



Room 1000  
1718 Peachtree St., N.W.  
Atlanta, Georgia 30367  
(404) 347-4836

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
ATLANTA REGIONAL OFFICE

V890054

COMMISSION AUTHORIZED

April 17, 1989

The Honorable Elaine Gordon  
Florida House of Representatives  
432 House Office Building  
Tallahassee, Florida 32399-1300

Dear Representative Gordon:

The staff of the Federal Trade Commission is pleased to have the opportunity to respond to your request for comment on House Bill 770 ("the Bill"), currently pending before the Florida legislature.<sup>1</sup> We are providing these remarks in response to your letter of March 31, 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, if enacted, limit the methods automobile rental companies may employ in calculating base rental charges and in advertising those prices. In addition, the Bill would alter the current methods of allocating the costs and risks of damage to or theft of a rental vehicle. 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.<sup>2</sup> In fulfilling this mandate, the staff of

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<sup>1</sup> These comments are the views of the staff of the Atlanta 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 Federal Trade Commission often submits comments, upon request, to federal, state, and local governmental bodies to help them 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 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 advertising, pricing, and the allocation of liability portions of the Bill are very similar to portions of these NAAG Guidelines.

#### Pricing and Advertising Restrictions

The Bill would require that any fee that consumers generally must pay be reflected in the total advertised price rather than being stated separately.<sup>4</sup> This requirement, referred to as "bundling" apparently is directed toward preventing car rental firms from advertising base rental rates that do not reflect certain charges, surcharges, and airport access fees, that some consumers, at least in certain locations,

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<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> "A person who rents a private passenger motor vehicle to another for 30 continuous days or less may advertise, quote, or charge only a rental rate that includes the entire rental amount except taxes and a mileage charge, if any, which a renter must pay to rent the vehicle for the period of time to which the rental rate applies . . . . A person may not charge any additional fee as a condition of renting the vehicle, including required fuel or airport surcharges, or any fee for transporting the renter to the location where the vehicle will be delivered to him. However, a renter may be separately charged for an item or service provided in connection with a transaction if he can avoid the charge by choosing not to obtain or use the optional item or service, including any optional insurance . . . ." House Bill 770 § 3(3).

must pay. We agree that it may be an unfair or deceptive act or practice for a company to fail to disclose unavoidable charges prior to taking reservations for rental cars. The bundling approach adopted by the Bill, however, may be unnecessary to protect consumers from deception or unfairness. For instance, it is not clear why an advertisement stating the availability of a vehicle for "\$25 per day plus a \$12 fuel charge" -- which apparently would be forbidden if the Bill were enacted -- is more deceptive or unfair than an advertisement stating the rate as "\$37 for first day; \$25 for each succeeding day" -- which apparently would be acceptable. Nor is it clear that consumers would be misled as to the total cost of the car and fuel by either advertisement. It is, of course, desirable that consumers have material information on rental prices before they sign a rental agreement. They can obtain that information from a variety of sources, however, including advertising, conversations when reserving a rental vehicle, and from the company representative at the rental counter.

Adoption of the requirement that any mandatory fee must be included in the total advertised price may reduce consumer welfare in several ways. This requirement may increase the cost of advertisements containing price information because the bundling requirement, coupled with differences in charges assessed by franchisees and in surcharges imposed by various airports, may make it difficult for some car rental companies to build these fees into nationally advertisable rates.<sup>5</sup> This may result in reduced price promotion, and lead to higher prices. Because numerous economic studies have demonstrated that price advertising enhances competition and lowers prices,<sup>6</sup> we suggest

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<sup>5</sup> The NAAG Car Rental Task Force recognized this possibility. National Association of Attorneys General, Task Force on Car Rental Industry Advertising and Business Practices, Preliminary Report (June 19, 1988) at 8.

