



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

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
ATLANTA REGIONAL OFFICE

COMMISSION AUTHORIZED

November 20, 1989

The Honorable Thomas F. Allgood
Majority Leader
Georgia State Senate
Post Office Box 1523
Augusta, Georgia 30904

Dear Senator Allgood:

The staff of the Federal Trade Commission is pleased to have the opportunity to respond to your August 15, 1989, letter requesting comments on both Georgia House Bill 565 ("H.B. 565") and the proposed substitute for H.B. 565 ("the substitute bill").¹ We understand that H.B. 565 has passed the House and that the Senate will be considering it, along with the proposed substitute, during the next legislative session. Our comments address the implications for consumers of the two bills. We would be pleased to offer additional assistance on any particular amendments that are offered.

Both bills concern the costs and risks associated with damage to a rental vehicle and with the sale of so-called collision damage waivers ("CDW"). Under these arrangements, vehicle rental companies, for a fee, agree to hold the consumer harmless for damage to a rental vehicle. H.B. 565 would require the rental companies to assume the liability for damage to the vehicle in most situations, thus effectively mandating the purchase of CDW. It would also prohibit the companies from requiring renters to put up any security or deposit for those damages for which the renter remains responsible. We are concerned that these aspects of the bill might result in increased costs to consumers who rent vehicles without providing significant benefits to the majority of renters or to the public at large.

The substitute bill would prohibit the rental companies from offering a CDW unless a required disclosure -- the main provision of which advises the consumer to determine whether his personal automobile insurance policy affords him coverage for damage to a rental vehicle -- appears on the face of the rental agreement.

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

If there is a problem with the sale of CDW, we believe that, in general, the disclosure approach taken by the substitute bill is more likely to serve the interests of consumers than that taken by H.B. 565.

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 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 impact of various private and governmental restraints on competition and the costs and benefits to consumers of these restraints, including matters involving the car rental industry. The Commission commented on both the Preliminary and Final Guidelines prepared by the National Association of Attorneys General's ("NAAG") Task Force on Car Rental Industry Advertising and Practices.³ In 1989, the Commission has brought enforcement actions against two car rental companies, Alamo and General, for failing to disclose certain mandatory charges to consumers seeking to obtain price information.⁴ In addition, the Commission staff has sent comments to executives and legislators considering CDW regulation in Illinois, New York, New Jersey,

² See 15 U.S.C. § 41 et seq.

³ See, Letter from the Federal Trade Commission (Commissioner Strenio not joining) to Art Weiss, Deputy Attorney General, Kansas, (November 4, 1988) commenting on National Association of Attorneys General, Draft Guidelines of the Task Force on Car Rental Industry, Advertising and Practices (1988); and Letter from the Federal Trade Commission (Commissioner Strenio not joining) to Robert T. Stephan, Attorney General, Kansas (February 24, 1989), commenting on National Association of Attorneys General, Final Guidelines of the Task Force on Car Rental Industry Advertising and Practices (1988) ("NAAG Guidelines.") The allocation of liability portion of H.B. 565 is very similar to portions of these NAAG Guidelines.

⁴ In re Alamo Rent-A-Car, Antitrust & Trade Reg. Rep. (BNA) No. 1397, at 13 (January 5, 1989); In re General Rent-A-Car Systems, Antitrust & Trade Reg. Rep. (BNA) No. 1407, at 420 (March 16, 1989).

Texas, Washington and Florida.⁵ Finally, in 1989, the Commission published a brochure entitled "Car Rental Guide," to help consumers evaluate rental car policies.

H.B. 565

Depending on the terms of the rental agreement, consumers who currently rent vehicles in Georgia may be held responsible for all or a substantial part of any damage to that vehicle. However, for a separate fee, the consumer ordinarily has the option of purchasing a CDW under which the rental company agrees to assume some or all of the risk of damage to the vehicle.

Whether it is in a consumer's interest to purchase a CDW depends on a number of factors. These include the circumstances under which he is responsible for damage to the rental vehicle, his potential liability if he elects not to purchase the CDW, and the amount of comparable coverage he may already have under his personal automobile insurance policy, by paying with a particular credit card, or by belonging to a motor or travel club or some business or professional organization. It may be that consumers confronted with a choice about CDW lack sufficient information about the risks and alternatives involved. If the Georgia legislature finds that a significant information problem exists, then government regulation designed to provide adequate information to consumers may be appropriate.

