

Short Paper

The First Thing We Do...Let's Kill the Kill Switches

(With Apologies to William Shakespeare)

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Abstract

A device used by lenders to assure payment of debt may endanger lives and be a violation of the Fair Debt Collection Practices Act. This paper examines the use of “kill switches” on vehicles and laws designed to eliminate or curb them.

Keywords

device, kill switches, eliminate

1. Introduction

In buying a used car from a sub-prime car dealership, one might find to one's surprise and dismay that the vehicle comes with a piece of unanticipated equipment: a “kill switch”.

While these devices have long been sold to car owners as an anti-theft device, some car dealers are using it to ensure the payment of car loans (Note 1).

If the owner misses a car payment, the kill switch will disable the vehicle so it will not start thus stranding the driver. A worse scenario might find the driver on an interstate highway, in traffic, when the car shuts off (Note 2).

In some states, the device allows the lender to shut off the car remotely with no advance notice to the owner. When the car is disabled and the driver tries to determine the cause, the owner learns of the existence of the “kill switch” (Note 3).

Are these debt collection devices legal? The answer varies from state to state. In New York, they are lawful only if creditors notify car buyers in writing by certified mail that the vehicle is equipped with the device (Note 4). New Jersey has imposed some strictures on the practice. Effective August 1, 2017, New Jersey allows for the installation of “payment assurance” devices if five conditions are met:

- 1) Written disclosure to the buyer and his/her agreement to the device being installed.
- 2) Buyers cannot be charged for the kill switch.
- 3) No disabling of the vehicle while it is in operation.
- 4) No disabling of the vehicle until owner has been in default on the debt for five days.
- 5) A 72-hour notice prior to disabling the vehicle.

The law provides that failure to comply violates the state's Consumer Fraud Act. Injured consumers could obtain triple damages and attorney's fees (Note 5).

Is there any state in which these devices are deemed to be illegal? In 2012, the Wisconsin Department of Financial Institutions issued an opinion stating:

“The act of disabling a vehicle has the same result as taking possession of the vehicle. Shutting down a car before a creditor has the right to actually physically repossess the car represents an improper repossession.” (Note 6)

Lenders disagree with that assessment. They argue that the use of such devices is less of an embarrassment than a repo man coming to the owner's house to take possession of the car and hauling it to the impound lot (Note 7).

Getting the car back into operation after the kill switch has been activated is quicker and easier because once the owner makes a payment, he/she is given a code to get the vehicle started again (Note 8).

Moreover, these gadgets, also called “starter interrupt” or “payment assurance” (Note 9) devices reduce the lender's repossession costs, give some people access to a vehicle when they might not otherwise qualify for credit, and permit them to provide a smaller down payment (Note 10).

Lenders argue that these devices are used only as a last resort. Car owners are first given a warning and some lead time before the car will be repossessed. They will be reminded that their payment is late by letters, phone calls, added interest, or late fees. Buyers can always decline to purchase the car knowing the device has been implanted. However, those with poor credit or low income who need to have a car because no alternate transportation exists, may feel they have no choice (Note 11). Most “Buy Here, Pay Here (BHPH)” dealers use the kill switches (Note 12). Their buyers do not have many choices because they do not have cash to pay for the car and few other avenues for financing (Note 13). If the buyer wants the car, he or she will have to accept the kill switch.

Estimates are that between 35 to 70 percent of cars that are financed with a subprime loan, approximately 2 million vehicles, have kill switches (Note 14), which are typically installed under the dashboard. The subprime market has grown dramatically in recent years. As of December 2016, the total amount of car loans was \$1.16 trillion and 20 percent of them were made to subprime customers (Note 15).

As the number of loans has increased, so have the number of borrowers who are delinquent. As of December 2016, subprime customers were sixty days behind on 5 percent of their loans, and the number has been growing, as car lenders have lowered their lending standards (Note 16).

Some consumer groups have labeled the “kill switch” as insidious and “Big Brother”. The head of collections at a Federal Credit Union in Louisiana boasted that he monitors the movements of 880 subprime borrowers on a computerized map and could, with a click of a button, remotely disable their vehicles on his computer or phone. No longer does a repo man have to be hired to track down the borrower who are behind on their payments, they have to come to him to reactivate their cars (Note 17).

Lenders claim that these gadgets have reduced delinquencies, but that has not stopped subprime lenders from continuing to charge high interest rates at the states’ maximum (Note 18). So now lenders are making more money by using the kill switches and still charging high fees.

The lenders also make money when a car is repossessed. Since a car is a depreciating asset, finding the vehicle as quickly as possible is a benefit to the lender (Note 19).