<sup>6</sup> See, e.g., Schroeter et al., Advertising and Competition in Routine Legal Service Markets: An Empirical Investigation, 36 J. Indus. Econ. 49 (1987); Cleveland Regional Office and Bureau of Economics, Federal Trade Commission, Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising, Federal Trade Commission Staff Report (1984); Kwoka, Advertising and Price and Quality of Optometric Services, 74 Am. Econ. Rev. 211 (1984); Cady, An Estimate of the Price Effects of Restrictions on Drug Price Advertising, 14 Econ. Inquiry 493 (1976); Benham, The Effects of Advertising on the Price of Eyeglasses, 15 J. L. &

caution in imposing any requirements that may discourage price advertising.<sup>7</sup>

### Lessor Liability

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Depending on the terms of the rental agreement, Florida rental car consumers presently may be held responsible for all or a substantial part of any damage to or loss of the rental vehicle. However, for a separate fee the consumer ordinarily has the option of purchasing a Collision Damage Waiver ("CDW")<sup>8</sup> under which the rental company agrees to assume the risk of loss or damage to the vehicle.<sup>9</sup> 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 responsibility for losses in excess of \$200 in most situations.<sup>10</sup> In practical effect, a \$200

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Econ 337 (1972).

7 Besides potentially discouraging price advertising, enactment of the bill may lead to consumers' rentals at some locations subsidizing rentals at other locations. For example, if rental agencies are forced to bundle airport access fees into their national rental fee, customers renting automobiles in locations that have no such fees will, in effect, subsidize those renting automobiles in locations that have fees.

8 Many corporate and government discount rates include this waiver in their base rental fees.

9 The form of these arrangements may vary among rental firms. For example, under the terms of Avis' Florida rental agreement, theft loss is covered as part of the base rental fee, independent of whether the renter purchases its CDW. Hertz, on the other hand, offers a so-called "Loss Damage Waiver" rather than a CDW. This waiver covers loss, damage, and theft, none of which are covered in the base rental price. As used herein, the term CDW may be read to embrace either type of waiver.

10 The Bill provides that an "authorized driver" -- defined as "the person to whom the vehicle is rented; his spouse who is a licensed driver and satisfies the rental company's minimum age requirement; his employer, employee, or coworker who is engaged in business activity with him, is a licensed driver, and satisfies the rental company's minimum age requirement; a person who operates the vehicle during an emergency or while

limitation on consumer liability for damage and theft is tantamount to mandating that car rental companies bundle CDW coverage into every car rental transaction. Any legislatively imposed bundling requirement will restrict consumer choice among CDW-like coverages of rental cars.<sup>11</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 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

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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 liable in a limited number of situations for damage or loss: (1) caused intentionally or as a result of the authorized driver's intentional misconduct; (2) arising out of the authorized driver's operation of the vehicle while under the influence of alcohol or drugs; (3) caused while the authorized driver is engaged in a speed contest; (4) if the rental transaction is based on fraudulent or false information supplied by the person to whom the vehicle is rented; (5) arising out of the use of the vehicle while committing or otherwise involved in the commission of a felony; (6) arising out of the use of the vehicle to carry persons or property for hire or to push or tow anything; (7) occurring while the vehicle is operated with the authorized driver's consent, by a person other than an authorized driver; or (8) arising out of the use of the vehicle outside the continental United States and such use is not authorized by the rental agreement. House Bill 770 §§ 3(1) & (2).

<sup>11</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.

Illinois.... 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>12</sup>

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Our analysis of the CDW issue comes to a different conclusion from that reached in the NAAG Guidelines.<sup>13</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>14</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>15</sup>

Accordingly, we believe that a legislature considering whether to regulate the risks associated with damage to, or the

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<sup>12</sup> The 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." The N.Y. Daily News, Feb. 13, 1989, at 23. Budget, according to its spokesman, has already raised rates 8 to 10% in Illinois and plans an increase of just under 10% in New York. Alamo, which does not operate in New York, has put a 20% rate increase into effect in Illinois. The N.Y. Times, April 2, 1989, § 5 at 3.

<sup>13</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>14</sup> See generally NAAG Guideline 3.1 (c) and following discussion.

<sup>15</sup> See Beales, Craswell & Salop, "The Efficient Regulation of Consumer Information," 24 J. L. & Econ. 491 (1981).

theft or loss of, a rental automobile 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>16</sup> 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.

### Conclusion

It is not clear that the Bill, if enacted, would provide net benefits to automobile rental consumers. We suggest that you consider the potentially adverse effects of the requirement that some charges be bundled into base automobile rental fees. We also hope you will take into account the prospect that the changes in liability for damaged or stolen rental vehicles could mean, on balance, higher rental prices for consumers.

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,



Paul K. Davis  
Director  
Atlanta Regional Office

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<sup>16</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.