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TRUTH IN ADVERTISING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James Cobb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to truth in advertising.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "advertisement";
- ▶ provides that it is a deceptive trade practice to cause likelihood of confusion or of misunderstanding as to the extent to which goods or services are the product of human authorship;
- ▶ increases the minimum damages award in an action alleging a deceptive trade practice;
- ▶ requires a potential plaintiff alleging a deceptive trade practice to give the potential defendant an opportunity to remedy the alleged violation before filing an action for damages; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 13-11a-2, as last amended by Laws of Utah 2009, Chapter 133

29 13-11a-3, as last amended by Laws of Utah 2010, Chapters 54, 378

30 13-11a-4, as enacted by Laws of Utah 1989, Chapter 205

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 13-11a-2 is amended to read:

34 **13-11a-2. Definitions.**

35 As used in this chapter:

36 (1) "Advertisement" means any written, oral, or graphic statement or representation, or
37 any series of written, oral, or graphic statements or representations, made by a supplier in
38 connection with the solicitation of business. It includes, but is not limited to, communication
39 by noncable television systems, radio, printed brochures, newspapers, leaflets, flyers, circulars,
40 billboards, banners, or signs. It does not include any oral, in person, representation made by a
41 sales representative to a prospective purchaser.

42 (2) To "clearly and conspicuously disclose" means:

43 (a) in the print media:

44 (i) to state in typeface that is sufficiently bold to be obviously seen;

45 (ii) to state in type size of at least 10 point type for a 14" x 23" document, and, in larger
46 documents, of a type size of proportionately the same size; and

47 (iii) to place in the text so as to be obviously seen;

48 (b) in radio advertising, to verbally state in the same volume as that used in the
49 advertisement;

50 (c) in television advertising, the method for print media or radio advertising is
51 acceptable unless contrary to other governing laws.

52 (3) "Generic good" means a product which is offered for sale under its common
53 descriptive name rather than under a trademark, trade name, brand name, house brand, or other
54 distinguishing appellation.

55 (4) "Goods and services" means all items which may be the subject of a sales
56 transaction.

57 (5) "Nondiscounted price" means a price at which the goods or services are offered at
58 the time of the price assessment without a temporary store reduction in price.

59 (6) "Performing group" means a vocal or instrumental group that performs live music
60 for a paying audience.

61 (7) "Person" means an individual, including a consumer, corporation, government, or
62 governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated
63 association, two or more of any of the foregoing having a joint or common interest, or any
64 other legal or commercial entity.

65 (8) "Price assessment" means the determination of the prices underlying a price
66 comparison.

67 (9) "Price assessor" means a firm or individual that determines the prices, including the
68 reference prices, underlying the price comparison, or who makes the price comparison.

69 (10) "Price comparison" means any express representation that a specific savings,
70 reduction, or discount exists or will exist between the supplier's advertised price and another
71 specific price. A representation which does not reasonably imply a comparison to identifiable
72 prices or items does not express a price comparison. Language constituting mere sales
73 "puffing" is not prohibited by this chapter.

74 (11) "Product area" means the geographical area in which the prospective purchasers to
75 whom the advertisement is aimed could reasonably be expected to seek the goods or services in
76 question.

77 (12) "Recording group" means a vocal or instrumental group at least one of the
78 members of which has released a commercial sound recording under the group's name, if the
79 member has a legal right to use of the group's name.

80 (13) "Reference price" means a higher price to which a supplier compares a lower price
81 to indicate that a reduction in price exists or will exist.

82 (14) "Regular price" means the price at which a supplier has recently offered the goods
83 or services for sale in good faith in the regular course of business. Every price represented in
84 an advertisement is considered a regular price unless it is specifically represented as a price
85 other than a regular price, such as a discount price or a manufacturer's suggested price. It is
86 prima facie evidence that a price is other than a regular price when it was not offered as the
87 nondiscount price of the goods or services for the 15 days immediately preceding an
88 advertisement of the price, and the price change during the 15 day period was not due to price
89 changes inherent in the pricing of seasonal or perishable goods, due to changes in cost of the

90 goods or services to the supplier, or due to pricing changes made to match a competitor's price.

91 (15) "Sales transaction" means a sale, lease, assignment, award by chance, or other
92 written or oral transfer or disposition of goods, services, or other property, both tangible and
93 intangible (except securities and insurance), to a person or business, or a solicitation or offer by
94 a supplier with respect to any of these transfers or dispositions. It includes any offer or
95 solicitation, any agreement, and any performance of an agreement with respect to any of these
96 transfers or dispositions.

