

2011 SENATE JUDICIARY


SB 2182

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2182
1/31/11
Job #13690

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to false advertisements regarding location of businesses

Minutes:

There are no attachments

Senator Nething – Chairman
Senator Olafson – Vice Chairman

Senator Nething – Introduces the bill and explains its intent.

Senator O'Connell – Co-sponsor – in support of this bill

Carol McIlravy – Don's House of Flowers, Jamestown – She explains that those advertising for example in the phone book with 1-800 number's a lot of times are not in ND. She said those wanting to order flowers call the 800-number to place an order and it goes to a telephone order gatherer. She said often times when they see its coming from ND they answer it like they live in ND. She goes on to describe the fees that are charged by these out of state companies. She stated she is just asking that the business be made to put where they are doing business from.

Senator Nething – Asked McIlravy what state this law was modeled after.

McIlravy – Responds; Minnesota as well as Connecticut.

Senator Nething – Asked about the process of sending flowers out of state.

McIlravy – Walks him through the process and the fees charged.

Jeff Brose – Speaks in support of this bill.

Senator Nething – Relates this bill does nothing to collect taxes, it simply requires if you are a 1-800 florist you have to have your city and address listed.

Laura Ressler – Roberts Floral Bismarck – President of the State Floral Association

In support of this bill. She said some places that are called to order flowers let you know they are not in ND. She said they are most concerned with the ones that are pretending they are in our towns and state. She states those places also charge more for the fees and make ND florists look bad.

Senator Sorvaag – Responds this bill addresses a very small part of the problem because of the internet.

Senator Olafson – Says the intent of her association is not to deny anyone free market competition, it's just to let ND citizens know who their doing business with.

Opposition – 0

Close the hearing 2182

Senator Olafson moves a do pass

Senator Sitte seconds

Discussion

Roll call vote

6 yes, 0 no

Motion passes

Senator Sitte will carry

Date: 1/31
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 282

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Olafson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment S. Sitte

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2182: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2182 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2182

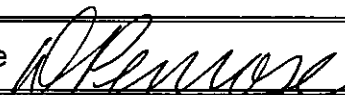
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2182
March 8, 2011
15083

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2182.

Sen. David O'Connell: Sponsor, support. Explained the bill. This bill talks about advertising in the phone book, etc. and inferring that the business is in your hometown; when in fact, they might be many states away.

Chairman DeKrey: I've noticed that the internet is really big about trying to make you believe that the company is in your town. When you come from a small town and there are only a couple of businesses, you know that the company isn't in your town. It may be a little different in Fargo.

Sen. O'Connell: You hit it on the head. This comes from one of the florists in Bottineau and I believe he is the head of the organization. Sen. Nething also testified about truth in advertising when this bill was on the Senate side.

Rep. Delmore: What is the punishment for violating this?

Sen. O'Connell: I didn't even bring a copy of the bill with me, and I didn't bring me any notes. They handed me a note and said that I was up and I didn't bring anything with me.

Chairman DeKrey: Whatever is in Section 51-12-01?

Rep. Delmore: It refers to another section of the code.

Rep. Koppelman: In our other truth-in-advertising laws, I am looking at the language at the bottom of the page, lines 21-24 where we hold someone harmless, and you state publisher here, which makes sense; but we also normally exempt advertising agencies, someone else preparing the ad on behalf of the client who misrepresents it to them. Would you have objection to clarifying that.

Sen. O'Connell: No, if you can make the bill better, that would be fine.

Rep. Delmore: It's a Class B misdemeanor.

Rep. Beadle: If you have a community like Fargo, where even if a business is located in West Fargo, they'll often advertise their business as Fargo-Moorhead Plumbing or F-M Area Plumbing or something like that in which their business name encompasses the Fargo-Moorhead metro area proper, even if the business itself may be located in West Fargo. Is this bill requiring that if they have any advertising they have to have their individual address of the business on there as well? Let's say they are a service industry, like a plumber, who comes on on-site, and works in this area, would they be in violation of this bill because they are technically located in West Fargo.

Sen. O'Connell: That wasn't the intent. If you are within the radius of your business that you serve, I would hope that would be held harmless. I think most people realize Fargo/Moorhead or Grand Forks/East Grand Forks, Bismarck/Mandan. It wasn't the intent to go after somebody like that.

