

South Dakota

Summary of Consumer Protection Law to Protect Kids from Junk Food Marketing

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

The South Dakota Deceptive Trade Practices and Consumer Protection law prohibits knowingly and intentionally using any “deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.” S.D. Codified Laws § 37-24-6(1). “Advertisement” is defined to include attempts to induce consumers “directly or indirectly” to acquire merchandise. S.D. Codified Laws § 37-24-1(1).

Does South Dakota Law provide any special protections for child consumers?

The South Dakota Deceptive Trade Practices and Consumer Protection law has no specific provision protecting children as vulnerable consumers. The law does Act 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 may seek injunctions. S.D. Codified Laws § 37-24-23. A private right of action exists for those who have been adversely affected by a violation of the act. S.D. Codified Laws § 37-24-31. Nothing in the statute prohibits class actions.

What needs to be shown to make out a claim?

Plaintiffs must show the violation was done knowingly and intentionally, pursuant to the plain language of the act. S.D. Codified Laws § 37-24-6(1). Additionally, plaintiffs must show causation between the violation and the harm they suffered. *Nygaard v. Sioux Valley Hospitals & Health System*, 731 N.W.2d 184, 197 (S.D. 2007).

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



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- **What are the powers of the Attorney General to protect kids from junk food marketing?**
- The Attorney General has authority to investigate possible violations of the act if he or she believes an investigation is in the public interest. S.D. Codified Laws § 37-24-12.
- The Attorney General may also issue subpoenas, conduct hearings, and promulgate rules governing 1) the conduct of investigations, 2) information to be released, and 3) conditions under which assurances of voluntary compliance will be allowed. S.D. Codified Laws § 37-24-14. The Attorney General has authority to seek an injunction. S.D. Codified Laws § 37-24-23. In certain circumstances, the Attorney General may petition for a civil penalty of up to \$2,000 for each violation. S.D. Codified Laws §§ 37-24-26; 37-24-27.
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- **How does the law compensate consumers?**
- Consumers may be awarded actual damages. S.D. Codified Laws §37-24-31. The South Dakota Supreme Court has stated that punitive damages are not allowed under the law. *Wyman v. Terry Schulte Chevrolet, Inc.*, 584 N.W.2d 103, 107 (S.D. 1998).
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- **Who is liable for attorney's fees?**
- Prevailing individual consumers generally are not awarded attorney's fees. Defense Research Institute (DRI), *Unfair Trade Practices: A Compendium of State Law* 595 (2005).
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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.

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