

1 AN ACT relating to the disclosure of private cellular phone numbers.

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

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

5 *(1) For the purposes of this section:*

6 *(a) "Directory provider" means any corporation, company, association,*  
7 *partnership, or person in the business of marketing or selling for*  
8 *commercial purposes the wireless phone number of any subscriber or a*  
9 *database containing the wireless phone number of any subscriber;*

10 *(b) "Subscriber" means a person who resides in Kentucky and subscribes to a*  
11 *wireless communications service and holds a wireless phone number with a*  
12 *Kentucky state area code;*

13 *(c) "Wireless communications service provider" means every corporation,*  
14 *company, association, partnership, or person that provides radio*  
15 *communications service or cellular communications service for hire, sale,*  
16 *or resale except for a Tier III CMRS provider as defined in KRS 65.7621;*  
17 *and*

18 *(d) "Wireless phone number" means a phone number unique to a specific*  
19 *subscriber to receive cellular communications from others.*

20 *(2) A person, including a directory provider or wireless communications service*  
21 *provider, shall not market, sell, or share the wireless phone number of any*  
22 *subscriber for commercial purposes without first obtaining the subscriber's*  
23 *express consent in accordance with subsection (3) of this section.*

24 *(3) The consent of a subscriber shall:*

25 *(a) Be in writing or transmitted electronically, with the return receipt of the*  
26 *consent sent to the subscriber;*

27 *(b) Be obtained through a separate document or located on a separate screen of*

1 a Web site that has the sole purpose of authorizing a wireless  
2 communications service provider or directory provider to market, sell, or  
3 share the subscriber's wireless phone number; and

4 (c) Provide that:

5 1. The subscriber authorizes the subscriber's wireless phone number to  
6 be marketed, shared, or sold as part of a list of subscribers; and

7 2. The subscriber may incur additional charges for receiving unsolicited  
8 calls or text messages.

9 (4) This section does not apply to the sharing of wireless phone numbers by any of  
10 the following:

11 (a) A law enforcement agency, fire protection agency, public health agency, or  
12 other emergency service agency, or any person operating under a contract  
13 with or at the direction of one (1) or more of these agencies, when carrying  
14 out official duties;

15 (b) A wireless communications service provider effectuating a transfer of  
16 service to another wireless communications service at a subscriber's  
17 request;

18 (c) A person carrying out a lawful order or process issued under state or  
19 federal law;

20 (d) A sales agent providing a subscriber's wireless phone number to the  
21 wireless communications service provider for the limited purpose of billing  
22 and customer service;

23 (e) A corporation, company, association, partnership, or person subject to the  
24 Fair Credit Reporting Act, 15 U.S.C. sec 1681(b), or the Gramm-Leach-  
25 Bliley Act, 15 U.S.C. secs. 6801 et seq;

26 (f) A public agency complying with a public record request in accordance with  
27 the Kentucky Open Records Act, KRS 61.870 to 61.884 or other applicable

1           open records statutes;

2           (g) A person, including a directory provider or wireless communications service  
 3           provider, sharing information to its affiliates, subsidiaries, agents, or  
 4           vendors, for the purpose of rendering, maintaining, or improving wireless  
 5           communications service to a subscriber or for the purpose of marketing  
 6           services or products of the provider in compliance with applicable law; or

7           (h) A person for the purpose of a law enforcement investigation, risk and  
 8           security assessment or analysis, legal research and case management, legal compliance  
 9           assessment or analysis, academic research, customer authentication, debt collection, or  
 10          identity theft or fraud prevention analysis or investigation.

11          ➔Section 2. KRS 367.990 is amended to read as follows:

12          (1) Any person who violates the terms of a temporary or permanent injunction issued  
 13          under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of  
 14          not more than twenty-five thousand dollars (\$25,000) per violation. For the  
 15          purposes of this section, the Circuit Court issuing an injunction shall retain  
 16          jurisdiction, and the cause shall be continued, and in such cases the Attorney  
 17          General acting in the name of the Commonwealth may petition for recovery of civil  
 18          penalties.

