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Your guide to maintaining compliance

GPS use in Nevada

The industry put up a valiant effort to prevent it from happening, but a new law in Nevada went into effect on July 1 that greatly impacts how buy-here, pay-here dealerships and other auto finance companies that dive deep into the subprime pool can use GPS and starter interrupt devices.

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Arbitration showdown

The Consumer Financial Protection Bureau rolled out its final rule banning arbitration, but industry representatives and Congressional lawmakers are pushing back to keep it from going into effect on Sept. 18. Prohibiting the use of class action waivers in arbitration clauses could greatly impact your vehicle installment contracts.

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Supreme Court win

The Supreme Court made its decision whether a finance company that regularly attempts to collect debts it purchased after the debts had fallen into default is a "debt collector" subject to the Fair Debt Collection Practices Act (FDCPA).

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TOP 10 HOT SPOTS

The legal team at Hudson Cook identified 10 places where dealerships could get burned if their adherence to state and federal regulations falls short.

1. **Advertising**
Know the federal and state rules that apply to your advertising, and know what ads they regulate.

2. **Pricing Your Cars**
Eliminate the difference in prices between cars you finance and those you sell for cash. Put your prices on your cars and don't change the prices based on cash or financed sales.

3. **Acquisition Fees & Discounts**
Know the rules that apply when you sell your contracts to finance sources that charge an acquisition fee or buy your contracts at a discount — do not increase the cost of the car to cover the fee or discount.

4. **Hidden Finance Charges**
Don't create other "hidden" finance charges. For example, don't tell buyers that you "can't get them financed" unless they buy a service contract.

5. **Financing Repairs**
Know the rules that apply to financing repairs for your customers. Have a written policy for financing repairs and document the transaction correctly.

6. **SID/GPS Devices**
Know the rules that apply to the use of a starter interrupt device (SID) or GPS device with your customers. Provide written disclosure, don't charge for installation or use, have a written policy and objective credit criteria regarding installation and use of device.

7. **Convenience Fees**
Know the rules that apply to charging a convenience fee. Can you charge a convenience fee? What does the law say? What does the contract say? Document the transaction correctly and apply to the contract.

8. **NSF Fees on Electronic Payments**
Know the rules that apply to charging a nonsufficient funds fee. Can you charge an NSF fee for electronic payments? What does the law say? Document the transaction correctly and apply to the contract.

9. **Fees to Reclaim Personal Property Post-Repo**
Do you know the state rules that apply to maintaining buyer's property post-repossession? What does your contact say? Do you charge the buyer(s) a fee to store the property?

10. **Dual Language Materials**
Ensure that your contracts, advertisements, and other consumer-facing materials are in the same language for the entire document. Do not promote features in Spanish only to provide limitations and disclaimers in English.

"Dealers can effectively manage their compliance with the laws by first making the decision to create a 'culture of compliance,' appointing a compliance officer and giving him/her a real budget and training (your mechanics are trained; your F&I folks need training, too), by having your documents and policies/procedures reviewed by knowledgeable counsel and a written compliance program. If you fail to plan, you are planning to fail."

Eric Johnson, Hudson Cook partner

New Nevada law greatly impacts GPS & starter interrupt usage

By Nick Zulovich, Senior Editor

CARY, N.C. — The industry put up a valiant effort to prevent it from happening, but a new law in Nevada went into effect on July 1 that greatly impacts how buy-here, pay-here dealerships and other auto finance companies that dive deep into the subprime pool can use GPS and starter interrupt devices.

Along with not being able to activate the starter interrupt until the contract holder is more than 30 days past due, there are several other modifications to how dealers and finance companies can use these devices in Nevada thanks to the passage of SB 350, including:

- Get written consumer disclosure for using starter-interrupt devices.
- Give at least 48-hour actual notice of disablement.
- Provide two 24-hour overrides in event of emergency.
- Cannot charge for installation or use of starter-interrupt technology.
- Restrictions on device data collection and length of data retention.
- Requires certified device installers.