Rep. Kingsbury: My florist brought this to my attention as well. I think it could be that someone could be operating out of their home and just channel out to other florists in other areas. You might have your ad there, like you have an office or business in that town, and you are operating with just your telephone and filling orders for here or there, and you are not paying taxes on your business. I think that was part of the reason for the bill.

Sen. O'Connell: I'm glad you brought that up. That was one of the biggest concerns that the florists had when they approached me, was that you could sit in New York City and run a business like that.

Rep. Delmore: Do you think it would be best to include the businesses that is included in the reference city or metro area. I share Rep. Beadle's problem, Fargo can be not only Fargo/Moorhead; it could be Fargo/West Fargo/Moorhead. Obviously if they follow through, they could list that specific area but we see a lot of, especially fliers that are sent out that will say the Fargo/Moorhead area. I wouldn't want to see someone prosecuted or persecuted for this; I think that is legitimate. It's a close enough area, I just wonder if that might be a good amendment, it's not very long but I think it covers the intent.

Chairman DeKrey: Sometimes persecution is more fun, though.

Sen. O'Connell: The funeral directors had testified on the Senate side and brought some of these objections forward too. It's really interesting, I ran into Sen. Olafson coming down the stairs and he wanted to know where I was going and I told him, and he said boy, I hope you're as lucky as I was. I said for what, and he said no questions and they passed out unanimously. I guess you saved everything for me.

Chairman DeKrey: Thank you. Further testimony in support of SB 2182.

Carol McAlravey: I'm from Don's House of Flowers in Jamestown, ND. I am past president of the ND State Florist Association. Our Association is concerned about the number of non-state shops that are being advertised in the yellow pages. This came to light a few years ago when the South-Central Dex telephone book came out with a beautiful red rose on the cover and an 800- number. Don, my husband, and myself have been in business up until the first of December, 2010 for almost 40 years and we sold the business. Don called that 800 number and asked the person who answered the phone where are you located. He was told New Jersey. They are taking business from the ND Florist by advertising in the yellow pages. This is the new yellow book that just came out this spring, and there are 30 non-ND and non-addressed listed florists. We're not asking the florists that are out-of-state to stop advertising. They can advertise but we want them to put in their address, city and state that the phone number is in. This isn't fair to John Q Public who isn't aware that businesses aren't always located in the state. They end up paying not only for the flowers but for other associated costs which push the total higher than if they used a local shop in that town. They sit in another state with a phone, computer, adding machine, and a credit card machine. You don't realize that you are paying the \$40 for the flowers, plus there will be a delivery charge of \$7.00, plus a service fee that will run about \$12.50. Now your bill is getting up there, but the amount of money that is sent to the florist in that ND town who actually fills the order and delivers it to your recipient is only going to be \$47.00. That ordering service keeps the \$12.50 or whatever amount was charged for that service fee. That's not fair to the customer or the florist. They are also not paying ND taxes, not helping to pay for our roads, schools, hospitals. We would like for this bill to be passed that they have to list their address, city and state.

Rep. Boehning: I guess if you are ordering flowers from NJ, where are the flowers being delivered from then.

Carol McAlravey: The order taker in New Jersey, will call a florist in Williston and pass along the order just like you had given it to them, but they will keep all the service fees.

Rep. Boehning: With that order being called in from NJ to the florist in Williston, there is still tax being paid on the money from the \$40 in Williston, correct.

Carol McAlravey: No.

Rep. Boehning: So the florist there doesn't charge any sales tax.

Carol McAlravey: Correct, because they are filling the order. The order was paid for by the person that is sending it. If he sends it through a florist in New Jersey or California, they are paying that tax in NJ or in CA.

Rep. Beadle: In reference to the phone book that had the rose on there with an 800 number; was this company advertising themselves as Jamestown FlowersRUs, something that had the city name in there or was it just 1-800 flowers.

Carol McAlravey: It was just the flower and the 1-800 number across the bottom. I can't even begin to imagine how much that advertising costs that florist to have that ad but look at the number of orders that he garnered from having that rose on the front of the cover.

