

1 AN ACT relating to caller identification.

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

3 ➔Section 1. KRS 367.46955 is amended to read as follows:

4 It is a prohibited telephone solicitation act or practice and a violation of KRS 367.46951
5 to 367.46999 for any person making a telephone solicitation through telecommunications
6 services or interconnected Voice over Internet Protocol or VoIP service to engage in the
7 following conduct:

- 8 (1) Advertising or representing that registration as a telemarketer equals an
9 endorsement or approval by any government or governmental agency;
- 10 (2) Requesting a fee in advance to remove derogatory information from or improve a
11 person's credit history or credit record;
- 12 (3) Requesting or receiving a payment in advance from a person to recover or otherwise
13 aid in the return of money or any other item lost by the consumer in a prior
14 telephone solicitation transaction;
- 15 (4) Requesting or receiving payment of any fee or consideration in advance of
16 obtaining a loan or other extension of credit when the telemarketing company has
17 guaranteed or represented a high likelihood of success in obtaining or arranging a
18 loan or other extension of credit for a person;
- 19 (5) Obtaining or submitting for payment a check, draft, or other form of negotiable
20 paper drawn on a person's checking, savings, or bond or other account without the
21 consumer's express written authorization, or charging a credit card account or
22 making electronic transfer of funds except in conformity with KRS 367.46963;
- 23 (6) Procuring the services of any professional delivery, courier, or other pickup service
24 to obtain immediate receipt or possession of a consumer's payment, unless the
25 goods are delivered with the opportunity to inspect before any payment is collected;
- 26 (7) Assisting, supporting, or providing substantial assistance to any telemarketer when
27 the telemarketing company knew or should have known that the telemarketer was

- 1 engaged in any act or practice prohibited under this section;
- 2 (8) Making a telephone solicitation to anyone under eighteen (18) years of age. When
3 making a telephone solicitation the telemarketer shall inquire as to whether the
4 person is eighteen (18) years of age or older and the answer shall be presumed to be
5 correct;
- 6 (9) **Causing misleading information to be transmitted to users of caller identification**
7 **technologies, or to otherwise misrepresent the origin of the telephone solicitation.**
8 **This subsection shall not apply to solicitations which block caller identification,**
9 **nor shall it apply to solicitations in which the name and telephone number of the**
10 **party on whose behalf the call is made is substituted for the name and telephone**
11 **number of the service used to make the call**~~Utilizing any method to block or~~
12 ~~otherwise circumvent the use of a caller identification service when placing an~~
13 ~~unsolicited telephone solicitation call, including but not limited to through the use~~
14 ~~of telecommunications services or interconnected Voice over Internet Protocol or~~
15 ~~VoIP, to knowingly cause any caller identification service to transmit misleading or~~
16 ~~inaccurate caller identification information with the intent to defraud or cause harm~~
17 ~~to another person or to wrongfully obtain anything of value];~~
- 18 (10) Directing or permitting employees to use a fictitious name or not to use their name
19 while making a telephone solicitation;
- 20 (11) Threatening, intimidating, or using profane or obscene language;
- 21 (12) Causing the telephone to ring more than thirty (30) seconds in an intended
22 telephone solicitation;
- 23 (13) Engaging any person repeatedly or continuously with behavior a reasonable person
24 would deem to be annoying, abusive, or harassing;
- 25 (14) Initiating a telephone solicitation call to a person, when that person has stated
26 previously that he or she does not wish to receive solicitation calls from that seller;
- 27 (15) Making or causing to be made an unsolicited telephone solicitation call if the

1 residential number for that telephone appears in the current publication of the
2 national Do Not Call Registry maintained by the United States Federal Trade
3 Commission;

4 (16) Making telephone solicitations to a person's residence at any time other than
5 between 10 a.m. - 9 p.m. local time, at the called person's location;

6 (17) Selling or making available for economic gain any information revealed during a
7 telephone solicitation without the express written consent of the consumer;

8 (18) Making a telephone solicitation to any residential telephone using an artificial or
9 prerecorded voice to deliver a message, unless the call is initiated for emergency
10 purposes by schools regulated by the Kentucky Department of Education or the call
11 is made with the prior express consent of the called party; or

12 (19) Engaging in any unfair, false, misleading, or deceptive practice or act as part of a
13 telephone solicitation.

14 ➔Section 2. KRS 367.46999 is amended to read as follows:

15 (1) Any person, including, but not limited to, a merchant, a telemarketer, a salesperson,
16 agent or representative of the merchant, or an independent contractor, who
17 knowingly violates any provision of KRS 367.46951 to 367.46999 or engages in
18 any act, practice, or course of business which operates or would operate as fraud or
19 deceit upon any person in connection with a sale shall be guilty of a Class D felony,
20 except that any person who violates KRS 367.46955(7) to (16) shall be guilty of a
21 Class B misdemeanor for the first offense and a Class A misdemeanor for any
22 subsequent offense.