PassTime, Spireon, the National Independent Automobile Dealers Association and J.D. Byrider were among the organizations that pushed back against this legislation for nearly four years as the Legal Aid Center of Southern Nevada championed an effort that won the favor of both of Nevada's lawmaking chambers as well as Gov. Brian Sandoval.

Depending on how the contract is structured, delinquencies and eventual defaults could spike in Nevada, which already ranked in the Top 10 nationally for 60-day delinquency. The latest data from Experian Automotive put Nevada's 60-day delinquency rate at 0.73 percent in the first quarter.

The state's 30-day delinquency rate also was among the nation's highest at 2.10 percent, according to Experian.

And now dealerships and finance companies who have customers in Nevada cannot activate the device when someone slips a few days past due in an effort to engage with the customers to get them back on track. Corinne Kirkendall is involved with the Telematics Service Providers Association (TSPA) and also is vice president of compliance and public relations at PassTime.

"For a subprime customer that's not on a 30-day cycle, if their payment schedule based on their job is weekly or biweekly, a consumer who gets 30 days behind, that could be four or five payments behind. A consumer who gets two payments behind typically can't catch up. So to be four payments behind, it's virtually impossible," Kirkendall said during a phone interview with *BHPH Report*. "It doesn't provide any cover for the consumer at all in trying to help them stay on track."

In a message to *BHPH Report*, Spireon conveyed its reaction to the Nevada law going into effect.

"The use of starter interrupt devices (SIDs) and GPS devices has enabled dealers and lenders to extend credit to consumers who have difficulty obtaining credit, potentially enabling them to repair poor credit ratings," said Reggie Ponsford, senior vice president of sales for Spireon's automotive solutions group. "Generally, use of SIDs has been deemed a last step in the process of helping a consumer maintain their payments and stay in the vehicle. However, over the past several years, the industry has started to transition in the ways lenders are interacting with their customers in default, utilizing different forms of payment reminders, such as buzzers, mobile communications and more.

"While the restrictions on SID use will have some effect on a small percentage of dealers and consumers, the end goal of any legislation restricting the use of this technology should be to keep consumers in their vehicles. For years, BHPH industry has been moving toward stricter protocols that continue to enable positive interactions with the consumer. The aggressive nature of this bill toward the use of payment assurance technology may have the adverse effect of reducing credit available to those that are most in need of it," Ponsford went on to say.

Kirkendall mentioned two other components of the new law that is likely to impact the device's efficiency for dealers and finance companies.

First, the data that's collected using the GPS component must be purged on a rolling 180-day timeframe.

"That's a huge undertaking," Kirkendall said. "It puts them at a disadvantage when they go to do the repossession. Now if it's not within that 180 days, they can't go back and use that data to try to secure the collateral. It really puts the creditor at a disadvantage."

Furthermore, if a dealer or finance company activates the starter interrupt component, the new law stipulates the action is considered constructive repossession, so the move must be reported to a credit bureau. Kirkendall noted that Hudson's Cook's Nikki Munro has led an ongoing effort to argue against that condition since "the creditor doesn't take any physical possession."

Kirkendall added, "Now the use of that starter interrupt device is much less effective than it was before. It will push creditors to use just the GPS portion of the device."

Making the case to lawmakers

Back on March 31, the industry offered one of its strongest arguments against Nevada SB 350. NIADA's Shaun Petersen testified during a Senate hearing on the measure, along with Brent Newman, who spent more than 20 years at J.D. Byrider, including time as chief operating officer.

Also pleading the industry's case were Milo Trevizo, director of finance at Chapman Auto Group Acceptance, and Jarl Kongsrud of Smart Auto, a buy-here, pay-here operation in business for more than 15 years.

"There are consumer benefits. Consumers often qualify for a better or more reliable vehicle through the use of the devices," Petersen said, according to the hearing minutes shared by the Nevada legislature. "Creditors are more comfortable with providing consumers greater purchasing power because the risk of being unable to recover collateral is diminished in the event of default.

