

1 **ENHANCEMENT OF TRUTH IN ADVERTISING**

2 **ACT**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Margaret Dayton**

6 House Sponsor: _____

7

LONG TITLE

8 **Committee Note:**

9 The Business and Labor Interim Committee recommended this bill.

10 **General Description:**

11 This bill authorizes the Division of Consumer Protection to enforce the Truth in
12 Advertising Act.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ authorizes the Division of Consumer Protection to:
- 16 • work with state and local officials;
- 17 • conduct research;
- 18 • hold hearings; and
- 19 • adopt rules to enforce the Truth in Advertising Act.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **13-11-4**, as last amended by Laws of Utah 2008, Chapter 232



28 ENACTS:

29 **13-11a-4.5**, Utah Code Annotated 1953



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

32 Section 1. Section **13-11-4** is amended to read:

33 **13-11-4. Deceptive act or practice by supplier.**

34 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
35 violates this chapter whether it occurs before, during, or after the transaction.

36 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
37 practice if the supplier knowingly or intentionally:

38 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
39 performance characteristics, accessories, uses, or benefits, if it has not;

40 (b) indicates that the subject of a consumer transaction is of a particular standard,
41 quality, grade, style, or model, if it is not;

42 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
43 has been used to an extent that is materially different from the fact;

44 (d) indicates that the subject of a consumer transaction is available to the consumer for
45 a reason that does not exist;

46 (e) indicates that the subject of a consumer transaction has been supplied in accordance
47 with a previous representation, if it has not;

48 (f) indicates that the subject of a consumer transaction will be supplied in greater
49 quantity than the supplier intends;

50 (g) indicates that replacement or repair is needed, if it is not;

51 (h) indicates that a specific price advantage exists, if it does not;

52 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier
53 does not have;

54 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a
55 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if
56 the representation is false; or

57 (ii) fails to honor a warranty or a particular warranty term;

58 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an

59 inducement for entering into a consumer transaction in return for giving the supplier the names
60 of prospective consumers or otherwise helping the supplier to enter into other consumer
61 transactions, if receipt of the benefit is contingent on an event occurring after the consumer
62 enters into the transaction;

63 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
64 services within the time advertised or otherwise represented or, if no specific time is advertised
65 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
66 applicable time period the supplier provides the buyer with the option to:

67 (i) cancel the sales agreement and receive a refund of all previous payments to the
68 supplier if the refund is mailed or delivered to the buyer within ten business days after the day
69 on which the seller receives written notification from the buyer of the buyer's intent to cancel
70 the sales agreement and receive the refund; or

71 (ii) extend the shipping date to a specific date proposed by the supplier;

72 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
73 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale
74 within three business days of the time of purchase if:

75 (i) the sale is made other than at the supplier's established place of business pursuant to
76 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,
77 telephone, or any other form of direct solicitation; and

78 (ii) the sale price exceeds \$25;

79 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
80 76, Chapter 6a, Pyramid Scheme Act;

81 (o) represents that the funds or property conveyed in response to a charitable
82 solicitation will be donated or used for a particular purpose or will be donated to or used by a
83 particular organization, if the representation is false;

84 (p) if a consumer indicates the consumer's intention of making a claim for a motor
85 vehicle repair against the consumer's motor vehicle insurance policy:

86 (i) commences the repair without first giving the consumer oral and written notice of:

87 (A) the total estimated cost of the repair; and

88 (B) the total dollar amount the consumer is responsible to pay for the repair, which
89 dollar amount may not exceed the applicable deductible or other copay arrangement in the

90 consumer's insurance policy; or

91 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
92 consumer was initially told the consumer was responsible to pay as an insurance deductible or
93 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
94 amount is less than the full amount the motor vehicle insurance policy requires the insured to
95 pay as a deductible or other copay arrangement, unless:

96 (A) the consumer's insurance company denies that coverage exists for the repair, in
97 which case, the full amount of the repair may be charged and collected from the consumer; or

98 (B) the consumer misstates, before the repair is commenced, the amount of money the
99 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
100 which case, the supplier may charge and collect from the consumer an amount that does not
101 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
102 copay arrangement;

103 (q) includes in any contract, receipt, or other written documentation of a consumer
104 transaction, or any addendum to any contract, receipt, or other written documentation of a
105 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
106 consumer is entitled under this chapter;

107 (r) charges a consumer for a consumer transaction that has not previously been agreed
108 to by the consumer;

109 (s) solicits or enters into a consumer transaction with a person who lacks the mental
110 ability to comprehend the nature and consequences of:

111 (i) the consumer transaction; or

112 (ii) the person's ability to benefit from the consumer transaction;

113 (t) solicits for the sale of a product or service by providing a consumer with an
114 unsolicited check or negotiable instrument the presentment or negotiation of which obligates
115 the consumer to purchase a product or service, unless the supplier is:

116 (i) a depository institution under Section 7-1-103;

117 (ii) an affiliate of a depository institution; or

118 (iii) an entity regulated under Title 7, Financial Institutions Act;

119 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
120 request for payment for a product or service the person has not ordered or used, or that implies

121 that the mailing requests payment for an ongoing product or service the person has not received
122 or requested;

123 (v) issues a gift certificate, instrument, or other record in exchange for payment to
124 provide the bearer, upon presentation, goods or services in a specified amount without printing
125 in a readable manner on the gift certificate, instrument, packaging, or record any expiration
126 date or information concerning a fee to be charged and deducted from the balance of the gift
127 certificate, instrument, or other record; or

128 (w) misrepresents the geographical origin or location of the supplier's business in
129 connection with the sale of cut flowers, flower arrangements, or floral products.

130 (3) (a) The notice required by Subsection (2)(m) shall:

131 (i) be a conspicuous statement written in dark bold with at least 12 point type on the
132 first page of the purchase documentation; and

133 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
134 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period
135 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE
136 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS
137 LATER".

138 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
139 cancellation policy:

140 (i) is communicated to the buyer; and

141 (ii) offers greater rights to the buyer than Subsection (2)(m).

142 (4) (a) A gift certificate, instrument, or other record that does not print an expiration
143 date in accordance with Subsection (2)(v) does not expire.

144 (b) A gift certificate, instrument, or other record that does not include printed
145 information concerning a fee to be charged and deducted from the balance of the gift
146 certificate, instrument, or other record is not subject to the charging and deduction of the fee.

147 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other
148 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is
149 printed on the gift certificate, instrument, or other record.

150 (5) A deceptive trade or practice under Section 13-11a-3 is a deceptive act or practice
151 under this section.

152 Section 2. Section **13-11a-4.5** is enacted to read:

153 **13-11a-4.5. Enforcement.**

154 A deceptive trade or practice described in Section 13-11a-3 is a deceptive act or

155 practice prohibited by Section 13-11-4.

Legislative Review Note
as of 10-20-08 10:45 AM

Office of Legislative Research and General Counsel