

**CHAPTER 115****(HB 430)**

AN ACT relating to consumer telemarketing.

*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 367.990, unless the context otherwise requires:

- (1) "Telephone solicitation" means:
  - (a) A live or recorded communication sent by a telephone 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 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 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 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;

- (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;
- (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. 78I) 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[~~l~~] list" means *the national Do Not Call Registry maintained by the United States Federal Trade Commission*~~[a list]~~ containing the *residential or wireless* 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 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 367.46963;
- (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 *national Do Not Call Registry* [zero call list] maintained by the *United States Federal Trade Commission* [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 list indicating the wish not to receive unsolicited telephone solicitation calls by notification to the division. The telephone numbers of persons requesting to be on the zero call 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 each telemarketing company, telemarketer, and merchant shall be deemed to be on notice not to solicit any person whose telephone number appears on the list. The list shall be made available to requesters either on a statewide or county by county basis];~~
- (16) Making telephone solicitations 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 shall ~~register~~~~file~~ with the division **by filing** the information described below and ~~paying~~~~pay~~ a filing fee of three hundred dollars (\$300). A telemarketing company shall be deemed to do business in this state if the telemarketing company 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, 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 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 annual registration, there is a material change in the information required by KRS 367.46951 to 367.46999, the telemarketing company 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 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 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 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 a written confirmation of receipt of the filing. If the telemarketing company has more than one (1) business location, the written confirmation shall be sent to the telemarketing company's principal business location as identified in the telemarketing company's filing in sufficient numbers so that the telemarketing company can meet the requirements of this subsection. Within ten (10) days of receipt of the confirmation, the telemarketing company shall post in a conspicuous place at each of the telemarketing company'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 shall post in a conspicuous place at each of the telemarketing company's business locations within this state a copy of the first page of the registration form sent to the department. The telemarketing company 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 does business in this state.

Section 4. KRS 367.46973 is amended to read as follows:

Each filing pursuant to KRS 367.46971 shall contain the following information:

- (1) The name or names of the **telemarketing company**~~{merchant}~~, including the name under which the **telemarketing company**~~{merchant}~~ is doing or intends to do business, if different from the name of the **telemarketing company**~~{merchant}~~, and the name of any parent or affiliated organization that will engage in business transactions with purchasers relating to sales solicited by the **telemarketing company**~~{merchant}~~, or that accepts responsibility for statements made by, or acts of, the **telemarketing company**~~{merchant}~~ relating to sales solicited by the **telemarketing company**~~{merchant}~~;
- (2) The **telemarketing company's**~~{merchant's}~~ business form and place of organization and, if the **telemarketing company**~~{merchant}~~ is a corporation, a copy of its articles of incorporation and bylaws and amendments to those, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered, along with a copy of the registration documents. The same information shall be included for any parent or affiliated organization disclosed pursuant to subsection (1) of this section;
- (3) The complete street address of all locations designating the principal location from which the **telemarketing company**~~{merchant}~~ will be conducting business. If the principal business location of the **telemarketing company**~~{merchant}~~ is not in this state, then the **telemarketing company**~~{merchant}~~ shall also designate which of its locations within this state is its main location;
- (4) A listing of all telephone numbers to be used by the **telemarketing company**~~{merchant}~~ and the address where each telephone using each of these telephone numbers is located;
- (5) The name of and the office held by the **telemarketing company's**~~{merchant's}~~ officers, directors, trustees, general and limited partners, sole proprietor, and owners and the names of persons having management responsibilities in the **telemarketing company's**~~{merchant's}~~ business activities;
- (6) The principal residence, the date of birth, and the driver's license number and state of issuance of each person named pursuant to subsection (5) of this section;

- (7) The name and principal residence of each person the **telemarketing company**~~[merchant]~~ leaves in charge at each location in which the **telemarketing company**~~[merchant]~~ does business in this state, and the business location at which each of these persons is in charge;
- (8) A statement, meeting the requirements of this subsection, as to both the **telemarketing company**~~[merchant]~~, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity and as to any person identified pursuant to subsection (5) or (7) of this section who:
- (a) Has been convicted of a felony or a misdemeanor involving a violation of this article, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere shall be considered a conviction;
  - (b) Has had entered against him a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of KRS 367.46951 to 367.46999, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices;
  - (c) Is subject to an injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit of that agency, including, but not limited to, an action affecting any vocational license; or
  - (d) Has during the previous seven (7) tax years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity that has so filed or was so adjudicated or reorganized, during or within one (1) year after the period that the person held that position.

