

海南自由贸易港反消费欺诈规定

Provisions of Hainan Free Trade Port on Deceptive Trade Practices

海南自由贸易港反消费欺诈规定

(2021年9月29日海南省第六届人民代表大会常务委员会第三十次会议通过)

第一条 为严厉打击消费欺诈行为，维护市场秩序，保护消费者合法权益，优化营商环境，遵循《中华人民共和国消费者权益保护法》等法律、法规的基本原则，结合海南自由贸易港实际，制定本规定。

第二条 经营者为消费者生活消费提供其生产、销售的商品或者服务时，采取故意告知消费者虚假情况或者隐瞒真实情况等手段损害消费者合法权益的行为，适用本规定。

第三条 经营者向消费者提供商品或者服务的质量、性能、用途、有效期限等信息，应当真实、全面，不得作虚假或者引人误解的宣传。

经营者应当在经营场所的醒目位置设立提示牌，对海鲜、水果、旅游特产等特色产品的品种、价格及季节性特征进行介绍并作出消费提示。

鼓励经营者在国家规定的无理由退货方式、期限、范围外，作出更有利于消费者的退货承诺。

第四条 交易市场开办者应当加强对本交易市场内经营者的规范管理，审查入场经营者的市场主体登记证明，与入场经营者签订反消费欺诈承诺书，定期对入场经营者进行检查，发现入场经营者有违反本规定行为的，应当及时制止并报告所在地市、县、自治县人民政府市场监督管理部门。

Provisions of Hainan Free Trade Port on Deceptive Trade Practices

(Adopted at the 30th Session of the Standing Committee of the 6th Hainan Provincial People's Congress on September 29, 2021)

Article 1 These Provisions are enacted based on the basic principles of the Law of the People's Republic of China on the Consumers' Rights Protection and other laws and regulations, and based on actual circumstances in the Hainan Free Trade Port to crack down on deceptive trade practices, maintain market order, protect consumer rights and interests, and optimize the business environment.

Article 2 These Provisions shall apply where business operators provide products or services that they produce or sell for consumer daily use and intentionally falsify information to mislead consumers or conceal the truth to the detriment of consumer rights.

Article 3 Product or service quality, performance, utilization, or expiration information provided by business operators to consumers shall be true and comprehensive, and no falsified or misleading advertisements shall be made.

Business operators shall set up notice boards in prominent places throughout their premises to display the varieties, prices, and seasonal characteristics of specialty products such as seafood, fruits, and specialties for tourists, and provide consumption tips.

Business operators are encouraged to create warranty policies beneficial to consumers to return products for any reason and that exceed legal requirements for time limits and type of product.

Article 4 Market operators shall improve the regulation of business operators, review business operator registration certificates, sign written commitments against deceptive trade practices with business operators, regularly inspect business operators, and promptly stop any business operators in violation of these Provisions and report them to the local municipal, county, or autonomous county people's government market regulation agencies.

集贸市场开办者应当统一配置供消费者称量所购商品份量是否准确的公平秤，每个独立销售区域的设置数量不少于一台。

本条第一款所称交易市场开办者，包括在海南自由贸易港设立的电子商务平台经营者。

第五条 县级以上人民政府应当加强对反消费欺诈工作的领导，加强市场监管智能化建设，采取措施制止消费欺诈行为，营造安全放心的消费环境。

县级以上人民政府应当建立反消费欺诈工作协调机制，由市场监督管理部门会同旅游文化、商务、公安等有关部门开展反消费欺诈联合执法、宣传和监督检查工作，及时查处消费欺诈行为。

第六条 消费者委员会和其他消费者组织依法对经营者提供商品或者服务进行社会监督，适时发布消费预警，保护消费者合法权益，倡导消费者理性消费。

有关行业组织应当加强行业自律，建立健全行业规范，推动行业诚信建设，引导、督促本行业经营者依法经营。

新闻媒体应当做好维护消费者合法权益的宣传工作，对消费欺诈行为进行舆论监督。

第七条 任何单位和个人可以向县级以上人民政府市场监督管理等有关部门投诉、举报消费欺诈行为。有关部门接到投诉、举报后应当按照有关规定及时处理，将处理结果告知投诉、举报人，并依法为投诉、举报人保密。

Farmers' market operators shall provide fair scales for consumers to accurately weigh their purchased goods, and each independent sales area shall have at least one fair scale.

