

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

North Carolina's Unfair and Deceptive Trade Practices Act ("UDTPA") prohibits "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce . . ." N.C. Gen. Stat. Ann. § 75-1.1(a). Specifically, "[a]ny act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of [the UDAP statute]." N.C. Gen. Stat. Ann. § 75-2.

Does North Carolina law provide any special protections for child consumers?

North Carolina's consumer protection law does not contain any special protections for child consumers.

Who can bring a lawsuit?

The Attorney General, N.C. Gen. Stat. Ann. § 75-14, individual consumers, N.C. Gen. Stat. Ann. § 75-16, and classes of consumers, *see, e.g., Richardson v. Bank of America*, 643 S.E.2d 410 (N.C. App. 2007), may file suit.

What needs to be shown to make out a claim?

In order to make out a claim under the UDTPA, a plaintiff must show: "(1) the defendants committed an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) that the plaintiff was injured thereby." *Richardson v. Bank of America*, 643 S.E.2d 410, 416 (N.C. App. 2007) (internal citations omitted). Further "[a] practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. A practice is deceptive if it has the capacity or tendency to deceive; proof of actual deception is not required." *Richardson v. Bank of America*, 643 S.E.2d 410, 416 (N.C. App. 2007) (internal citations omitted). The injury alleged must be an "actual injury [suffered] as a proximate result of defendant's deceptive statement or misrepresentation." *Pearce v. American Defender Life Ins. Co.*, 343 S.E.2d 174, 180 (N.C. 1986).

**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.