Rep. Beadle: The reason why I asked that and I would be curious to know, the way the bill is written, to say that in a printed advertisement a person cannot use an assumed or fictitious name which includes the name of any city or state, unless they are located in that city or state, or if they put their actual address in the advertisement. The way I am interpreting this, is if they just have a flower on there with an 1-800 number that they wouldn't have to put their address of where they are located on this, because they aren't saying that they are Jamestown Flowers or not advertising that they are from Jamestown or this area; they are merely saying we can do this.

Carol McAlravey: Yes, with the front page. I thought about ads on the internet, but you can't really regulate that. I went on the internet and typed in Jamestown ND florist.com and several listings appeared. I clicked on Ameritflorist.com, and across the top it said that flowers were hand delivered in Jamestown, ND by a courteous and reliable family florist. Then I called the 1-800 number; she finally admitted that she wasn't in Jamestown but was from Houston, TX. I also printed out their policies and if they have an incorrect address or if the recipient is not home they charge an additional \$10 redelivery fee. It also said that \$1.99 fee will be added to the order placed by phone, so please consider ordering on line at our website. In the yellow pages, it says local and nationwide delivery, rated A1 by the Better Business Bureau. Flowers delivered fast. American floral delivery, 100% quality guaranteed. Call us 24/7 365.

Rep. Beadle: I understand that it is a significant issue as far as competition, they are advertising in the yellow pages saying that they can service this local area. But going back to how I'm reading the bill, it says the person's business which includes the name of a city or state, as part of the assume or fictitious name of the company, not necessarily where they are providing the service to. Just because you're not based in that area, if you're still able to service that area, it seems like you should be able to say that. Granted, maybe you shouldn't have that business in your name. Going with the internet reference that you had, those are part of the meta-tags that are there when you search it. If you type in Jamestown florist and search, the auto-generating off Google will put that into the meta-tag which will put it up in the header on top of the banner, but as long as they aren't saying that they are Jamestown-based florist. It might be family-owned regardless of where they are. As long as they aren't saying that they are based in Jamestown when they're not, or based

somewhere else when they're not, it doesn't seem like this bill will actually solve that issue.

Carol McAlravey: We belong to FTD and Teleflora, which are nationwide florists' organizations which allows us to take an order in Jamestown and send it to a fellow florist, a FTD florist member in Fargo, West Fargo, Moorhead, etc. You feel that this should be rewritten.

Rep. Beadle: I'm not necessarily saying that, and somebody could correct my interpretation, but just the way that I'm interpreting lines 8-10 in subsection 1, to me it's saying that as long as the business name isn't Jamestown Flowers, that they can still operate and advertise in Jamestown without putting down their address, because they aren't assuming a name that's referencing that city in which they are trying to operate. I don't see where it will have an effect to actually stop the problem that you are seeing without really only having the effect on the unintended consequences that we had discussed previously about the metro area and someone who is outside that area servicing that area and that they would be punished for it.

Carol McAlravey: We really don't want to punish anyone; we just want them to put their address, city and state information in the advertising in our local phone books. It gives the customer the opportunity to know where the company is actually located and that way they can buy from someone local if they want to.

Rep. Koppelman: I understand what you're trying to get at here and I support your intent. I know it's frustrating when people do what you're describing and sort of deceive the public. When you started working on this to try and resolve your dilemma, were you aware that there are truth-in-advertising laws on the books in ND. Did you approach your state's attorney or anyone about that?

Carol McAlravey: No, this had come up at our State Convention more than once. We had a friend of ours living in the Mandan area; I don't know if the ad she saw was in print or on the radio, but she happened to run across a florist advertising it was in Mandan. It was about prom time, so she called just to see what it was about and she talked to a person about ordering some prom flowers. When asked if she could come down and look at what was available, she was told that they could deliver them for her. Well, they weren't in Mandan. I went and talked to Sen. Nething and showed him some various yellow pages out of the areas of Minot, Devils Lake, Grand Forks and Jamestown. We sat down and discussed it, and he said that he would work on the bill for us.

