

CHAPTER 21**(HB 47)**

AN ACT relating to telephone solicitation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 367.46951 is amended to read as follows:

As used in KRS 367.46951 to 367.46999 *and Section 8 of this Act*, unless the context otherwise requires:

(1) "Telephone solicitation" means:

(a) *A live or recorded communication sent by a* telephone ~~call~~ or message sent by a facsimile machine to a residential, mobile, or telephone paging device telephone number, including a call made by an automatic dialing or recorded message device, for the purpose of:

1. Soliciting a sale of consumer goods or services, offering an investment, business, or employment opportunity, or offering a consumer loan to the person called;
2. Obtaining information that will or may be used for the solicitation of a sale of consumer goods or services, the offering of an investment, business, or employment opportunity, or the offering of a consumer loan to the person called;
3. Offering the person called a prize, gift, or anything else of value, if payment of money or other consideration is required in order to receive the prize or gift, including the purchase of other merchandise or services or the payment of any processing fees, delivery charges, shipping and handling fees, or other fees or charges; or
4. Offering the person called a prize, gift, or other incentive to attend a sales presentation for consumer goods or services, an investment or business opportunity, or a consumer loan; or

(b) *A live or recorded communication sent*~~solicitation or attempted solicitation which is made~~ by telephone, *facsimile machine, mobile telephone, or telephone paging device* in response to inquiries generated by unrequested notifications sent by the merchant to persons who have not previously purchased goods or services from the merchant or telemarketer or who have not previously requested credit from the merchant, to a prospective purchaser if the merchant or telemarketer represents or implies to the recipient of the notification that any of the following applies:

1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
2. That the recipient will receive a prize or gift if the recipient calls the merchant or telemarketer; or
3. That if the recipient buys one (1) or more items from the merchant or telemarketer, the recipient will also receive additional or other items of the same or a different type at no additional cost or for less than the regular price of the items;

(2) "Telephone solicitation" does not mean the following:

- (a) A telephone call made in response to an express request of a person called, unless the request was made during a prior telephone solicitation;
- (b) A telephone call made *to the debtor or a party to the contract*~~[primarily]~~ in connection with the payment or performance of an existing debt or contract, the payment or performance of which has not been completed at the time of the call;
- (c) A telephone call to any person with whom the telemarketer or merchant has a prior or existing business relationship, including but not limited to the solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;
- (d) A telephone call made by~~any of~~ the following:
 1. *A merchant or telemarketer located in Kentucky to a location outside of the Commonwealth of Kentucky;*
 2. *A telephone call made by one (1) merchant to another;*
~~[college or university accredited by a national or regional accrediting organization;~~
 2. ~~An organization exempt from taxation under Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code;~~
 3. ~~A school, or a person on behalf of a school, regulated by the Kentucky Department of Education;~~
 4. ~~A real estate broker or sales associate properly licensed under the provisions of KRS Chapter 324;~~
 5. ~~A broker-dealer, agent, or investment adviser properly registered under the provisions of KRS Chapter 292;~~
 6. ~~An insurance agent, solicitor, or consultant properly licensed under the provisions of Subtitle 9 of KRS Chapter 304;~~
 7. ~~An employment agency that has obtained a current permit from the Cabinet for Workforce Development under the provisions of KRS Chapter 340;~~
 8. ~~A person soliciting the sale of a subscription to a newspaper, magazine, or periodical of general circulation, or a cable television service;~~
 9. ~~A merchant or telemarketer or the merchant's or telemarketer's affiliate or authorized agent, when the merchant or telemarketer is regulated by the Public Service Commission;~~
 10. ~~A merchant or telemarketer soliciting the sale of food costing less than one hundred dollars (\$100) to each address;~~
 11. ~~A person who periodically issues and delivers catalogs to potential purchasers if the catalog includes a written description or illustration and the sales price of each item offered for sale, includes at least twenty four (24) full pages of written material or illustrations, is distributed in more than one (1) state, and has an annual circulation of not less than two hundred fifty thousand (250,000) customers;~~