23 (2) ~~[Notwithstanding any other provision of law,]~~In addition to **any other**~~[the]~~
24 penalties provided **for the commission of the offense**~~[in this section]~~, **the court**
25 **shall order that** any person found guilty of violating KRS 367.46955(9) shall:

26 (a) Be fined no less than five hundred dollars (\$500) for the first offense and
27 **three thousand dollars (\$3,000)**~~[one thousand dollars (\$1,000)]~~ for any

1 subsequent offense; and

2 (b) Pay restitution of any financial benefit secured through conduct proscribed by
3 KRS 367.46955(9).

4 (3) The Office of the Attorney General or the appropriate Commonwealth's attorney
5 shall have~~—concurrent~~ enforcement powers as to such fines, felonies, and
6 misdemeanors.

7 ➔Section 3. KRS 367.667 is amended to read as follows:

8 The following acts and practices in the conduct of charitable solicitation shall be
9 considered unfair, false, misleading, or deceptive in violation of KRS 367.170:

10 (1) Representing or leading anyone in any manner to believe that a solicitation is for or
11 on behalf of a charitable organization; or utilizing any emblem, device, or printed
12 matter belonging to or associated with a charitable organization; or otherwise
13 representing that any part of the contributions received will be donated to a
14 charitable organization without first being authorized in writing to do so by the
15 charitable organization;

16 (2) Utilizing a name, symbol, or statement so closely related or similar to that used by
17 another charitable organization, public official, or public agency that its use would
18 tend to confuse or mislead a solicited person;~~—or~~

19 (3) Causing misleading information to be transmitted to users of caller identification
20 technologies, or to otherwise misrepresent the origin of the charitable telephone
21 solicitation. This subsection shall not apply to solicitations which block caller
22 identification, nor shall it apply to solicitations in which the name and telephone
23 number of the party on whose behalf the call is made is substituted for the name
24 and telephone number of the service used to make the call; or

25 (4) Representing when soliciting funds that a charity will be the recipient of the funds
26 when the professional solicitor or his employer pursuant to a contract is allowed to
27 or will receive more than fifty percent (50%) of the gross receipts of the funds

1 solicited as his compensation. It shall be a defense in any action brought to enforce
2 this subsection for the professional solicitor to show that he disclosed in a clear and
3 conspicuous manner to the prospective donor the percentage of the funds which he
4 was allowed by contract to receive.

5 ➔Section 4. KRS 367.990 is amended to read as follows:

- 6 (1) Any person who violates the terms of a temporary or permanent injunction issued
7 under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of
8 not more than twenty-five thousand dollars (\$25,000) per violation. For the
9 purposes of this section, the Circuit Court issuing an injunction shall retain
10 jurisdiction, and the cause shall be continued, and in such cases the Attorney
11 General acting in the name of the Commonwealth may petition for recovery of civil
12 penalties.
- 13 (2) In any action brought under KRS 367.190, if the court finds that a person is
14 willfully using or has willfully used a method, act, or practice declared unlawful by
15 KRS 367.170, the Attorney General, upon petition to the court, may recover, on
16 behalf of the Commonwealth, a civil penalty of not more than two thousand dollars
17 (\$2,000) per violation, or where the defendant's conduct is directed at a person aged
18 sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)
19 per violation, if the trier of fact determines that the defendant knew or should have
20 known that the person aged sixty (60) or older is substantially more vulnerable than
21 other members of the public.
- 22 (3) Any person with actual notice that an investigation has begun or is about to begin
23 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,
24 or falsifies documentary material is guilty of a Class A misdemeanor.
- 25 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240
26 or 367.250, intentionally falsifies or withholds documents, records, or pertinent
27 materials that are not privileged shall be subject to a fine as provided in subsection

- 1 (3) of this section.
- 2 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is
3 proposed, operated, or promoted may grant an injunction without bond, upon
4 complaint filed by the Attorney General to enjoin the further operation thereof, and
5 the Attorney General may ask for and the court may assess civil penalties against
6 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)
7 which shall be for the benefit of the Commonwealth of Kentucky.
- 8 (6) Any person, business, or corporation who knowingly violates the provisions of KRS
9 367.540 shall be guilty of a violation. It shall be considered a separate offense each
10 time a magazine is mailed into the state; but it shall be considered only one (1)
11 offense for any quantity of the same issue of a magazine mailed into Kentucky.
- 12 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty
13 of a Class A misdemeanor.
- 14 (8) In addition to the penalties contained in this section, the Attorney General, upon
15 petition to the court, may recover, on behalf of the Commonwealth a civil penalty of
16 not more than the greater of five thousand dollars (\$5,000) or two hundred dollars
17 (\$200) per day for each and every violation of KRS 367.175.
- 18 (9) Any person who shall willfully and intentionally violate any provision of KRS
19 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- 20 (10) (a) Any person who violates the terms of a temporary or permanent injunction
21 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a
22 penalty of not more than five thousand dollars (\$5,000) per violation. For the
23 purposes of this section, the Circuit Court issuing an injunction shall retain
24 jurisdiction, and the cause shall be continued, and in such cases the Attorney
25 General acting in the name of the Commonwealth may petition for recovery of
26 civil penalties. ~~;~~
- 27 (b) 1. The Attorney General may, upon petition to a court having jurisdiction

1 under KRS 367.190, recover on behalf of the Commonwealth from any person
 2 found to have willfully committed an act declared unlawful by KRS 367.667 a
 3 penalty of not more than five thousand dollars (\$5,000)~~[two thousand dollars~~
 4 ~~(\$2,000)]~~ per violation.

