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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
NEW YORK REGIONAL OFFICE

COMMISSION AUTHORIZED

V890036

March 6, 1989

The Honorable Wayne R. Bryant
The Assembly
State of New Jersey
309 Market Street
Camden, N.J. 08102

Dear Mr. Bryant:

The staff of the Federal Trade Commission is pleased to have the opportunity to respond to your request for comment on Assembly Bill 3597 ("the Bill"), which is currently pending before the New Jersey Assembly.¹ We are providing these remarks in response to your letter of February 16, 1989. Our comment addresses aspects of the Bill that may adversely affect consumers. We would be pleased to offer additional assistance on any particular amendments that are offered.

The Bill would alter the current methods of allocating the costs and risks of damage to (or theft of) a rental vehicle. In addition, it would prohibit rental car companies from requiring renters to provide, during the term of the rental agreement or pending resolution of any dispute, any security, deposit, or payment for damage. We are concerned that parts of these provisions might result in increased costs to consumers who rent automobiles without providing significant benefits to the majority of automobile renters or to the public at large.

The Federal Trade Commission is charged with promoting competition and protecting consumers from unfair and deceptive commercial practices.² In fulfilling this mandate, the

¹ These comments are the views of the staff of the New York Regional Office and the Bureau of Consumer Protection of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner.

² See 15 U.S.C. § 41 et seq.

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staff of the Federal Trade Commission often submits comments, upon request, to federal, state, and local governmental bodies to help assess the competitive and consumer welfare implications of pending policy issues. In enforcing the Federal Trade Commission Act, the Commission has gained considerable experience in analyzing the impact of various private and governmental restraints on competition and the costs and benefits to consumers of these restraints.

The Commission and its staff have considered other matters involving the car rental industry. The Commission recently commented on Guidelines prepared by the National Association of Attorneys General's Task Force on Car Rental Industry Advertising and Practices ("NAAG Guidelines").³ The allocation of liability portion of the Bill is very similar to portions of these NAAG Guidelines.

Lessor Liability

The Bill would make significant changes in the allocation of the risk that a rental vehicle will be damaged or stolen. The Bill would require car rental companies, as an integral (and therefore not separately billable) part of every rental transaction, to assume all responsibility for any damage in most instances,⁴ and prohibits the offering of

³ Letter from the Federal Trade Commission (Commissioner Strenio not joining) to Robert T. Stephan, Attorney General, Kansas (February 24, 1989). A copy is attached. The Guidelines will be further considered by the Attorneys General at their March meeting.

⁴ Section 4 provides that an "authorized driver" -- defined as "a renter who drives a private passenger automobile rented under the terms of a rental agreement or any of the following other drivers of the vehicle: the renter's spouse if the spouse is a licensed driver and satisfies the rental company's minimum age requirement; any employee or co-worker of the renter who is engaged in business activity with the renter and is a licensed driver satisfying the rental company's minimum age requirement; any person who operates the vehicle during an emergency situation or while parking the vehicle at a commercial establishment; or any person expressly listed by the rental company on the rental agreement as an authorized driver" -- may be held (continued...)

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a separate Collision Damage Waiver ("CDW").⁵ In practical effect, legislative restriction of the offering of a distinct CDW product is tantamount to mandating that car rental companies bundle CDW coverage into every car rental transaction.⁶ Any legislatively imposed bundling requirement will restrict consumer choice among CDW-like coverages of rental cars,⁷ resulting in some consumers having to bear greater costs, primarily in the form of higher base prices, than they otherwise might have incurred to cover the accident and theft losses statutorily shifted to the rental car companies. Recent news reports suggest that this may be happening to

⁴(...continued)

liable for damage or loss: caused intentionally by an authorized driver; resulting from an authorized driver's willful or wanton misconduct, intoxication or drug use (provided that the driver is consequently convicted in connection with that intoxication or drug use); that occurs while an authorized driver is engaged in a speed contest; where the rental transaction is based on information supplied by the renter with the intent to defraud the rental company; or that occurs while the authorized driver is engaged in a criminal act in which the vehicle usage is substantially related to the nature of the criminal activity, or is carrying persons or property for hire; or that happens during unauthorized use of the vehicle outside the United States or Canada, or while a driver other than the authorized driver is operating the vehicle. Assembly Bill 3597 § 4.

5 Assembly Bill 3597 § 2 (d).

6 Hereinafter we refer to measures that would restrict the offering of a distinct CDW product as "CDW-bundling" measures, in recognition of their practical effect.

7 These options include purchasing no insurance and assuming the full risk ("going naked"), purchasing CDW, relying on personal automobile liability insurance that extends to rented cars, and using coverage provided by a third party such as a credit card provider. Initially, credit card providers extended these benefits to holders of their "prestige" cards, such as "gold," "platinum," and corporate cards. Recently, however, American Express extended rental car damage coverage to its basic "green" card. Other credit card companies are expected to follow suit. The Record, Jan. 15, 1989, at B2, col. 2.