The market operators referred to in Paragraph 1 of this Article include e-commerce platform operators incorporated in the Free Trade Port.

Article 5 People's governments at or above the county level shall improve deceptive trade practice prevention administration, improve electronic market oversight, and take action to stop deceptive trade practices to create a safe and secure consumption environment.

People's governments at or above the county level shall create a deceptive trade practice prevention coordination system, and the market regulation agency shall collaborate with the appropriate tourism and culture, commerce, and public security agencies to conduct joint deceptive trade practice prevention law enforcement, awareness, oversight, and inspection, and promptly investigate and penalize any instances of deceptive trade practice.

Article 6 The consumer council and other consumer organizations shall conduct social oversight over the products or services provided by business operators, issue early warnings in a timely manner, protect consumer rights, and advocate rational consumption methods pursuant to law.

The appropriate industry organizations shall encourage industry self-discipline, implement and optimize industry standards, develop industry integrity, and guide and urge industry operators to operate pursuant to law.

News media shall improve awareness of the protection of consumer rights and report on and uncover deceptive trade practices.

Article 7 Any entity or individual shall be entitled to file a complaint or report deceptive trade practice to the market regulation agency of the people's government at or above the county level. The appropriate agencies shall then promptly process the complaints and reports received pursuant to applicable law, send notice of the results to the complainants and whistleblowers, and keep their identities confidential pursuant to law.

县级以上人民政府市场监督管理等有关部门应当将受理投诉、举报的电话、信箱、微信公众号或者电子邮件地址向社会公布。对实名举报并查证属实的，由查处消费欺诈行为的部门对举报人给予奖励。举报奖励办法由省人民政府制定。

鼓励消费者通过在线消费纠纷解决机制、消费维权服务站、消费维权绿色通道、第三方争议解决机制等方式与经营者协商解决消费者权益争议。

第八条 经营者销售海鲜、水果、旅游特产及其他商品时，使用不合格的计量器具、破坏计量器具准确度、将包装物重量作为商品重量或者以作弊的方式称量商品，短斤缺两的，由县级以上人民政府市场监督管理部门责令改正，给予警告，没收违法所得，对经营者处二千元以下的罚款；情节较重或者社会影响恶劣的，处二千元以上五万元以下的罚款；情节严重或者社会影响特别恶劣的，处五万元以上五十万元以下的罚款，并可以处不少于三个月的责令停产停业，直至依法吊销营业执照。

经营者为单位、有前款规定的行为情节严重或者社会影响特别恶劣的，除依照前款规定处罚外，对其法定代表人、主要负责人和其他直接责任人员，处一千元以上三万元以下的罚款。

第九条 经营者有下列欺诈行为之一的，由县级以上人民政府市场监督管理部门责令改正，给予警告，没收违法所得，对经营者处一万元以下的罚款；情节较重或者社会影响恶劣的，处一万元以上十万元以下的罚款；情节严重或者社会影响特别恶劣的，处十万元以上五十万元以下的罚款，并可以处不少于三个月的责令停产停业，直至依法吊销营业执照：

The market regulation agencies of the people's government at or above the county level shall announce the telephone number, address, official WeChat subscription, or email address for sending complaints and reports. The agency investigating the deceptive trade practices shall reward the whistleblower should they use their real name and the report or complaint submitted is verified to be true. The reward guidelines shall be issued by the provincial people's government.

Consumers are encouraged to negotiate and resolve disputes with business operators through online dispute resolution services, consumer rights protection platforms, consumer rights protection fast track platforms, and third party dispute resolution services.

