

# Washington

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

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

Washington's Consumer Protection Act ("CPA") is modeled off of the Federal Trade Commission Act ("FTCA") and broadly prohibits "unfair methods of competition and unfair or deceptive acts or practices . . ." Wash. Rev. Code § 19.86.020. When interpreting the CPA, courts are to be guided by the federal courts, the Federal Trade Commission, and the federal statutes dealing with similar matters. Wash. Rev. Code § 19.86.920.

### Does Washington law have any special protections for child consumers?

The CPA does not have any special provisions dealing with child consumers. The CPA does direct 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 is authorized to bring an action under the CPA. Wash. Rev. Code § 19.86.080(1). Additionally, a private right of action exists for individuals injured by a violation of the act. Wash. Rev. Code § 19.86.090. Washington courts have allowed class actions to be brought under the statute.

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

In order to have a valid claim under the CPA, a plaintiff must show: (1) an unfair or deceptive act or practice occurred, (2) in trade or commerce, (3) affecting the public interest, (4) injury to the plaintiff, and (5) a causal link between the unfair or deceptive act and the injury to the plaintiff. *Quinn v. Cherry Lane Auto Plaza, Inc.*, 225 P.3d 266, 273 (Wash. App. 2009). An act or practice injures the public interest if it (1) violates a statute that incorporates the Consumer Protection Act, (2) violates a statute that specifically declares a public interest impact, or (3) injures or has the capacity to injure others. Wash. Rev. Code § 19.86.093.

### 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 may undertake a civil investigation, Wash. Rev. Code § 19.86.110 (1), recover damages, Wash. Rev. Code § 19.86.090, and pursue civil penalties of up to \$2,000 per violation, Wash. Rev. Code § 19.86.140.

**How does the law compensate consumers?**

Injured consumers may pursue equitable relief, and actual damages. Wash. Rev. Code § 19.86.090. A court also has the discretion to award treble damages in an amount up to \$25,000. Wash. Rev. Code § 19.86.090.

**Who is liable for attorney's fees?**

The court may award attorney's fees to the prevailing party. Wash. Rev. Code § 19.86.090.

**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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