

Representative Scott Daniels proposes the following substitute bill:

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 requires that notice and an opportunity to promulgate a corrective advertisement be given before a person, including the state, files a lawsuit for an injunction or for damages.

However, even if a corrective action is promulgated the act allows for the recovery of actual damages. The act provides for statutory damages if a corrective advertisement is not timely promulgated. 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]~~ If the requirements of Subsection (5) have been met, any person [or], including 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



26 defendant from an act which violates this chapter if the court finds that the defendant is violating
27 or has violated any of the provisions of this chapter~~[-it shall enjoin the defendant from continuance~~
28 ~~of the violation. It is not necessary that actual damages be proven].~~

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

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

32 (ii) \$2,000.

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

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

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

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

40 (5) (a) No action ~~[for injunctive relief]~~ may be brought for a violation of this chapter unless
41 the complaining person first gives notice of the alleged violation to the prospective defendant and
42 provides the prospective defendant an opportunity to promulgate a ~~[correction notice]~~ corrective
43 advertisement by the same media as the allegedly violating advertisement.

44 (b) If the prospective defendant does not promulgate a ~~[correction notice]~~ corrective
45 advertisement within ten days of receipt of the notice, the complaining person may file a lawsuit
46 ~~[under this chapter]~~ for injunctive relief under Subsections (2)(a) and (b) and for damages under
47 Subsection (2)(c).

48 (c) Even if the prospective defendant promulgates a corrective advertisement, the
49 complaining person may file a lawsuit for actual damages under Subsection (2)(c)(i).