

AN ACT relating to consumer protection.

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

➔Section 1. KRS 367.170 is amended to read as follows:

- (1) Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful, *provided that acts or practices permitted, approved, or regulated by the Federal Trade Commission or any other regulatory body or officer acting under statutory authority of this Commonwealth or the United States shall not be unlawful under this chapter.*
- (2) For the purposes of this section, unfair shall be construed to mean unconscionable.
- (3) *In construing this chapter, courts shall be guided by the policies of the Federal Trade Commission and interpretations of 15 U.S.C. sec. 45(a)(1) by the Federal Trade Commission and the federal courts.*

➔Section 2. KRS 367.220 is amended to read as follows:

- (1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by *the seller or lessor of the goods or services*~~[another person]~~ of a method, act or practice declared unlawful by KRS 367.170, may bring an action under the Rules of Civil Procedure in the Circuit Court in which the seller or lessor resides or has his principal place of business or is doing business, or in the Circuit Court in which the purchaser or lessee of goods or services resides, or where the transaction in question occurred, to recover actual damages. The court may, in its discretion, award actual damages and may provide such *injunctive*~~[equitable]~~ relief as it deems necessary or proper *to prevent future damages from the unlawful method, act, or practice at issue in the action. As used in this section, "actual damages" means the amount of money equal to the difference between the amount paid by the consumer for the good or service and the actual market value of the good or service that the consumer*

~~*received.*~~ [Nothing in this subsection shall be construed to limit a person's right to seek punitive damages where appropriate.]

(2) To prevail in an action under this section, any person bringing the action must individually prove that:

(a) He or she would not have entered into the transaction that caused an ascertainable loss of money or property except for the use or employment, by the seller or lessor of goods or services, of a method, act, or practice declared unlawful under Section 1 of this Act;

(b) Such ascertainable loss of money or property was proximately caused by the use or employment, by the seller or lessor of goods or services, of the method, act, or practice declared unlawful by Section 1 of this Act; and

(c) He or she acted reasonably in light of all of the circumstances.

~~(3)~~~~(2)~~ Upon commencement of any action brought under subsection (1) of this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

~~(4)~~~~(3)~~ In any action brought by a person under this section, the court may award, to the prevailing party, in addition to the relief provided in this section, reasonable attorney's fees and costs.

~~(5)~~~~(4)~~ Any permanent injunction, judgment or order of the court made under KRS 367.190 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by KRS 367.170.

~~(6)~~~~(5)~~ Any person bringing an action under this section must bring such action within one (1) year after any action of the Attorney General has been terminated or within two (2) years after the violation of KRS 367.170, whichever is later.

(7) No action may be brought under this section to recover damages for personal

injury or death.