

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

Arizona's Consumer Fraud Act ("CFA") prohibits "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact . . . in connection with the sale or advertisement of any merchandise . . ." Ariz. Rev. Stat. § 44-1522. Under Arizona law, advertisement "includes the attempt by publication, dissemination, solicitation or circulation, oral or written, to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise." Ariz. Rev. Stat. § 44-1521.

Does Arizona law provide any special protections for child consumers?

The CFA has no specific provision protecting children as vulnerable consumers. The CFA's definition of "advertisement" does include indirect and direct attempts to induce consumers to buy products. Ariz. Rev. Stat. § 44-1521. 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 the parent is the ultimate purchaser.

Who can bring a lawsuit?

The Attorney General, private consumers and classes of private consumers can file suit under the CFA.

What needs to be shown to make out a claim?

A plaintiff must show that the defendant committed a deceptive or fraudulent act in connection with the sale of merchandise and that he or she was injured (suffered damages) as a result. *Howell v. Midway Holdings, Inc.*, 362 F.Supp.2d 1158, 1164 (D. Ariz. 2005) (citing *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338, 342 (Ariz. App. 1983)). The CFA requires a showing that the defendant acted with intent when the misconduct alleged involves concealment, suppression or omission of a material fact. Ariz. Rev. Stat. § 44-1522. For private actions, the Arizona courts have interpreted the CFA to require a basic showing of reliance on the deception by the consumer. *See, Peery v. Hansen*, 585 P.2d 574, 577 (Ariz. App. 1978), and *Siemer v. Associates First Capital Corp.*, 2001 WL 35948712 (D. Ariz. 2001). Arizona courts have held, however, that a private plaintiff's reliance need not be reasonable: "An injury occurs when a consumer relies, even unreasonably, on false or misrepresented information." *Kuehn v. Stanley*, 91 P.3d 346, 351 (Ariz. App. Div., 2004). *See also, Stratton v. American Medical Sec., Inc.*, 266 F.R.D. 340, 348 (D. Ariz., 2009).

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

• The Arizona Attorney General has the power to investigate, Ariz. Rev. Stat. § 44-1524, issue subpoenas, Ariz. Rev. Stat. § 44-1526, conduct hearings, Ariz. Rev. Stat. § 44-1526, promulgate procedural rules, Ariz. Rev. Stat. § 44-1526, and seek injunctive relief and restitution for consumers, Ariz. Rev. Stat. § 44-1528, and petition the court for up to \$10,000 in civil penalties for willful violations of the CFA, Ariz. Rev. Stat. 44-1531(A). The Attorney General may seek restitution for affected consumers. Ariz. Rev. Stat. § 44-1528(A)(2).

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• **How does the law compensate private plaintiffs?**

• Private individuals are entitled to actual damages. *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338, 342 (Ariz. App. 1983). In rare cases, a court may award punitive damages if the wrongdoer's conduct "is wanton or reckless, shows spite or ill will or where the conduct demonstrates a reckless indifference to the interests of others." *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338, 343 (Ariz. App. 1983).

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• **Who is liable for attorney's fees?**

• The Attorney General is entitled to attorney's fees for prevailing in an action brought under the CFA. Ariz. Rev. Stat. § 44-1534. Consumers are not entitled to attorney's fees for actions under Arizona's CFA. *Sellinger v. Freeway Mobile Home Sales, Inc.*, 521 P.2d 1119, 1123 (Ariz. 1974).

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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