97 (16) "Sound recording" means a work resulting from the fixation on a material object,
98 such as a disk, tape, or phono-record, of musical or instrumental sounds.

99 (17) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who
100 regularly solicits, engages in, or enforces sales transactions, whether or not he deals directly
101 with the purchaser.

102 Section 2. Section **13-11a-3** is amended to read:

103 **13-11a-3. Deceptive trade practices enumerated -- Records to be kept -- Defenses.**

104 (1) Deceptive trade practices occur when, in the course of a person's business,
105 vocation, or occupation that person:

106 (a) passes off goods or services as those of another;

107 (b) causes likelihood of confusion or of misunderstanding as to the source,
108 sponsorship, approval, or certification of goods or services;

109 (c) causes likelihood of confusion or of misunderstanding as to affiliation, connection,
110 association with, or certification by another;

111 (d) uses deceptive representations or designations of geographic origin in connection
112 with goods or services;

113 (e) represents that goods or services have sponsorship, approval, characteristics,
114 ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship,
115 approval, status, affiliation, or connection that the person does not have;

116 (f) represents that goods are original or new if they are deteriorated, altered,
117 reconditioned, reclaimed, used, or second-hand;

118 (g) represents that goods or services are of a particular standard, quality, or grade, or
119 that goods are of a particular style or model, if they are of another;

120 (h) disparages the goods, services, or business of another by false or misleading

121 representation of fact;

122 (i) advertises goods or services or the price of goods and services with intent not to sell
123 them as advertised;

124 (j) advertises goods or services with intent not to supply a reasonable expectable public
125 demand, unless:

126 (i) the advertisement clearly and conspicuously discloses a limitation of quantity; or

127 (ii) the person issues rainchecks for the advertised goods or services;

128 (k) makes false or misleading statements of fact concerning the reasons for, existence
129 of, or amounts of price reductions, including the false use of any of the following expressions
130 in an advertisement:

131 (i) "going out of business";

132 (ii) "bankruptcy sale";

133 (iii) "lost our lease";

134 (iv) "building coming down";

135 (v) "forced out of business";

136 (vi) "final days";

137 (vii) "liquidation sale";

138 (viii) "fire sale";

139 (ix) "quitting business"; or

140 (x) an expression similar to any of the expressions in Subsections (1)(k)(i) through

141 (ix);

142 (l) makes a comparison between the person's own sale or discount price and a
143 competitor's nondiscounted price without clearly and conspicuously disclosing that fact;

144 (m) without clearly and conspicuously disclosing the date of the price assessment

145 makes a price comparison with the goods of another based upon a price assessment performed

146 more than seven days prior to the date of the advertisement or uses in an advertisement the

147 results of a price assessment performed more than seven days prior to the date of the

148 advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or

149 television ad, the time frame of the price assessment;

150 (n) advertises or uses in a price assessment or comparison a price that is not that

151 person's own unless this fact is:

- 152 (i) clearly and conspicuously disclosed; and
- 153 (ii) the representation of the price is accurate;
- 154 (o) represents as independent an audit, accounting, price assessment, or comparison of
- 155 prices of goods or services, when the audit, accounting, price assessment, or comparison is not
- 156 independent;
- 157 (p) represents, in an advertisement of a reduction from the supplier's own prices, that
- 158 the reduction is from a regular price, when the former price is not a regular price as defined in
- 159 Subsection 13-11a-2(14);
- 160 (q) advertises a price comparison or the result of a price assessment or comparison that
- 161 uses, in any way, an identified competitor's price without clearly and conspicuously disclosing
- 162 the identity of the price assessor and any relationship between the price assessor and the
- 163 supplier;
- 164 (r) makes a price comparison between a category of the supplier's goods and the same
- 165 category of the goods of another, without randomly selecting the individual goods or services
- 166 upon whose prices the comparison is based;
- 167 (s) makes a comparison between similar but nonidentical goods or services unless the
- 168 nonidentical goods or services are of essentially similar quality to the advertised goods or
- 169 services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements;
- 170 [~~or~~]
- 171 (t) engages in any other conduct which similarly creates a likelihood of confusion or of
- 172 misunderstanding~~[-]; or~~
- 173 (u) causes likelihood of confusion or of misunderstanding as to the extent to which
- 174 goods or services are the product of human authorship.
- 175 (2) (a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect
- 176 for less than one week from the advertisement date, the advertisement shall clearly and
- 177 conspicuously disclose the specific time period during which the price will be in effect.
- 178 (b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the
- 179 price shall be one at which the competitor offered the goods or services for sale in the product
- 180 area at the time of the price assessment, and may not be an isolated price.
- 181 (c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or
- 182 comparison shall be independent if the price assessor randomly selects the goods to be