- ~~12. Any corporation, partnership, or individual whose business or activities are regulated by the Commonwealth of Kentucky, Department for Financial Institutions;~~
- ~~13. A merchant or telemarketer or the merchant's or telemarketer's affiliate or authorized agent when the merchant or telemarketer is subject to the control or licensure regulations of the Federal Communications Commission;~~
- ~~14. A book, video, or record club or contractual plan or arrangement in which the merchant or telemarketer provides the consumer with a form which the consumer may use to instruct the merchant or telemarketer not to ship the offered merchandise, or which is regulated by federal regulation concerning the use of negative option plans by sellers in commerce, or which otherwise provides for the sale of books, records, or videos. Examples of the latter plan include continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;~~
- ~~15. A merchant or telemarketer who: solicits without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; does not make the major sales presentation during the solicitation but arranges for the major presentation to be made at a later, face to face meeting between the sales person and the purchaser; and does not go or cause another to collect payment for the purchase or deliver any item purchased to the prospective purchaser directly following the telephone solicitation;~~
- ~~16. Any telephone marketing service company which provides telemarketing sales services under contract to merchants and has been operating continuously for at least five (5) years under the same business name and seventy five percent (75%) of whose services are performed for merchants exempted under KRS 367.46951 to 367.46999, if the company files an annual certification with the Office of the Attorney General on a form prescribed by the Attorney General. The certification shall include the company's basis for claiming the exemption and shall indicate the company's agreement to comply with the provisions of KRS 367.46951 to 367.46999, if applicable;~~
- ~~17. A telephone call made by a merchant or telemarketer located in Kentucky to a location outside the Commonwealth of Kentucky;~~
- ~~18. A merchant or his employee if the merchant has operated for at least two (2) years, under the same name as that used in connection with its telemarketing operations, a retail establishment in Kentucky where consumer goods are displayed and offered for sale on a continuing basis if a majority of the merchant's business involves the buyers obtaining services or products at the merchant's retail establishment; or~~
- ~~19. A merchant or telemarketer or the merchant's or telemarketer's affiliate or authorized agent, where the merchant or telemarketer is a publicly traded corporation;~~

~~Except for paragraph (d)16. of this subsection, the exemptions provided under this subsection shall apply only to a merchant or telemarketer or the merchant's or telemarketer's~~

~~affiliate or authorized agent engaging in a telephone solicitation on the merchant's or telemarketer's behalf;]~~

- (3) "Consumer goods or services" means goods, services, or interests in real property used by natural persons primarily for personal, family, or household purposes;
- (4) "Consumer loan" means any extension of credit, including credit cards and other forms of revolving credit, to a natural person primarily for the purposes of purchasing consumer goods or services or for paying existing personal, family, or household debts;
- (5) "Consumer" means a natural person who receives a telephone solicitation;
- (6) "Legal name of the merchant" means the real name of the merchant, as defined in KRS 365.015(1), or the assumed name of the merchant for which all proper certificates have been filed pursuant to KRS 365.015;
- (7) "Merchant" means the individual or business entity offering the consumer goods or services, an investment, business, or employment opportunity, or a consumer loan;
- (8) "Caller" or "sales person" means the individual making the call or operating the automatic dialing or recorded message device and causing the call to be made;
- (9) "Division" means the Consumer Protection Division of the Office of the Attorney General;
- (10) "Automated calling equipment" means any device or combination of devices used to select or dial telephone numbers and to deliver recorded messages to those numbers without the use of a live operator;~~[-and]~~
- (11) "Telemarketer" means any person who under contract with a merchant or in connection with a telephone solicitation initiates or receives telephone calls to or from a consumer of goods and services. A telemarketer includes, but is not limited to, any such person that is an owner, operator, officer, director, or partner to the management activities of a business;~~[-]~~
- (12) "Publicly-traded corporation" means an issuer or subsidiary of an issuer that has a class of securities which is:
 - (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78l) and which is registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
 - (b) Listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; or
 - (c) A reported security within the meaning of subparagraph (4) of Regulation Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A subsidiary of an issuer that qualifies for exemption under this paragraph shall not itself be exempt unless at least sixty percent (60%) of the voting power of its shares is owned by the qualifying issuer;
- (13) "Telemarketing company" means a company whose primary business is to engage in telephone solicitation; **and**
- (14) ***"Zero call" list means a list containing the telephone numbers of the individuals that indicate their preference not to receive telephone solicitations.***

