

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

The West Virginia Consumer Credit and Protection Act ("Act") prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices." W. Va. Code § 46A-6-104. Unfair methods of competition and unfair or deceptive acts or practices include:

- "Passing off goods or services as those of another." W. Va. Code § 46A-6-102 (7)(A);
- "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services." W. Va. Code § 46A-6-102 (7)(B);
- "Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another." W. Va. Code § 46A-6-102 (7)(C);
- "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have." W. Va. Code § 46A-6-102 (7)(C);
- "Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." W. Va. Code § 46A-6-102 (7)(L); and
- "The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby." W. Va. Code § 46A-6-102 (7)(M).

Courts are to be guided by the federal courts' interpretations of the federal statutes that deal with similar matters. W. Va. Code §46A-6-101(1).

**Does West Virginia law have any special protections for child consumers?**

The Act does not have any special provisions dealing with child consumers. The Act 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.

**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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- **Who can bring a lawsuit?**
- The Attorney General, individual consumers and classes of consumers may file suit.
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- **What needs to be shown to make out a claim?**
- A consumer must allege that she suffered an “ascertainable loss” as a result of a violation of the Act. W. Va. Code § 46A-6-106(a). In order to prove an “ascertainable loss,” a consumer need only prove that they purchased an item that is different or inferior to that which he bargained for, rather than a specific amount of actual damages. *In re West Virginia Rezulin Litigation*, 585 S.E.2d 52, 75 (W.Va. 2003).
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- **What are the powers of the Attorney General to protect kids from junk food marketing?**
- The Attorney General may enforce the Act and has rulemaking authority under the statute. W. Va. Code § 46A-6-103.
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- **How does the law compensate consumers?**
- Prevailing consumers may be awarded equitable relief and actual damages or \$200, whichever is greater. W. Va. Code § 46A-6-106(a).
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- **Who is liable for attorney’s fees?**
- The court may award reasonable attorney’s fees to prevailing consumers. W. Va. Code § 46A-5-104. However, if the consumer’s suit was brought in bad faith or to harass, the court may award the defendant reasonable attorney’s fees. W. Va. Code § 46A-5-104.

**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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