

23 or savings claims with respect to the seller's current price. The term
24 shall include, but not be limited to, such comparisons as "fifty
25 percent off", "up to seventy percent off", "save one-third", "half-
26 price sale", "thirty percent to seventy percent off", "was twenty
27 dollars, now half price", "guaranteed lowest prices", "ten dollar
28 value, now eight dollars", "was seven dollars, now six dollars",
29 "list price fifty dollars, our price twenty-nine dollars", "clearance
30 price", or "liquidation price".

31 "Sale", a reduction from the seller's price at which consumer
32 property or services is offered to the public for a fixed period of
33 time; and

34 "Seller", any person engaged in the sale or lease of consumer
35 property or services. The term shall not include banks, savings
36 and loan associations, insurance companies, and public utilities.

37 Section 2. A seller advertising products or services in the
38 Commonwealth in which such advertisements contain represen-
39 tations or statements as to any type of saving claims, including
40 reduced price claims and comparative value claims, shall maintain
41 adequate records which disclose the factual basis for such
42 representations or statements and from which the validity of any
43 such claims can be established.

44 Section 3. It shall be an unfair or deceptive act or practice for
45 a seller to make any price comparison: (1) based upon a price
46 other than one at which the consumer property or services was
47 either sold or offered for sale by the seller or a competitor, or will
48 be sold or offered for sale by the seller in the future, in the regular
49 course of business in the trade area in which the price comparison
50 is made; (2) in which the consumer property or services
51 materially differ in composition, grade or quality, style or design,
52 model, name or brand, kind or variety, or service and performance
53 characteristics, unless the general nature of the material
54 differences is conspicuously disclosed in the advertisement with
55 the price comparison; or (3) unless all the relevant price terms
56 and conditions of any offer which is based upon the purchase of
57 other merchandise are conspicuously disclosed. Such types of
58 offers shall include, but are not limited to, "free", "two for one",
59 "two-fer", "half-price sale", "one cent sale", "fifty percent off", or
60 other similar type of offer.

61 Section 4. A seller who does catalog business on a regional or

62 national basis may refer to reference prices in comparison to the
63 seller's current selling prices based upon a reasonably
64 substantiated survey of the usual prices in the trade area. The
65 reference price stated in such catalog is permissible if the catalog
66 using such reference price contains a disclosure statement printed
67 in a conspicuous manner, fully explaining: (1) the source of the
68 reference price; and (2), that the reference prices may not continue
69 to be in effect during the entire life of the catalog, if such is in
70 fact the case.

71 Section 5. It shall be an unfair or deceptive act or practice for
72 a seller to advertise or make any price comparison:

73 (1) based upon a price at which consumer property or services
74 were sold by the seller unless:

75 (i) the price is a price at which such property or services were
76 actually sold by the seller in the last ninety days immediately
77 preceding the date on which the price comparison is stated in the
78 advertisement; or

79 (ii) the price is a price at which such property or services were
80 actually sold by the seller during any other period, and the
81 advertisement discloses with the price comparison, the date, time
82 or seasonal period when such sales were made.

83 (2) based upon a price at which the seller has offered for sale
84 but has not sold consumer property or services unless:

85 (i) the price is a price at which such property or services were
86 actually offered for sale by the seller for at least four weeks during
87 the last ninety days immediately preceding the date on which the
88 price comparison is stated in the advertisement; or

89 (ii) the price is a price at which such property or services were
90 actually offered for sale by the seller for at least four weeks during
91 any other ninety day period, and the advertisement clearly
92 discloses the date, time, or seasonal period of such offer.

93 (3) in which the seller represents that it is conducting a "sale"
94 unless:

95 (i) the termination date of the "sale" is clearly set forth in
96 the advertisement; and

97 (ii) the day after the "sale" ends, the consumer property or
98 services reverts in price to the price charged by the seller for said
99 item before the "sale" began or to a price which is higher than
100 the "sale" price, except for "clearance", "closeout", or "permanent

101 markdown” sales where the item will be reduced in price until it
102 is removed from the seller’s inventory.

103 (4) referencing a higher price at which consumer property or
104 services will be offered or sold in the future unless:

105 (i) the advertisement clearly discloses that the price
106 comparison is based upon a future price increase;

107 (ii) the effective date of the future higher price, if more than
108 ninety days after the price comparison is first stated in an
109 advertisement, is clearly disclosed in the advertisement; and

110 (iii) the future higher price increase takes effect on the date
111 disclosed in the advertisement or, if not disclosed in the
112 advertisement, within ninety days after the price comparison is
113 stated in the advertisement, except where compliance becomes
114 impossible because of circumstances beyond the seller’s control.

