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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
DALLAS REGIONAL OFFICE

COMMISSION AUTHORIZED

V890041

Office of the Regional Director

March 27, 1989

The Honorable Gwyn Shea
Texas State House of Representatives
State of Texas
P.O. Box 2910
Austin, Texas 78768-2910

Dear Ms. Shea:

The staff of the Federal Trade Commission is pleased to have the opportunity to respond to your request for comment on Texas House Bill 476 ("the Bill"), which is currently pending before the Texas House of Representatives.¹ We are providing these remarks in response to your letter of March 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 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 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

¹ These comments are the views of the staff of the Dallas 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.

Act, the Commission has gained considerable experience in analyzing the market 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 appears to be designed to prohibit the offering

³ Letter from Federal Trade Commission (Commissioner Strenio not joining) to Robert T. Stephan, Attorney General, Kansas (February 24, 1989). A copy is attached. The preliminarily approved Guidelines were adopted with revisions by the Attorneys General at their March meeting.

⁴ Section 4(a) provides that an "authorized driver" -- defined in Section 3(6) as "(A) the person to whom a private passenger automobile is rented; (B) the spouse of a person renting a private passenger automobile if the spouse is a licensed driver and meets the rental company's minimum age requirements; (C) the employer or coworker of a person renting the private passenger automobile if the employer or coworker is engaged in business activity with the person to whom the automobile is rented and is a licensed driver and satisfies the rental company's minimum age requirements; (D) a person who operates a rented private passenger automobile during an emergency or while parking motor vehicles at a commercial establishment; or (E) a person who is expressly listed as an authorized driver by the rental company on the rental agreement" -- may be held liable for damage or loss: caused intentionally by an authorized driver or resulting from an authorized driver's wilful and wanton misconduct; arising out of an authorized driver's legal intoxication or illegal drug use (as defined or determined under the law of the state in which the damage

(continued...)

of 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

⁴(...continued)

occurred); 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; 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; where the vehicle is used to transport persons or property for hire; or that occurs during unauthorized use of the vehicle outside the United States or Canada. House Bill 476 § 4(a).

Our reading of the Bill leaves us uncertain whether the limitation of liability in Section 4(a) applies to an unauthorized driver or to a renter who permits an unauthorized person to drive the vehicle. The legislature may wish to adopt appropriate clarifying amendments.

⁵ According to Section 2 of the Bill, the purpose of this Bill "is to prohibit rental companies from imposing liability on persons who rent automobiles subject to certain stated exceptions and to prohibit the sale of collision damage waiver in connection with private passenger automobile rental agreements for a period of 30 days or less." House Bill 476 § 2. Although the Bill does not specifically articulate a ban on the sale of CDW, it appears that the effect of the Bill would be to prohibit such sales.

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.

choice among CDW-like coverages of rental cars.⁷ As a result, some consumers will have to bear greater costs, primarily in the form of higher base prices, than they otherwise might incur, to cover the accident and theft losses statutorily shifted to the rental car companies. Recent news reports suggest that this may be happening to 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

Some believe that CDW sales are troubling in part because consumers lack adequate information and they encounter deception or high pressure at the rental counter.⁹ However, where consumers suffer from insufficient or confusing information, remedies requiring the disclosure of more or better information often may resolve the problem. Providing consumers information on CDW may be more effective and less costly than requiring that

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.

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

CDW be sold in the rental bundle regardless of whether consumers want it.¹⁰

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.¹¹ 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 "[s]ecurity or a deposit for damage in any form may not be required or requested by the rental company during the rental period or pending resolution of any dispute."¹² Thus, for example, under the Bill a rental car company would be prohibited from securing the

¹⁰ See Beales, Craswell & Salop, "The Efficient Regulation of Consumer Information," 24 J. of L. & Econ. 491 (1981).

Our analysis of the CDW issue comes to a different conclusion than that reached in the NAAG Guidelines. 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.

¹¹ 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.

¹² House Bill 476 § 4(c).

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 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 damages for which the Bill 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.¹³

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.

¹³ 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.

Significantly, 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 deposits, credit card account holds, and similar rental car company requirements. See, *e.g.*, NAAG Guideline 3.4. This approach, although not cost-free, entails fewer costs to consumers than would be imposed by the Bill.

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,

A handwritten signature in cursive script, appearing to read "Thomas B. Carter".

Thomas B. Carter
Director
Dallas Regional Office

Attachment