"Less risk to the creditor often translates to lower interest rates, higher loan-to-value ratios and longer termed notes," he continued. "After the transaction is consummated, consumers will realize benefits in the event of default that would not be present without the use of such devices. The devices open lines of communication between creditors and consumers. If the vehicle starter is rendered temporarily inoperable because of default, a consumer will often cure the default much quicker.

"Compared to the unavailability of the vehicle due to repossession, the consumer can be on the road much faster through the use of the device," Petersen went on to say.

Later in the hearing, Newman came right to the point about what the law passage would mean.

"It would be a devastation and a deal breaker to our businesses. It would affect our ability to offer loans," Newman said. "Las Vegas has a transient feel and the device allows us to do additional business and to provide a better vehicle for the consumer. A GPS device is not intrusive. We definitely disclose it to each of our consumers.

"Without the GPS devices, we could go out of business. It is a part of our business and could be a difference in our margin," he added.

Trevizo also emphasized that doing business without the device's impact would be nearly impossible. The finance company began to use these devices in 2011, and during a five-year span, Trevizo indicated CAG was able to provide vehicle installment contracts to 3,200 customers, an increase of more than 1,000 percent compared to the time before the provider used the technology.

"From our experience, the starter interrupt technology has enabled customers to obtain loans who would otherwise be unable to obtain financing," Trevizo said. "We had been seeing vehicle repossessions in Nevada double, delinquencies triple and our loan volume reduced in the absence of starter interrupt technology.

"If the proposed legislation passes, we envision a sharp decrease in loans, leading to severe reduction in profitability. This will force CAG to cease conducting business in Nevada," he continued during that March hearing. "This will mean customers of CAG may be left without an avenue to purchase a vehicle."

And Kongsrud told lawmakers about how his dealership uses the devices.

"When we turn off a vehicle, it is the last resort," Kongsrud said. "We try every means available to contact the customer. The GPS devices buzz the customers to notify them to contact us. We only turn vehicles off during business hours. The customer can contact us and resolve the issue during this time. We will then turn on the vehicle right away. We locate the vehicle prior to turning it off to know the vehicle is either at the customer's home or employment. If the vehicle is at another location, we will not activate the device."

Nonetheless, lawmakers passed the bill, and Sandoval declined to meet with TSPA, NIADA or any other industry representatives; the opposite of what unfolded in New Jersey where Gov. Chris Christie vetoed a similar piece of legislation earlier this year.

"Unlike the governor in New Jersey whose team sat down with us and talked about it, (Sandoval) wouldn't give us that meeting," Kirkendall said. "That really put us at a disadvantage in not being able to explain the position of the industry and how this would deeply impact the way they do business in order to extend credit to consumers."

What could be ahead

Now with SB 350 the law in Nevada, the industry is left to wonder what happens next.

"I hope Nevada takes a real good look at this and realizes the repercussions of what's happened with regard to the availability of credit to consumers," Kirkendall said. "Maybe in a couple of years, they'll go back and change this law and make it more consumer and business friendly. This law as it currently stands is just not a good practice in this space."

Spireon's Ponsford added to the sentiment about the ramifications of the newest law on the Nevada books.

"The provisions of SB 350 in Nevada will lead companies to rethink their lending strategy to the buy-here, pay-here industry, and will also drive new technology initiatives to open other lines of communications for payment reminders and notice of default. Spireon and other tech companies already offer alternative solutions that are beneficial to both lender and borrower," Ponsford said.

"Without the effective and consistent use of solutions that facilitate communication and compliance, some lenders will vacate the BHPH lending space due to their default rates and loss ratios, and the inability to manage losses," he continued. "Further, unless the industry adopts mutually beneficial technologies and procedures for managing risk and delinquency, there is a strong possibility that we will see an increase in the number of repossessions in Nevada, which is the worst-case scenario for dealers, lenders and consumers."