

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1581

Introduced by Assembly Member Wieckowski
(Principal coauthor: Senator Wolk)

February 2, 2012

An act to add Section 17537.15 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1581, as amended, Wieckowski. Advertising: business location representations: floral businesses.

Existing law provides for the regulation of advertising in this state and makes certain advertising practices unlawful. A violation of the provisions regulating advertising is a crime.

~~This bill would make it unlawful for a floral business, as defined, to misrepresent the geographic location of its business by (1) listing a local telephone number in any advertisement, as defined, unless the advertisement identifies the true physical address, including the city, of the floral business; or (2) representing the geographic location of the floral business as "local," "locally owned," or as being physically located, as defined, in this state if it is not physically located in this state, in specified manners that would cause a reasonable consumer to believe that the floral business is physically located in this state, or if a telephone call to the telephone number listed in the advertisement routinely forwards or transfers the caller to, or terminates in, a physical location outside of this state. This bill would also state that its provisions shall not be construed to create or impose any obligation or duty upon~~

~~a person other than a floral business and would specify circumstances under which provisions of the bill would not apply.~~

This bill would make it unlawful for a provider or vendor of floral or ornamental products or services, as defined, to misrepresent the geographic location of its business by either (1) listing a local telephone number in any listing or advertisement, unless the advertisement or listing identifies the true physical address, including the city, of the provider’s or vendor’s business; or (2) listing a fictitious business name or an assumed business name in any listing or advertisement, if the name misrepresents the location of the business and the listing or advertisement does not identify the true physical address of the business. This bill would also state that it does not create or impose any obligation or duty upon a person other than a vendor or provider as described above.

By creating new advertising prohibitions, the violation of which would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17537.15 is added to the Business and
- 2 Professions Code, to read:
- 3 17537.15. (a) For purposes of this section, “floral or
- 4 ornamental products or services” means floral arrangements, cut
- 5 flowers, floral bouquets, potted plants, balloons, floral designs,
- 6 and related products and services.
- 7 (b) For the purposes of this section, “local telephone number”
- 8 means a specific telephone number (area code and prefix) assigned
- 9 for the purpose of completing local calls between a calling party
- 10 or station and any other party or station within a designated
- 11 exchange or all of its designated local calling areas. The term
- 12 “local telephone number” does not include long distance telephone
- 13 numbers or any toll-free telephone numbers listed in a local
- 14 telephone directory.

1 (c) It is unlawful for a provider or vendor of floral or ornamental
2 products or services to misrepresent the geographic location of
3 its business by doing either of the following:

4 (1) Listing a local telephone number in any advertisement or
5 listing, unless the advertisement or listing identifies the true
6 physical address, including the city, of the provider's or vendor's
7 business.

8 (2) Listing a fictitious business name or an assumed business
9 name in any advertisement or listing if both of the following criteria
10 are met:

11 (A) The name of the business misrepresents the provider's or
12 vendor's geographic location.

13 (B) The advertisement or listing does not identify the true
14 physical address, including the city and state, of the provider's or
15 vendor's business.

16 (d) This section does not create or impose any duty or obligation
17 on a person other than a vendor or provider described in
18 subdivision (a).

19 (e) This section does not apply to any of the following:

20 (1) A publisher of a telephone directory or other publication or
21 a provider of a directory assistance service publishing or providing
22 information about another business.

23 (2) An Internet Web site that aggregates and provides
24 information about other businesses.

25 (3) An owner or publisher of a print advertising medium
26 providing information about other businesses.

27 (4) An Internet service provider.

28 (5) An Internet service that displays or distributes
29 advertisements for other businesses.

30 ~~SECTION 1. Section 17537.15 is added to the Business and~~
31 ~~Professions Code, to read:~~

32 ~~17537.15. (a) For purposes of this section, the following terms~~
33 ~~shall have the following meanings:~~

