

**Which state consumer protection laws may protect kids from junk food marketing?**

The South Carolina Unfair Trade Practices Act is modeled off of the Federal Trade Commission Act and declares “[u]nfair methods of competition and unfair or deceptive acts or practices” unlawful. S.C. Code Ann. § 39-5-20(a). When construing the South Carolina Unfair Trade Practices Act, courts are to be “guided by the interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a)(1) of the Federal Trade Commission Act . . .” S.C. Code Ann. § 39-5-20(b).

**Does South Carolina law provide any special protections for child consumers?**

The South Carolina Unfair Trade Practices Act directs state courts to be guided by interpretations given by the FTC and the federal courts. 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 may bring actions to protect the public interest. S.C. Code Ann. § 39-5-50(a). Individual consumers may file suit. S.C. Code Ann. § 39-5-140(a). Class actions are prohibited under the law. S.C. Code Ann. § 39-5-140(a).

**What needs to be shown to make out a claim?**

To make out a claim a consumer must establish 1) a violation of the act, 2) actual, ascertainable damages, and 3) that the unfair or deceptive act had an adverse impact on the public interest. *City of Charleston, SC v. Hotels.com, LP*, 487 F.Supp.2d 676, 680 (D.S.C. 2007). To prove adverse impact of the public interest, plaintiffs can show “that unfair or deceptive acts or practices . . . have the potential for repetition.” *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 480 (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.



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

• The Attorney General can investigate violations or possible violations of the law and has the authority to issue subpoenas, conduct hearings to aid in investigations, and “promulgate such rules and regulations as may be necessary . . .” S.C. Code Ann. §39-5-70(a); S.C. Code Ann. § 39-5-80. The Attorney General may seek restraining orders or injunctions. S.C. Code Ann. § 39-5-50. The Attorney General may recover civil penalties of up to \$5,000 per violation for willful violations of the act, S.C. Code Ann. § 39-5-110(a), and up to \$15,000 per violation of an injunction, S.C. Code Ann. § 39-5-110 (b).

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• **How does the law compensate consumers?**

• A court may award actual damages. S.C. Code Ann. § 39-5-140(a). Upon a finding that a violation was committed willfully or knowingly, a court “shall” award treble the amount of the actual damages. S.C. Code Ann. § 39-5-140(a).

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

• The court will award attorney’s fees to the consumer if the consumer proves a violation of the act. S.C. Code Ann. § 39-5-140(a).

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**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.

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