Article 8 Where a business operator sells seafood, fruit, specialties for tourists, and other products, and such operator uses non-conforming scales, tampers with the accuracy of the scales, includes the package weight in the product weight, or intentionally misweighs products, the market regulation agency of the people's governments at or above the county level shall require the operator to make the necessary corrections, issue a warning, confiscate any illegal income earned, and impose a penalty under 2,000 Yuan. If the circumstances are serious or have an adverse impact on the public, a penalty of not less than 2,000 Yuan and not more than 50,000 Yuan shall be imposed. If the circumstances are serious or have a significantly adverse impact on the public, a penalty of not less than 50,000 Yuan but not more than 500,000 Yuan may be imposed, and the operator may be required to suspend production or business for a minimum of 3 months, or its business license will be revoked pursuant to law.

Where the business operator is an entity in violation of the preceding paragraph and the circumstances are serious or the violation has a significantly adverse impact on the public, its statutory representative, the person directly in charge, and other employees subject to direct liability shall receive a penalty of not less than 1,000 Yuan and not more than 30,000 Yuan.

Article 9 If a business operator commits any of the following deceptive acts, the market regulation agency of the people's government at or above the county level shall require the operator to correct such act, issue a warning, confiscate the illegal income, and impose a penalty of less than 10,000 Yuan. If the circumstances are serious or have an adverse impact on the public, a penalty of not less than 10,000 Yuan and not more than 100,000 Yuan shall be imposed. If the circumstances are serious or have a significantly adverse impact on the public, a penalty of not less than 100,000 Yuan and not more than 500,000 Yuan shall be imposed, and the business operator may be required to suspend production or business for a minimum of 3 months, or its business license is revoked pursuant to law:

（一）在提供海鲜代客加工、汽车维修、装饰装修等服务中，采用谎报用工用料、偷换材料、偷工减料等方式欺诈消费者的；

（二）在销售的商品中掺杂、掺假，以假充真，以次充好，以不合格商品冒充合格商品欺诈消费者的；

（三）在经营场所内设置相对封闭、独立区域，诱骗或者强迫旅游者购买旅游商品的；

（四）在销售商品或者提供健身、美容、培训、餐饮等服务中，采用预收款等方式骗取消费者费用而不提供或者不按照约定提供商品、服务的。

经营者为单位、有前款规定的行为情节严重或者社会影响特别恶劣的，除依照前款规定处罚外，对其法定代表人、主要负责人和其他直接责任人员，处五千元以上五万元以下的罚款。

第十条 经营者有下列欺诈行为之一的，依照《中华人民共和国反不正当竞争法》的规定处罚：

（一）借助免费或者不合理低价旅游、组织讲座、现场体验、公益活动等名义和形式进行虚假宣传，误导、欺骗消费者的；

（二）发布虚假免税或者零关税商品信息，误导、欺骗消费者的；

（三）以虚构交易、编造用户评价等方式进行虚假或者引人误解的商业宣传，误导、欺骗消费者的；

（四）在提供婚纱摄影、海鲜餐饮、汽车租赁、房屋租赁等服务中，对其服务作虚假或者引人误解的商业宣传，误导、欺骗消费者的；

（五）在提供高空、高速、水上、潜水、探险等旅游娱乐服务中，对其服务作虚假或者引人误解的商业宣传，误导、欺骗消费者的；

（六）销售伪造或者冒用知名商品特有的名称、包装、装潢商品的。

(a) when providing seafood processing, vehicle maintenance, renovation, and other services, using falsified materials, surreptitiously switching materials, cutting corners, or using other methods to cheat consumers;

(b) bulking or adulterating products sold, selling fake products as genuine products, selling inferior products as superior products, or selling defective products as conforming products to deceive consumers;

(c) setting up relatively closed and independent areas in the business premises to induce or force tourists to buy tourist products; or

(d) when selling commodities or providing services such as fitness, beauty treatment, training, catering, and other services, deceiving consumers by charging advance or other fees and failing to provide the products or services as agreed.

