

SFA

BILL ANALYSIS

Senate Fiscal Agency

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House Bill 5193 (Substitute S-2 as reported)**Sponsor:** Representative Lyn Banks**House Committee:** Consumers**Senate Committee:** Commerce and Technology**Date Completed:** 3-10-88**RATIONALE**

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.

CONTENT

The bill would create a new public act regulating the advertisement of consumer goods and services, specifying the conditions for seeking an injunction for violation of the bill, and providing for penalties for violations. The bill would take effect for advertisements sold after June 1, 1988.

Specifically, the bill would:

- Prohibit a person from knowingly giving a street address for publication, dissemination, circulation or placement before the public in an advertisement unless the advertisement also included a street address where business was actually conducted or, if applicable, where parts could be purchased. Publishers, newspapers, printers, outdoor advertising firms, and radio and television stations would not be liable for unknowingly publishing an advertisement in violation of the bill. The bill would not apply to a mail order business.
- Allow the Attorney General to seek an injunction against a continuing violation of the bill after giving a defendant 48 hours' notice to stop violating the bill.
- Allow the Attorney General to accept from the potential defendant an assurance of discontinuance, which the person would have to file with the court.
- Require a prosecutor or law enforcement officer immediately to notify the Attorney General upon being informed of an alleged violation of the bill.
- Allow a prosecutor to conduct an investigation and take action under the bill in the same manner as the Attorney General.

Violation of the bill or an injunction or order issued under it would constitute a civil penalty of no more than \$200 for the first violation and 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, a person could sue for a declaratory judgment that a practice violated the bill, and/or for an injunction against a person who was violating or about to violate the bill. Someone who suffered a loss due to a violation could bring an individual or class action suit 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.

SENATE COMMITTEE ACTION

The Senate Committee adopted a substitute that states that the bill would take effect for advertisements sold after June 1, 1988, and that the bill's provisions would apply to publishers, newspapers and others who publish advertisements with actual knowledge that the advertisement is in violation of the bill. As the bill passed the House, the bill would have taken effect on June 1, 1988, and its provisions would have applied to those who published advertisements with knowledge that the advertisements were in violation of the bill.

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. The number of violations and resulting enforcement costs cannot be estimated.

ARGUMENTS**Supporting Argument**

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

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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 addressed the giving of information for advertisement, rather than the publication of the advertisement.

Opposing Argument

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.

Response: The bill would not affect businesses that have someone working out of the business' office at least part of the time. The bill would only affect those businesses that claim as their business address vacant lots, abandoned buildings and telephone answering services, i.e., addresses at which no one works at any time or addresses at which business other than the advertisers' business is conducted.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.