a court found a rental company (not a retail installment seller, lender, or assignee) invaded a consumer's privacy by using a GPS device, even where the rental agreement disclosed that the device would be used in connection with the rental.²³ It is not clear, however, whether the rental agreement included an express agreement that the GPS device could be used or whether the renter waived their right to privacy in connection with the location of the vehicle.²⁴ Presumably, an express, conspicuous agreement and a waiver, separately signed by the customer, would lessen the likelihood that a court would find an invasion of privacy.

In addition to the general concern about privacy, some states have either expressly or implicitly limited the use of GPS in connection with credit transactions. In Connecticut, GPS components are deemed a type of "electronic self-help." For purposes of Connecticut law, electronic self-help includes the use of electronic means to locate collateral.²⁵ As explained earlier, Connecticut allows use of electronic self-help only if (a) the customer separately agrees in the security instrument to use of electronic self-help; and (b) the creditor gives at least 15 days' prior notice to the customer before using electronic self-help. Thus, in Connecticut, GPS devices may not be used until after default and until the creditor complies with the requirements for electronic self-help. That is, GPS could not be used to monitor the location of the vehicle prior to default. The GPS component could be activated only after default and after the creditor complies with the requirements under Connecticut law for electronic self-help.

In addition to limitations under Connecticut law, California, Michigan and Tennessee criminalize the use of electronic tracking devices on a vehicle without the owner's consent.²⁶ If the owner expressly consents to the use of GPS and waives any privacy right, GPS would be permitted in California and Tennessee.

No other states expressly regulate the use of GPS in connection with credit transactions. However, it is perhaps arguable that monitoring the location of a vehicle is an action by the secured party to "realize upon collateral." Many states, particularly states that have adopted the Uniform Consumer Credit Code, prohibit creditors from taking any action to realize on collateral until there has been a default and the creditor

²³ *Turner v. American Car Rental*, 92 Conn. App. 123.

²⁴ See also *American Car Rental, Inc. v. the Commissioner of Consumer Protection*, 273 Conn. 296 (2005), in which the Supreme Court of Connecticut concluded that a rental car company that used a GPS tracking device to issue speeding fees to customers each time a rented vehicle exceeded 79 miles per hour continuously for two minutes or more violated the Connecticut Unfair Trade Practices Act, and that the speeding fee was not a valid liquidated damages provision, but rather a penalty in violation of Connecticut law.

²⁵ Conn. Gen. Stat. § 42a-9-609(d)(1).

²⁶ Cal. Penal Code § 637.7; [Mich. Comp. Laws Ann. § 750.539](#); Tenn. Stat. § 39-13-606.

has given the consumer a right to cure such default.²⁷ While the argument that using GPS to determine the location of the vehicle is an action to realize upon collateral appears tenuous at best (as simply monitoring location does not seem to equate to actually taking steps to recover or liquidate collateral), in an abundance of caution, creditors should assure that the GPS component may not be activated prior to default and opportunity to cure in any state that prohibit action upon collateral until default and the right to cure expires.

GPS devices have also come under the scrutiny of the federal courts, though in the context of a criminal case. In *United States v. Jones*,²⁸ government agents used a GPS device to track the movement of a suspect's vehicle. They installed the GPS device and monitored the suspect's movements without his knowledge or consent. The Court concluded that the government's action was an illegal search and seizure, violating the defendant's Fourth Amendment rights. However, this case appears to have little application in the context of a creditor that obtains a consumer's consent to use of a GPS device in connection with credit financing. In that case, unlike in *Jones*, the consumer has knowledge of the creditor's installation and use of the device, and moreover has expressly consented to such use.

Thus, if the creditors that use a device with GPS obtain a written agreement to allow the use of GPS and a waiver of any right to privacy in the location of the vehicle, and do not activate the GPS device until after any default and right to cure expires, the use of GPS in credit transactions appears permissible in every state (other than, perhaps, Wisconsin, as noted above) and under federal law.

Conclusion

The use of a starter interrupt device is equivalent to the common practice of repossessing a motor vehicle. The devices disable the vehicle upon the customer's failure to make timely payments. This disabling of the vehicle can prevent the intentional relocation of the vehicle while reducing confrontations with the customer. When faced with the inoperable car and the need to go somewhere, the customer will typically contact the secured creditor in order to make the necessary payment and take the steps enabling the use of the vehicle.

The use of properly installed device should not violate public policy. The device will not render a moving vehicle inoperable during use, a characteristic that eliminates any traffic-related public safety concerns. The practice of providing a customer with one or more emergency codes further reduces these concerns, and also reduces or eliminates "societal" public policy concerns raised by those who point to dire consequences if, for instance, the vehicle is needed to obtain urgent medical attention at a time when standard codes have expired and payment is in default.

In the event the customer fails to cure a default, the device facilitates actual

²⁷ See, for example, Kan. Stat. Ann. §§ 16a-5-110;16a-5-111; Me Rev. Stat. Ann. tit. 9-A, §§ 5-110; 5-111.

²⁸ *U.S. v. Jones*, 2012 U.S. LEXIS 1063.

repossession. The vehicle is inoperable and cannot be driven from its location. Collection costs are reduced, the consumer is less inconvenienced and more credit can be made available to consumers at less expensive rates.

With few exceptions, state laws do not expressly address the use of starter interrupt devices. However, public policy and the substantial law regarding repossessions support the legality of the devices, provided that the devices are used with due regard for state repossession notice requirements, right to cure requirements and other state consumer protections applicable to secured parties attempting to enforce their security interests in collateral, and provided that the terms and conditions of the installation of the devices are fully disclosed to the customers. In addition, the device should not disable a vehicle involved in a pending bankruptcy.

With respect to the GPS component, few states expressly restrict the use of GPS in credit transactions. Of those that do, the agreement of the customer appears to make the use of the devices permissible. If creditors obtain the customer's agreement to the use of GPS and a waiver of privacy rights, and does not use GPS to track the location of a vehicle until after default and any right to cure expires, GPS would appear to be permissible in all states.