

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUFFALO REGIONAL OFFICE

In the Matter of

Assurance No.23-034

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

Avis Budget Group, Inc.,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12), General Business Law (“GBL”) Article 22-A, §§ 391-1¹ and 396-z into Respondent’s requirement of ownership of a credit card to rent a motor vehicle in New York. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent Avis Budget Group, Inc., whether acting through its respective directors, officers, employees, representatives, agents, affiliates, licensees or subsidiaries (“Respondent” or “Avis-Budget” and together with the OAG, the “Parties”).

OAG’s FINDINGS

Respondent

1. Respondent Avis Budget Group, Inc. is a Delaware corporation registered to do business in New York as a foreign business corporation.

¹There are two statutes titled GBL § 391-1. All references to GBL § 391-1 herein are to the statute titled “Rental of motor vehicles; discrimination on the basis of credit card ownership.”

2. Avis-Budget's headquarters are located at 6 Sylvan Way, Parsippany, New Jersey 07054.

3. Avis-Budget, through its subsidiaries and licensees, owns and operates the car rental brands Avis Car Rental, Budget Rent a Car, and Payless Car Rental, as well as smaller regional brands. The Avis, Budget and Payless brands each have locations in New York. In total, Respondent has over 100 rental car locations in New York. Most of these locations are the Avis and Budget brands; there are three Payless locations in New York. Certain of these locations are owned by Respondent while others are operated by licensees.

New York's Laws Concerning Rental Cars

4. GBL § 391-l provides that, "It shall be unlawful for any person, firm, partnership, association or corporation engaged in the business of renting motor vehicles to refuse to rent such vehicle to any person solely on the requirement of ownership of a credit card."

5. Similarly, GBL § 396-z, titled "Rental vehicle protections," provides, *inter alia*, that rental vehicle companies must conspicuously display a sign noting that "it is unlawful for any rental vehicle company to refuse to rent a vehicle to any person solely on the requirement of ownership of a credit card."

6. The bill jacket memorandum for GBL § 391-l, which became law in 1980, explains the reason the law was enacted.

A substantial percentage of people in New York State are not holders of credit cards. Certain motor vehicle rental agencies discriminate against those people who wish to rent a vehicle and pay cash, by not allowing them to do so. This bill gives these people an equal opportunity to access in the rental of a motor vehicle.

The OAG's Investigation of Avis-Budget

7. In the fall of 2022, the OAG received a complaint from a consumer who tried to rent a car from Budget's location on Main Street in Buffalo and was advised that they could not rent a car without a credit card.

8. OAG investigators visited Avis-Budget locations in Buffalo and Amherst, NY and found handwritten signs indicating debit cards were not accepted at those locations. At both locations, printed signs stated, "WE ARE NO LONGER ACCEPTING DEBIT CARDS THANK YOU." Handwritten signs at both locations advised the same, with one sign stating:

Avis/Budget Group in Western N.Y. Don't Accept Debit Cards. Don't Accept Secured Credit Cards. Example Chime, Open Sky, Self etc. 1-31 Day Rental \$200.00 Deposit Plus Amount of Rental Needs to Be On Card. When you Pre Pay Reservation \$250.00 Deposit On Major Credit Card Only One (1) Swipe Per Day. All Corporate Codes Must Show.

9. In one store, the handwritten sign advising that debit cards were not accepted was next to the statutorily required sign advising that "it is unlawful for any rental vehicle company to refuse to rent a vehicle to any person solely on the requirement of ownership of a credit card." This juxtaposition of two contradictory signs could have caused consumer confusion.

10. Investigators were informed at both locations that a "major credit card" was required to rent a vehicle from Avis-Budget. When asked what a consumer should do if they do not own a credit card, the employee responded, "then you can't rent from Avis or Budget."

11. OAG investigators made dozens of calls to Avis-Budget locations in New York inquiring about the option to rent a vehicle without a credit card. Of the calls that were answered, the vast majority resulted in investigators being informed that a major credit card was required to rent a vehicle from Avis-Budget in New York. Several of the other responses were

ambiguous with regard to the circumstances in which a person could rent a vehicle without a credit card.

12. Certain of these calls were answered by staff at the local Avis-Budget locations in New York, while others were answered by Avis-Budget's national call center. Avis-Budget's national call center repeatedly stated that "a major credit card" was required and that "in New York debit cards are not accepted." When asked if "for all the Budgets in New York I need a credit card," one Avis-Budget employee stated, "that is correct." Local offices provided similar responses. At the Avis-Budget in Cicero, NY, investigators were informed they could not rent from Avis-Budget if they did not possess a major credit card.

13. The Avis-Budget location in Colonie Center, NY, stated that a "major credit card" was required and that "you could use a debit card to pre-pay online or close out a rental but at the counter when you go to the location you need a major credit card, there's honestly no way around that." Similarly, the Avis-Budget in Syracuse, NY, stated that "a major credit card" was required and that "it cannot be debit, Chime, Swift, Deserve, Apple Pay or prepay reloadable card," and confirmed that without a credit card it was not possible to rent a vehicle.

14. Most rental car companies that allow rental of a vehicle without a credit card do so by placing a deposit or hold on a debit card, taking a cash deposit, or similar requirements.

15. OAG staff conducted a review of Avis-Budget's written debit card policies on its website. Avis maintains a section of its website titled "Can I Rent with a Debit Card." Notably, this page stated under "Exceptions" that "[s]ome Avis locations do not accept debit cards at the time of rental for any vehicle including locations in the Metropolitan NY Tri-State area."

