

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

The Nevada Deceptive Trade Practices Act (“NDTPA”) provides that a person engages in a deceptive trade practice if, in the course of his or her business or occupation, he or she:

- “Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease” Nev. Rev. Stat. Ann. § 598.0915(2);
- “Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale . . .” Nev. Rev. Stat. Ann. § 598.0915(5);
- “Advertises goods or services with intent not to sell or lease them as advertised.” Nev. Rev. Stat. Ann. § 598.0915(9); or
- “Knowingly makes any other false representation in a transaction.” (catch-all provision). Nev. Rev. Stat. Ann. § 598.0915(15).

The NDTPA defines “advertisement” to mean “the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation to lease or to acquire any title or interest in any property.” Nev. Rev. Stat. Ann. § 598.0905.

**Does Nevada law provide any special protections for child consumers?**

The NDTPA does not contain any special protections for child consumers. The NDTPA’s definition of “advertisement” includes indirect and direct attempts to induce consumers to buy products. Nev. Rev. Stat. Ann. § 598.0905. 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, Nev. Rev. Stat. Ann. § 598.0963(1), and individual consumers, Nev. Rev. Stat. Ann. § 41.0600(1), may file suit. Nothing in the NDTPA prohibits class actions and at least one court has allowed for a class action brought under the NDTPA. *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada*, 102 P.3d 578 (Nev. 2004).

**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 needs to be shown to make out a claim?**
- To make out a claim under NDTPA, a person must show that the defendant in the course of the defendant's business or occupation, engaged in the one of the NDPTA's enumerated deceptive trade practices, and that the plaintiff suffered damages as a result. *See* Nev. Rev. Stat. Ann. § 598.0915 and Nev. Rev. Stat. Ann. § 41.0600. Nevada courts have not addressed whether or not a plaintiff needs to prove that he or she relied on the defendant's unlawful actions.

- Many of the enumerated "deceptive practices" require that the defendant's unlawful actions be done "knowingly" or with the "intent" to deceive the consumer. *See, e.g.*, Nev. Rev. Stat. Ann. § 598.0915(2), (5), and (9).

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

- The Nevada Attorney General may "adopt such regulations as may be necessary to administer the provisions of" the DTPA. Nev. Rev. Stat. Ann. § 598.0967(1).

- "If the Attorney General has cause to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may issue a subpoena to require the testimony of any person or the production of any documents, and may administer an oath or affirmation to any person providing such testimony." Nev. Rev. Stat. Ann. § 598.0963(3). The attorney general may also seek injunctive relief and any "other appropriate relief" as well as restitution for consumers. Nev. Rev. Stat. Ann. § 598.0963(3). The Commissioner for Consumer Affairs may seek restitution for consumers. Nev. Rev. Stat. Ann. § 598.0971(2)(c).

- "[A] person who violates a court order or injunction issued pursuant to the provisions of [the Act] . . . upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this state or the Attorney General" must pay a civil penalty of not more than \$10,000 for each violation. Nev. Rev. Stat. Ann. § 598.0999(1). "[I]f the court finds that a person has willfully engaged in a deceptive trade practice" the court may assess a civil penalty of up to \$5,000 per violation. Nev. Rev. Stat. Ann. § 598.0999(2).

- **How does the law compensate consumers?**  
State law allows a court to award consumers "[a]ny damages that the claimant has sustained." Nev. Rev. Stat. Ann. § 41.600(3)(a).

- **Who is liable for attorney's fees?**  
A court shall award prevailing plaintiffs "costs in the action and reasonable attorney's fee." Nev. Rev. Stat. Ann. § 41.600(3)(a).

**DISCLAIMER:** This legal summary is for informational purposes only. Please consult an attorney for legal advice. All information reflects legal research conducted in 2010.

**THANKS:** Many thanks for research assistance provided by Northeastern University School of Law Public Health Legal Clinic students Bill Mostyn, Alexandra Geiger and Jordan Barringer. Thanks also to Jennifer Roberston.

**FUNDING:** This Project is funded by the Robert Wood Johnson Foundation's Healthy Eating Research Program.

**Prepared by Cara Wilking, J.D.**