The statement required by paragraphs (a), (b), and (c) of this subsection shall identify the **telemarketing company**~~[merchant]~~ or person, the court or administrative agency rendering the conviction, judgment, or order, the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. For purposes of paragraph (d) of this section, the statement required shall include the name and location of the **telemarketing company**~~[merchant]~~ or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter;

- (9) A list of the names, driver's license numbers and states of issuance, principal residence addresses, and telephone numbers of salespersons who solicit on behalf of the **telemarketing company**~~[merchant]~~, and any names the salesperson uses while soliciting;
- (10) A description of the items the **telemarketing company**~~[merchant]~~ is offering for sale and a copy of all sales scripts the **telemarketing company**~~[merchant]~~ requires salespersons to use when soliciting prospective purchasers. If no sales script is required to be used, a statement to that effect shall be included;
- (11) A copy of all sales information and literature including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information provided by the **telemarketing company**~~[merchant]~~ to salespersons or of which the **telemarketing company**~~[merchant]~~ informs salespersons, and a copy of all written materials the **telemarketing company**~~[merchant]~~ sends to any prospective or actual purchaser;
- (12) (a) If the **telemarketing company**~~[merchant]~~ represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items, including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate, or one (1) or more items among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:
- 1. A list of the items offered;
  - 2. The actual value or worth of each item described to prospective purchasers and the basis for the valuation; and

3. The price paid by the *telemarketing company*~~{merchant}~~ to its supplier for each of these items and the name, address, and telephone number of each item's supplier;
- (b) If the purchaser is to receive fewer than all of the items described by the *telemarketing company*~~{merchant}~~, the filing shall include the following:
  1. The manner in which the *telemarketing company*~~{merchant}~~ decides which item each prospective purchaser is to receive;
  2. The odds a single prospective purchaser has of receiving each described item;
  3. The name and address of each recipient who has, during the preceding twelve (12) months, or if the *telemarketing company*~~{merchant}~~ has not been in business that long, during the period the *telemarketing company*~~{merchant}~~ has been in business, received the item having the greatest value and the item with the smallest odds of being received; and
  4. All rules, regulations, terms, and conditions a prospective purchaser must meet in order to receive the item; and
- (13) If the *telemarketing company*~~{merchant}~~ is offering an investment, business, or employment opportunity, the filing shall include the following:
  - (a) The number of consumers or investors who have participated to date;
  - (b) The actual experience of the consumers or investors as measured by standards used in the sales presentations; and
  - (c) If the opportunity is so recent that no actual performance experience exists, that fact shall be disclosed in all sales presentations, and no other representation of performance shall be made in sales presentations.

Section 5. KRS 367.46994 is amended to read as follows:

- (1) *The Office of the Attorney General immediately shall request that the Federal Trade Commission include on the national Do Not Call Registry the residential numbers that were placed on the zero call list on or before the effective date of this Act. If the Federal Trade Commission denies the request, then those households whose residential numbers will be purged from the zero call list shall be informed by the Office of the Attorney General on how to place their telephone number on the national Do Not Call Registry.*~~{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.~~
- ~~(2){(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).]~~

(3){(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 KRS 367.46955(15), 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.]~~

(4){(7)} The Kentucky Public Service Commission shall produce~~{ a }~~ consumer education *materials*~~{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 *and*~~{ 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); and

(e) Describes how a consumer can file a complaint if the consumer receives calls after being placed on the *Do Not Call Registry established by the Federal Communications Commission and the Federal Trade Commission*~~{zero call list}.~~

(5){(8)} ~~The~~~~{At least once a year, the}~~ Public Service Commission shall require that, *once a year, telephone companies under the jurisdiction of the Public Service Commission shall include the customer education material or portions thereof, at the discretion of the companies, in either the billing inserts, billing messages, or in the Customer Guide pages of their telephone directories*~~{the pamphlet be included in the billing inserts of the telephone companies under the Public Service Commission's jurisdiction}.~~

Section 6. 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 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 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 KRS 367.46955(15)~~+(a)~~ 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 KRS 367.46955(15) 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.

**Approved April 5, 2007.**