

CHAPTER 134**(HB 246)**

AN ACT relating to deceptive business practices.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *A person may not misrepresent the geographical location of a business that derives fifty percent (50%) or more of its gross income from the sale or arranging for the sale of flowers or floral arrangements in the listing of the business in a telephone directory or other directory assistance database.*
- (2) *A person is considered to misrepresent the geographical location of a business in a telephone directory or other directory assistance database if the name of the business indicates that the business is located in a geographical area, and:*
 - (a) *The business is not located within the geographical area indicated;*
 - (b) *The listing fails to identify the municipality and state of the business's geographical location; and*
 - (c) *A telephone call to the local telephone number listed in the telephone directory or directory assistance database routinely is forwarded or transferred to a location that is outside the calling area covered by the telephone directory or directory assistance database in which the number is listed.*
- (3) *A person may place a directory listing for a business described in subsection (1) of this section whose name indicates that it is located in a geographical area that is different from the geographical area in which the business is actually located, only if a conspicuous notice in the listing states the municipality and state in which the business is located.*
- (4) *This section does not apply to a publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business.*
- (5) *This section creates no duty and imposes no obligation upon anyone other than the business that is the subject of the advertisement or listing.*
- (6) *This section applies only to information supplied to a telephone directory published after the effective date of this Act or to information supplied for entry into a directory assistance database after the effective date of this Act.*

Section 2. 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.
- (26) ***Any person who violates Section 1 of this Act shall be liable for a penalty of two thousand five hundred dollars (\$2,500) per violation. Either the Attorney General or the appropriate Commonwealth's attorney may prosecute violations of Section 1 of this Act.***

Approved April 5, 2007.