Where a business operator is an entity and materially violates the above paragraph or has an adverse impact on the public, its statutory representative, the person directly in charge, and other employees directly liable shall receive a penalty of not less than 5,000 Yuan and not more than 50,000 Yuan.

Article 10 Business operators who commit any of the following deceptive acts shall be penalized pursuant to the Anti-Unfair Competition Law of the People's Republic of China:

(a) false advertising under the guise of or by means of free or unrealistically low-cost travel, classes, in-person experiences, or activities for the public interest to mislead or deceive consumers;

(b) publishing false information about duty-free or zero-duty products to mislead or deceive consumers;

(c) issuing false or misleading commercial advertisements through fictitious transactions or false customer reviews to misguide or deceive consumers;

(d) issuing false or misleading commercial service advertisements to misguide or deceive consumers when providing services such as wedding photography, seafood catering, car rental, or accommodation rental;

(e) issuing false or misleading commercial service advertisements to misguide or deceive consumers when providing high-altitude, high-speed, water, diving, or exploration tourism and recreational services; or

(f) selling counterfeit or fake products using the distinctive name, packaging, or designs of well-known products.

第十一条 经营者发布医疗、药品、医疗器械、保健食品等方面的虚假广告，误导、欺骗消费者的，依照《中华人民共和国广告法》的规定处罚。

第十二条 经营者销售伪造产地，伪造或者冒用他人的厂名、厂址，伪造或者冒用认证标志等质量标志，篡改生产日期的商品，或者假冒他人注册商标销售商品或者提供服务的，分别依照《中华人民共和国产品质量法》《中华人民共和国商标法》的规定处罚。

第十三条 经营者向消费者提供商品或者服务时，利用虚假或者使人误解的价格手段，诱骗消费者与其进行交易的，依照《中华人民共和国价格法》等有关规定处罚。

第十四条 交易市场开办者未依照规定履行审查、检查、制止、报告等管理义务，同一交易市场一年内出现两次以上经营者因消费欺诈受到行政处罚的，由县级以上人民政府市场监督管理部门对交易市场开办者处二万元以上十万元以下的罚款；交易市场开办者为单位的，同时对其法定代表人、主要负责人和其他直接责任人员，处一万元以上三万元以下的罚款。

第十五条 经营者利用网络实施消费欺诈行为的，依照本规定处罚。

第十六条 县级以上人民政府市场监督管理等部门调查涉嫌消费欺诈行为时，有关单位或者个人应当配合，不得弄虚作假或者拒绝、阻挠。涉嫌消费欺诈的有关单位和个人在接受调查时弄虚作假或者拒绝、阻挠的，由实施调查的部门责令改正；拒不改正的，处一千元以上五万元以下的罚款。

Article 11 Business operators who publish false advertisements on medical treatment, drugs, medical devices, or dietary supplements to mislead or deceive consumers shall be penalized pursuant to the Advertisement Law of the People’s Republic of China.

Article 12 Business operators who sell products with forged origins, forged or falsified factory names and addresses belonging to others, forged or falsified use of quality marks such as certification marks, falsified product production dates, or forged registered trademarks belonging to others to sell products or provide services shall be penalized pursuant to the Product Quality Law of the People’s Republic of China or Trademark Law of the People’s Republic of China.

Article 13 When providing products or services to consumers, business operators who use false or misleading prices to induce consumers into transactions shall be penalized pursuant to the Price Law of the People’s Republic of China or other applicable provisions.

Article 14 Where a market operator fails to perform its administrative obligations such as review, inspection, stoppage, and reporting as required and is subject to administrative penalties for deceptive trade practice twice or more in one year in the market, they shall receive a penalty of not less than 20,000 Yuan and not more than 100,000 Yuan imposed by the market regulation agency of the people’s governments at or above the county level. If the market operator is an entity, its statutory representative, the person directly in charge, and directly liable employees shall receive a penalty of not less than 10,000 Yuan and not more than 30,000 Yuan.