183 compared, and the time and place of the comparison, and no agreement or understanding exists
184 between the supplier and the price assessor that could cause the results of the assessment to be
185 fraudulent or deceptive. The independence of an audit, accounting, or price comparison is not
186 invalidated merely because the advertiser pays a fee for the audit, accounting, or price
187 comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or
188 part-time employee of the advertiser.

189 (d) Examples of a disclosure that complies with Subsection (1)(q) are:

190 (i) "Price assessment performed by Store Z";

191 (ii) "Price assessment performed by a certified public accounting firm"; or

192 (iii) "Price assessment performed by employee of Store Y".

193 (e) For the purposes of Subsection (1)(r), goods or services are randomly selected when
194 the supplier has no advance knowledge of what goods and services will be surveyed by the
195 price assessor, and when the supplier certifies its lack of advance knowledge by an affidavit to
196 be retained in the supplier's records for one year.

197 (f) (i) It is prima facie evidence of compliance with Subsection (1)(s) if:

198 (A) the goods compared are substantially the same size; and

199 (B) the goods compared are of substantially the same quality, which may include
200 similar models of competing brands of goods, or goods made of substantially the same
201 materials and made with substantially the same workmanship.

202 (ii) It is prima facie evidence of a deceptive comparison under this section when the
203 prices of brand name goods and generic goods are compared.

204 (3) Any supplier who makes a comparison with a competitor's price in advertising shall
205 maintain for a period of one year records that disclose the factual basis for such price
206 comparisons and from which the validity of such claim can be established.

207 (4) Engaging in a deceptive trade practice is prohibited.

208 [~~4~~] (5) It is a defense to any claim of false or deceptive price representations under
209 this chapter that a person:

210 (a) has no knowledge that the represented price is not genuine; and

211 (b) has made reasonable efforts to determine whether the represented price is genuine.

212 [~~5~~] (6) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs
213 in which a supplier compares the price of a single item of its goods or services with those of

214 another.

215 ~~[(6)]~~ (7) To prevail in an action under this chapter, a complainant need not prove
216 competition between the parties or actual confusion or misunderstanding.

217 ~~[(7)]~~ (8) This chapter does not affect unfair trade practices otherwise actionable at
218 common law or under other statutes of this state.

219 Section 3. Section 13-11a-4 is amended to read:

220 **13-11a-4. Jurisdiction of district courts -- Injunctive relief -- Damages --**
221 **Attorneys' fees -- Corrective advertising -- Notification required.**

222 (1) The district courts of this state have jurisdiction over any supplier as to any act or
223 practice in this state governed by this chapter or as to any claim arising from a deceptive trade
224 practice as defined in this chapter.

225 (2) (a) Any person or the state may maintain an action to enjoin a continuance of any
226 act in violation of this chapter and, if injured by the act, for the recovery of damages. If, in
227 such action, the court finds that the defendant is violating or has violated any of the provisions
228 of this chapter, it shall enjoin the defendant from continuance of the violation. It is not
229 necessary that actual damages be proven.

230 (b) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant
231 the amount of actual damages sustained or ~~[\$2,000]~~ \$4,000, whichever is greater.

232 (c) Costs shall be allowed to the prevailing party unless the court otherwise directs.
233 The court shall award attorneys' fees to the prevailing party.

234 (3) The court may order the defendant to promulgate corrective advertising by the same
235 media and with the same distribution and frequency as the advertising found to violate this
236 chapter.

237 (4) The remedies of this section are in addition to remedies otherwise available for the
238 same conduct under state or local law.

239 (5) No action ~~[for injunctive relief]~~ may be brought for a violation of this chapter
240 unless the complaining person first gives notice of the alleged violation to the prospective
241 defendant and provides the prospective defendant an opportunity to promulgate a correction
242 notice by the same media as the allegedly violating advertisement. If the prospective defendant
243 does not promulgate a correction notice within 10 days of receipt of the notice, the complaining
244 person may file a lawsuit under this chapter.

245 Section 4. **Effective date.**

246 This bill takes effect on May 1, 2024.