

Which state consumer protection provisions could be used to protect kids from junk food marketing?

Iowa has two consumer protection statutes. The Iowa Consumer Fraud Act ("ICFA") grants the Attorney General the authority to protect consumers. Iowa Code Ann. § 714.16 et seq., and the "Private Right of Action for Consumer Frauds Act" of 2009 ("Private Act") allows individual consumers to file suit. Iowa Code Ann. § 714H et. seq. Both acts generally prohibit unfair trade practices and deception. While both the ICFA and the Private Act use the same definition of "advertisement"—"the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any . . . interest in any merchandise" — only the ICFA, enforceable exclusively by the Attorney General, has a specific "deceptive advertising" provision. Iowa Code Ann. § 714.16(1)(a), § 714H.2(2) Deceptive advertising is defined as when "a person to represent[s] . . . that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits . . . if, at the time of the representation, no reasonable basis for the claim existed." Iowa Code Ann. § 714.16(2)(a).

Does Iowa law provide any special protections for child consumers?

Neither the ICFA nor the Private Act contains any special protections for child consumers. The ICFA and the Private Act's definition of "advertisement" includes indirect and direct attempts to induce consumers to purchase merchandise. Iowa Code Ann. § 714.16(1)(a). Advertising aimed at children intended to generate "pester power" whereby children pester their parents into buying a product for them is a classic form of "indirect" food marketing. The inclusion of indirect marketing practices in the definition of "advertisement" may prove beneficial to consumers in cases where deceptive advertising is aimed at children but parents are the ultimate purchasers.

Who can bring a lawsuit?

The Iowa Attorney General may bring actions under the ICFA. Individual consumers may file suit under the Private Act. The Private Act also permits classes of individual consumers to file suit after obtaining prior approval from the Attorney General. Iowa Code Ann. § 714H.7. The AG is to approve a class action unless the action is frivolous. Iowa Code Ann. § 714H.7.

What needs to be shown to make out a claim?

ICFA: The Attorney General is required under the ICFA are required to show that a trade practice was either unfair or deceptive. *State ex rel. Miller v. Cutty's Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 527 (Iowa 2005). An "unfair practice" is "an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces." Iowa Code Ann. § 714.16(1)(n). The ICFA defines "deception" as "an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts." Iowa Code Ann. § 714.16(1)(f). While no showing of intent to deceive is required, *State ex rel. Miller v. Pace*, 677 N.W.2d 761 (Iowa 2004), in order "[t]o maintain an action for either injunction or restoration . . . it is necessary to show a misrepresentation of any material fact with the intent that others rely on this misrepresentation." *State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 617, 622 (Iowa 1989).

Using State Consumer Protection Law to Limit Junk Food Marketing to Children

This project conducted a 50-state survey of existing state consumer protection law and the potential role it might play to limit junk food marketing to children. Each State legal summary describes the most relevant existing consumer protection statute and identifies provisions that might be invoked to protect children from junk food marketing. Procedural provisions and criminal penalties are not discussed.



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- **Private Act:** The Private Act uses the same definition of unfair, Iowa Code Ann. § 714H.2(9), but defines “deception” as “an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts.” Iowa Code Ann. § 714H.2(5). A claim under the Private Act must establish that a person engaged in a practice that the person knew “or reasonably should [have] know[n] [was] an unfair practice, deception, fraud, false pretense, or false promise.” Iowa Code Ann. § 714H.3. Or a person engaged in a “misrepresentation, concealment, suppression, or omission of a material fact with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission.” Iowa Code Ann. § 714H.3. A consumer must show the unfair or deceptive trade practice occurred “in connection with the advertisement, sale, or lease of consumer merchandise, or the solicitation of contributions for charitable purposes.” Iowa Code Ann. § 714H.3. In all cases, the consumer must “prove that the prohibited practice related to a material fact or facts,” Iowa Code Ann. § 714H.3, and that he or she suffered an “ascertainable loss” as a result of the prohibited practice, Iowa Code Ann. § 714H.5(1).
- **What are the powers of the Attorney General to protect kids from junk food marketing?**
The Iowa Attorney General has the power to petition the court for a temporary restraining order, preliminary or permanent injunction, and civil penalties not to exceed \$40,000 per violation. Iowa Code Ann. § 714.16(7). The AG may instigate investigations, Iowa Code Ann. § 714.16(3), and bring actions on behalf of the residents of the state, Iowa Code Ann. § 714.16(15).
- **How does the law compensate consumers?**
Successful plaintiffs can recover actual damages and pursue equitable relief. Iowa Code Ann. § 714H.5(1). Violations of the Private Act that constitute a “willful and wanton disregard for the rights or safety of another” entitle a plaintiff to recover additional statutory damages up to three times the amount of actual damages. Iowa Code Ann. § 714H.5(4).
- **Who is liable for attorney’s fees?**
The AG may recover attorneys’ fees. Iowa Code Ann. § 714.16(7). Prevailing plaintiffs under the Private Act may recover reasonable attorneys fees and costs. Iowa Code Ann. § 714H.5(2).

DISCLAIMER: This legal summary is for informational purposes only. Please consult an attorney for legal advice. All information reflects legal research conducted in 2010.

THANKS: Many thanks for research assistance provided by Northeastern University School of Law Public Health Legal Clinic students Bill Mostyn, Alexandra Geiger and Jordan Barringer. Thanks also to Jennifer Roberston.

FUNDING: This Project is funded by the Robert Wood Johnson Foundation’s Healthy Eating Research Program.

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