

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

The Virginia Consumer Protection Act prohibits fraudulent acts or practices. Va. Code Ann. § 59.1-200(A).
Fraudulent acts or practices include:

- Misrepresenting goods. Va. Code Ann. § 59.1-200(A)(1);
- Misrepresenting the source, sponsorship, approval, or certification of goods. Va. Code Ann. § 59.1-200(A)(2); Misrepresenting that goods or services have certain ingredients or benefits. Va. Code Ann. § 59.1-200(A)(5); Misrepresenting that goods are of a particular quality. Va. Code Ann. § 59.1-200(A)(6); and
- Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, Va. Code Ann. § 59.1-200(A)(14).

Does Virginia law have any special protections for child consumers?

Virginia's CPA does not have any special protections for child consumers relating to food products, but it does define "children's products" for the purpose of enforcing its prohibition on the sale of children's products recalled by the federal Consumer Product Safety Commission, *see* Va. Code Ann. § 59.1-200(A)(49):

A "Children's product" means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:

1. A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable;
2. Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
3. Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
4. The Age Determination Guidelines issued by the staff of the Consumer Products Safety Commission in September 2002, and any successor to such guidelines. Va. Code Ann. § 59.1-198.

**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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• This definition may serve as a useful model to legislators and Attorneys General interested in incorporating specific provisions relevant to the marketing of products, including food, to child consumers into their consumer protection statutes and regulations.
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Who can bring a lawsuit?

• The Attorney General, Va. Code Ann. § 59.1-203(A), and individual consumers, Va. Code Ann. § 59.1-204(A), may file suit.
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What needs to be shown to make out a claim?

• In order to make out a claim a consumer must allege that the defendant committed a fraudulent act in violation of the statute and that he suffered a loss as a result of the act. Va. Code Ann. § 59.1-204(A)
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What are the powers of the Attorney General to protect kids from junk food marketing?

• The Attorney General may issue a civil investigative demand if he or she has reasonable cause to believe a violation of the law has occurred or will occur. Va. Code Ann. § 59.1-201.1. The Attorney General is authorized to bring an action to enjoin a violation of the statute. Va. Code Ann. § 59.1-203(A). Additionally, civil penalties may be sought by the Attorney General. Va. Code Ann. § 59.1-206(A).
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How does the law compensate consumers?

• Consumers are entitled to equitable relief and the greater of actual damages or \$500. Va. Code Ann. § 59.1-204(A). If a violation of the act was willful, a court "may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater." Va. Code Ann. § 59.1-204(A).
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Who is liable for attorney's fees?

The court may award attorney's fees to prevailing consumers. Va. Code Ann. § 59.1-204(B).

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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