

TRUTH IN ADVERTISING AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott Daniels

This act modifies the truth in advertising provisions of the Commerce and Trade Code. The act eliminates the requirement that a person give notice and an opportunity to a prospective defendant to promulgate a corrective advertisement before filing a lawsuit for actual damages. The act requires that notice and an opportunity to promulgate a corrective advertisement be given before a person files a lawsuit to recover the statutory damage amount. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

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

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

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

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

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

(2) (a) Any person or the state may maintain an action to enjoin ~~[a continuance of]~~ any act ~~[in violation of]~~ which violates this chapter and, if injured by the act, ~~[for the recovery of damages. If, in such action,]~~ to recover damages.

(b) In an action for injunctive relief under Subsection (2)(a), the court shall enjoin the defendant from an act which violates this chapter if:

(i) the court finds that the defendant is violating or has violated any of the provisions of this chapter~~[, it shall enjoin the defendant from continuance of the violation. It is not necessary~~



28 ~~that actual damages be proven.]; and~~

29 (ii) the plaintiff has complied with the requirements of Subsection (5)(a).

30 ~~[(b)] (c)~~ In addition to injunctive relief, the plaintiff is entitled to recover from the
31 defendant the greater of the following:

32 (i) the amount of actual damages sustained [or \$2,000, whichever is greater.]; or

33 (ii) \$2,000, if the plaintiff has complied with the requirements of Subsection (5)(a).

34 ~~[(e)] (d)~~ Costs shall be allowed to the prevailing party unless the court otherwise directs.

35 The court shall award attorneys' fees to the prevailing party.

36 (3) The court may order the defendant to promulgate a corrective [~~advertising~~]
37 advertisement by the same media and with the same distribution and frequency as the [~~advertising~~]
38 advertisement found to violate this chapter.

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

41 (5) (a) No action for injunctive relief under Subsections (2)(a) and (b) or for statutory
42 damages under Subsection (2)(c)(ii) may be brought for a violation of this chapter unless the
43 complaining person first gives notice of the alleged violation to the prospective defendant and
44 provides the prospective defendant an opportunity to promulgate a [~~correction notice~~] corrective
45 advertisement by the same media as the allegedly violating advertisement. If the prospective
46 defendant does not promulgate a [~~correction notice~~] corrective advertisement within ten days of
47 receipt of the notice, the complaining person may file a lawsuit [~~under this chapter.~~] for injunctive
48 relief under Subsections (2)(a) and (b) or for statutory damages under Subsection (2)(c)(ii).

49 (b) A plaintiff is not required to comply with the provisions of Subsection (5)(a) as a
50 condition to filing a lawsuit under this chapter to recover actual damages.

Legislative Review Note
as of 12-28-01 3:32 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel