

HOUSE BILL REPORT

ESHB 1471

As Passed House:

March 12, 1999

Title: An act relating to unfair trade practices regarding business telephone listings.

Brief Description: Prohibiting deceptive telephone directory listings.

Sponsors: By House Committee on Commerce & Labor (Originally sponsored by Representatives Conway, Crouse, Wood, Poulsen, Kessler and Thomas).

Brief History:

Committee Activity:

Commerce & Labor: 2/18/99, 2/23/99 [DPS].

Floor Activity:

Passed House: 3/12/99, 95-0.

Brief Summary of Substitute Bill

- Prohibits misrepresentation of a business' geographic location in telephone directories making it an unfair trade practice under the Consumer Protection Act.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk; McIntire and McMorris.

Staff: Douglas Ruth (786-7134).

Background:

The Consumer Protection Act prohibits unfair methods of competition and unfair or deceptive practices in commerce. The act may be enforced by private legal action, or through a civil action brought by the attorney general. A court may award private individuals injured by an unfair or deceptive practice actual damages, court costs, and

additional damages up to triple the actual damages amount. In addition, a court may enjoin a business from conducting further unfair practices.

State actions filed by the attorney general may also recover damages if the state has been injured by unfair or deceptive practices. Otherwise, the state may seek an injunction to restrain the business from further practices. The Consumer Protection Act is enforced by the Consumer Protection Division of the Attorney General's office.

In various cases, Washington courts have held that false advertising, false representations, and trademark or trade name infringements may constitute unfair and deceptive practices. One type of such business activity that may violate the Consumer Protection Act is the practice of out-of-state firms pretending to be local businesses in the telephone directory and serving customers who think they are doing business with a local firm.

A firm (e.g., a florist) may list its name in a local Washington directory as a local business and list a local number. The firm might use the name of a local city in the business' name to indicate a local affiliation. However, customers who call the local number are forwarded to operators in another state who take their order. The firm bills the customer for processing and takes a percentage off the top. They then contact a local business to fill the order. The local business takes their cut and the customer receives goods worth the amount remaining after these charges.

Nine states have enacted laws classifying this type of business activity as an unfair business practice.

Summary of Bill:

The Consumer Protection Act is applied to certain business practices in the floral industry. Businesses that sell, deliver, or solicit CVR or arranged flowers may not list a local phone number in a directory if calls to the number are forwarded outside the area covered by the directory and the listing does not disclose the business location. This limitation does not apply to toll-free and 900 telephone numbers.

In addition, businesses in the floral industry may not list in a directory a business name that misrepresents the location of the business without giving the business' actual location.

The requirements of the bill may be enforced according to the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) California florists list local phone numbers in local Washington telephone directories although they do not have local establishments. This is unfair for three reasons. The consumer is lead to believe he or she is dealing with a local company, but the business has no local presence. This makes it difficult for the customer to seek recourse for unacceptable service. Second, it is unfair competition. Because these companies do not have to stock products, they have less overhead costs. They get almost a 100 percent profit, while the local company they order through receives less for the order than it would receive if the customer had called them directly. Third, the state loses sales tax revenue because the local establishment is paid less by the customer after the out-of-state broker takes its cut. In addition, the value of the goods provided to the customer are less than what he or she would receive if the out-of-state middleman was not involved.

(With concerns) The bill refers to the calling area of a local Washington telephone directory, but in any one area there may be several different directories, each covering different calling areas. This makes it difficult to know when a business, which is forwarding its calls to another location, must disclose its location. Some businesses have a statewide market and forward calls from various parts of the state to a central location as a convenience to their consumers. These same businesses may not want, legitimately, to disclose their addresses. The bill should not apply to businesses licensed in this state.

Testimony Against: None.

Testified: (In favor) Bruce Peterson, Brown's Flowers Inc.; John Cohn, Johnny's Flowers; and Bill Pattison, Heath's Flowerland.

(With concerns) Jim Irish, Appraisers Coalition of Washington and Appraisal Institute.