

# 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.