Rep. Koppelman: In current state law, it says that no person with intent to sell, dispose of, increase the consumption of, or induce the public to enter into an obligation relative to or to acquire title or interest in any..... and then there is a whole list of goods and services which is pretty much all encompassing. Then it lists all the types of advertising, which includes newspaper, circulars, etc. that contains any assertion, representation, or statement of fact, including the price thereof, which is

untrue, deceptive, or misleading regarding such and goes on to list the products again. Basically that says you can't be deceptive in advertising. The penalty for that right now is a Class B misdemeanor, as was indicated earlier, and that would be the same penalty under this bill, in fact it would just be added to that section. My point is, I think you probably could have whatever recourse under current law that you would have even if this bill were to be passed.

Carol McAlravey: My concern then is to contacting these advertising companies. We can't shoot the messenger. It's not their fault, but look at the amount of money that they are drawing in from all these companies, and there are ads for florists in here that are listed more than once.

Rep. Koppelman: The problem is, even if this bill were to pass, and given the scenario that you described, that the company was in Houston, TX or New Jersey or wherever, if you go to the Stutsman's county state's attorney's office and say that there is this outfit out of Houston TX that is engaging in false and deceptive advertising because they are saying Jamestown in their ad, I think that would be a violation now; I think it would be a violation under your bill; the problem still remains that they are located in Texas. It's a class B misdemeanor and the likelihood of a state's attorney or prosecutor going out of state, you're not going to extradite people and whatever. Maybe you can get him to write a letter or something. I think you can do that under current law. We appreciate what you're trying to accomplish.

Rep. Onstad: The Teleflora, how does that work. That's really a network of florists that become members. Do they not have an 800 number and then they contact a florist in that area, or does the call originate with you and then you contact someone in that area.

Carol McAlravey: You can do it both ways. We belonged to FTD and Teleflora. It's a network of florists nationwide and worldwide. If I want to send an arrangement to Williston, I can call the Teleflora florist there and if my customer has picked something out of a selection guide that Teleflora provides that they like, I will ask that florist in Williston to fill that arrangement for the person that it's going to. We pay for the privilege of being FTD and Teleflora members. They do a lot for us; they can also take orders themselves. One of the things that we have run up against is a company called ProFlowers. Now at holiday time, especially a couple of years ago at Valentine's Day, we had ordered flowers to come to our shop from our wholesaler out of Miami. They were supposed to be here the Wednesday before the holiday and they didn't come. We called the wholesaler and asked where the roses were, that they didn't arrive as ordered. The wholesaler said that most of our shipment didn't come either because ProFlowers had the entire cargo plane of their own flowers; because they send directly to the customer. If you call ProFlowers they will send from their warehouse to whomever you want them sent to. When you think of February in ND, having a nice warm day is probably slim and I know we have had one of our UPS drivers tell us that the number of ProFlowers orders that they had on the truck for delivery pretty well filled their truck and they ended up being all frozen,

so if they stand by their product, they would have to redeliver those flowers or issue refunds. You would think that after a while that they would think that flowers would need to be wrapped better for protection so they aren't killed because of the weather.

Rep. Onstad: You did partially. I understand the dilemma in the advertising part, but I could be in Jamestown ND, call the 800 number, they would contact you because I want to deliver flowers to a friend of mine across town in Jamestown, I could do it that way, or I could go directly to your store and then order them. The situation of calling an 800 number might be calling Teleflora, what address would they have to put down as to where they are located.

Carol McAlravey: They would probably put Oklahoma City, OK, that's where their headquarters are located.

Chairman DeKrey: Thank you.

Sen. Dave Nething: I put this bill in on behalf of the local constituents. I'm not an authority on the operation of a floral business. I do know that, in preparation for this, we had legislative council do the drafting of the bill and they usually check to see if there are other particular problems that might be there with existing law and I was never notified of any particular problem. There is a citation that might be helpful for those of you that do have a particular interest in this; it's www.floristdetective.com. If you go to that site, and I haven't done this, but I've been referred to it, they tell me that you learn a lot about what's going on in this floral business, including non-existent flower shops, fraudulent orders, etc.

Rep. Klemin: I don't know if you heard the question from Rep. Beadle on the language on lines 8-10. I have a concern that the bill, the way that it's presently written on those lines, doesn't do what you intended to do. Let me give you an example, on line 8 a person may not use an assumed or fictitious name.