Section 2. KRS 367.46955 is amended to read as follows:

It is a prohibited telephone solicitation act or practice and a violation of KRS 367.46951 to 367.46999 for any *person making a telephone solicitation*~~[telemarketing company]~~ to engage in the following conduct:

- (1) Advertising or representing that registration as a telemarketer equals an endorsement or approval by any government or governmental agency;
- (2) Requesting a fee in advance to remove derogatory information from or improve a person's credit history or credit record;
- (3) Requesting or receiving a payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telephone solicitation transaction;
- (4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the telemarketing company has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;
- (5) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or bond or other account without the consumer's express written authorization, *or charging a credit card account or making electronic transfer of funds except in conformity with KRS 367.46953*;
- (6) Procuring the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected;
- (7) Assisting, supporting, or providing substantial assistance to any telemarketer when the telemarketing company knew or should have known that the telemarketer was engaged in any act or practice prohibited under this section;
- (8) Making a telephone solicitation to anyone under eighteen (18) years of age. When making a telephone solicitation the telemarketer shall inquire as to whether the person is eighteen (18) years of age or older and the answer shall be presumed to be correct;
- (9) Utilizing any method to block or otherwise circumvent the use of a caller identification service when placing an unsolicited telephone solicitation call;
- (10) Directing or permitting employees to use a fictitious name or not to use their name while making a telephone solicitation;
- (11) Threatening, intimidating, or using profane or obscene language;
- (12) Causing the telephone to ring more than thirty (30) seconds in an intended telephone solicitation;
- (13) Engaging any person repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive, or harassing;
- (14) Initiating a telephone solicitation call to a person, when that person has stated previously that he or she does not wish to receive solicitation calls from that seller;
- (15) (a) Making or causing to be made an unsolicited telephone solicitation call if the *residential* number for that telephone appears in the current publication of the *zero call*~~[no telephone solicitation calls]~~ list maintained by the Office of the Attorney General, Division of Consumer Protection. Any holder of a *residential* telephone

number may notify the division and be placed on a **zero call**~~["no telephone solicitation calls"]~~ list indicating the wish not to receive unsolicited telephone solicitation calls by notification to the division. The **telephone numbers**~~[names]~~ of persons requesting to be on the **zero call**~~["no telephone solicitation calls"]~~ list shall remain on the list until the person rescinds his or her name from the list.

- (b) The **zero call** list shall be **updated**, published, **and distributed on a** quarterly **basis** in **electronic and** hard copy and may be made available in other formats at the discretion of the division. After the publication of the list each **quarter**~~[month]~~ each telemarketing company, **telemarketer, and merchant** shall be deemed to be on notice not to solicit any person whose **telephone number**~~[name]~~ appears on the list~~[-The division shall charge a fee calculated to defray costs of the no telephone solicitation calls program to telemarketing companies for the provision of the list. Funds collected shall be deposited into the division's trust and agency account.]~~ The list shall be made available to requesters either on a statewide or county by county basis;~~[or]~~
- (16) **Making telephone solicitations**~~[Engaging in telemarketing]~~ to a person's residence at any time other than between 10 a.m. - 9 p.m. local time, at the called person's location;
- (17) **Selling or making available for economic gain any information revealed during a telephone solicitation without the express written consent of the consumer;**
- (18) **Making a telephone solicitation to any residential telephone using an artificial or prerecorded voice to deliver a message, unless the call is initiated for emergency purposes by schools regulated by the Kentucky Department of Education or the call is made with the prior express consent of the called party; or**
- (19) **Engaging in any unfair, false, misleading, or deceptive practice or act as part of a telephone solicitation.**

Section 3. KRS 367.46971 is amended to read as follows:

- (1) At least ten (10) days prior to doing business in this state, a **telemarketing company**~~[merchant]~~ shall file with the division the information described below and pay a filing fee of three hundred dollars (\$300). A **telemarketing company**~~[merchant]~~ shall be deemed to do business in this state if the **telemarketing company**~~[merchant]~~ solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state. The information required by this section shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the **telemarketing company**~~[merchant]~~, under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to KRS 367.46951 to 367.46999 shall be clearly identified and appended to the filing.
- (2) Registration of a **telemarketing company**~~[merchant]~~ shall be valid for one (1) year from the effective date thereof and may be renewed annually by making the filing required by this section and paying a filing fee of fifty dollars (\$50).
- (3) If, prior to expiration of a **telemarketing company's**~~[merchant's]~~ annual registration, there is a material change in the information required by KRS 367.46951 to 367.46999, the **telemarketing company**~~[merchant]~~ shall, within ten (10) days, file an addendum updating the information with the division. However, changes in salespersons soliciting on behalf of a **telemarketing company**~~[merchant]~~ shall be updated by filing addenda, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall

include the required information for all salespersons currently soliciting or having solicited on behalf of the **telemarketing company**~~[merchant]~~ at any time during the period between the filing of the registration, or the last addendum, and the current addendum, and shall include information on salespersons no longer soliciting for the **telemarketing company**~~[merchant]~~ as of the date of the filing of the current addendum.

- (4) Upon receiving the filing and the filing fee pursuant to this section, the division shall send the **telemarketing company**~~[merchant]~~ a written confirmation of receipt of the filing. If the **telemarketing company**~~[merchant]~~ has more than one (1) business location, the written confirmation shall be sent to the **telemarketing company's**~~[merchant's]~~ principal business location as identified in the **telemarketing company's**~~[merchant's]~~ filing in sufficient numbers so that the **telemarketing company**~~[merchant]~~ can meet the requirements of this subsection. Within ten (10) days of receipt of the confirmation, the **telemarketing company**~~[merchant]~~ shall post in a conspicuous place at each of the **telemarketing company's**~~[merchant's]~~ business locations within this state a copy of the entire registration statement which has been filed with the division. Until confirmation of receipt of filing is received and posted, the **telemarketing company**~~[merchant]~~ shall post in a conspicuous place at each of the **telemarketing company's**~~[merchant's]~~ business locations within this state a copy of the first page of the registration form sent to the department. The **telemarketing company**~~[merchant]~~ shall also post in close proximity to either the confirmation of receipt of filing or the first page of the submitted registration form the name of the individual in charge of each location from which the **telemarketing company**~~[merchant]~~ does business in this state.

Section 4. KRS 367.46981 is amended to read as follows:

- (1) Every **telemarketing company**~~[merchant]~~ shall maintain a bond issued by a surety company admitted to do business in this state. The bond shall be in the amount of fifty thousand dollars (\$50,000) in favor of the Attorney General for the benefit of any person suffering injury or loss by reason of any violation of KRS 367.46951 to 367.46999 to be paid under the terms of any order of a court of competent jurisdiction obtained by the Attorney General, as a result of any violation of KRS 367.46951 to 367.46999. A copy of the bond shall be filed with the division.
- (2) At least ten (10) days prior to the inception of any promotion offering a premium with an actual market value or advertised value of five hundred dollars (\$500) or more, the **telemarketing company**~~[merchant]~~ shall notify the Attorney General in writing of the details of the promotion, describing the premium and its current market value, the value at which it is advertised or held out to the customer, the date the premium shall be awarded, and the conditions under which the award shall be made. The **telemarketing company**~~[merchant]~~ shall maintain an additional bond for the greater of the current total market value or the advertised value of the premiums held out or advertised to be available to a purchaser or recipient. A copy of the bond shall be filed with the division. The bond, or a portion of it necessary to cover the cost of the award, shall be forfeited if the premium is not awarded to a bona fide customer within thirty (30) days of the date disclosed as the time of award or the time otherwise required by law. The proceeds of the bond shall be paid to any person suffering injury or loss by reason of any violation of KRS 367.46951 to 367.46999 or shall be paid pursuant to the terms of any order of a court of competent jurisdiction obtained by the Attorney General, Commonwealth's attorney, or county attorney as a result of any violation of KRS 367.46951 to 367.46999. The bond shall be maintained until the

telemarketing company~~[merchant]~~ files with the Attorney General proof that the premium was awarded.