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some consumers in at least one state. A recent article in The New York Times regarding adoption of CDW-bundling legislation in Illinois said:

[C]ar-rental companies have raised their rates in Illinois, where the ban on collision waivers took effect Jan. 1. Hertz raised its prices by 8 percent in Illinois and by 2.5 to 5 percent elsewhere in anticipation of a decline in waiver sales to American Express's 22.1 million cardholders. Alamo and Budget have also followed Hertz's lead by raising prices in Illinois, but no other major company has raised prices across the board.⁸

Our analysis of the CDW issue comes to a different conclusion from that reached in the NAAG Guidelines.⁹ According to the Guidelines, CDW sales are troubling in part because consumers lack adequate information and they encounter deception or high pressure at the rental counter.¹⁰ Where consumers suffer from insufficient or confusing information, remedies requiring the disclosure of more or better information often may resolve the problem. Therefore, providing consumers information on CDW may be more effective

⁸ N.Y. Times, Jan. 7, 1989, § 1 at 52, col. 1.

More recently, a Hertz spokesman has indicated that due to a New York CDW-bundling law due to go into effect on April 1, 1989, "the company's rates will go up about 8%, or \$3 to \$4 per day for rentals in New York." N.Y. Daily News, Feb. 13, 1989, at 23.

⁹ The Guidelines make three alternative legislative proposals, two of which would irrevocably allocate most of the risk of damage to or loss of a rental car to the rental car company. The final legislative proposal would permit a rental car company to hold consumers liable for damages resulting from their negligence or intentional misconduct provided that the rental car company offered to sell to consumers a waiver at a regulated price related to the company's loss experience. See NAAG Guideline 3.1.

¹⁰ See generally NAAG Guideline 3.1 (c) and following discussion.

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and less costly than requiring that CDW be sold in the rental bundle regardless of whether consumers want it.¹¹

Accordingly, we believe that a legislature considering regulation of CDW ought first to determine whether information now conveniently available to consumers permits rational decisionmaking with respect to CDW. In the event that the legislature determines that currently available information is inadequate, it then ought to explore fully the efficacy of information-generating measures.¹² On the other hand, if consumers are encountering unfair or deceptive marketing practices at some car rental counters, the most direct and efficient remedy may be law enforcement action against the offenders.

Prohibition of Security Requirements

Another provision of the Bill states that "no security or deposit for damage in any form may be required or requested by the rental company during the rental period or pending resolution of any dispute."¹³ Thus, for example, under the Bill a rental car company would be prohibited from securing the lending of an automobile worth thousands of dollars through a "hold" on a consumer's credit card account, even if the hold were to be limited to the anticipated cost of the rental and the consumer manifested informed consent. If enacted, this provision may increase the number of instances in which rental car companies are unable to obtain payment for car rentals or for damages for which the Bill

¹¹ See Beales, Craswell & Salop, "The Efficient Regulation of Consumer Information," 24 J. L. & Econ. 491 (1981).

¹² The authors of the NAAG Guidelines state that they do "not believe that this [CDW] information gap can be filled by more disclosures . . ." Comment to NAAG Guideline 3.1 (c). No explanation is offered for this belief. Nevertheless, if this conclusion is supported, traditional law enforcement efforts might be adequate to prevent deception or unfairness in the marketing of CDW. These alternatives are worth exploring in detail before concluding that mandated purchase of CDW is the proper solution to the problem of unwanted purchase of CDW.

¹³ Assembly Bill 3597 § 6.

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makes the renter responsible. Rental car companies may then have no recourse but to increase rental rates to cover any increase in unpaid charges, effectively requiring honest and careful consumers to bear debts incurred by less scrupulous and less careful persons.¹⁴

We note for your consideration that although the NAAG Task Force expressed concern regarding certain rental car companies' practices relating to deposits, credit card holds, and the like, the NAAG Guidelines would not bar these practices generally. The approach adopted in the NAAG Guidelines, instead, tends to focus on ensuring adequate disclosure of and consumer consent to deposit, credit card account hold, and similar rental car company requirements.¹⁵ This approach, although not cost-free, entails fewer costs to consumers than would be imposed by the Bill.

Conclusion

It is not clear that the Bill would provide net benefits to consumers. We hope you will take into account the prospect that the changes in liability for damaged or stolen rental vehicles, i.e., the mandatory "bundling" of CDW into the rental car rates, could mean, on balance, higher rental prices for consumers. In addition, we suggest that you consider whether it is advisable to shift to some consumers part of the losses that may be caused by other consumers, as may result from the provisions of the Bill relating to the holding of security.

¹⁴ Further, the proscription of security-taking, insofar as it may lead some drivers to conclude that they have a lesser financial stake in avoiding all harm to rental cars, may result in reduced care by some consumers.

¹⁵ See, e.g., NAAG Guideline 3.4.

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We hope that these comments will help you in your determination of whether the Bill is likely to achieve the goal of protecting consumers and fostering a competitive environment in the car rental industry.

We appreciate the opportunity to comment.

Sincerely,



Michael Joel Bloom
Director
New York Regional Office