Sen. Nething: In a printed advertisement, now.

Rep. Klemin: So let's say that the legal name of the company is Flowers Unlimited, Inc. That's not an assumed or fictitious name. So if in the printed ad they used the name Flowers Unlimited, Inc. that would be their correct legal name, then they wouldn't meet the part 1 of this bill which is on line 8. Secondly, on line 9 it seems to indicate that the name must include the name of a city in this state like Flowers Unlimited of Jamestown; but in the example I gave you, I just said Flowers Unlimited, Inc. It doesn't use the name of a city in the name of the company, so it wouldn't meet the second step which is on line 9. So this company, doing business out of Houston, TX as basically an order taker under the name of Flowers Unlimited, Inc. would not be in violation of this law because it's not an assume name, they don't have the name Jamestown in their title. I don't think that's what you are intending here.

Sen. Nething: As I read it, I read the whole sentence together. In a printed advertisement a person may not use an assumed or fictitious name for the conduct of the person's business which includes the name of a city in this state in a manner that suggests the business is located in that city. I guess I don't read it like you do.

Rep. Klemin: In the example I gave you, they didn't use the name of any city in their ad.

Sen. Nething: I don't track that. I didn't draft the bill.

Rep. Klemin: I'm just saying that it isn't clear.

Sen. Nething: When I gave it to Legislative Council, I believe the wording came from a MN or a CT statute, one of them. I think that is where the language was taken from.

Rep. Beadle: One of the other questions that I had earlier was with the wording on lines 8-10. Let's say you have a service based company; FM Plumbing was the example I used. Fargo-Moorhead Plumbing. They go out to sites and do the work. They are based in West Fargo, and goes out to the Fargo/Moorhead metro area to work. Would this bill have the unintended consequence of them having to register as a West Fargo address when technically they are in the Fargo/Moorhead area, or advertised as F/M Area Plumbing. Would you be opposed to an amendment, say on line 11, where it is located in the referenced city or metro area, something like that. If it's a metro area like Fargo/Moorhead, Grand Forks/E Grand Forks, Bismarck/Mandan where they might be advertising as Bismarck "service" but they might be technically based in Mandan. Would you be opposed to some sort of a friendly amendment like that.

Sen. Nething: I think you're right. In an effort to keep it as clear as possible. We do have about three communities where we have those multiple possibilities. No, I don't think that would hinder the bill at all.

Rep. Steiner: If this is just about the florist issue, would it be possible to make this bill narrower just for the florist issue. For example, my husband and I have a small business "BigSkyCondos.com" and when people call our home, it's an 800 number and they'll ask if we are located in Big Sky, MT. On our internet site it says Dickinson, ND on one of the final pages, if you go through all the different links. I don't know if printed advertisement is when somebody prints out our internet sheet.

Sen. Nething: You're not violating anything; you're not holding yourself out to be some other place, are you. From what you described, you're telling them that you are from Dickinson, right.

Rep. Steiner: Yes, that's correct. People do assume sometimes that we are located in Big Sky. I don't know why but they'll call and we basically are order takers for reservations for condos at Big Sky, but we live in Dickinson. I can see how this is happening on the internet, that's the way the internet works. Would it be better to narrow this bill to just the florists.

Sen. Nething: When you have bills drafted here, you go to Legislative Council for their expert help in drafting the bills.

Chairman DeKrey: Thank you. Further testimony in support of SB 2182. Opposition to SB 2182. We will close the hearing. We're going to appoint a subcommittee on this bill; Rep. Koppelman, chair, Rep. Beadle, and Rep. Guggisberg.

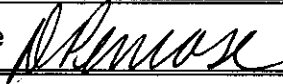
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2182
March 16, 2011
15510

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at SB 2182.