Lenders’ harassing and threatening practices like illegally telling customers, “The tow truck is around the corner” when it was not or “We’re coming to get your car” when they were not, have been curbed by Federal Trade Commission action. The agency settled with one company for \$5.5 million in 2014. It’s CEO admitted that the debt collection practices used to be more “aggressive” complaining to investors that “there are a lot of rules to follow” and “a lot of work is required to make sure rules aren’t broken” (Note 20). Clearly, subprime lenders have decided that the kill switch device is a more fertile area for them given the paucity of state laws forbidding it, a lack of court decisions on the subject, and no regulation at the federal level from either the Consumer Financial Protection Bureau or the Federal Trade Commission.

Subprime car dealers expect eventually to repossess any car they sell. These dealers do not make money from selling a vehicle once for a high price. Their money is made in selling, repossessing, and then reselling the same car three or four times, confiscating the down payment each time, and charging excessive interest with each transaction (Note 21). The kill switch enables them to make even more money by “shortening the time between the first non-payment and the repossession” (Note 22) as well as on expenses related to hiring a repo man.

2. What Can Be Done about Kill Switches?

The first and best remedy would be to ban these devices altogether. Because they can be activated remotely, they can pose a safety risk to consumers by causing the vehicle to come to a stop in traffic (Note 23), a bad neighborhood (Note 24) or putting a life in jeopardy if the vehicle is disabled while a driver or passenger is en route to the hospital due to a health emergency (Note 25).

Absent an absolute ban, other steps can be taken to even the playing field such as mandating a cooling off period of three days before a consumer can buy a vehicle with a kill switch. Most major purchases allow three days to cancel a transaction but car dealers do not mandate a three-day cooling off period to allow customers to review the financial documents and return a used vehicle if they are dissatisfied with the deal (Note 26). The same amount of time should be required for new car purchases. The

average price of a new car in 2019 is almost \$37,000, and some borrowers sign on for a seven-year repayment period (Note 27). Unlike a used car, the new vehicle would remain in the dealer's hands since it would lose value once it leaves the lot (Note 28).

Documents provided to the buyer should highlight in bold black letters or contrasting colored print the fact that a kill switch device has been placed in the vehicle and under what circumstances it can be activated and what the consumer must do to prevent the switch from being used. A uniform document should be used by all dealers (Note 29) (See Appendix).

States could also create a loan program providing consumers who have subprime credit with an opportunity to purchase a car and pay for it at a reasonable interest rate.

Since most subprime car dealers are also involved in financing the vehicles, interest rates should be capped at no more than ten percent for any vehicles sold for over \$5000.00.

States should establish a government office whose contact information is clearly written on the financial documents so consumers can complain about predatory subprime car dealerships and shady transactions (Note 30).

Advertising by subprime dealers who prey on customers with bad credit should be regulated. There should be a requirement that all provisions of the car sale be clearly spelled out in these media or online ads (Note 31).

It should be easier for customers to sue used car dealerships either individually or in a class action by allowing the state attorney general to sue on their behalf. Those who bring a case privately would recover their court costs and attorney's fees.

Although the above are steps that can be taken by state legislatures, the problem exists across the country. Therefore, the Federal Trade Commission, which has been investigating the issue since 2017 (Note 32), should create rules to address the problem and Congress should consider amending the Fair Debt Collection Practices Act to keep up with these "electronic repossessions" (Note 33) and to make sure the law considers the practice to be a repossession (Note 34).

3. Conclusion

Technology in vehicles has advanced so rapidly that eventually it will be possible to keep track of all cars on the road at all times. The laws at the state and federal levels have failed to keep pace with these developments which involve significant invasions of privacy (Note 35) as well as opportunities to circumvent existing regulations on debt collection and repossession.

Perhaps most middle-class people will not face the tyranny of the kill switch, but for poor people, as one lawyer put it, "There is a debt collector right there in the car with them" (Note 36).

References

Elaine, S. P. (2018). *Does Your Used Car Have a Kill Switch?* Waterbury Republican American.

Notes

Note 1. Elaine S. Povich “Does Your Used Car Have a Kill Switch?” Waterbury Republican American Dec 3, 2018 at C1. (hereinafter “Does Your Used Car Have a Kill Switch?”)

Note 2. For a contrary point of view see Terry O’Loughlin, “Not Your Father’s Payment Assurance Device —A Plea To Regulators”, June 10, 2015. <https://www.providers-administrators.com/348185/not-your-fathers-payment-assurance-de>

Note 3. Id.

Note 4. Id.

Note 5. See N.J. Statutes 56: 8-205 and 56:806 <https://www.eckertseamans.com/publications/nj-auto-industry-alert-juno-15-2017> <https://www.lawserver.com/law/state/newjersey/nj-laws/new-jersey-laws-56-8-205>

Note 6. Aimee Picchi, “Why The Repo Man Can Remotely Shut Off Your Car Engine” Moneywatch, Sept 25, 2014. <https://www.cbsnews.com/news/why-the-repo-man-can-remotely-shut-off-your-car-engine/> hereinafter “Why the Repo Man Can Remotely Shut Off Your Car Engine”

Note 7. “Does Your Used Car Have a Kill Switch”? supra note 1.