SECTION 5. A NEW SECTION OF KRS 367.46951 TO 367.46999 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person may apply to the Office of the Attorney General, Division of Consumer Protection, to have his or her residential telephone number listed on the zero call list. The Office of the Attorney General shall provide automated telephone dial-in registration and shall collect only the home phone number from the applicant deemed to be required to administer the zero call list. The Office of the Attorney General shall promulgate administrative regulations to:*
 - (a) *Provide for automatic telephone number referral from the incumbent local exchange carrier or the competitive local exchange carrier to the Office of the Attorney General for the purpose of updating the zero call list to reflect an applicant's change of address or an applicant's termination of telephone service; and*
 - (b) *Develop, modify, or administer the zero call list in such a way as to permit interface with any national registry established by the Federal Trade Commission or the Federal Communications Commission for the purpose of including in Kentucky's zero call list that part of the national database that relates to the Commonwealth or release to the national registry applicants on the zero call list that indicate a preference to be listed on a national registry.*
- (2) *The Attorney General shall place the residential telephone number provided by the applicant on the list. The Attorney General may update the information on the list as provided in subsection (1) of this section, but shall not remove the information unless requested to do so in writing by the applicant, or upon receiving notice that the given telephone number is no longer held in the name of the applicant.*
- (3) *Persons whose telephone numbers appear on the zero call list shall not receive telephone solicitations except in accordance with the provisions of KRS 367.46951 to 367.46999.*
- (4) *Any person that applies to the Office of the Attorney General to be placed on the zero call list shall be informed about how to add his or her name or telephone number to company-specific and industry-wide no solicitation call lists, including those lists provided by the Direct Marketing Association (DMA) and the Telephone Preference Service (TPS).*
- (5) *Information contained in a database established for the purpose of administering the zero call list shall be used only for the purpose of implementing the zero call program in conformance with KRS 367.46951 to 367.46999.*
- (6) *The zero call list shall be available at no cost to any merchant or telemarketing company that is required to consult the list. In addition to the formats described in subsection (15) of Section 2 of this Act, the list shall be made available in a format for electronic download from the Internet Web page of the Office of the Attorney General. The Attorney General shall make the electronic list available in a format that is searchable by area code and by local exchange. The electronic format shall be arranged with the last four digits of the telephone numbers in ascending order. The electronic list shall also be searchable by individual number and shall be downloadable in at least five (5) of the most common commercially available data management program formats. Hard copies of the*

zero call list shall be arranged by area code and local exchange with the last four digits in ascending order. The Office of the Attorney General shall develop procedures to assure that:

- (a) The merchant or telemarketing company requesting the list shall maintain the confidentiality of the information on the list; and*
 - (b) The merchant or telemarketing company shall use the list only for the purpose of preventing telephone solicitation calls to persons whose telephone numbers appear on the list.*
- (7) The Kentucky Public Service Commission shall produce a consumer education pamphlet that:*
- (a) Describes the changes made in the year 2002 to Kentucky's telemarketing laws including the creation of the zero call list.*
 - (b) Describes the consumer's rights and responsibilities regarding the receipt of telephone solicitation.*
 - (c) Explains how consumers can apply to be placed on the zero call list and on any federal do not call registry established by the Federal Communications Commission or the Federal Trade Commission.*
 - (d) Explains how to apply to be placed on company-specific and industrywide no solicitation calls list, including those lists provided by the Direct Marketing Association (DMA) and the Telephone Preference Service (TPS).*
 - (e) Describes how a consumer can file a complaint if the consumer receives calls after being placed on the zero call list.*
- (8) At least once a year, the Public Service Commission shall require that the pamphlet be included in the billing inserts of the telephone companies under the Public Service Commission's jurisdiction.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 367.46951 TO 367.46999 IS CREATED TO READ AS FOLLOWS:

- (1) Any claim or action alleging the making of a call to a person on the zero call list in violation of Section 2 of this Act shall be in writing and verified by the claimant.*
- (2) In any action or claim alleging the making of a call to a person on the zero call list, it shall be a defense that the defendant obtains the current zero call list in a timely manner and makes reasonable efforts to avoid calling persons whose telephone numbers appear on the list.*
- (3) It shall be a defense in any action or proceeding brought under KRS 367.46951 to 367.46999 that the defendant has established and implemented, with due care, reasonable practices and procedures to prevent telephone solicitations in violation of KRS 367.46951 to 367.46999.*

Section 7. KRS 367.46967 is amended to read as follows:

- (1) A violation by a **telemarketing company, telemarketer**, caller, or merchant of KRS 367.46951 to 367.46999 shall constitute an unfair, false, misleading, or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170.*

- (2) All of the remedies, powers, and duties provided for the Attorney General by KRS 367.190 to 367.300 and the penalties provided in KRS 367.990, relating to acts and practices violating KRS 367.170 shall apply with equal force and effect to acts and practices declared unlawful by KRS 367.46951 to 367.46999.
- (3) Nothing in KRS 367.46951 to 367.46999 shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General authorized under any other provision of law.

