

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

The North Dakota False Advertising statute prohibits any advertisement that contains “any assertion, representation, or statement of fact . . . which is untrue, deceptive, or misleading regarding . . . food . . .” N.D. Cent. Code § 51-12-01(1). Any advertisement that is “untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” N.D. Cent. Code § 51-12-08.

North Dakota also has the Unlawful Sales or Advertising Practices statute (“Unlawful Sales or Advertising statute”) which outlaws any “deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby . . .” N.D. Cent. Code § 51-15-02. The Unlawful Sales or Advertising statute defines an advertisement to include attempts “to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.” N.D. Cent. Code § 51-15-01(1).

Does North Dakota provide any special protections for child consumers?

North Dakota’s consumer protection statutes do not have any specific provision protecting children as vulnerable consumers. The Unlawful Sales or Advertising Practices statute does define advertising to include direct and indirect marketing strategies. 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” advertising is beneficial to consumers.

Who can bring a lawsuit?

The Attorney General, individual consumers, and classes of individual consumers (class actions) may file suit under both laws.

**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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- **What needs to be shown to make out a claim?**
- Both consumer protection laws require a basic showing that the defendant engaged in an illegal trade practice and that the plaintiff suffered damages as a result of the illegal conduct or that the defendant obtained money or property by means of an illegal trade practice. *See* N.D. Cent. Code § 51-12-08; N.D. Cent. Code § 51-12 et seq.
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- **What are the powers of the Attorney General to protect kids from junk food marketing?**
- The North Dakota Attorney General may seek injunctive relief under the False Advertising Statute and the Unlawful Sales or Advertising Practices statute. Violations of an injunction issued pursuant to the Unlawful Sales or Advertising Practices statute may result in civil penalties of up to \$1,000 per violation. N.D. Cent. Code § 51-15-07. And a court “may assess for the benefit of the state a civil penalty of not more than [\$5,000] for each violation” of the Unlawful Sales or Advertising Practices statute. N.D. Cent. Code § 51-15-11. The Unlawful Sales or Advertising Practices statute also grants the Attorney General rulemaking authority. N.D. Cent. Code § 51-15-05.
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- **How does the law compensate consumers?**
- Consumers may recover damages under the False Advertising Statute. Successful claims brought under the Unlawful Sales or Advertising Practices statute may result in an award of actual damages or, “[i]f the court finds the defendant knowingly committed the conduct” the court may award “up to three times the actual damages proven.” N.D. Cent. Code § 51-15-09.
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- **Who is liable for attorney’s fees?**
- Under the Unlawful Sales or Advertising Practices statute if a “court finds the defendant knowingly committed the conduct,” the court “must order that the person commencing the action recover costs, disbursements, and actual reasonable attorney’s fees” N.D. Cent. Code § 51-15-09. The False Advertising statute is silent as to attorney’s fees. North Dakota law, in general, requires that defendants be awarded attorney’s fees for frivolous claims. N.D. Cent. Code § 28-26-01.

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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