

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by the Vice - Chairperson Pat Ranson, at 8:00 a.m. on February 21, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Salisbury (excused)

Committee staff present: Lynne Holt, Legislative Research Department  
Jerry Ann Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Betty Bomar, Secretary

Conferees appearing before the committee:  
Senator Greta H. Goodwin  
Wayne DeBey, Salina, Kansas  
Carol Honback, Pittsburg, Kansas  
Donna Homan, Winfield, Kansas  
Steve Rarrick, Deputy Attorney General

Others attending: See attached list

**SB 614 - Use of municipality by fictitious business in printed advertisement as deceptive act under Consumer Protection Act.**

Bob Nugent, Revisor of States, briefed the Committee on **SB 614**, stating that there are a series of Internet companies that advertise themselves as local merchants when, in fact, they are not local merchants and are miles away, and in some cases are out of state. **SB 614** creates another specific deceptive act practice. The new provision is found on Page 2, at line 39 and prohibits the using in any printed advertisement the name of any municipality in the state in such manner as to suggest that such person's business is located in such municipality unless: the business is, in fact, located in the municipality, and that the complete street address of the business in which the business is conducted is printed in full.

Senator Greta H. Goodwin, testified **SB 614** was drafted at her request due to the deceptive practice allowing national telemarketing companies to masquerade as local businesses by listing a business as a local city business with local telephone numbers. **SB 614** is drafted from the model legislation used by the State of Connecticut. There are currently 13 states who have successfully passed legislation prohibiting the misrepresentation of a businesses' name and location. (Attachment 1)

Ms. Goodwin testified the deceptive practice of using the name of a municipality in the business name with a local telephone number is primarily within the florist industry. The practice consists of listing the name of a business in the white or yellow pages of a telephone book, without a local address but with a local telephone number. A person calls the local florist to place an order. The call is automatically forwarded to some place, usually in New Jersey, where the call is answered with a generic name, "flower shop", an order is placed, charging a service fee of \$8.95-\$9.95. The order is placed electronically back to a local florist. The local florist fills the order with flowers costing less than the original order as the service fee has been deducted together with a 25% handling fee. The consumer is unhappy with the florist because they did not get what they ordered, and the florist is completely unaware of what has occurred as they are filling the order as it has been placed. Ms. Goodwin submitted a NBC-TV Dateline transcript, aired February 1998, detailing the deceptive practice with an estimated loss of \$2.5 million.

Wayne DeBey, Past President of the Kansas State Florists' Association, testified in support of **SB 614**, stating the deceptive practice of out-of-state floral order gatherers placement of local phone numbers in directories throughout the state should not be allowed. The Association believes the following

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practices should not be allowed: 1) company's that deceptively list their names in local phone directories to suggest a location in that city, and 2) attempts to withhold the company's actual physical location when asked by consumers. Mr. DeBey stated the Association is in favor of legislation that requires full disclosure of location in telephone directory advertising to prevent consumers from being misled. (Attachment 2)

Carol Hornback, Pittsburg, Kansas, testified in support of **SB 614**, stating she owns two floral retail stores and has been in business over 30 years. The consumer is deceived by doing business with an out-of-state florist and paying an extra service fee, when they believe they are doing business with a local florist. (Attachment 3)

Donna Homan, Winfield, Kansas, testified in support of **SB 614**, stating the deceptive trade practice has hurt retail florists in Kansas as well as in many other states. Ms. Homan stated there are 33 cities in Kansas that have deceptive listings of which the Florist's Association is aware. Telemarketers misrepresent their geographical location and also, often use the names of existing flower shops in a particular location which hurts the local florist and the entire floral industry. \$3.15 million in sales taxes were collected by the floral industry in 1999 for the State of Kansas. There is no way to measure the volume of sales taxes lost as result of the deceptive practices used by the telemarketers who paid sales taxes in another state. Ms. Homan stated **SB 614** allows consumers to be aware of what they are buying and who they are trading with. (Attachment 4)

Steve Rarrick, Deputy Attorney General, stated the Consumer Protection Division, had not received many complaints as a result of this deceptive practice, and further, if it was unlawful to use the name of a municipality the telemarketers would more than likely utilize the name of the county. Mr. Rarrick stated there would be a penalty of up to \$5,000.

The Committee asked whether **SB 614** would apply to any other type of business. Mr. Rarrick responded it would apply to any business using a municipalities' name.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 22, 2000.