Lessor Liability

H.B. 565 requires rental companies, as an integral (and therefore not separately billable) part of every rental transaction, to assume all responsibility for damage to the

⁵ See, Letter from C. Steven Baker, Director, Chicago Regional Office, to the Honorable James R. Thompson, Governor of Illinois (Dec. 22, 1988); Letters from Michael J. Bloom, Director, New York Regional Office, to the Honorable Peter M. Sullivan, New York Assembly (March 16, 1989) and the Honorable Wayne R. Bryant, The Assembly, State of New Jersey (March 16, 1989); Letter from Thomas B. Carter, Director, Dallas Regional Office, to the Honorable Gwyn Shea, Texas State House of Representatives (March 27, 1989); Letter from Janet M. Grady, Director, San Francisco Regional Office, to the Honorable Peter Von Reichbauer, Washington State Senate (March 27, 1989); and Letter from Paul K. Davis, Director, Atlanta Regional Office, to the Honorable Elaine Gordon, Florida House of Representatives (April 17, 1989).

vehicle in most situations.⁶ This requirement, which effectively would mandate that consumers purchase CDW coverage with every rental transaction, would restrict consumer choice among CDW-like coverages.⁷ As a result, some consumers will incur greater costs, primarily in the form of higher base prices, than they otherwise would to cover the accident losses statutorily shifted

⁶ The Bill provides that 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 wilful or wanton misconduct; (2) arising out of the authorized driver's operation of the vehicle while illegally intoxicated or under the influence of any illegal drug; (3) caused while the authorized driver is engaged in any illegal speed contest or drag racing; (4) based on information supplied by the renter with the intent to defraud the company; (5) arising out of the use of the vehicle while committing or otherwise engaged in a criminal act in which the use of the vehicle is substantially related to the nature of the criminal activity; (6) arising out of the use of the vehicle to carry persons or property for hire; (7) arising out of the use of the vehicle outside the United States or Canada and such use is not authorized by the rental agreement. An authorized driver is defined as "the person to whom the vehicle is rented or leased; the spouse of such person if the spouse is a licensed driver and satisfies the rental company's minimum age requirement; the person's employer or a co-worker of the person if the employer or co-worker is engaged in business activity with the person, is a licensed driver, and satisfies the rental company's minimum age requirements; any person who operates the vehicle during an emergency situation; any person who is employed to park vehicles at a commercial establishment; or any person who is expressly listed by the rental company on the rental agreement and authorized to operate the vehicle. House Bill 565 §§ 10-1-731 & 732.

⁷ These options include refusing to purchase insurance and assuming the full risk ("going naked"), purchasing CDW, relying on personal automobile liability insurance that extends to rented cars, or using coverage provided by a third party such as a credit card company, a travel club, or a professional organization. Initially, credit card providers extended these benefits to holders of their "prestige" cards, such as "gold," "platinum," and corporate cards. However, American Express has extended rental car damage coverage to its basic "green" card. The Record, Jan. 15, 1989, at B2, col. 2. Visa and Master Charge, on the other hand, have not extended coverage to their basic cardholders.

to the rental companies.⁸ A recent article in Business Week regarding adoption of CDW-bundling legislation in Illinois appears to support this point:

As legislators in Florida and other states toil over their bills, they will look closely at what has happened in Illinois and New York, where the CDW is for the most part gone. In Illinois, Hertz and Budget Rent a Car Corp. say that since the CDW was banned, they have raised their rates around 8%. Weekend rental rates in Hertz's Chicago locations have gone up about 12%. Hertz, Avis, and Budget say they need higher prices to cover the costs of insurance, capital improvements, and interest payments.⁹

According to the NAAG Guidelines, consumers lack adequate information about CDW and they encounter deceptive or high pressure sales tactics designed to sell CDW at the rental counter.¹⁰ However, where consumers suffer from insufficient or

⁸ Many consumers who would have declined purchasing CDW would be injured because they would be required, in essence, to pay for coverage twice: first for the coverage provided by their own insurance, which reflects their own driving records, and also for rental car company-provided insurance, which pools good and bad drivers. Moreover, it is possible that in response to this change some consumers would become less careful with rental vehicles. If this were to happen, rental companies would experience higher repair costs and an increase in the proportion of vehicles under repair at any given time. Increased costs are likely to be passed through to consumers as higher rates. For a theoretical treatment of this issue, see Brown, *Toward an Economic Theory of Liability*, 2 J. of Legal Stud. 323 (1973); Diamond, *Single Activity Accidents*, 3 J. of Legal Stud. 107 (1974); and Shavell, *Strict Liability vs. Negligence*, 9 J. of Legal Stud. 1 (1980).