34 ~~(1) "Advertising medium" means any of the following:~~

35 ~~(A) Telephone directory or other directory assistance database.~~

36 ~~(B) Television.~~

37 ~~(C) Radio.~~

38 ~~(D) Newspaper, magazine, flyer, brochure, or other print~~
39 ~~medium.~~

40 ~~(E) Billboard, sign, or poster.~~

1 ~~(F) Facsimile.~~

2 ~~(G) Electronic mail or other electronic form of communication.~~

3 ~~(H) The Internet and services available by means of the Internet.~~

4 ~~(2) "Advertisement" means any oral, written, or graphic~~
5 ~~statement or representation made while engaging in floral business~~
6 ~~regardless of the medium of communication for the purpose of~~
7 ~~inducing, directly or indirectly, the purchase of floral arrangements;~~
8 ~~plant arrangements, and related merchandise and services by a~~
9 ~~resident of this state or for delivery to a resident of this state.~~

10 ~~(3) "Floral business" means a business that engages directly or~~
11 ~~indirectly in the retail sale of floral arrangements, plant~~
12 ~~arrangements, and related merchandise and services that are~~
13 ~~purchased by a resident of this state or for delivery to a resident~~
14 ~~of this state, including, but not limited to, the sale, offer for sale,~~
15 ~~marketing, distribution, order gathering, and advertisement of~~
16 ~~floral arrangements, plant arrangements, and related merchandise~~
17 ~~and services.~~

18 ~~(4) "Local telephone number" means a specific telephone~~
19 ~~number (area code and prefix) assigned for the purpose of~~
20 ~~completing local calls between a calling party or station and any~~
21 ~~other party or station within a designated exchange or all of its~~
22 ~~designated local calling areas. The term "local telephone number"~~
23 ~~does not include long distance telephone numbers or 800, 888, or~~
24 ~~900 exchange telephone numbers listed in a local telephone~~
25 ~~directory.~~

26 ~~(5) "Physically located" means having a place of business that~~
27 ~~is a physical geographic presence in this state at a location~~
28 ~~designated by a post office mailing address in this state.~~

29 ~~(b) It is unlawful for a floral business to misrepresent the~~
30 ~~geographic location of its business by doing any of the following~~
31 ~~in an advertising medium:~~

32 ~~(1) Listing a local telephone number in any advertisement, unless~~
33 ~~the advertisement identifies the true physical address, including~~
34 ~~the city, of the floral business.~~

35 ~~(2) Representing the geographic location of the floral business~~
36 ~~as "local," "locally owned," or as being physically located in this~~
37 ~~state if the floral business is not physically located in this state and~~
38 ~~any of the following applies:~~

39 ~~(A) The name of the floral business specified in the~~
40 ~~advertisement is a fictitious business name or an assumed business~~

1 name that would lead a reasonable consumer to conclude that the
2 floral business is physically located in this state.

3 (B) The advertisement uses the name of or any form of contact
4 information for another floral business that is physically located
5 in this state in a manner that would cause a reasonable consumer
6 to believe that the floral business is physically located in this state.

7 (C) A telephone call to the telephone number listed in the
8 advertisement for purposes of contacting the floral business
9 routinely forwards or transfers the caller to, or terminates in, a
10 physical location that is outside of this state.

11 (D) The advertisement would otherwise lead a reasonable
12 consumer to conclude that the floral business is physically located
13 in this state.

14 (e) (1) This section shall not be construed to create or impose
15 any duty or obligation on a person other than a floral business as
16 defined in paragraph (3) of subdivision (a).

17 (2) Subdivision (b) does not apply to a person as to whom any
18 of the following applies:

19 (A) Has an ownership interest in another floral business that is
20 physically located in this state.

21 (B) Is a service mark licensee of a service mark of another floral
22 business that is physically located in this state, regardless of
23 whether the service mark is registered under state law or federal
24 law.

25 (C) Is a franchisor of a floral business that is physically located
26 in this state.

27 (D) Is engaged in floral business at a geographical location
28 outside of this state and that discloses in a clear and conspicuous
29 manner that would cause a reasonable consumer to easily become
30 aware of the disclosure that the person is engaged in floral business
31 at a geographical location outside of this state.

32 (3) This section does not apply to any of the following:

33 (A) A publisher of a telephone directory or other publication or
34 a provider of a directory assistance service publishing or providing
35 information about another business.

36 (B) An Internet Web site that aggregates and provides
37 information about other businesses.

38 (C) An owner or publisher of a print advertising medium
39 providing information about other businesses.

40 (D) An Internet service provider.

1 ~~(E) An Internet service that displays or distributes~~
2 ~~advertisements for other businesses.~~

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.