Section 8. KRS 367.990 is amended to read as follows:

- (1) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties.
- (2) In any action brought under KRS 367.190, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars (\$2,000) per violation, or where the defendant's conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the trier of fact determines that the defendant knew or should have known that the person aged sixty (60) or older is substantially more vulnerable than other members of the public.
- (3) Any person with actual notice that an investigation has begun or is about to begin pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys, or falsifies documentary material is guilty of a Class A misdemeanor.
- (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240 or 367.250, intentionally falsifies or withholds documents, records, or pertinent materials that are not privileged shall be subject to a fine as provided in subsection (3) of this section.
- (5) The Circuit Court of any county in which any plan described in KRS 367.350 is proposed, operated, or promoted may grant an injunction without bond, upon complaint filed by the Attorney General to enjoin the further operation thereof, and the Attorney General may ask for and the court may assess civil penalties against the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000) which shall be for the benefit of the Commonwealth of Kentucky.
- (6) Any person, business, or corporation who knowingly violates the provisions of KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense each time a magazine is mailed into the state; but it shall be considered only one (1) offense for any quantity of the same issue of a magazine mailed into Kentucky.
- (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty of a Class A misdemeanor.
- (8) In addition to the penalties contained in this section, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth a civil penalty of not more than the greater of five thousand dollars (\$5,000) or two hundred dollars (\$200) per day for each and every violation of KRS 367.175.

- (9) Any person who shall willfully and intentionally violate any provision of KRS 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- (10) (a) Any person who violates the terms of a temporary or permanent injunction issued under KRS 367.665 shall forfeit and pay to the Commonwealth a penalty of not more than five thousand dollars (\$5,000) per violation. For the purposes of this section, the Circuit Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the Commonwealth may petition for recovery of civil penalties;
- (b) The Attorney General may, upon petition to a court having jurisdiction under KRS 367.190, recover on behalf of the Commonwealth from any person found to have willfully committed an act declared unlawful by KRS 367.667 a penalty of not more than two thousand dollars (\$2,000) per violation; and
- (c) Any person who knowingly violates any provision of KRS 367.652, 367.653, 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false or incorrect information to the Attorney General in filing statements or reports required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per violation to be collected in the name of the Commonwealth upon action of the Attorney General.
- (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in the name of the Commonwealth upon action by the Attorney General.
- (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or 367.816 shall be guilty of a Class C felony.
- (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violations of KRS 367.801 to 367.819.
- (15) A violation of KRS 367.474 to 367.478 and KRS 367.482 is a Class C felony. Either the Attorney General or the appropriate Commonwealth's attorney shall have authority to prosecute violators of KRS 367.474 to 367.478 and KRS 367.482.
- (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- (17) Any person, partnership, or corporation who violates the provisions of KRS 367.850 shall be guilty of a Class A misdemeanor.
- (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets back, disconnects, fails to connect, or causes to be changed, set back, or disconnected, the speedometer or odometer of any motor vehicle, to effect the sale of the motor vehicle shall be guilty of a Class D felony.
- (19) Any person who negotiates a contract of membership on behalf of a club without having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty of a Class D felony.
- (20) Any person or corporation who operates or attempts to operate a health spa in violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and

