



601 Market Street  
Suite 570  
San Francisco, CA 94102  
415. 995. 1220

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
SAN FRANCISCO REGIONAL OFFICE

V890053

**COMMISSION AUTHORIZED**

March 27, 1989

The Honorable Peter von Reichbauer  
Washington State Senate  
Financial Institutions and  
Insurance Committee  
408 John A. Cherberg Building  
Olympia, Washington 98504

Dear Senator von Reichbauer:

The staff of the Federal Trade Commission is pleased to have the opportunity to respond to your request for comment on House Bill No. 1068 ("the Bill"), which is currently pending before the State Senate Financial Institutions and Insurance Committee.<sup>1</sup> We are providing these remarks in response to your letter of March 2, 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 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 deposit or other security for damage to the vehicle. 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 the public at large.

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

---

<sup>1</sup> These comments are the views of the staff of the San Francisco 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.

<sup>2</sup> See 15. U.S.C. § 41 et seq.



The Honorable Peter von Reichbauer  
March 27, 1989

-2-

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 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 and 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").<sup>3</sup> The allocation of liability portion of the Bill is very similar to portions of the NAAG Guidelines.

#### Lessor Liability

The Bill would make significant changes in the allocation of the risk that a rental vehicle will be damaged. 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,<sup>4</sup> and

---

<sup>3</sup> 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 preliminarily approved Guidelines were adopted with revisions by the Attorneys General at their March meeting.

<sup>4</sup> Section 3, subsection 1 provides that an "authorized driver"--defined as the person to whom the vehicle is rented and, if a licensed driver and satisfying the company's minimum age requirement: (a) the spouse of such person; (b) the renter's employer, employee, or coworker if engaged in business activity with the renter; and (c) a person expressly listed by the rental company on the rental agreement as an authorized driver--may be held liable for damage or loss: (a) caused intentionally by an authorized driver or as a result of his or her willful and wanton misconduct; (b) arising from an authorized driver's operation of the vehicle while illegally intoxicated or under the influence of an illegal drug; (c) caused while the authorized driver is engaged in a speed contest; (d) where the rental transaction is based on false or incomplete information supplied by the renter with the intent to defraud the rental company; (e) arising from the use the vehicle while engaging in a criminal act in which the vehicle usage is substantially related to the criminal activity; or (f) arising from the unauthorized use of the vehicle outside the United States or Canada. Amended House Bill 1068 § 3(1).

prohibits the offering of a separate Collision Damage Waiver ("CDW").<sup>5</sup> 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.<sup>6</sup> Any legislatively imposed bundling requirement will restrict consumer choice among CDW-like coverages of rental cars.<sup>7</sup> 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 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.<sup>8</sup>

Our analysis of the CDW issue comes to a different

---

<sup>5</sup> Amended House Bill 1068 § 3(5).

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

conclusion from that reached in the NAAG Guidelines.<sup>9</sup> 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.<sup>10</sup> 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 CDW be sold in the rental bundle regardless of whether consumers want it.<sup>11</sup>

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.<sup>12</sup> For example, the Washington State Senate has voted to adopt a bill, substitute Bill 5148, aimed at increasing consumers' information concerning rental car liability and CDW information. This bill would require clear and conspicuous disclosure of renter's liability and CDW availability in separate attachments to rental contracts and in signs posted at the place where the renter signs the rental agreement. On the

---

<sup>9</sup> 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.

<sup>10</sup> See generally NAAG Guideline 3.1 (c) and following discussion.

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

<sup>12</sup> 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.

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 "[t]he rental company may not request or require a deposit or other security for damage to the vehicle during the rental period or pending resolution of any dispute."<sup>13</sup> 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 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.<sup>14</sup>

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 deposits, credit card account holds, and similar rental car company requirements.<sup>15</sup> 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 rental vehicles, i.e., the mandatory "bundling" of CDW into the rental car rates, could mean, on balance, higher rental prices for consumers. In

---

<sup>13</sup> House Bill 1068 § 3(4).

<sup>14</sup> 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.

<sup>15</sup> See, e.g., NAAG Guideline 3.4.

The Honorable Peter von Reichbauer  
March 27, 1989

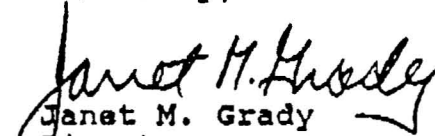
-6-

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.

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,

  
Janet M. Grady  
Director

San Francisco Regional Office

Enclosures