Rep. Koppelman: This amendment is the product of your subcommittee, which included Rep. Beadle, Rep. Guggisberg and me. If you recall, this was the bill that regarded the florist shop and the truth-in-advertising law. As the subcommittee looked at it, we had a number of concerns; one was the fact that the bill they introduced would not have solved the problem they sought to solve. We didn't want to kill the bill, we wanted to be sensitive to the purpose and in looking at the truth-in-advertising law that currently exists in statute, LC believed that the best way to deal with the issue was simply to amend that. In the process, they took the liberty of doing some clean-up. If you look at the overstruck language, there was a laundry list of items in the law that dates back to the 1920's and some of it to the 1950's. LC believed that was really summarized when we started talking about categories like product, merchandise, security service, performance and so on, and we didn't need to say drug, medicine, patent, varnish, oil, ...etc. Those changes were for that reason. They added broadcast because obviously that is a current update to the law. The old law talked about print ads, because in the 1920's there virtually wasn't any broadcasting yet and this covers TV, radio and so on. It brings the statute up to date, mentions those things and there is a line that says "or name suggesting the business location of the offeror" to take care of what the bill really sought to deal with. Down on the bottom, of the existing statute, where it says price, business location, etc. and then there was a segment in the bill that also talked about liability. We included that phrase and that's been a long-standing tenet of truth-in-advertising law in ND anyway, so we thought it was best to clarify and codify it with this same section of Code. I move the amendment.

Rep. Delmore: Did you include metro areas, we talked about the F/M area, but you have your business in West Fargo, would they be okay under this amendment.

Rep. Koppelman: Yes, by making it more general I think it actually clarifies that, because we're saying that you can't do something untrue, deceptive, or misleading regarding the location of your business. So if you're in Cincinnati and you said

Bismarck Floral, or Missouri Valley Floral, you're implying something that isn't the case. This is broader language and I think it actually helps protect even more.

Rep. Delmore: What is the penalty.

Rep. Onstad: Class B misdemeanor.

Rep. Koppelman: That's right, Class B misdemeanor, correct.

Rep. Kretschmar: At the very end of the bill, is the closed ". Where is the opening ".

Rep. Koppelman: I noticed that too, there is a " at the top also and I don't know why they did that, but it looks like the " at the top and " at the bottom are because it is a hog house, it says replace lines with...

Rep. Klemin: It doesn't mean anything.

Rep. Delmore: Second the motion.

Chairman DeKrey: Voice vote, motion carried. We now have SB 2182 before us as amended.

Rep. Koppelman: I move a Do Pass as amended.

Rep. Delmore: Second the motion.

Rep. Boehning: With the internet, how are we even going to regulate that on an internet business. They could be an overseas company saying that they are Bismarck Floral. I think you could probably regulate print media, newspapers, phone books, etc.

Rep. Koppelman: You have a good point. The reason that we included web pages, is because that is a very popular means of communication and advertising, we thought it should extend to that. However, I think you're right that there is limited enforceability, just like there would be if a ND business places an ad in the New York Times, can we really regulate that. It's kind of iffy. I think what you could clearly regulate is if Bismarck Floral has a web page and they are advertising to ND customers and they are located in Bismarck, and it's a ND transaction, that's clearly within the state. The worldwide web is used both globally and locally. I think that's the intent.

Rep. Klemin: I guess one of the examples we had was a company advertising in a Jamestown phone book which was actually an order taker from Houston. I didn't get anything out of the testimony that they were using a false or deceptive name or that they said they were located in Jamestown, or anything. This would not preclude them from continuing to do exactly the same thing.

Rep. Koppelman: I didn't see that ad, but if all they had was Flowers and an 800 number, I think you're right. If they said, Jamestown Floral and an 800 number, then maybe it would under the bill. But if they said Jamestown Floral and the 800-number, I don't think the original bill would have protected them.

Rep. Klemin: Right, I guess if they said their name was Flowers Unlimited, and they put their ad on the cover of the Jamestown phone book, that's free enterprise I guess.

Rep. Koppelman: You're right. I think the argument is maybe we shouldn't try to infringe upon that. It's only a question of whether they are doing something false, misleading or deceptive.

Rep. Delmore: It seemed to me that there was something that led people to believe that it was their local florist. To me, that would be deceptive. If you're out of Houston and you say that you are the local florist, then I think we could do something about them in this bill. Sometimes you're right, free enterprise does as it does, and they can advertise whatever, as long as they're honest.

Rep. Koppelman: If they had Flowers Unlimited and an 800 number, and then they had a tag line that said "your local florist" then maybe that would be misleading.