- (b) The appropriate Commonwealth's attorney shall have authority to prosecute felony violations of KRS 367.832.
- (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be guilty of a violation. Either the Attorney General or the appropriate county health department may prosecute violators of KRS 367.855 or 367.857.
- (b) The provisions of this subsection shall not apply to any retail establishment if the wholesaler, distributor, or processor fails to comply with the provisions of KRS 367.857.
- (23) *Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class D felony when that telemarketing company, telemarketer, caller, or merchant three (3) times in one (1) calendar year knowingly and willfully violates subsection (15)(a) of Section 2 of this Act by making or causing to be made an unsolicited telephone solicitation call to a telephone number that appears in the current publication of the zero call list maintained by the Office of the Attorney General, Division of Consumer Protection.*
- (24) *Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when that telemarketing company, telemarketer, caller, or merchant uses a zero call list identified in subsection (15) of Section 2 of this Act for any purpose other than complying with the provisions of KRS 367.46951 to 367.46999.*
- (25) (a) *Notwithstanding any other provision of law, any telemarketing company, telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999 shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each offense.*
- (b) *The Attorney General, or any person authorized to act in his or her behalf, shall initiate enforcement of a civil penalty imposed under paragraph (a) of this subsection.*
- (c) *Any civil penalty imposed under paragraph (a) of this subsection may be compromised by the Attorney General or his or her designated representative. In determining the amount of the penalty or the amount agreed upon in compromise, the Attorney General, or his or her designated representative, shall consider the appropriateness of the penalty to the financial resources of the telemarketing company, telemarketer, caller, or merchant charged, the gravity of the violation, the number of times the telemarketing company, telemarketer, caller, or merchant charged has been cited, and the good faith of the telemarketing company, telemarketer, caller, or merchant charged in attempting to achieve compliance, after notification of the violation.*
- (d) *If a civil penalty is imposed under this subsection, a citation shall be issued which describes the violation which has occurred and states the penalty for the violation. If, within fifteen (15) working days from the receipt of the citation, the affected party fails to pay the penalty imposed, the Attorney General, or any person authorized to act in his or her behalf, shall initiate a civil action to collect the penalty. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.*

Section 9. KRS 454.210 is amended to read as follows:

- (1) As used in this section, "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a nonresident of this Commonwealth.
- (2) (a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person's:
 1. Transacting any business in this Commonwealth;
 2. Contracting to supply services or goods in this Commonwealth;
 3. Causing tortious injury by an act or omission in this Commonwealth;
 4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of substantial revenue within the Commonwealth;
 5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when the seller knew such person would use, consume, or be affected by, the goods in this Commonwealth, if he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;
 6. Having an interest in, using, or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated;
 7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting; ~~or~~
 8. Committing sexual intercourse in this state which intercourse causes the birth of a child when:
 - a. The father or mother or both are domiciled in this state;
 - b. There is a repeated pattern of intercourse between the father and mother in this state; or
 - c. Said intercourse is a tort or a crime in this state; *or*
 9. ***Making a telephone solicitation, as defined in Section 1 of this Act, into the Commonwealth.***
- (b) When jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.
- (3) (a) When personal jurisdiction is authorized by this section, service of process may be made on such person, or any agent of such person, in any county in this

Commonwealth, where he may be found, or on the Secretary of State who, for this purpose, shall be deemed to be the statutory agent of such person;

- (b) The clerk of the court in which the action is brought shall issue a summons against the defendant named in the complaint. The clerk shall execute the summons by sending by certified mail two (2) true copies to the Secretary of State and shall also mail with the summons two (2) attested copies of plaintiff's complaint. The Secretary of State shall, within seven (7) days of receipt thereof in his office, mail a copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall make the usual return to the court, and in addition the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Rules of Civil Procedure; and
 - (c) The clerk mailing the summons to the Secretary of State shall mail to him, at the same time, a fee of ten dollars (\$10), which shall be taxed as costs in the action.
- (4) When the exercise of personal jurisdiction is authorized by this section, any action or suit may be brought in the county wherein the plaintiff resides or where the cause of action or any part thereof arose.
 - (5) A court of this Commonwealth may exercise jurisdiction on any other basis authorized in the Kentucky Revised Statutes or by the Rules of Civil Procedure, notwithstanding this section.

Section 10. The Attorney General shall study the implementation and effectiveness of a zero call list and shall report to the legislative committee with jurisdiction over telephone solicitation and the Legislative Research Commission by October 15, 2004. The Attorney General's report may contain recommendations for legislative action in the next odd-numbered year session of the General Assembly.

Approved March 06, 2002