



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517.373-6466

DISCLOSE BUSINESS' STREET ADDRESS

House Bill 5193 with committee amendments
First Analysis (12-16-87)

RECEIVED

Sponsor: Rep. Lyn Banks
Committee: Consumers

FEB 06 1988

Mich. State Legislature

THE APPARENT PROBLEM:

A dismayingly common form of consumer fraud is represented by the appliance repair service that makes unnecessary repairs, overcharges, sabotages customers' machines, or engages in other unscrupulous practices. Such firms often attract customers through yellow pages advertisements that list addresses that are false, such as when the address is a vacant lot, or misleading, such as when the address is that of the telephone answering service whose number is given. Sometimes one entity will advertise under several different names, thus enabling the firm to attract customers dissatisfied with the work done under one of the names. Customers can be misled into thinking that a firm is situated locally when it is not, or that it has a proper place of business when it does not. One way to combat this problem would be through requiring that when a street address is advertised, the address must indicate where business is actually conducted.

THE CONTENT OF THE BILL:

Under the bill, which would create a new public act, a person could not publish or place before the public an advertisement for consumer goods or services that stated a street address unless that address indicated where business was actually conducted and, if applicable, where parts could be purchased. Publishers, newspapers, printers, outdoor advertising firms, and radio and television stations would not be liable under the bill for unwittingly participating in the publication of an advertisement in violation of the bill.

The attorney general could seek an injunction against a continuing violation of the bill after giving a defendant 48 hours notice to stop violating the bill. The court could not issue an injunction if the defendant had stopped violating or had taken positive action to stop violating the bill. The attorney general could accept from the potential defendant an assurance of discontinuance, which the person would have to file with the court. Upon being informed of an alleged violation of the bill, a prosecutor or law enforcement officer would have to immediately notify the attorney general. A prosecutor could conduct an investigation and take action under the bill in the same manner as the attorney general.

A person who knowingly violated the bill or an injunction or order issued under it would have to pay to the state a civil penalty of no more than \$200 for the first violation and of no more than \$1,000 for a second or subsequent violation.

If the attorney general or the prosecutor failed to initiate action within 60 days after receiving notice of an alleged violation of the bill, a person could bring action to obtain a declaratory judgment that a practice violated the bill, and/or to obtain an injunction against a person who is violating or about to violate the bill. Someone who suffered a loss due to a violation of the bill could bring an individual

or class action to recover actual damages or \$50, whichever was greater, for each day of violation, plus reasonable attorney fees of up to \$300 for an individual suit.

The bill would take effect June 1, 1988.

FISCAL IMPLICATIONS:

Fiscal information is not available. (12-14-87)

ARGUMENTS:

For:

By requiring advertised addresses to be those where business is actually conducted, the bill would put an obstacle in the way of service companies that might otherwise advertise addresses that misled customers into thinking the advertiser was a locally situated and established firm. Provisions for injunctive relief, damages, and civil fines would give aggrieved consumers recourse and punish violators without the cumbersome process of criminal prosecution.

Response: The bill would be stronger if it required advertisements for services where charges were affected by starting location to identify that starting location, and if it required that an advertised telephone number either accurately reflect the business location or be accompanied by a statement that the advertised business was not located within the service area of the advertised telephone exchange. In addition, the bill's aim could be more clearly directed at those who would place misleading advertisements, rather than those who print or publish them, if it was phrased so as to address itself to the giving of information for advertisement, rather than to the publication of the advertisement.

Against:

The bill could unnecessarily cause problems for legitimate businesses who, for instance, do mail order business from one location, have a warehouse in another, and perhaps a retail outlet at another. It is unclear how such firms would comply with the bill or why the bill need affect them.

SUGGESTED AMENDMENTS:

GTE seeks amendments to the bill that would change "A person shall not knowingly make, publish, disseminate, circulate, or place" before the public an advertisement that violated the bill to "A person shall not knowingly give information for publication, dissemination, circulation, or placement" before the public.

POSITIONS:

The Detroit Consumer Affairs Department supports the bill. (12-11-87)

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The Michigan Consumers Council supports the bill.
(12-11-87)

The Michigan Merchants Council supports the bill.
(12-11-87)

The Michigan Retailers Association supports the bill.
(12-11-87)

GTE supports the bill as a legitimate means to protect the consumer from false and misleading advertising, but would like the bill to include language that shifts the burden for the accuracy of the information from the advertising company to the person placing the advertisement.
(12-11-87)