

1                                   **TRUTH IN ADVERTISING ACT AMENDMENTS**

2   2009 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Michael T. Morley**

5                                   Senate Sponsor: Margaret Dayton

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7 **LONG TITLE**

8 **General Description:**

9           This bill amends the Truth in Advertising Act.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ prohibits a person from advertising that a good or service will not be sold to a
- 13           certain age group and then selling the good or service to that age group; and
- 14           ▶ makes technical corrections.

15 **Monies Appropriated in this Bill:**

16           None

17 **Other Special Clauses:**

18           This bill takes effect January 1, 2010.

19 **Utah Code Sections Affected:**

20 AMENDS:

21           **13-11a-3**, as last amended by Laws of Utah 2007, Chapters 138 and 306

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

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

25           **13-11a-3. Deceptive trade practices enumerated -- Records to be kept --**

26 **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
- 38 sponsorship, 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
- 48 public 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;
- 53 (l) makes a comparison between the person's own sale or discount price and a
- 54 competitor's nondiscounted price without clearly and conspicuously disclosing that fact;
- 55 (m) without clearly and conspicuously disclosing the date of the price assessment
- 56 makes a price comparison with the goods of another based upon a price assessment performed
- 57 more than seven days prior to the date of the advertisement or uses in an advertisement the

58 results of a price assessment performed more than seven days prior to the date of the  
59 advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio  
60 or television ad, the time frame of the price assessment;

61 (n) advertises or uses in a price assessment or comparison a price that is not that  
62 person's own unless this fact is:

63 (i) clearly and conspicuously disclosed; and

64 (ii) the representation of the price is accurate;

65 (o) represents as independent an audit, accounting, price assessment, or comparison of  
66 prices of goods or services, when the audit, accounting, price assessment, or comparison is not  
67 independent;

68 (p) represents, in an advertisement of a reduction from the supplier's own prices, that  
69 the reduction is from a regular price, when the former price is not a regular price as defined in  
70 Subsection 13-11a-2(12);

71 (q) advertises a price comparison or the result of a price assessment or comparison that  
72 uses, in any way, an identified competitor's price without clearly and conspicuously disclosing  
73 the identity of the price assessor and any relationship between the price assessor and the  
74 supplier;

75 (r) makes a price comparison between a category of the supplier's goods and the same  
76 category of the goods of another, without randomly selecting the individual goods or services  
77 upon whose prices the comparison is based;

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

82 (t) engages in any other conduct which similarly creates a likelihood of confusion or of  
83 misunderstanding[-]; or

84 (u) (i) advertises that the person will not provide a good or service labeled with an age  
85 restriction or recommendation to a buyer subject to the age restriction or recommendation; and

86           (ii) except as provided under Subsection (2)(g), provides that good or service to a  
87 buyer subject to the age restriction or recommendation.

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

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

94           (c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or  
95 comparison shall be independent if the price assessor randomly selects the goods to be  
96 compared, and the time and place of the comparison, and no agreement or understanding  
97 exists between the supplier and the price assessor that could cause the results of the assessment  
98 to be fraudulent or deceptive. The independence of an audit, accounting, or price comparison  
99 is not invalidated merely because the advertiser pays a fee for the audit, accounting, or price  
100 comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or  
101 part-time employee of the advertiser.

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

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

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

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

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

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

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

112           (B) the goods compared are of substantially the same quality, which may include  
113 similar models of competing brands of goods, or goods made of substantially the same

114 materials and made with substantially the same workmanship.

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

117 (g) (i) A person does not commit deceptive trade practices under Subsection (1)(u) if:

118 (A) at the time a good or service labeled with an age restriction or recommendation  
119 was provided to a buyer subject to the age restriction or recommendation:

120 (I) the person has a documented program to train an employee on the person's policies  
121 against providing the good or service labeled with an age restriction or recommendation to a  
122 buyer subject to the age restriction or recommendation;

123 (II) the employee who provided the good or service attended the training program  
124 described in Subsection (2)(g)(i)(A)(I) within 30 days of commencing duties of selling the  
125 good or service; and

126 (III) the person took appropriate remedial action, including retraining the employee; or

127 (B) the buyer intentionally misrepresented the buyer's age to the person by presenting  
128 false age identification at the time good or service was provided.

129 (ii) Notwithstanding Subsection (2)(g)(i)(A), a person shall commit deceptive trade  
130 practices under Subsection (1)(u) if the employee described in Subsection (2)(g)(i)(A)  
131 provides a good or service a third or subsequent time to a buyer subject to an age restriction or  
132 recommendation.

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

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

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

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

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

142 another.

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

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

147           Section 2. **Effective date.**

148           This bill takes effect on January 1, 2010.