

- SUBJECT:** Misrepresenting business location of florist on the Internet or in a print ad
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Miller, Quintanilla, Workman
- 0 nays
- 1 absent — Solomons
- WITNESSES:** For — Jack Cross; Gayle Johnson; Debbie Woltmann; (*Registered, but did not testify*: Dianna Nordman, Texas State Florists' Association; Chad Freytag; Clifford Martinez; Pat Shirley-Becker; Nancy Wharton)
- Against — None
- BACKGROUND:** The Texas Deceptive Trade Practices Act (DTPA) prohibits the use of false or misleading advertising and provides civil penalties for violations. In 2003, the DTPA was amended to prohibit a business that derived 50 percent or more of its gross income from selling or arranging flowers from misrepresenting the geographical location of its company in a telephone directory or other directory assistance database.
- A business is considered in violation if the company's name indicates that it is located in a certain geographical area and:
- the business is not located within the geographical area indicated;
 - the listing does not identify the municipality and state of the business's geographical location; and
 - a telephone call to a local telephone number listed in a directory or database routinely is forwarded or transferred to a location outside of the calling area covered by the directory or database.
- A directory listing for a business that derives 50 percent or more of its gross income from selling or arranging flowers and whose name indicates that it was in a geographical area different from the one where the business is located is permitted if a conspicuous notice in the listing states the actual municipality and state of the business.

The provision does not apply to the publisher of a telephone directory or other publication or provider of a directory assistance service publishing information about another business.

DIGEST:

HB 989 would amend the DTPA to add Internet websites and print advertisements to the prohibitions against a business that derived 50 percent or more of its gross income from selling or arranging flowers from misrepresenting its geographical location.

Exemptions would include:

- an Internet website that aggregated and provided information about other businesses;
- an owner or publisher of a print medium that provided information about other businesses;
- an Internet service provider; or
- an Internet service that displayed or distributed advertisements for other businesses.

The bill would take effect September 1, 2011, and would apply only to a print advertisement disseminated or an Internet website posting available for viewing on or after the effective date.

**SUPPORTERS
SAY:**

HB 989 is a consumer information bill intended to ensure that consumers know whether or not they are contacting a local florist. The bill would help combat deceptive trade practices and protect consumers seeking to use a local florist from being misled.

The Internet has provided convenience and new retail business opportunities to consumers, but it also has led to certain deceptive business practices. In order to capture floral sales, many floral brokers deceptively advertise that they are local businesses but actually are located thousands of miles away in another state or country.

The perishable nature of floral arrangements requires that they be arranged close to the area of delivery. Unable to design or deliver the order themselves, and unknown to the purchaser, a nonlocal business may transfer the order to a local florist for completion. The nonlocal business charges fees, service charges, and commissions in order to do this. The nonlocal fees decrease the actual value of the order for the consumer and would not be paid if the order was placed with a local florist. The

consumer is never told of the fees taken from the order and ends up paying a higher price while receiving less value.

Broker companies deceptively may appear to be local by using a name or website address similar to those of local florists or by incorporating the name of a unique local landmark into their company name. These brokers often list a false local address in their advertisements. Some even have used the addresses of a county courthouse or a state-supported living center. While these broker companies tend to be transient on the Internet throughout the year, they always appear around holidays and divert business from local florists.

HB 989 would prevent Texas from losing valuable sales tax dollars. Sales tax is accrued in the state or country where the order is placed. The local phone numbers and addresses displayed in online and print advertisements mislead customers into believing that they are spending money in their state and local community when they are not. Consumers have the right to know and choose when their floral dollars will be leaving their local communities and state.

Nonlocal brokers also can damage the reputations of local businesses with poor customer service. These nonlocal businesses often assume names very close to the names of actual local businesses. Customers disappointed with the nonlocal business's customer service mistakenly become upset with the local business and are less likely to order floral arrangements from the local shop in the future.

Nonlocal businesses still would be able to compete in the flower market, but they would just have to do so fairly and transparently.

**OPPONENTS
SAY:**

Requiring businesses to put additional information in their Internet and print listings would be a burden to nonlocal businesses. Targeting nonlocal businesses like this would give local florists an unfair competitive advantage that would distort the free market, ultimately harming the consumer.

HB 989 would not promote a healthy, competitive business environment. Nonlocal flower brokers have the right to take orders for flowers in Texas,

and restricting their ability to do so would be an unwarranted restriction on competition.