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PHONE DIRECTORY LISTINGS FOR BUSINESSES

House Bill 5499 as enrolled
Public Act 229 of 1998
Sponsor: Rep. Andrew Raczkowski

House Bill 5500 as enrolled
Public Act 230 of 1998
Sponsor: Rep. Mark Schauer

Second Analysis (8-5-98)
House Committee: Consumer Protection
Senate Committee: Technology and Energy

THE APPARENT PROBLEM:

Small local businesses are one of the cornerstones of this state's economy. Many people make an effort to support local businesses through their patronage. People know that when they buy from a local business they are helping the local economy and that if something goes wrong, a local business is likely to make a greater effort to see to the customer's satisfaction than an out-of-state business. The importance of the local business' reputation in the community generally causes such businesses to make every effort to see to it that the customer is satisfied with the transaction. Given that consumers often seek out local businesses, it is not hard to imagine that non-local businesses would want to make every effort to appear as local as possible. In fact, the activities of a New Jersey-based company toward this end have gained national attention, raised the ire of many locally-owned flower shops and raised concerns about the possible spread of this allegedly deceitful market practice. The New Jersey-based company places listings in local phone books using local sounding names and local telephone exchange numbers. For example, according to an article in the *Battle Creek Enquirer*, the New Jersey-based business has listings in the Battle Creek phone book that include: Battle Creek Florist, Battle Creek Florist & Gift Service, Battle Creek Flowers, Florist in Battle Creek and Florist of Battle Creek. When a consumer calls one of these phone numbers, the call is forwarded directly to a New Jersey location. From there, the customer's order is taken without informing the customer that he or she has not contacted a local business or that the New Jersey company does not sell flowers but only

acts as a middleman. The New Jersey company then calls a local florist, usually one with which they have a contract, to fill the order and an additional fee for the "service" is added to the cost of the flowers, usually without the customer's knowledge. It is argued that this is a deceptive practice, particularly since there usually is a local company doing business under a name nearly identical to one or more of the names listed by the New Jersey company. Not only do the local businesses lose commerce, but the complaints about poor service, products or added costs are often mistakenly directed at the local florist with a similar name, instead of being directed to the New Jersey company or to the usually unnamed company that actually fills the order.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Consumer Protection Act to, under certain circumstances, prohibit a business from being listed or advertising in a phone directory in a manner that inaccurately implies that the business is a local business, and to establish penalties for violations.

Specifically, the bills would set two prohibitions on businesses that were listed or advertised in a telephone directory. First, House Bill 5499 would prohibit listing or advertising an assumed name or fictitious business name in a telephone directory that intentionally misrepresented where the business was located or falsely stated that the business was located or operating in the same area as was covered by the

telephone directory. Second, House Bill 5500 would prohibit advertising or listing a business address in a telephone directory that intentionally misrepresented the location or area of operation of the business or that falsely stated that the business was located or operating in the same area as is covered by the directory. However, this would not apply to a telephone service provider that listed a local telephone number that forwards calls for the purpose of providing customer service.

Both bills would provide that a person who violated the bills' provisions would be subject to a civil fine of no less than \$100 or no more than \$10,000. Neither bill would apply to a telephone service provider or to the publisher or distributor of a telephone directory, unless the prohibited conduct was performed on behalf of that telephone service provider or that publisher or distributor.

Neither bill would take effect unless the other was enacted.

MCL 445.903c and 445.903d

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills could slightly increase local revenue generated through civil fines depending upon how often violations occurred. (8-5-98)

ARGUMENTS:

For:

The bills simply require truth in advertising. They will help to stop out-of-state businesses from misleading Michigan consumers and hurting local businesses. Currently, this deceitful practice behavior is mainly harming local florists, but it is only a matter of time before companies begin engaging in this sort of deceitful practice in some other area of commerce. The practice is already taking money in lost tax revenue out of the state, and if another company starts a similarly misleading business more revenues could be lost.

Unfortunately, the practice doesn't only cheat Michigan florists, it also cheats consumers who end up paying extra fees that they had probably intended to avoid by directly calling a local shop. This practice is particularly harmful to the florist industry as a whole because generally, a customer who gets poor service

or ends up paying extra fees when he or she orders flowers will be less likely to order flowers again.

Against:

The best way to deal with the unfair practices of the New Jersey florist and other such businesses is better consumer education. If consumers are informed about these types of business practices they will avoid dealing with those businesses. It is a nearly universal truth that, in a marketplace of educated consumers, a good, honest local business will prevail over the sharp or deceitful marketing practices of an out-of-state business (or another local business for that matter). Provided that the local business is not charging a much higher price for the same service or product, informed consumers will gladly support a local business with a presence in the community over non-local business whose only connection is through a phone line. All that is needed is the provision of this information to the consumers and this business practice will no longer be profitable enough to maintain.

Against:

It is inaccurate to portray this practice as harmful to local businesses. This is simply a marketing technique, and the florists who receive and fill the orders taken by this New Jersey firm are benefitting from this practice. Further, regulations like this tend to end up restricting more than just the wrongdoer. In fact, the wrongdoers will tend to keep up the practice in spite of such laws while honest companies will end up being prevented from taking advantage of a new means of marketing. The companies that fill orders presented from the telephone sales made by the New Jersey-based business are increasing their orders without having to increase their advertising or marketing costs. Florists who take advantage of this can lower their costs by avoiding the employment and phone line costs involved in taking telephone orders directly.

Response:

This practice is not a marketing tool; it does nothing to increase or generate business in the flower industry. In fact, businesses that add on charges and provide poor service tend to decrease the likelihood that people will order flowers the next time an occasion arises and as a result these practice are harmful to the industry as a whole.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.