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## Consumer News

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## Blacklisting Bad Drivers

People with bad driving records will now find it harder to rent cars. Car rental companies, including Hertz Corp., Avis Inc., Budget Rent A Car Corp., and National Car Rental Systems Inc., have started checking the driving records of potential customers by using electronic links to government motor-vehicle records. The screening takes a few seconds and has resulted in the rejection of six to ten percent of the people who want to rent cars.

The rental car industry started screening customers in an effort to reduce both damage to their cars and lawsuits brought by people who are injured by drivers of rented cars. Under vicarious liability laws in New York and other states, the rental company remains financially responsible for accidents that kill or injure third parties, even if the renter caused the accident. According to car rental companies, these laws have led to tremendous liability costs. For example, in 1991 Hertz paid liability claims of \$24 million in the New York City area alone, said Hertz spokeswoman Annalise McKean-Marcus.

Car rental companies also point to public safety concerns as a reason for the computer checks. "Not only do we limit our liability costs," said McKean-Marcus "but this is a sound public policy that reduces the number of high-risk drivers on the road."

Hertz began screening drivers in New York City in 1992. Other companies have followed suit, in part out of

fear of renting to the people whom Hertz considered unsafe. Similar systems are now in use in Florida, Ohio, and Maryland, and are expected to spread soon to California, Pennsylvania, and the District of Columbia. Within five years, the rental companies will have instant access to check the driving records of nearly all the country's 167 million drivers.

The screening process begins when a potential customer presents a driver's license at the car rental counter. The rental agent enters the driver's name, date of birth, and driver's license number into a computer connected to TML Information Services, whose computer is linked with state motor-vehicle departments. TML gets the driver's record from the appropriate state database, and analyzes it according to standards set by the rental company. Within six seconds, the rental agent gets a "rent" or "do not rent" message. The agent does not receive any details about the driver's record, and drivers who complain are directed to the state motor vehicle department. Some of the most common reasons why drivers are disqualified include:

- having a suspended, revoked, expired, or otherwise invalid driver's license;
- having been convicted of drunk driving in the past 72 months;
- being at fault in two or more accidents in the past 72 months; and
- having three or more convictions for moving violations within the past 36 months.

Consumer groups criticize the screening process for three reasons. First, they argue that the screening should take place when the reservation is made, not when the customer arrives at the rental counter to pick up the car. Rental companies reply that the expense, which is between \$2.41 and \$5.00 per screening, prohibits them from doing the screening when the reservations are made. In addition, one in three people who reserve

a car never show, and companies cannot confirm if a customer is providing a legitimate driver's license number over the phone. For these reasons, an agent would have to repeat any advance check at the time of rental. Further, the rental companies warn customers about the screening process when they make reservations. "One would assume they'd know whether they have a clean driving record," said Michael Olsen, a spokesman for National.

Consumer groups are also concerned about the potential invasion of privacy involved in a records check. Car rental companies argue that because most state driving records are public information, this concern is not valid. Driving records have long been available to insurance companies, which routinely check the driving record of every new applicant seeking an automobile policy and of policyholders who are renewing policies or are involved in an accident. In addition, according to Olsen, the participating states have concluded that making individual driving records available contributes to public safety.

The final concern of consumer groups is the blacklisting process used by Hertz and National. At these companies, rejected drivers are placed on internal "do-not-rent lists." These lists prevent them from renting cars anywhere in the country. Critics of the lists charge that they can be abused and are subject to error. Because the lists are not automatically updated as driving records change, customers may have problems getting their names off a list once their driving records are cleared.

The rental companies counter that they would be remiss to let a driver rejected in one state rent a car in another. "If we don't want to rent to someone in one state, and we know they're high risk, we cannot in good conscience rent to them in another state," a Hertz spokesman says.

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Consumer News is prepared by the News Editor, Melissa A. Murphy. A limited list of materials used in preparing the stories appearing here is available for a \$5 compilation charge. Please be specific (include volume number, issue number, and story title) when ordering. Send requests to: News Editor, *Loyola Consumer Law Reporter*, One East Pearson Street, Chicago, Illinois 60611.

Regardless of consumer concerns, it is unlikely that the screening system will be eliminated. The rejection of one in every 13 customers has cut accident rates nearly in half in the test states, and rental companies are saving money on damage repairs. The companies expect to see the biggest payoff in three or four years, when costs for lost or settled lawsuits are reduced. ❖

## **FTC Attacks False Weight Loss Claims**

The Federal Trade Commission (FTC) has launched an investigation of a dozen major diet organizations in an effort to attack false weight loss claims and other misleading advertising. Some of the companies under investigation include Diet Center Inc., Nutri-System Inc., Jenny Craig Inc., Physicians Weight Loss Centers of America Inc., and Weight Watchers Inc.

The FTC has alleged that the five companies failed to provide evidence in their advertisements to verify claims of dramatic weight loss or that customers would be able to keep off weight in the long-term. According to the FTC, consumer testimonials and program comparisons have been misleading, pricing has been deceptive, and rates of weight loss have not been monitored.

In June 1993, prior to the FTC's announcement, Consumer Reports magazine published the first major survey of the nation's leading weight-loss programs. In researching the story, the non-profit group collected information from 95,000 readers who had followed weight-loss programs in the past three years. This number included 19,000 who had used commercial diet programs. Most of the respondents said they lost weight using one of the planned programs, but the "great majority of them gain back most of that weight within two years," the magazine said.

A goal of the FTC investigation is

to set a standard for evidence that would be required to support various weight maintenance claims. For example, the FTC would require claims of long-term weight loss to be based on dieters who have been monitored for at least two years. In addition, the FTC may require that maintenance success claims be accompanied by clear disclosures, including the statement, "For many dieters, weight loss is temporary."

