HOUSE RESEARCH ORGANIZATION bill analysis 4/30/2003

SB 378
Armbrister
(Kolkhorst)

SUBJECT: Restrictions on listing of nonlocal florist in a telephone directory

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 9 ayes — Giddings, Elkins, Kolkhorst, Bohac, Martinez Fischer, J. Moreno, Oliveira, Solomons, Zedler

0 nays

SENATE VOTE: On final passage, March 13 — voice vote, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 903)*:
For — Jack Cross and Diana Doss, Texas State Florist Association; *(Registered, but did not testify:)* Nancy Wharton, Texas State Florist Association

Against — None

BACKGROUND: The Texas Deceptive Trade Practices Act (DTPA) prohibits the use of false or misleading advertising and provides civil penalties for violations.

DIGEST: SB 378, as amended, would prohibit a business that derives at least 50 percent of its income from selling or arranging flowers from misrepresenting its geographical location in a listing in a telephone directory or other directory assistance database. A person would misrepresent the business's location if the company's name indicated that it was located in a geographical area and:

- the business was not located in the identified geographical area, unless a conspicuous notice in the listing stated the municipality and state of the true location;
- the listing failed to identify the municipality and state of the true location; and
- a telephone call to the local number listed would be forwarded routinely to a location outside of the calling area covered by the directory or database.

The bill would not apply to the publisher of a telephone directory or to the provider of a directory assistance database. It would create no duty and impose no obligation upon anyone other than the listed business. A violation of the bill's provisions would be a false, misleading, or deceptive act or practice and would be subject to civil penalties.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

SB 378 is a consumer information bill, intended to ensure that consumers know whether or not they are calling a local florist.

Some companies have set up call centers to take wire orders for flowers. A wire order is an order placed with one company and then sent to a local florist to be filled. When a customer calls and places a flower order, these companies contact a local florist, place the order, and keep a portion of the order price as a fee. Florists also can set up wire orders between each other, so that, for example, if a customer in Brenham called the local florist and ordered flowers to be delivered in Victoria, the Brenham florist would arrange with the Victoria florist to deliver the flower arrangement. The Brenham florist would keep a portion of order price as a fee.

SB 378 would require call centers to notify customers that they were not local businesses by properly labeling their locations in the phone listings. Currently, call centers from around the nation may place ads in a local phone book listing local numbers. Customers may call these numbers believing that they have placed an order with a local florist. The call center may engage in a wire transfer with a local florist who then fills the order at a lower price. The customer could be charged $60 for an arrangement that would cost only $50 from the florist that delivered it, with the out-of-state call center pocketing the extra amount as profit. At the same time, the local business receives less than the market value for its services.

SB 378 would promote good business policy. The wire transfer system was set up on the premise that florists would place orders between themselves and to establish business relationships among florists around the nation. Companies like FTD facilitate this type of relationship and have flourished because of the florist network. Florists that accept wire orders actually lose money on those orders because the referring florist keeps a fee. Florists are willing to engage in these transfers between each other because of the likelihood that a florist will receive business in the near future from the florist that just received the referral. However, call centers are not in the business of actually arranging and delivering the flowers, so they benefit from fees without having to take a loss on orders themselves. This lack of quid pro quo goes against the basic tenet of the florist network and of fair business practice.

SB 378 would prevent Texas from losing valuable sales tax dollars. Because the tax on orders placed to call centers accrues to the state where the call center is located, Texas is losing sales tax on these orders. Requiring out-of-state companies to list their locations properly would prevent Texas consumers who intended to use local florists from sending their money out of state.

The bill would promote consumer confidence in local florists and would prevent unwarranted loss of business. Recently, in San Antonio, a husband ordered flowers for his wife from a call center, believing that it was a local florist. When the flowers were delivered by a local florist of a different name, the husband refused to accept them, stating that he had not ordered from that company. The local florist lost business because of this consumer's confusion about the business practices of the call center.

SB 378 would address a widespread problem in the floral business. Eighteen other states have enacted similar legislation. Although this problem arguably could be remedied under the current DTPA, this industry's circumstances need to be addressed specifically to protect consumers.

SB 378 would not impede operation of the free-market system and would not restrict competition. Current practice is not competition on an even playing field, because call centers do not accept wire transfers or take a loss on orders. SB 378 would prevent consumers from being deceived into believing that they were ordering flowers from a local business when they were not.

OPPONENTS SAY:

Call centers do not take business away from local florists. In fact, they help local florists increase their business. SB 378 would put unnecessary restrictions on call centers and likely would reduce the amount of business they conduct. Reducing call centers' business also would mean less business for local florists, who would receive fewer wire transfers.

SB 378 would not promote a healthy competitive business environment. Call centers have every right to take orders for flowers in Texas, and restricting their ability to do so would be an unwarranted restriction on competition.

The DTPA provides remedies for false, misleading, or deceptive trade practices, so there is no need for a separate statute addressing florists.

Requiring businesses to put additional information in their telephone listings would be overly burdensome. Targeting nonlocal businesses and burdening them with the additional expense of listing additional information would be unfair.

NOTES:

The committee amendment to the Senate engrossed version would add the specification that the bill would impose no duty or obligation upon anyone other than the listed business.

The companion bill, HB 903 by Kolkhorst, was considered in a public hearing by the House Business and Industry Committee on March 18 and left pending.