Rep. Boehning: One of the other things that comes to mind, say a Jamestown florist has a 800 number and the 800 number is answered by an order taker in Houston, TX; they take the orders for them 24/7. The orders go back to the Jamestown florist, I really don't think that this bill is going to be enforceable. I'm going to vote against it. There's no way to even regulate it.

Rep. Koppelman: Just a comment, I think to be perfectly frank with the Committee, the end result of this amendment is to clean up the truth-in-advertising law which is on the books and is antiquated. I don't think it hurts anything.

Chairman DeKrey: Clerk will take the roll on SB 2182 as amended.

11 YES 1 NO 2 ABSENT
DO PASS AS AMENDED CARRIER: Rep. Koppelman

March 16, 2011

VR
3/16/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2182

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 51-12-01 of the North Dakota Century Code, relating to false and misleading advertising; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-12-01 of the North Dakota Century Code is amended and reenacted as follows:

51-12-01. False and misleading advertising prohibited.

1. No person with intent to sell, dispose of, increase the consumption of, or induce the public to enter an obligation relative to or to acquire title or interest in any ~~food, drug, medicine, patent and proprietary product,~~ merchandise, security, service, performance, ~~medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ or anything offered to the public may make, publish, disseminate, circulate, broadcast, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, broadcast, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, television or radio broadcast, placement on the internet, or in any other way, an advertisement or web page that contains any assertion, representation, or statement of fact, including the price thereof or name suggesting the business location of the offeror, which is untrue, deceptive, or misleading regarding such ~~food, drug, medicine, patent and proprietary product,~~ merchandise, security, service, performance, ~~medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ price, business location, or anything offered to the public.
2. It is not a violation of this section to advertise a performance by a performing group if at least one member of the performing group was a member of the recording group, the performance is identified as a "salute" or "tribute" to the recording group, the performance is expressly authorized in the advertising by the recording group, the advertising does not relate to a live music performance taking place in this state, or the advertising contains a disclaimer that the performing group is not the recording group or is not affiliated with the recording group.
3. This section imposes liability on only the offeror of a product or service. This section does not impose liability on a publisher, other advertising media, or an advertising agency that relies on the assurances of a person placing an advertisement that the claims or representations are true."

Renumber accordingly

Date: 3/16/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2182

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle			Rep. Hogan	✓	
Rep. Boehning		✓	Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos					
Rep. Steiner	✓				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2182: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). SB 2182 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 51-12-01 of the North Dakota Century Code, relating to false and misleading advertising; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-12-01 of the North Dakota Century Code is amended and reenacted as follows:

51-12-01. False and misleading advertising prohibited.

1. No person with intent to sell, dispose of, increase the consumption of, or induce the public to enter an obligation relative to or to acquire title or interest in any ~~food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ or anything offered to the public may make, publish, disseminate, circulate, broadcast, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, broadcast, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, television or radio broadcast, placement on the internet, or in any other way, an advertisement or web page that contains any assertion, representation, or statement of fact, including the price thereof or name suggesting the business location of the offeror, which is untrue, deceptive, or misleading regarding such ~~food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ price, business location, or anything offered to the public.
2. It is not a violation of this section to advertise a performance by a performing group if at least one member of the performing group was a member of the recording group, the performance is identified as a "salute" or "tribute" to the recording group, the performance is expressly authorized in the advertising by the recording group, the advertising does not relate to a live music performance taking place in this state, or the advertising contains a disclaimer that the performing group is not the recording group or is not affiliated with the recording group.
3. This section imposes liability on only the offeror of a product or service. This section does not impose liability on a publisher, other advertising media, or an advertising agency that relies on the assurances of a person placing an advertisement that the claims or representations are true."

Renumber accordingly

2011 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2182

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2182
4/8/11
Job #16452

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to false advertisements regarding location of businesses

Minutes:

Senators

Nething
Sitte
Lyson

Representatives

Koppelman
Maragos
Onstad

Chairman Nething asked Representative Koppelman to explain the changes made by the House. He says two things came to light when looked at the language of the bill. First was the belief that what was sought in the bill could be accomplished under current law and current false advertising law. He said he appointed a sub-committee and they learned that that the language didn't accomplish the intended purpose so the House tried to incorporate the intent of the bill into the current false advertising statute and in doing that Legislative Council thought there needed to be some language clean up. He explains that is what the amendment does. Senator Nething said he agrees with their amendment but brings in an amendment to change one word. Representative Koppelman agrees.