Article 15 Business operators who commit deceptive trade practices online shall be penalized pursuant to these Provisions.

Article 16 When the market regulation agency of the people’s governments at or above the county level investigate suspected deceptive trade practice, the entities or individuals under investigation shall cooperate and shall not falsify information, refuse, or obstruct the investigation. The investigating agency shall require them to correct their actions, and may impose a fine of not less than 1,000 Yuan and not more than 50,000 Yuan should the investigated entities or individuals refuse to comply.

第十七条 对因消费欺诈受到行政处罚的经营者，有关部门应当依法记入信用档案，通过信用信息平台进行公示。因消费欺诈情节严重或者社会影响特别恶劣受到行政处罚的，依照国家有关市场监督管理严重违法失信惩戒的规定以及本省的有关规定实施相应的惩戒措施。

第十八条 违反本规定的行为，本规定未设定处罚但其他法律、法规已有处罚规定的，依照有关法律、法规的规定处罚；《中华人民共和国食品安全法》《中华人民共和国药品管理法》《中华人民共和国消费者权益保护法》等法律、法规的规定严于本规定的，依照有关法律、法规的规定执行；构成违反治安管理行为的，依照《中华人民共和国治安管理处罚法》予以处罚；构成犯罪的，依法追究刑事责任；造成人身、财产损害的，依法承担民事责任。

消费欺诈违法行为，依法决定由市、县、自治县综合行政执法部门或者乡镇人民政府、街道办事处实施处罚的，从其规定。

第十九条 履行反消费欺诈工作职责的行政管理部门及其工作人员违反本规定，有下列情形之一的，由其上级机关、主管部门责令改正；对直接负责的主管人员和其他直接责任人员依法给予处理；构成犯罪的，依法追究刑事责任：

（一）不依法受理或者不及时处理投诉、举报的；

（二）对监督检查过程中发现的消费欺诈行为不制止或者拖延查处的；

（三）其他滥用职权、玩忽职守、徇私舞弊的行为。

第二十条 本规定自 2021 年 11 月 1 日起施行。

Article 17 Business operators subject to administrative penalties for deceptive trade practice shall be recorded by the appropriate agencies in the credit report pursuant to law and announced via the credit information platform. Appropriate disciplinary action shall be taken against those subject to administrative penalties for material deceptive trade practice or material adverse impact on the public pursuant to applicable national market regulation and administration regulations and applicable provincial regulations.

Article 18 Where other laws and regulations provide penalties for violations of these Provisions not provided in these Provisions, such laws and regulations shall control. The Food Safety Law of the People’s Republic of China, the Drug Administration Law of the People’s Republic of China, or the Consumer Rights Protection Law of the People’s Republic of China shall control should one provide stricter penalties than these Provisions. Those who violate the administration of public security shall be subject to penalties pursuant to the Law of the People’s Republic of China on Administration of and Penalties for Public Security, and shall be held criminally liable pursuant to law should such violation commit a crime. Those who cause harm to a person or property shall assume the appropriate civil liability pursuant to law.

The laws shall control if they provide that the comprehensive law enforcement agencies at the city, county, or autonomous county level, the town or township government, or subdistrict office shall penalize those involved in deceptive trade practice.

Article 19 The administrative agencies and their employees with deceptive trade practice prevention duties found to be in violation of these Provisions or involved in any of the following circumstances shall be required by higher authorities and the appropriate agencies to correct such. The persons directly in charge and other directly liable employees shall be penalized pursuant to law and held criminally liable if a crime is committed:

- (a) failing to accept or resolve complaints and reports in a timely manner pursuant to law;
- (b) deceptive trade practice discovered during oversight and inspection is not stopped or its management is delayed; or
- (c) other acts of abuse of position, dereliction of duty, or playing favoritism and committing irregularities.

Article 20 These Provisions shall come into force as of November 1, 2021.

