

BILL ANALYSIS

Senate Research Center
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H.B. 989
By: Kolkhorst (Hegar)
Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Internet has provided not only new retail business opportunities but also opportunities to misrepresent the physical location of a business. Local florists across Texas have noted an alarming number of telemarketing businesses advertising themselves as local florists when in fact they are physically located thousands of miles away. These nonlocal telemarketing businesses creatively misrepresent their actual geographic location to consumers in a variety of ways, including omitting their true location on a website; assuming a fictitious local-sounding business name, address, or web address; using a web address appearing to be local but instead linked, invisibly to the consumer, to a completely different nonlocal order-gathering site; and using a local exchange phone number that forwards calls to an out-of-state phone number unknown to the consumer.

A local consumer is misled when an order is routed to a nonlocal business location because fees and commissions usually are taken out of the order price. These nonlocal fees and commissions are not normally paid when a consumer places a floral order directly with an actual local florist, as intended. Ironically, a nonlocal telemarketer who falsely represents the telemarketer as a local florist often simply reroutes the order to an actual local florist for processing. In these cases, the consumer pays a higher price and receives less value, while the local florist shares the business profit with an unnecessary and nonlocal third party.

A consumer who purchases floral products through the Internet from a business that describes itself as local in the web address, business name, or local phone exchange usually does so with the intent to purchase from a local business in the consumer's community and to benefit that community. Therefore, in order to be able to make an informed consumer choice, a consumer has the right to know whether the money spent and the sales taxes collected stay in the local community or whether that revenue is being directed elsewhere. The purpose of H.B. 989 is to end the deceptive practice of misrepresenting to a consumer that the consumer's floral order is being placed with a local florist when in fact the consumer is dealing with a nonlocal telemarketing firm that takes sales tax dollars out of the local community and frequently out of Texas.

H.B. 989 amends current law relating to the listing of a business location of certain businesses in print advertisements or on Internet websites.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 17.462, Business & Commerce Code, to read as follows:

Sec. 17.462. LISTING OF BUSINESS LOCATION OF CERTAIN BUSINESSES.

SECTION 2. Amends Sections 17.462(a), (b), (c), and (d), Business & Commerce Code, as follows:

(a) Prohibits a person from misrepresenting the geographical location of a business that derives 50 percent or more of its gross income from the sale or arranging for the sale of flowers or floral arrangements in the listing of the business:

(1) in a telephone directory or other directory assistance database;

(2) on an Internet website; or

(3) in a print advertisement.

(b) Provides that a person is considered to misrepresent the geographical location of a business for a purposes of Subsection (a) if the name of the business indicates that the business is located in a geographical area and:

(1)-(2) Makes no changes to these subdivisions; and

(3) a telephone call to the local telephone number listen in the directory or database routinely is forwarded or transferred to a location that is outside the calling area covered by the director or database in which the number is listed; or provided on the Internet website or in a print advertisement routinely is forwarded or transferred to a location that is outside the calling area of the geographical area as indicated by the name of the business.

(c) Authorizes a person to place a listing, rather than a directory listing, for a business described by Subsection (a) the name of which indicates that it is located in a geographical area that is different from the geographical area in which the business is located if a conspicuous notice in the listing states the municipality and state in which the business is located.

(d) Provides that this section does not apply to:

(1) a publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business;

(2) an Internet website that aggregates and provides information about other businesses;

(3) an owner or publisher of a print medium providing information about other businesses;

(4) an Internet service provider; or

(5) an Internet service that displays or distributes advertisements for other businesses.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2011.