

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

Montana's Consumer Protection Act ("MCPA") prohibits "[u]nfair or deceptive acts or practices in the conduct of any trade or commerce . . ." Mont. Code Ann. § 30-14-103. The Act provides that "[i]t is the intent of the legislature that . . . due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts . . ." Mont. Code Ann. § 30-14-104(1).

Does Montana law provide any special protections for child consumers?

The MCPA has no specific provision protecting children as vulnerable consumers, but does state that Montana courts are to give due consideration to the FTC and federal court interpretations of the Federal Trade Commission Act ("FTCA"). The Federal Trade Commission has recognized an exception from the general "reasonable person" standard for FTCA actions when advertising is aimed at a vulnerable or particularly susceptible audience. Federal Trade Commission, *See* Deception Policy Statement, appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 177 (1984), <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>. This lesser standard should be applied when children, who by their very nature are particularly susceptible, are the target audience of food advertising.

Who can bring a lawsuit?

The Attorney General, Mont. Code Ann. § 30-14-111(1) and individual consumers, Mont. Code Ann. § 30-14-133(1), may file suit. Class actions are prohibited. Mont. Code Ann. § 30-14-133(1).

What needs to be shown to make out a claim?

To make out a claim under the "MCPA," a plaintiff must show: 1) that he suffered an ascertainable loss of money or property, real or personal; 2) that the defendant engaged an act or practice declared unlawful under section 30-14-103; and 3) that this loss was a result of the defendant's unlawful actions. Mont. Code Ann. § 30-14-133(1).

Montana courts have not addressed whether a plaintiff, in order to recover under the MCPA, 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.