"The bottom line is that losing weight is hard work," said Christian White of the FTC's bureau of consumer protection. The agency wants to make sure that weight-loss promotions acknowledge this fact, White said.

Three of the five major programs under investigation have settled government charges by signing consent decrees: Diet Center Inc., Physicians Weight Loss Centers Inc., and Nutri-System Inc. The other two, Jenny Craig Inc. and Weight Watchers Inc., argue that they are already in full compliance with FTC requirements. "The guilty have signed," said Charles Berger, chairman of Weight Watchers. "And since Weight Watchers has never done anything wrong we will not sign a consent order." Said Ronald Gerevas, president and chief executive officer of Jenny Craig, "We look forward to debating this issue in court."

Diet companies point out that the settlements between the FTC and Nutri-System, Physicians Weight Loss Centers, and Diet Center are not admissions of guilt, but instead are agreements to avoid certain advertising claims. Nutri-System chairman and chief executive officer Michael Heisley said that his company signed the settlement in order to show its customers that it is committed to ensuring accountability in the weight control industry.

Essentially, the settlements require companies to engage in truthful advertising. The companies must also provide evidence to support any advertised claims. Dramatic success stories would have to be accompanied by

a statement of average success rates or by a statement that the experience is not typical, said the FTC's White. ❖

## **Electronic Insurance Claim Filing Sparks Privacy Concerns**

Through electronic claim filing, the U.S. health-care industry and insurance companies are joining the computer revolution to cut down on vast amounts of paperwork. If successful, computerization could save as much as \$42 billion a year in administrative costs — half the cost of President Clinton's proposed health-care reform. Electronic filing could also save millions of hours spent in filling out forms, checking eligibility, and processing claims for payment.

By the end of next year, insurers, health-care providers, and employers are set to computerize and standardize nearly all health-care transactions. The computers of the largest insurers, providers, and firms will handle enrollment, eligibility claims, bill paying, and other transactions.

To achieve this goal, the program participants have decided to use standard identifying numbers: the Social Security number for individuals and the tax identification number for providers. A separate eleven-digit number would be used to identify companies.

This prospect raises fears that unauthorized people may discover ways to access, read, and misuse private health records stored in an electronic database. Privacy experts are concerned about the massive amount of personal information collected by insurance companies. These experts say that electronic files are more difficult to steal than paper records. However, if an intruder breaks into the computer system, the breach of confidentiality could be more serious because of the increased volume of information stored in computers.

Recognizing the problem of potential theft and tampering, the employ-

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ers, providers, and insurers that are adopting the new industry standards are urging Congress to strengthen privacy laws in order to preserve confidentiality of electronic health records, as well as impose criminal penalties on violators. The group recommends that the federal government preempt all state laws governing the confidentiality of private electronic health-care records because the state laws are often in conflict.

Privacy experts contend that use of Social Security numbers could compromise health-care confidentiality. "It's not a secure identifier," said Evan

Hendricks, editor and publisher of the Privacy Times, a biweekly newsletter on privacy issues. "If your Social Security number falls into the hands of an unscrupulous person, it can potentially ruin you financially or otherwise."

In response to these concerns, a Congressional committee is drafting legislation to protect the confidentiality of medical records. "The sensitivity of health care information can hardly be overstated," said Rep. Gary Condit, chairman of the Information Subcommittee of the Government Operations Committee, which is draft-

ing the legislation.

Congress will also be asked to resolve other related issues, such as who will receive access to government health records and whether one's Social Security number should also serve as a health identification number.

"We think that use of the Social Security number is a critical issue," said Marc Rotenberg, director of Computer Professionals for Social Responsibility, a non-profit organization. "If you use the Social Security number as the patient identifier, you take a major step toward establishing a national identification system." ♦

## Announcements

### Fast-Food Chain Bans Smoking

Non-smokers won a major victory in the battle over smoking in public places recently when McDonald's Corp., the world's largest restaurant chain, announced a smoking ban in its 1,400 company-owned restaurants.

Until now, most fast-food restaurants had continued to allow smoking. Exceptions included Arby's Inc. and Dairy Queen Inc.

However, recent threats of litigation and governmental action may have helped put pressure on fast-food restaurants. Last year, the Environmental Protection Agency classified secondhand smoke as a serious cancer threat. In addition, a coalition of 16 state attorneys general has been pressuring the fast-food industry to ban smoking because of the large number of children and teenagers who eat and work at the restaurants. Earlier this year, the Texas Attorney General filed lawsuits against five fast-food chains,

including McDonald's, demanding better protection for children against secondhand smoke.

### New 900 Number Rule Helps Consumers

Under a new rule of the Federal Trade Commission, 900 number services (pay-per-call services) must provide the following information to consumers:

- Information in their advertisements about the cost of the call, i.e. whether it's a flat fee or a per-minute charge.
- An introductory message ("preamble") that gives the name of the 900 number company and the call's cost. This preamble must give callers the chance to hang up without charge.
- Procedures for resolving billing disputes. Billing statements must include a local or toll-free number consumers can call with questions about 900 number charges.

For more information about the new 900 number rule, contact the Federal Trade Commission Public Reference Office at (202) 326-2222.

### Metric Measurements Required on Product Labels

A Federal Trade Commission (FTC) regulation went into effect in February requiring that companies selling soap, toilet paper, tissues, and other FTC-regulated consumer goods include metric measurements on the package label. A similar Food and Drug Administration regulation mandating metric labels on other consumer products is now under consideration.

However, experts predict the regulations will have little effect on the everyday lives of consumers, in part because inch/ounce measurements will still be listed on the label as well.