

**TRUTH IN ADVERTISING ACT AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**General Description:**

This bill amends the Truth in Advertising Act.

**Highlighted Provisions:**

This bill:

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

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

**⚡→ [None] This bill takes effect January 1, 2010. ←⚡**

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

(1) Deceptive trade practices occur when, in the course of a person's business, vocation, or occupation that person:



- 28 (a) passes off goods or services as those of another;
- 29 (b) causes likelihood of confusion or of misunderstanding as to the source,  
30 sponsorship, approval, or certification of goods or services;
- 31 (c) causes likelihood of confusion or of misunderstanding as to affiliation, connection,  
32 association with, or certification by another;
- 33 (d) uses deceptive representations or designations of geographic origin in connection  
34 with goods or services;
- 35 (e) represents that goods or services have sponsorship, approval, characteristics,  
36 ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship,  
37 approval, status, affiliation, or connection that the person does not have;
- 38 (f) represents that goods are original or new if they are deteriorated, altered,  
39 reconditioned, reclaimed, used, or second-hand;
- 40 (g) represents that goods or services are of a particular standard, quality, or grade, or  
41 that goods are of a particular style or model, if they are of another;
- 42 (h) disparages the goods, services, or business of another by false or misleading  
43 representation of fact;
- 44 (i) advertises goods or services or the price of goods and services with intent not to sell  
45 them as advertised;
- 46 (j) advertises goods or services with intent not to supply a reasonable expectable public  
47 demand, unless:
  - 48 (i) the advertisement clearly and conspicuously discloses a limitation of quantity; or
  - 49 (ii) the person issues rainchecks for the advertised goods or services;
- 50 (k) makes false or misleading statements of fact concerning the reasons for, existence  
51 of, or amounts of price reductions;
- 52 (l) makes a comparison between the person's own sale or discount price and a  
53 competitor's nondiscounted price without clearly and conspicuously disclosing that fact;
- 54 (m) without clearly and conspicuously disclosing the date of the price assessment  
55 makes a price comparison with the goods of another based upon a price assessment performed  
56 more than seven days prior to the date of the advertisement or uses in an advertisement the  
57 results of a price assessment performed more than seven days prior to the date of the  
58 advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or

59 television ad, the time frame of the price assessment;

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

62 (i) clearly and conspicuously disclosed; and

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

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

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

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

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

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

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

83 (u) (i) advertises that the person will not ~~H→~~ [sell] provide ~~←H~~ a good or service labeled  
83a with an age  
84 restriction or recommendation to a ~~H→~~ [person under] buyer subject to ~~←H~~ the age restriction or  
84a recommendation; and

85 (ii) ~~H→~~ except as provided under Subsection (2)(g), provides [sells] ~~←H~~ that good or  
85a service to a ~~H→~~ [person under] buyer subject to ~~←H~~ the age restriction or recommendation.

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

89 (b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the

90 price must be one at which the competitor offered the goods or services for sale in the product  
91 area at the time of the price assessment, and must not be an isolated price.

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

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

- 101 (i) "Price assessment performed by Store Z";
- 102 (ii) "Price assessment performed by a certified public accounting firm"; or
- 103 (iii) "Price assessment performed by employee of Store Y".

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

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

- 109 (A) the goods compared are substantially the same size; and
- 110 (B) the goods compared are of substantially the same quality, which may include  
111 similar models of competing brands of goods, or goods made of substantially the same  
112 materials and made with substantially the same workmanship.

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

114a **H→ (g)(i) A person does not commit deceptive trade practices under Subsection (1)(u) if :**  
114b **(A) at the time a good or service labeled with an age restriction or recommendation was**  
114c **provided to a buyer subject to the age restriction or recommendation:**  
114d **(I) the person has a documented program to train an employee on the person's policies**  
114e **against providing the good or service labeled with an age restriction or recommendation to a**  
114f **buyer subject to the age restriction or recommendation;**  
114g **(II) the employee who provided the good or service attended the training program**  
114h **described in Subsection (2)(g)(i)(A)(I) within 30 days of commencing duties of selling the good**  
114i **or service; and**

114j (III) the person took appropriate remedial action, including retraining the employee; or  
114k (B) the buyer intentionally misrepresented the buyer's age to the person ~~§~~by  
114ka presenting false age identification~~←~~§ at the time  
114l good or service was provided.

114m (ii) Notwithstanding Subsection (2)(g)(i)(A), a person shall commit deceptive trade  
114n practices under Subsection (1)(u) if the employee described in Subsection (2)(g)(i)(A) provides  
114o a good or service a third or subsequent time to a buyer subject to an age restriction or  
114p recommendation. ~~←~~Ĥ

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

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

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

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

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

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

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

128a **Ĥ→ Section 2. Effective date.**

128b **This bill takes effect on January 1, 2010. ←Ĥ**

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**Legislative Review Note**  
as of 1-26-09 12:43 PM

**Office of Legislative Research and General Counsel**

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**H.B. 353 - Truth in Advertising Act Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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