

## **BILL ANALYSIS**

H.B. 989  
By: Kolkhorst  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

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 where calls are forwarded, unknown to the consumer, to an out-of-state phone number.

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.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 989 amends the Business & Commerce Code, in a provision prohibiting a person's misrepresentation of 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 in a telephone directory or other directory assistance database, to prohibit such misrepresentation on an Internet website or in a print advertisement. The bill expands the conditions under which a person is considered to misrepresent the geographical location of such

a business to include the routine forwarding or transferring of a telephone call to the local telephone number provided on the Internet website or in a print advertisement of the business to a location that is outside the calling area of the geographical area as indicated by the name of the business. The bill exempts an Internet website that aggregates and provides information about other businesses, an owner or publisher of a print medium providing information about other businesses, an Internet service provider, and an Internet service that displays or distributes advertisements for other businesses from the statutory provisions that prohibit misrepresentation of a business location and that establish the conditions constituting such misrepresentation.

**EFFECTIVE DATE**

September 1, 2011.