16. OAG staff reviewed the written policies on the website of each Avis and Budget location in New York. Seventy-four locations stated that debit cards are not accepted, while

thirty-two stated that debit cards are accepted. Therefore, at the time of the OAG's investigation, it appears that approximately 70% of Avis-Budget's rental locations in New York required a credit card to rent a vehicle.

17. During the OAG's investigation, Avis-Budget acknowledged that it did not have a specific policy or procedure regarding compliance with GBL § 396-z(15).

18. After being informed of the OAG's investigation, Avis-Budget indicated it was not aware that its locations were not accepting debit cards and indicated the belief that it and its multiple New York locations were in compliance with New York State law including GBL §§369-z(15) and 391-1

19. As a result of its investigation, the OAG finds that Respondent's actions are in violation of Executive Law § 63(12), GBL Article 22-A, §§ 391-1 and 396-z.

20. Respondent does not contest the OAG's assertion that its actions violated the statutory provisions cited and the OAG's Findings, paragraphs 1-19 above.

21. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of GBL Article 22-A, §§ 391-1 and 396-z based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

22. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to GBL Article 22-A, §§ 391-1 and 396-z, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding

contemplated in paragraph 21, *supra*, in addition to any other appropriate investigation, action, or proceeding.

23. Specific Injunctions:

- a. Respondent shall not refuse to rent a motor vehicle to a person in New York solely because such person does not own a credit card.
- b. Respondent shall not publish any advertisement or make any statement claiming or suggesting that ownership of a credit card is required to rent a motor vehicle from Respondent in New York.

24. Programmatic Relief:

- a. Respondent shall adopt a written policy (“Policy”) and training plan (“Plan”) for ensuring compliance with GBL §§ 391-l and 396-z. Respondent will send a copy of the Policy to all Avis-Budget locations in New York. Each Avis-Budget location in New York will be required to certify its compliance with the Policy on an annual basis.
- b. Respondent shall ensure that all Avis-Budget employees that interact with customers in New York receive a copy of the Policy and receive training consistent with the Plan within sixty (60) days of the start of their employment and thereafter on at least a biennial basis.
- c. Respondent shall develop uniform written requirements (“Requirements”) for a consumer to rent a motor vehicle from Respondent in New York without a credit card. These requirements shall be applied uniformly at each Avis-Budget location in New York.

- d. Respondent shall conspicuously post the text required by GBL § 396-z(15) and the Requirements in each of Respondent's rental locations in New York.
 - e. Respondent shall post the Requirements on the website of each of its brands that operates in New York, including Avis, Budget and Payless.
 - f. Respondent shall conduct periodic compliance checks, on at least a biennial basis, to ensure that its rental locations have not unilaterally imposed additional requirements, beyond the Requirements set by Respondent, for a consumer to rent a motor vehicle without a credit card from an Avis-Budget location in New York.
25. Oversight/Monitoring:
- a. *Periodic Compliance Reports:* Respondent shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraph 24 (Programmatic Relief), to be submitted to the OAG by within ninety (90) days of the effective date of this Assurance. This report shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance. This report shall be signed by an authorized representative of the Respondent. Thereafter, a report of compliance shall be submitted to the OAG on an annual basis for the following three years. In any case where the circumstances warrant, the OAG may require Respondent to file an interim report of compliance upon sixty (60) days' notice or as otherwise agreed to in writing by the Parties.
 - b. *Compliance Report on Demand:* Upon sixty (60) days written notice from the OAG, Respondent shall provide the OAG with a report certifying its compliance with the requirements set forth in this Assurance, paragraph 24 (Programmatic

Relief). This requirement will expire three years after the effective date of this Assurance.

- c. Respondent expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 21, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 19, pursuant to Executive Law § 63(15).

26. Monetary Relief

- a. *Monetary Relief Amount*: Respondent shall pay to the State of New York \$275,000 in penalties (the “Monetary Relief Amount”). Payment of the Monetary Relief Amount shall be made in full upon execution of this Assurance.
- b. Payment of the Monetary Relief Amount shall be made by wire transfer pursuant to instructions provided to Respondent by the OAG.
- c. The Parties agree that it would be difficult to value the damages caused by default in the performance of any obligation under this Assurance, and therefore agree that should the OAG determine Respondent engaged in substantial non-compliance with an obligation under this Assurance after the effective date thereof, upon such showing by the OAG, Respondent shall be responsible for paying to the OAG a stipulated penalty of \$10,000 for each and every instance of material non-compliance with any obligation under this Assurance occurring after the effective date with a maximum penalty of \$100,000 for violations that arise

out of the same action or omission or series of actions or omissions. It is further agreed such penalty shall be enforceable by the OAG only and not through any private right of action by a non-party to this Assurance.

MISCELLANEOUS

Subsequent Proceedings.

27. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 33, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

28. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

29. This Assurance is not intended for use by any third party in any other proceeding nor shall be used as evidence of any wrongdoing or alleged wrongdoing by any third party.

30. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

31. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

32. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 23-034, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: Robert E. Muhs, Esq., or in his absence, to the person holding the title of Vice President, Government Affairs & Counsel.

If to the OAG, to: Christopher L. Boyd, or in his absence, to the person holding the title of Assistant Attorney General in Charge, Buffalo Regional Office.

Representations and Warranties:

33. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in the OAG's Findings, paragraphs 1-21 above. Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

34. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

35. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Avis-Budget, by Robert E. Muhs, Esq., as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of Avis-Budget.

General Principles:

36. Unless a term limit for compliance is otherwise specified within this Assurance, Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

37. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

38. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

39. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

40. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

41. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

42. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

43. This Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.


44. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and

transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

45. The effective date of this Assurance shall be ~~July~~ ^{August} 15, 2023.

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By:



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