115 (5) based upon advertised savings of a particular percentage or
116 a range of percentages, such as “save thirty percent”, or “twenty
117 percent to sixty percent off”, unless:

118 (i) the minimum percent reduction is clearly stated in the
119 advertisement in a manner as conspicuously as the maximum
120 percentage reduction, when applicable;

121 (ii) the basis for the advertised percent reduction is clearly
122 and conspicuously disclosed in the advertisement (e.g. “twenty
123 percent off our regular price”) and

124 (iii) the number of items available at the maximum savings
125 comprise at least ten percent of all the items in the offering.

126 (6) based upon the use of the terms “wholesale price”, “factory
127 outlet”, “at cost”, and other similar terms, unless the stated savings
128 can be substantiated and the terms meet the following
129 requirements:

130 (i) the terms “factory to you”, “direct from maker”, “factory
131 outlet”, and words of similar meaning shall not be used unless
132 all advertised merchandise is actually manufactured by the
133 advertiser or in factories owned and controlled by the advertiser;

134 (ii) the terms “wholesale”, “wholesale outlet”, “distributor”,
135 and words of similar meaning shall not be used unless the
136 advertiser actually owns and operates or directly and absolutely
137 controls a wholesale distribution facility which sells the majority
138 of its products to retailers or other wholesalers for resale, rather
139 than to the ultimate consumer for use; and

140 (iii) the terms “wholesale price”, “at cost”, and similar words
141 shall not be used unless they are the current prices which retailers
142 usually and customarily pay when they buy such merchandise for
143 resale.

144 (7) based upon the use of the term “original” or “originally”,
145 to fail to disclose that intermediate markdowns have been taken,
146 if such is the case. A seller may use the term “original” or
147 “originally” when offering a reduction from an original price that
148 was the price at which such consumer property or services was
149 actually offered for sale in the recent, regular course of business.
150 If the comparative price, identified as “original” or “originally”,
151 is not also the last previous selling price, that fact shall be
152 disclosed, by stating the last previous selling price, or indicating
153 “intermediate markdowns taken”.

154 Section 6. It shall be an unfair or deceptive act or practice for
155 a seller to make any price comparison:

156 (1) based upon a competitor’s price unless:

157 (i) the competitor’s price is either a price at which the
158 competitor sold or advertised consumer property or services for
159 sale at any time within the ninety day period immediately
160 preceding the date on which the price comparison is stated in the
161 advertisement, or the date on which the completed advertising
162 copy was submitted to the printer for final printing and
163 publication; provided, however, that such submission date does
164 not exceed eight weeks from the date of actual publication or
165 distribution;

166 (ii) the competitor’s price is a price that is representative of
167 prices at which the consumer property or services are sold or
168 advertised for sale in the trade area in which the price comparison
169 is made and is not an isolated price; and

170 (iii) disclosure is made with the price comparison that the
171 price used as a basis for the comparison was not the seller’s own
172 price.

173 (2) based upon a “manufacturer’s suggest price”, “distributor’s
174 suggested price”, “list price”, “suggested retail”, or any similar
175 term implying a suggested or list price established by anyone other
176 than the seller, unless either:

177 (i) the seller has actually offered such consumer property or
178 services for sale at the suggested price as its regular price; or

179 (ii) the seller can substantiate that it is the actual price at
180 which such consumer property or services were being offered for
181 sale by representative retailers in the trade area in which the claim
182 is made at any time within the ninety day period immediately
183 preceding either the date on which the price comparison is stated
184 in the advertisement, or the date on which the completed
185 advertising copy was submitted to the printer for final printing
186 and publication; provided, however, that such submission date
187 does not exceed eight weeks from the date of actual publication
188 or distribution.

189 Section 7. A price label or tag permanently imprinted on or
190 affixed to consumer property or its container, by the manufacturer
191 or supplier, also called a "pre-ticketed price", and not under
192 control of the retail seller or instigated by said retail seller, or
193 which is required to be attached to such property under federal
194 law, need not be covered, obliterated or removed for purposes of
195 compliance with this statute:

196 (1) when the retail seller's current offering price is attached to,
197 printed on or placed on a label, tag or sign accompanying such
198 property; provided, however, that no price comparison is made
199 by the retail seller based solely on the manufacturer's price thereon
200 unless such comparison would be valid based on past price.

201 (2) when the retail seller's original offering price attached to,
202 printed on or placed on a label, tag or sign accompanying such
203 property, is identical to the pre-ticketed price.

204 Section 8. Whoever violates the provisions of this act may be
205 enjoined therefrom by a petition in equity brought by the attorney
206 general or any aggrieved party, and shall be punished by a fine
207 of not less than five hundred dollars and not more than five
208 thousand dollars.



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