Representative Koppelman moves the Senate accede to House amendments and further amend by inserting the word broadcaster after publisher on page 2 line 7

Rep. Maragos seconded

Roll call vote – 6 yes, 0 no
Motion passes

Senator Sitte will carry

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 2182 as (re) engrossed

Date: 4-8-11

Roll Call Vote #: 1

- Action Taken**
- SENATE accede to House amendments
 - SENATE accede to House amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 819 - 820

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep Koppelman Seconded by: Rep Maragos

Senators	4/8	Yes	No		Representatives	4/8	Yes	No
<u>Nothing</u>	<u>X</u>	<u>X</u>			<u>Koppelman</u>	<u>X</u>	<u>X</u>	
<u>Sitte</u>	<u>X</u>	<u>X</u>			<u>Maragos</u>	<u>X</u>	<u>X</u>	
<u>Lyson</u>	<u>X</u>	<u>X</u>			<u>Dustad</u>	<u>X</u>	<u>X</u>	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Sitte House Carrier Koppelman

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2182: Your conference committee (Sens. Nething, Sitte, Lyson and Reps. Koppelman, Maragos, Onstad) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 819-820, adopt amendments as follows, and place SB 2182 on the Seventh order:

That the House recede from its amendments as printed on pages 819 and 820 of the Senate Journal and pages 1014 and 1015 of the House Journal and that Senate Bill No. 2182 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 51-12-01 of the North Dakota Century Code, relating to false and misleading advertising; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-12-01 of the North Dakota Century Code is amended and reenacted as follows:

51-12-01. False and misleading advertising prohibited.

1. No person with intent to sell, dispose of, increase the consumption of, or induce the public to enter an obligation relative to or to acquire title or interest in any ~~food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ or anything offered to the public may make, publish, disseminate, circulate, broadcast, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, broadcast, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, television or radio broadcast, placement on the internet, or in any other way, an advertisement or web page that contains any assertion, representation, or statement of fact, including the price thereof or name suggesting the business location of the offeror, which is untrue, deceptive, or misleading regarding such ~~food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ price, business location, or anything offered to the public.
2. It is not a violation of this section to advertise a performance by a performing group if at least one member of the performing group was a member of the recording group, the performance is identified as a "salute" or "tribute" to the recording group, the performance is expressly authorized in the advertising by the recording group, the advertising does not relate to a live music performance taking place in this state, or the advertising contains a disclaimer that the performing group is not the recording group or is not affiliated with the recording group.
3. This section imposes liability on only the offeror of a product or service. This section does not impose liability on a publisher, broadcaster, other advertising media, or an advertising agency that relies on the assurances of a person placing an advertisement that the claims or representations are true."

Renumber accordingly

SB 2182 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2182

PROPOSED AMENDMENTS TO SB 2182 WITH HOUSE AMENDMENTS

Page 2, line 7, after "publisher," insert "broadcaster,"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2182

Page 1, line 1, replace "create and enact a new section to chapter 51-12" with "amend and reenact subsection 1 of section 51-12-01"

Page 1, replace lines 5 through 24 with:

"SECTION 1. AMENDMENT. Subsection 1 of section 51-12-01 of the North Dakota Century Code is amended and reenacted as follows:

1. No person with intent to sell, dispose of, increase the consumption of, or induce the public to enter an obligation relative to or to acquire title or interest in any ~~food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ or anything offered to the public may make, publish, disseminate, circulate, broadcast, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, broadcast, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, television or radio broadcast, placement on the internet, or in any other way, an advertisement or web page that contains any assertion, representation, or statement of fact, including the price thereof or name suggesting the business location of the offeror, which is untrue, deceptive, or misleading regarding such ~~food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ price, business location, or anything offered to the public.

This section imposes liability on only the offeror of a product or service. This section does not impose liability on a publisher, other advertising media, or an advertising agency that relies on the assurances of a person placing an advertisement that the claims or representations are true."

Renumber accordingly