

1 **TRUTH IN ADVERTISING AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Truth in Advertising act relating to deceptive trade
10 practices.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that, under certain circumstances, a deceptive trade practice occurs when a
14 person advertises a good or service with an image or photograph that exaggerates or
15 does not accurately depict the good or service.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **13-11a-3**, as last amended by Laws of Utah 2010, Chapters 54 and 378

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

25 Section 1. Section **13-11a-3** is amended to read:

26 **13-11a-3. Deceptive trade practices enumerated -- Records to be kept -- Defenses.**

27 (1) Deceptive trade practices occur when, in the course of a person's business,



28 vocation, or occupation, that person:

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

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

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

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

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

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

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

43 (h) disparages the goods, services, or business of another by false or misleading
44 representation of fact;

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

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

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

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

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

54 (i) "going out of business";

55 (ii) "bankruptcy sale";

56 (iii) "lost our lease";

57 (iv) "building coming down";

58 (v) "forced out of business";

- 59 (vi) "final days";
- 60 (vii) "liquidation sale";
- 61 (viii) "fire sale";
- 62 (ix) "quitting business"; or
- 63 (x) an expression similar to any of the expressions in Subsections (1)(k)(i) through
- 64 (ix);
- 65 (l) makes a comparison between the person's own sale or discount price and a
- 66 competitor's nondiscounted price without clearly and conspicuously disclosing that fact;
- 67 (m) without clearly and conspicuously disclosing the date of the price assessment
- 68 makes a price comparison with the goods of another based upon a price assessment performed
- 69 more than seven days prior to the date of the advertisement or uses in an advertisement the
- 70 results of a price assessment performed more than seven days prior to the date of the
- 71 advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or
- 72 television ad, the time frame of the price assessment;
- 73 (n) advertises or uses in a price assessment or comparison a price that is not that
- 74 person's own unless this fact is:
- 75 (i) clearly and conspicuously disclosed; and
- 76 (ii) the representation of the price is accurate;
- 77 (o) represents as independent an audit, accounting, price assessment, or comparison of
- 78 prices of goods or services, when the audit, accounting, price assessment, or comparison is not
- 79 independent;
- 80 (p) represents, in an advertisement of a reduction from the supplier's own prices, that
- 81 the reduction is from a regular price, when the former price is not a regular price as defined in
- 82 Subsection 13-11a-2(14);
- 83 (q) advertises a price comparison or the result of a price assessment or comparison that
- 84 uses, in any way, an identified competitor's price without clearly and conspicuously disclosing
- 85 the identity of the price assessor and any relationship between the price assessor and the
- 86 supplier;
- 87 (r) makes a price comparison between a category of the supplier's goods and the same
- 88 category of the goods of another, without randomly selecting the individual goods or services
- 89 upon whose prices the comparison is based;

90 (s) makes a comparison between similar but nonidentical goods or services unless the
91 nonidentical goods or services are of essentially similar quality to the advertised goods or
92 services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements;
93 [or]

94 (t) (i) advertises a good or service with an image or photograph that exaggerates or
95 otherwise fails to accurately depict:

96 (A) the good or service; or

97 (B) the expected results of the good or service; and

98 (ii) does not clearly and conspicuously disclose the exaggeration or inaccuracy; or

99 [(t)] (u) engages in any other conduct which similarly creates a likelihood of confusion
100 or of misunderstanding.

101 (2) (a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect
102 for less than one week from the advertisement date, the advertisement shall clearly and
103 conspicuously disclose the specific time period during which the price will be in effect.

104 (b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the
105 price shall be one at which the competitor offered the goods or services for sale in the product
106 area at the time of the price assessment, and may not be an isolated price.

107 (c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or
108 comparison shall be independent if the price assessor randomly selects the goods to be
109 compared, and the time and place of the comparison, and no agreement or understanding exists
110 between the supplier and the price assessor that could cause the results of the assessment to be
111 fraudulent or deceptive. The independence of an audit, accounting, or price comparison is not
112 invalidated merely because the advertiser pays a fee for the audit, accounting, or price
113 comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or
114 part-time employee of the advertiser.

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

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

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

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

119 (e) For the purposes of Subsection (1)(r), goods or services are randomly selected when
120 the supplier has no advance knowledge of what goods and services will be surveyed by the

121 price assessor, and when the supplier certifies its lack of advance knowledge by an affidavit to
122 be retained in the supplier's records for one year.

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

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

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

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

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

133 (4) It is a defense to any claim of false or deceptive price representations under this
134 chapter that a person:

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

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

137 (5) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs in
138 which a supplier compares the price of a single item of its goods or services with those of
139 another.

140 (6) To prevail in an action under this chapter, a complainant need not prove
141 competition between the parties or actual confusion or misunderstanding.

142 (7) This chapter does not affect unfair trade practices otherwise actionable at common
143 law or under other statutes of this state.

Legislative Review Note
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Office of Legislative Research and General Counsel