5 **2. In addition to any other penalties provided for the commission of the**
 6 **offense, the court shall order that any person found guilty of violating**
 7 **subsection (3) of Section 3 of this Act:**

8 **a. Be fined no less than five hundred dollars (\$500) for the first**
 9 **offense and no less than three thousand dollars (\$3,000) for any**
 10 **subsequent offense; and**

11 **b. Pay restitution of any financial benefit secured through conduct**
 12 **proscribed by subsection (3) of Section 3 of this Act.**

13 **3. The Office of the Attorney General or the appropriate**
 14 **Commonwealth's attorney shall have enforcement powers as to fines,**
 15 **felonies, and misdemeanors under this paragraph.**~~[; and]~~

16 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,
 17 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false
 18 or incorrect information to the Attorney General in filing statements or reports
 19 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.

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

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

27 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or

- 1 367.816 shall be guilty of a Class C felony.
- 2 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have
3 authority to prosecute violations of KRS 367.801 to 367.819.
- 4 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the
5 Attorney General or the appropriate Commonwealth's attorney shall have authority
6 to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- 7 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 8 (17) Any person, partnership, or corporation who violates the provisions of KRS
9 367.850 shall be guilty of a Class A misdemeanor.
- 10 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets
11 back, disconnects, fails to connect, or causes to be changed, set back, or
12 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale
13 of the motor vehicle shall be guilty of a Class D felony.
- 14 (19) Any person who negotiates a contract of membership on behalf of a club without
15 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty
16 of a Class D felony.
- 17 (20) Any person or corporation who operates or attempts to operate a health spa in
18 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 19 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
20 (b) The appropriate Commonwealth's attorney shall have authority to prosecute
21 felony violations of KRS 367.832.
- 22 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be
23 guilty of a violation. Either the Attorney General or the appropriate county
24 health department may prosecute violators of KRS 367.855 or 367.857.
- 25 (b) The provisions of this subsection shall not apply to any retail establishment if
26 the wholesaler, distributor, or processor fails to comply with the provisions of
27 KRS 367.857.

- 1 (23) Notwithstanding any other provision of law, any telemarketing company,
2 telemarketer, caller, or merchant shall be guilty of a Class D felony when that
3 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)
4 calendar year knowingly and willfully violates KRS 367.46955(15) by making or
5 causing to be made an unsolicited telephone solicitation call to a telephone number
6 that appears in the current publication of the zero call list maintained by the Office
7 of the Attorney General, Division of Consumer Protection.
- 8 (24) Notwithstanding any other provision of law, any telemarketing company,
9 telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when
10 that telemarketing company, telemarketer, caller, or merchant uses a zero call list
11 identified in KRS 367.46955(15) for any purpose other than complying with the
12 provisions of KRS 367.46951 to 367.46999.
- 13 (25) (a) Notwithstanding any other provision of law, any telemarketing company,
14 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999
15 shall be assessed a civil penalty of not more than five thousand dollars
16 (\$5,000) for each offense.
- 17 (b) The Attorney General, or any person authorized to act in his or her behalf,
18 shall initiate enforcement of a civil penalty imposed under paragraph (a) of
19 this subsection.
- 20 (c) Any civil penalty imposed under paragraph (a) of this subsection may be
21 compromised by the Attorney General or his or her designated representative.
22 In determining the amount of the penalty or the amount agreed upon in
23 compromise, the Attorney General, or his or her designated representative,
24 shall consider the appropriateness of the penalty to the financial resources of
25 the telemarketing company, telemarketer, caller, or merchant charged, the
26 gravity of the violation, the number of times the telemarketing company,
27 telemarketer, caller, or merchant charged has been cited, and the good faith of

1 the telemarketing company, telemarketer, caller, or merchant charged in
2 attempting to achieve compliance, after notification of the violation.

3 (d) If a civil penalty is imposed under this subsection, a citation shall be issued
4 which describes the violation which has occurred and states the penalty for the
5 violation. If, within fifteen (15) working days from the receipt of the citation,
6 the affected party fails to pay the penalty imposed, the Attorney General, or
7 any person authorized to act in his or her behalf, shall initiate a civil action to
8 collect the penalty. The civil action shall be taken in the court which has
9 jurisdiction over the location in which the violation occurred.

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