

SENATE, No. 648

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Senator CIESLA

1 AN ACT concerning the advertisement of former or comparison prices
2 of goods and supplementing P.L.1960, c.39 (C.56:8-1 et seq.)

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "Truth in
8 Pricing Act."

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10 2. The Legislature finds and declares that price comparison
11 advertising is a form of advertising commonly used in the sale or
12 offering for sale of consumer merchandise by which current prices are
13 compared with former prices or other stated values to demonstrate
14 price reductions or cost savings. Price comparisons which accurately
15 reflect values in the advertising merchant's trade area provide
16 consumers with useful information in making value comparisons and
17 purchasing decisions. However, price comparisons based on arbitrary
18 or inflated prices or values serve only to deceive consumers and to
19 give the advertising merchant an unfair competitive advantage over its
20 competitors. Further abuse occurs when advertising merchants fail to
21 disclose material information essential to consumer understanding of
22 the comparisons made. The use of arbitrary or inflated price
23 comparisons as an inducement to the sale of consumer merchandise
24 injures both the consuming public and competition, and is an unfair
25 trade practice and an unfair method of competition.

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27 3. As used in this act:

28 "Advertise" or "cause to be advertised" means any attempt, other
29 than by use of a price tag, catalogue or any offering for sale of a motor
30 vehicle, to induce directly or indirectly the purchase or rental of
31 merchandise at retail, appearing in any newspaper, magazine,
32 periodical, circular, in-store or out-of-store sign or other written
33 matter placed before the consuming public, or in any radio or
34 television broadcast.

35 "Merchandise" means any objects, wares, merchandise,
36 commodities, services or anything offered directly or indirectly to the
37 public for sale or rental at retail.

1 "Person" means a natural person, firm, partnership, association,
2 corporation, or agent or employer thereof.

3 "Trade area" means the geographical area in which a person solicits
4 or makes a substantial volume of sales of merchandise.

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6 4. It shall be an unlawful practice for any person to advertise or
7 cause to be advertised a comparison price which is based upon or
8 refers to another merchant's price unless:

9 a. the person can substantiate through documents or other
10 reasonable proof that the comparison price is the price offered for sale
11 by that other merchant in the trade area during the 60 days prior to the
12 effective date of the advertisement for merchandise of substantially the
13 same kind and quality; and

14 b. a clear and conspicuous disclosure is made in the advertisement
15 that the comparison price is that other merchant's price, and not the
16 person's own price.

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18 5. It shall be an unlawful practice for any person to advertise or
19 cause to be advertised a former price of any merchandise unless:

20 a. the former price is equal to or exceeds the price at which a
21 substantial volume of sales was made in the 60 days prior to or 60
22 days subsequent to the effective date of the advertisement; or

23 b. the former price was the price at which the advertised
24 merchandise, or merchandise of substantially the same kind, quality or
25 quantity, was openly and actively offered for sale in the 60 days prior
26 to or the 60 days subsequent to the effective date of the advertisement;
27 or

28 c. the former price is based on a mark-up that does not exceed the
29 supplier's cost plus the usual and customary mark-up used by the
30 advertising merchant in the actual sale of the advertised merchandise,
31 or merchandise of substantially the same kind, quality or quantity, in
32 the recent regular course of business.

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34 6. It shall be an unlawful practice for any person to advertise or
35 cause to be advertised a former or comparison price in terms of:

36 a. "market value," "valued at" or words of similar import, unless
37 that price is the price at which the merchandise, or merchandise of
38 substantially the same kind, quality or quantity, is offered for sale by
39 a reasonable number of merchants in the trade area;

40 b. "suggested retail price," "inventory price," "invoice price," or
41 similar terms that directly or indirectly compare or suggest the
42 comparison between the cost of supply and the price at retail for the
43 advertised merchandise.

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45 7. A competitor within the trade area of any person violating this
46 act may bring an action to enjoin the continuance of the violation,

1 whether or not the competitor has been injured or damaged by the
2 violation. In an action brought pursuant to this section, the court may
3 award to the competitor any damages actually incurred by reason of
4 the violation. The court shall award reasonable attorneys' fees and
5 costs of suit to the prevailing party in any action brought pursuant to
6 this section.

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8 8. The Director of the Division of Consumer Affairs in the
9 Department of Law and Public Safety may promulgate regulations
10 pursuant the "Administrative Procedure Act," P.L.1968, c.410
11 (C.52:14B-1 et seq.) to effectuate the provisions of this act.

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13 9. This act shall take effect immediately.

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16 STATEMENT

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18 This bill prohibits the advertising of a comparison price which is
19 based upon or refers to another merchant's price unless: the person
20 making the advertisement can substantiate through documents or other
21 reasonable proof that the comparison price is the price offered for sale
22 by the merchant in the trade area during the 60 days prior to or
23 subsequent to the effective date of the advertisement for merchandise
24 of substantially the same kind and quality; and, a clear and
25 conspicuous disclosure is made in the advertisement that the
26 comparison price is another merchant's price, and not the person's own
27 price.

28 The bill prohibits the advertisement of a former price of any
29 merchandise unless: the former price is equal to or exceeds the price
30 at which a substantial volume of sales was made in the 60 days prior
31 to or subsequent to the effective date of the advertisement; or, the
32 former price was the price at which the advertised merchandise, or
33 merchandise of substantially the same kind, quality or quantity, was
34 openly and actively offered for sale in the 60 days prior to or
35 subsequent to the effective date of the advertisement; or, the former
36 price is based on a mark-up that does not exceed the supplier's cost
37 plus the usual and customary mark-up used by the advertising
38 merchant in the actual sale of the advertised merchandise, or
39 merchandise of substantially the same kind, quality or quantity, in the
40 recent regular course of business.

41 The bill also prohibits the advertisement of a former or comparison
42 price in terms of: (1) "suggested retail price," "inventory price," or
43 similar terms that directly or indirectly compare or suggest the
44 comparison between the cost of supply and the price at retail for the
45 advertised merchandise; and (2) "market value," "valued at" or words
46 of similar import unless the price is the price at which the merchandise,

1 or merchandise of substantially the same kind, quality or quantity, is
2 offered for sale by a reasonable number of merchants in the trade area.

3 The bill allows a competitor within the trade area of any party
4 violating the act to bring an action to enjoin the continuance of the
5 violation, whether or not the competitor has been injured or damaged
6 by the violation. The bill allows the competitor to be awarded
7 damages actually incurred by the violation and attorneys' fees.

8 As a supplement to the consumer fraud act, P.L.1960, c.39
9 (C.56:8-1 et seq.) the bill makes use of the existing civil suit and
10 enforcement provisions of that act to deter unlawful practices as
11 defined in the bill. Anyone who commits an unlawful practice by
12 violating a provision of this bill shall be subject to consumer fraud act
13 penalties of not more than \$7,500 for a first offense and not more than
14 \$15,000 for each subsequent offense.

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The "Truth in Pricing Act."