

TITLE 42 SALES AND COLLECTIONS
DEPARTMENT OF CONSUMER PROTECTION

COMPARISON PRICE ADVERTISING

REGULATION

Sec. 42-110b-9a. Definitions

For purposes of Sections 42-110b-9a through 42-110b-14a, the following terms shall have the meanings indicated:

(a) "advertisement" means any oral, written, or graphic statement or representation made in connection with the solicitation of business in any manner by a seller and includes, but is not limited to, statements and representations made in any newspaper or other publication, or on radio or television or printed in any catalog, circular, or any other sales literature or brochure;

(b) "consumer property or services" means any personal property or services sold primarily for personal, family, or household use and not for resale or for use or consumption in a trade or business. For purposes of these regulations, "consumer property or services" shall include "merchandise."

(c) "price comparison" means: (1) the comparison, whether or not expressed wholly or in part in dollars, cents, fractions or percentages, in any advertisement, of a seller's current price for consumer property or services with any other price or statement of value for such property or services, whether or not such prices are actually stated in the advertisement; or, (2) the making of price reduction claims or savings claims with respect to the seller's current price. The term includes, but is not limited to, such comparisons as "50% off," "Up to 70% off," "Save 1/3," "Half-price sale," "30% to 70% off," "Was \$ 20, now half price," "Guaranteed Lowest Prices," "\$ 10 value, now \$ 8," "Was \$ 7, now \$ 6," "List Price \$ 50, Our Price \$ 29," "Clearance Price," or "Liquidation Price";

(d) "sale" means a meaningful reduction from the seller's price at which consumer property or services is offered to the public for a fixed period of time; and

(e) "seller" means any person engaged in the sale or lease of consumer property or services. The term does not include banks, savings and loan associations, insurance companies, and public utilities.

Sec. 42-110b-10a. Price comparison; general

It shall be an unfair or deceptive act or practice for a seller to make any price comparison:

(1) based upon a price other than one at which consumer property or services was either sold or offered for sale by the seller or a competitor, or will be sold or offered for sale by the seller in the future, in the regular course of business in the trade area in which the price comparison is made;

(2) in which the consumer property or services materially differ in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics, unless the general nature of the material differences is conspicuously disclosed in the advertisement with the price comparison; or

(3) unless all the relevant price terms and conditions of any offer which is based upon the purchase of other merchandise are conspicuously disclosed. Such types of offers shall include, but are not limited to, "Free," "2-for-1," "Two-Fer," "Half-Price Sale," "1 sale," "50% off" or other similar type of offer.

Sec. 42-110b-11a. Catalogs

A seller who does business on a large regional or national basis may refer to reference prices in comparison to the seller's current selling prices in a seasonal or annual catalog if the reference prices are based upon a reasonably substantiated survey of the usual prices in the trade area.

(1) The reference price stated in such catalog is permissible if the catalog using such reference price contains a disclosure statement printed in a conspicuous manner, fully explaining:

(A) the source of the reference price; and

(B) that the reference prices may not continue to be in effect during the entire life of the catalogue, if such is in fact the case.

Sec. 42-110b-12a. Price comparison advertisements

(a) It shall be an unfair or deceptive act or practice for a seller to make any price comparison based upon a price at which consumer property or services were sold by the seller unless:

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

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

(b) It shall be an unfair or deceptive act or practice for a seller to make any price comparison based upon a price at which the seller has offered for sale but has not sold consumer property or services unless:

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

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

(c) It shall be an unfair or deceptive act or practice for a seller to make any price comparison in which the seller represents that it is conducting a "sale" unless:

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

(2) the day after the "sale" ends, the consumer property or services reverts in price to the price charged by the seller for said item before the "sale" began or to a price which is higher than the "sale" price, except for "clearance," "closeout" or "permanent markdown" sales where the item will be reduced in price until it is removed from the seller's inventory.

(d) It shall be an unfair or deceptive act or practice for a seller to make any price comparison referencing a higher price at which consumer property or services will be offered or sold in the future unless:

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

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

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

(e) It shall be an unfair or deceptive act or practice for a seller to make any price comparison based upon advertised savings of a particular percentage or a range of percentages (e.g. "save 30%" or "20% to 60% off") unless:

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

(2) the basis for the advertised percent reduction is clearly and conspicuously disclosed in the advertisement (e.g. "20 [percent] off our regular price"); and

(3) the number of items available at the maximum savings comprise at least 10% of all the items in the offering.

(f) It shall be an unfair or deceptive act or practice for a seller to use the terms "wholesale prices," "factory outlet," "at cost," and other similar terms in a price comparison, unless the stated savings can be substantiated and the terms meet the following requirements:

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

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

(3) the terms "wholesale price," "at cost" and the like shall not be used unless they are the current prices which retailers usually and customarily pay when they buy such merchandise for resale.

(g) It shall be an unfair or deceptive act or practice for a seller, using the term "original" or "originally" in a price comparison, to fail to disclose that intermediate markdowns have been taken, if such is the case. A seller may use the term "original" or "originally" when offering a reduction from an original price that was the price at which such consumer property or services was actually offered for sale in the recent, regular course of business. If the comparative price, identified as "original" or "originally," is not also the last previous selling price, that fact shall be disclosed, by stating the last previous selling price, (e.g., "originally \$ 599.95, formerly \$ 499.95, now \$ 399.95,") or indicating "intermediate markdowns taken."

(h) It shall be an unfair or deceptive act or practice for a seller to advertise consumer property or services for sale under special circumstances using terms such as "closeout," "clearance sale," "must be sacrificed" or similar terms unless the advertised item is permanently reduced in price in order to remove it from the seller's inventory.

Sec. 42-110b-13a. Competitor's prices

(a) It shall be an unfair or deceptive act or practice for a seller to make any price comparison based upon a competitor's price unless:

(1) the competitor's price is either a price at which the competitor sold or advertised consumer property or services for sale at any time within the ninety day period immediately preceding the date on which the price comparison is stated in the advertisement, or the date on which the completed advertising copy was submitted to the printer for final printing and publication, provided such submission date does not exceed eight weeks from the date of actual publication or distribution;

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

(3) disclosure is made with the price comparison that the price used as a basis for the comparison was not the seller's own price.

(b) It shall be an unfair or deceptive act or practice for a seller to make any price comparison

based upon a "manufacturer's suggested price," "distributor's suggested price," "list price," "suggested retail," or any similar term implying a suggested or list price established by anyone other than the seller, unless either:

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

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

Sec. 42-110b-14a. Retail price labels

(a) A price label or tag permanently imprinted on or affixed to consumer property or its container, by the manufacturer or supplier ("pre-ticketed price"), and not under control of the retail seller or instigated by him, or which is required to be attached to such property under federal law, need not be covered, obliterated or removed for purposes of compliance with these regulations:

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

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

Sec. 42-110b-15. Records of fact

Any seller advertising products or services in this State in which such advertisements are contained representations or statements as to any type of saving claims, including reduced price claims and comparative value claims, shall maintain adequate records which disclose the factual basis for such representations or statements and from which the validity of any such claim can be established.