

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

Nebraska's Consumer Protection Act ("CPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce . . ." Neb. Rev. Stat. Ann. § 59-1602.

Does Nebraska law provide any special protections for child consumers?

The CPA does not contain any special protections for child consumers. As discussed below, the CPA does specify that a consumer may be awarded damages "whether [he or she] dealt directly or indirectly with the defendant. . ." Neb. Rev. Stat. Ann. § 59-1609. 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. In cases where parents are the ultimate purchaser, but children were the targets and the victims of the deceptive food marketing, the recognition of "indirect" dealings with a defendant is beneficial to consumers.

Who can bring a lawsuit?

The Attorney General, Neb. Rev. Stat. Ann. § 59-1608.01, individual consumers, Neb. Rev. Stat. Ann. § 59-1609, and classes of individual consumers (class actions), *See, e.g., Arthur v. Microsoft Corp.*, 676 N.W.2d 29 (Neb. 2004), may file suit.

What needs to be shown to make out a claim?

To make out a claim under the CPA, a person must show that he or she was injured in his or her business or property by a violation of the Act, whether the person dealt directly or indirectly with the defendant. Neb. Rev. Stat. Ann. § 59-1609.

In addition, to be actionable under the CPA, the unfair or deceptive act or practice must have an impact upon the public interest, i.e. "consumers at large." *Arthur v. Microsoft Corp.*, 676 N.W.2d 29, 36 (Neb. 2004).

Nebraska courts have not addressed whether a plaintiff, in order to recover under the CPA, must prove reliance on the defendant's unlawful act or that the defendant intended to engage in the unlawful act.

**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.



at Northeastern University School of Law
102 The Fenway
Cushing Hall, Ste. 117
Boston, MA 02115

Phone: 617-373-2026
E-mail: cp@phaionline.org



What are the powers of the Attorney General to protect kids from junk food marketing?

The Nebraska Attorney General may seek injunctive relief and restitution for consumers, Neb. Rev. Stat. Ann. § 59-1608(1)-(2), as well as a civil penalty of up to \$2,000 per violation, Neb. Rev. Stat. Ann. § 59-1614. Any person who violates the terms of an injunction issued under the CPA is subject to a civil penalty up to \$25,000. Neb. Rev. Stat. Ann. § 59-1614. The CPA does not explicitly authorize the Attorney General to make rules and regulations interpreting or enforcing the Act.

How does the law compensate consumers?

State law allows a court to award consumers injunctive relief and actual damages, and the court may, in its discretion, increase the damage award up to \$1,000. Neb. Rev. Stat. Ann. § 59-1609.

Who is liable for attorney's fees?

A court is authorized, in its discretion, to award prevailing plaintiffs "the costs of the suit, including a reasonable attorney's fee." Neb. Rev. Stat. Ann. § 59-1609.

DISCLAIMER: This legal summary is for informational purposes only. Please consult an attorney for legal advice. All information reflects legal research conducted in 2010.
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Prepared by Cara Wilking, J.D.