⁹ Business Week, May 1, 1989, p. 97. Alamo has put a 20% rate increase into effect in Illinois. The N.Y. Times, April 2, 1989, § 5 at 3.

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

(continued...)

confusing information, remedies requiring the disclosure of more or better information often may resolve the problem without the need for more intrusive regulatory action. In addition, providing consumers information on CDW may be more effective and less costly than requiring that CDW be purchased whether or not consumers want it.¹¹

Accordingly, we believe that a legislature considering whether to regulate the risks associated with damage to a rental vehicle should first determine whether information now conveniently available to consumers permits informed decisionmaking with respect to CDW. In the event that the Senate determines that currently available information is inadequate, we suggest that it then explore the efficacy of information disclosure measures.¹² And, if consumers are encountering unfair or deceptive marketing practices at some car rental counters, the most effective remedy may be law enforcement action against the offenders.

Prohibition of Security Requirements

Another provision of H.B. 565 states that "no security or deposit for damages in any form may be requested or required 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 rental of an automobile worth thousands of dollars through a "hold" on a consumer's credit card account, even if the consumer agreed and the hold were limited in time and amount. If enacted, this

¹⁰(...continued)
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 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 § ID-1-734.

provision may increase the number of instances in which rental companies are unable to obtain payment for damages for which the renter is responsible. The costs associated with any increase in unpaid charges would likely be reflected in rental rates, effectively requiring honest and careful consumers to bear costs incurred by less careful and scrupulous consumers.¹⁴

The Substitute Bill

The substitute bill would prohibit car rental companies from offering a CDW as part of the rental agreement unless the following disclosure appears on the agreement's face:

Notice: This contract offers, for an additional charge, a collision damage waiver to cover your responsibility for damage to the vehicle. Before deciding whether to purchase the collision damage waiver, you may wish to determine whether your own vehicle insurance affords you coverage for damage to the rental vehicle and the amount of the deductible under your own insurance coverage. The purchase of this collision damage waiver is not mandatory and may be waived.

Because, in our view, mandating that rental companies include CDW coverage in every rental transaction restricts consumer choice among CDW and its alternatives, we believe the disclosure approach of the substitute bill is more likely to benefit consumers than the approach taken by H.B. 565.

Before voting to enact the particular disclosure contained in the substitute bill, however, (or any others that might be considered), we suggest that the Senate weigh the benefits of any information it may require to be disclosed against the costs that

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 vehicles, may result in reduced care by some consumers.

Significantly, although the NAAG Task Force expressed concern regarding certain rental 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 H.B. 565.

mandatory disclosure of that information may impose on the companies.¹⁵ The Senate may want to consider altering the disclosure proposed by the substitute bill to mention that CDW coverage may also be provided by payment with certain credit cards or membership in a club or professional organization. This would reflect a more complete statement of alternatives to a CDW purchase. For example, the disclosure contained in the substitute bill could be revised to read:

Notice: This contract offers, for an additional charge, an opportunity to shift responsibility for damage you may do to the vehicle from you to the rental company (collision damage waiver). Before purchasing this option, you may want to determine whether your own vehicle insurance, credit card company, or any travel or professional organization to which you belong, affords you coverage for damage to a rental vehicle and the amount of the deductible applicable to such coverage. The purchase of this option is not mandatory and may be waived.

Conclusion

The substitute bill takes what we regard as the preferred, information disclosure approach to the CDW issue. The "bundling" option represented by H.B. 565 would restrict consumer choice among CDW alternatives and could result, on balance, in higher rental prices. 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 bill's provisions relating to the holding of security.

¹⁵ The cost to the rental companies of disseminating any required information will depend on the timing and medium specified: point of purchase, time of reservation, or advertising. Careful consideration of all relevant costs and benefits will help avoid any tendency to force information about the characteristics of CDW into any one medium. For example, advertising is often not the most efficient or effective vehicle for disclosing detailed and comprehensive information. One goal of advertising in the rental car context is to impart general information and to signal consumers to make further inquiry. Subjecting car rental companies to detailed disclosure requirements in advertisements may clutter those advertisements, thereby making them a less effective medium. Additionally, advertisers may respond to such disclosure requirements by simply restricting the amount of advertising in which they engage, which in turn will also reduce the amount of information they provide to consumers.

The Honorable Thomas F. Allgood -- Page 9

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

We appreciate this opportunity to present our views. If you have any questions, please feel free to contact us again.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul K. Davis". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke.

Paul K. Davis
Director
Atlanta Regional Office