19          (2) In any action brought under KRS 367.190, if the court finds that a person is  
 20          willfully using or has willfully used a method, act, or practice declared unlawful by  
 21          KRS 367.170, the Attorney General, upon petition to the court, may recover, on  
 22          behalf of the Commonwealth, a civil penalty of not more than two thousand dollars  
 23          (\$2,000) per violation, or where the defendant's conduct is directed at a person aged  
 24          sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)  
 25          per violation, if the trier of fact determines that the defendant knew or should have  
 26          known that the person aged sixty (60) or older is substantially more vulnerable than  
 27          other members of the public.

- 1 (3) Any person with actual notice that an investigation has begun or is about to begin  
2 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,  
3 or falsifies documentary material is guilty of a Class A misdemeanor.
- 4 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240  
5 or 367.250, intentionally falsifies or withholds documents, records, or pertinent  
6 materials that are not privileged shall be subject to a fine as provided in subsection  
7 (3) of this section.
- 8 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is  
9 proposed, operated, or promoted may grant an injunction without bond, upon  
10 complaint filed by the Attorney General to enjoin the further operation thereof, and  
11 the Attorney General may ask for and the court may assess civil penalties against  
12 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)  
13 which shall be for the benefit of the Commonwealth of Kentucky.
- 14 (6) Any person, business, or corporation who knowingly violates the provisions of KRS  
15 367.540 shall be guilty of a violation. It shall be considered a separate offense each  
16 time a magazine is mailed into the state; but it shall be considered only one (1)  
17 offense for any quantity of the same issue of a magazine mailed into Kentucky.
- 18 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty  
19 of a Class A misdemeanor.
- 20 (8) In addition to the penalties contained in this section, the Attorney General, upon  
21 petition to the court, may recover, on behalf of the Commonwealth a civil penalty of  
22 not more than the greater of five thousand dollars (\$5,000) or two hundred dollars  
23 (\$200) per day for each and every violation of KRS 367.175.
- 24 (9) Any person who shall willfully and intentionally violate any provision of KRS  
25 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- 26 (10) (a) Any person who violates the terms of a temporary or permanent injunction  
27 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a

1 penalty of not more than five thousand dollars (\$5,000) per violation. For the  
2 purposes of this section, the Circuit Court issuing an injunction shall retain  
3 jurisdiction, and the cause shall be continued, and in such cases the Attorney  
4 General acting in the name of the Commonwealth may petition for recovery of  
5 civil penalties;

6 (b) The Attorney General may, upon petition to a court having jurisdiction under  
7 KRS 367.190, recover on behalf of the Commonwealth from any person  
8 found to have willfully committed an act declared unlawful by KRS 367.667 a  
9 penalty of not more than two thousand dollars (\$2,000) per violation; and

10 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,  
11 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false  
12 or incorrect information to the Attorney General in filing statements or reports  
13 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.

14 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under  
15 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per  
16 violation to be collected in the name of the Commonwealth upon action of the  
17 Attorney General.

18 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be  
19 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in  
20 the name of the Commonwealth upon action by the Attorney General.

21 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or  
22 367.816 shall be guilty of a Class C felony.

23 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have  
24 authority to prosecute violations of KRS 367.801 to 367.819.

25 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the  
26 Attorney General or the appropriate Commonwealth's attorney shall have authority  
27 to prosecute violators of KRS 367.474 to 367.478 and 367.482.

