

A New State Comparative Price Advertising Statute

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In 1990 retail merchants requested that the General Assembly study Virginia's comparative price advertising law. They felt that it was too restrictive and noted that the marketplace had changed substantially since the General Assembly last amended the statute in 1974. A study was requested because this is typically required before changes are made. The General Assembly responded by approving a joint House and Senate subcommittee to study the necessity and desirability of revising the statute.

Public hearings were held across the state and the subcommittee concluded that changes were necessary. Consumer advocates did not share the view of business concerning the type of change needed, but called for changes to make the law more restrictive. They noted that in recent years other states, such as Maryland and Pennsylvania, had taken action concerning advertising against businesses which also do business in Virginia. However, under the existing law, those businesses could not be prosecuted in Virginia.

Some retailers requested a more stringent law. They found it difficult to compete in a marketplace where consumers could not understand comparative prices or trust that the prices meant what advertisers said they meant. The retailers were convinced that they were losing business to competitors who used unfair comparisons.

At the request of the State Division of Consumer Affairs, a study was designed to describe in a comprehensive way citizens attitudes about retail store advertising. General questions which identified no particular industry or merchant were designed by the researcher and the Division. The questionnaire was pilot tested and refined.

The statistically valid stratified telephone survey collected data from 415 residents in four localities across the state. The sample was systematically drawn from the latest telephone book published for each locality. Data were collected in January 1992 by trained interviewers.

Respondents were highly educated; nearly half had taken at least some college courses. Sixty percent lived in one or two person households and 70% had no children living with them. Half of the sample was under age 40 and 46% had annual household incomes below \$40,000.

Citizens said that they did not trust comparative price advertising. In fact, 37% reported almost never believing that markdowns were real. However, 81% also said that they usually bought things at sale prices.

Almost three-quarters of these consumers said that they wanted stores to compare their prices to actual prices in other stores, and two-thirds wanted to have prices compared to the average price in the area.

Consumers wanted this information, but apparently were not willing to work very hard to comparison shop. Almost half said that they did not check prices in several stores before buying.

Since disclaimers were proposed as a way to make comparisons fair, interviewers asked respondents if they read disclaimers. Nearly a third said they rarely read disclaimers and 46% almost always read them. While 46.5% of respondents believed that disclaimers make advertisements more clear, 21% said disclaimers make advertisements less clear, and 33% said disclaimers make no difference.

Another issue was whether stores should be required to actually offer an item at one price before advertising a sale price compared to the original price. Respondents (67%) agreed that stores should offer items at a regular price before advertising a sale price compared to that regular price. Only 11% of respondents felt that it was not necessary for stores to first offer items at a regular price.

Some respondents told interviewers that they did not know the difference between terms like manufacturer's suggested retail price and market value. Others informed interviewers that they knew of merchants in their area who used artificial comparison prices to lure consumers into their stores.

Since respondents report buying items on sale, merchants have tremendous incentive to make consumers think they are on sale. It is clear that while consumers say they want to comparison shop, they often do not do so. They want a simple, clear, comparison.

These results were reported to legislators working on a new comparative price advertising

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statute. While the law was changed, making it easier for the Division of Consumer Affairs to enforce, it is still possible for advertisements to confuse consumers.

Disclaimers were not required. Although business lobbied against it, the law requires that items be offered at a regular price before a sale price can be advertised. It also requires businesses to keep records to prove previous prices when comparisons are made. The statute was removed from the criminal code and placed in the Consumer Protection Act for easier enforcement.

In the end this legislation, like all legislation, was a compromise. Neither business nor consumer advocates achieved all their goals. However, the statute is clearer and more enforceable, so it is an improvement for consumers and businesses.