Note 8. Id.

Note 9. “Why the Repo Man Can Remotely Shut Off Your Car Engine”? supra note 6.

Note 10. Id.

Note 11. “Car Dealerships Have Discovered GPS Tracking Technology”, Live View GPS, blog/car-dealerships-discovered-gps-tracking-technology/

Note 12. Elaine S. Povich “Late Payment”? A Kill Switch Can Strand You and Your Car. Stateline.org Dec 2, 2018, <http://www.heraldandnews.com/news/local-news/business/late-payment-a-kill-switch-con...>

Note 13. Id.

Note 14. Matt Scully “Auto Lenders’ Kill Switches Being Probed By U.S. Regulator” Bloomberg, Feb 17, 2017 <http://www.autonews.com/article/20170217/FINANCE-AND-INSURANCE/170219847/> (hereinafter “Auto Lenders’ Kill Switches Being Probed by U.S. Regulator”). See also Megan Woolhouse, “Car Lenders Are Using Remote Shut-Off To Collect Delinquent Payments”, Mar 14, 2017, <https://www.bostonglobe.com/business/2017/03/14/car-lenders-using-remote-shut-off-collect-delinquent-payments>

Note 15. Id.

Note 16. Id. A subprime borrower means one who has a credit score at or below 640. See Nick Canedo, “Car Lenders Use Remote Kill Switch to Disable Vehicles When Borrowers Miss Payments Central NY News”, Sept 26, 2014 <https://www.syracuse.com/news/index.ssf/2014/09/car-lenders-use-remote-kill-switch-....>

Note 17. Id.

Note 18. Jaeah Lee, “Wait, Banks Can Shut Off My Car?” Mother Jones, March/April 2016 <https://www.motherjones.com/politics/2016/04/subprime-car-loans-starter-interrupt/>

Note 19. Matt Scully, “FTC Conducting Probe of Auto Lenders’ Kill Switches” Feb 21, 2017 <https://www.claimsjournal.com/news/national/2017/02/27/276961.htm>

Note 20. Id.

Note 21. “Miss A Payment? Your Car Stops Running” <https://newslashdot.org/story/14/09/25/1620218/miss-a-payment-your-car-stops-running>

Note 22. Id.

Note 23. “Does Your Used Car Have a Kill Switch”, supra note 1. T. Candice Smith testified before in Nevada state legislature that in 2013 her cars kill switch activated while she was driving on I-15.

Note 24. “Remote Kill Switches Disable Cars With Missed Payments”, Sept 25, 2014 <http://www.nbcnews.com/tech/gadgets/remote-kill-switches-disable-cars-missed-payment> (hereinafter “Remote Kill Switches Disable Cars With Missed Payments”)

Note 25. “Car Lenders Use Remote Kill Switches to Disable Vehicles When Borrowers Miss Payments”, supra note 16. Lenders claim that they can disable the ignition but not while car is operating. Mary Bolender of Las Vegas, Nevada was about to drive her asthmatic daughter with a fever to the hospital when her car would not start. Bolender owed \$389.00 on her 2005 Chrysler van.

Note 26. Senators Klein and Savino Reveal Top Predatory Subprime Auto Lending Practices in New York, News from Independent Democratic Conference Apr 30, 2015 <https://www.nyc.gov/site/dca/media/pr043015/page> (hereinafter Senators Klein and Savino Reveal Top Predatory Subprime Auto Lending Practices in New York)

Note 27. James R. Hood, “Feds Investigating Auto Lender’s Use of Kill Switches” Feb 1, 2017 <https://www.consumeraffairs.com/news/feds-investigating-auto-lenders-use-of-kill-switches...> (hereinafter “Feds Investigating Auto Lender’s Use of Kill Switches”)

Note 28. “Senators Klein and Savino Reveal Top Predatory Subprime Auto Lending Practices in New York” supra, note 26.

Note 29. Id.

Note 30. Id.

Note 31. Id.

Note 32. “Feds Investigating Auto Lenders’ Use of Kill Switches” supra note 27. See also, “Payment Assurance Devices Under Scrutiny: NMA E-Newsletter #428 National Motorists Association”, Mar 26, 2017, <https://www.motorists.org/alerts/payment-assurance-devices-scrutiny-nma-e-newsletter-428>

Note 33. “Remote Kill Switches Disable Cars With Missed Payments” supra note 24.

Note 34. “Late Payment? A Kill Switch Can Strand You and Your Car” supra note 12. Nevada law defines a technological shut off as a repossession.

Note 35. The Electronic Privacy Information Center, a privacy group based in Washington D.C. filed a complaint with the Consumer Financial Protection Bureau asking it to look onto kill switches as an invasion of privacy.

Note 36. “Why the Repo Man Can Remotely Shut Off Your Car Engine”, supra note 6.