- 1 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 2 (17) Any person, partnership, or corporation who violates the provisions of KRS  
3 367.850 shall be guilty of a Class A misdemeanor.
- 4 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets  
5 back, disconnects, fails to connect, or causes to be changed, set back, or  
6 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale  
7 of the motor vehicle shall be guilty of a Class D felony.
- 8 (19) Any person who negotiates a contract of membership on behalf of a club without  
9 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty  
10 of a Class D felony.
- 11 (20) Any person or corporation who operates or attempts to operate a health spa in  
12 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 13 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and  
14 (b) The appropriate Commonwealth's attorney shall have authority to prosecute  
15 felony violations of KRS 367.832.
- 16 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be  
17 guilty of a violation. Either the Attorney General or the appropriate county  
18 health department may prosecute violators of KRS 367.855 or 367.857.
- 19 (b) The provisions of this subsection shall not apply to any retail establishment if  
20 the wholesaler, distributor, or processor fails to comply with the provisions of  
21 KRS 367.857.
- 22 (23) Notwithstanding any other provision of law, any telemarketing company,  
23 telemarketer, caller, or merchant shall be guilty of a Class D felony when that  
24 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)  
25 calendar year knowingly and willfully violates KRS 367.46955(15) by making or  
26 causing to be made an unsolicited telephone solicitation call to a telephone number  
27 that appears in the current publication of the zero call list maintained by the Office

1 of the Attorney General, Division of Consumer Protection.

2 (24) Notwithstanding any other provision of law, any telemarketing company,  
3 telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when  
4 that telemarketing company, telemarketer, caller, or merchant uses a zero call list  
5 identified in KRS 367.46955(15) for any purpose other than complying with the  
6 provisions of KRS 367.46951 to 367.46999.

7 (25) (a) Notwithstanding any other provision of law, any telemarketing company,  
8 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999  
9 shall be assessed a civil penalty of not more than five thousand dollars  
10 (\$5,000) for each offense.

11 (b) The Attorney General, or any person authorized to act in his or her behalf,  
12 shall initiate enforcement of a civil penalty imposed under paragraph (a) of  
13 this subsection.

14 (c) Any civil penalty imposed under paragraph (a) of this subsection may be  
15 compromised by the Attorney General or his or her designated representative.  
16 In determining the amount of the penalty or the amount agreed upon in  
17 compromise, the Attorney General, or his or her designated representative,  
18 shall consider the appropriateness of the penalty to the financial resources of  
19 the telemarketing company, telemarketer, caller, or merchant charged, the  
20 gravity of the violation, the number of times the telemarketing company,  
21 telemarketer, caller, or merchant charged has been cited, and the good faith of  
22 the telemarketing company, telemarketer, caller, or merchant charged in  
23 attempting to achieve compliance, after notification of the violation.

24 (d) If a civil penalty is imposed under this subsection, a citation shall be issued  
25 which describes the violation which has occurred and states the penalty for the  
26 violation. If, within fifteen (15) working days from the receipt of the citation,  
27 the affected party fails to pay the penalty imposed, the Attorney General, or

1           any person authorized to act in his or her behalf, shall initiate a civil action to  
2           collect the penalty. The civil action shall be taken in the court which has  
3           jurisdiction over the location in which the violation occurred.

4   (26) Any person who violates KRS 367.500 shall be liable for a penalty of two thousand  
5       five hundred dollars (\$2,500) per violation. Either the Attorney General or the  
6       appropriate Commonwealth's attorney may prosecute violations of KRS 367.500.

7   (27) (a) A wireless communications service provider or directory provider who  
8       violates Section 1 of this Act shall be liable for a penalty of not less than one  
9       thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) per  
10      violation. Each wireless phone number marketed, shared, or sold shall be  
11      considered a separate violation.

12   (b) Notwithstanding paragraph (a) of this subsection, a disclosure of wireless  
13      phone numbers that occurs as the result of a criminal act shall not be  
14      considered a violation so long as the wireless communications service  
15      provider or directory provider makes a reasonable effort to notify the  
16      subscriber of the disclosure of the wireless phone number which occurred  
17      as a result of a criminal act.

18   (c) The Attorney General, or any person authorized to act on his or her behalf,  
19      shall have jurisdiction to enforce the penalty established in this subsection.