

1 AN ACT relating to internet privacy.

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) As used in this section:*

6 *(a) "Connected device" means any device or other physical object that is*
7 *capable of connecting to the Internet, directly or indirectly, and that is*
8 *assigned an Internet Protocol address or Bluetooth address;*

9 *(b) "Cookies" means a text file stored on a user's connected device containing*
10 *data used to identify the connected device and capable of tracking the*
11 *connected device after leaving the Web site;*

12 *(c) "Express consent" means agreement manifested by the clicking, checking,*
13 *or electronic marking of an electronic prompt containing an unambiguous*
14 *and complete disclosure of the data collection, usage, and storage practices,*
15 *including utilization of cookies, of the first-party and or third-party*
16 *operators;*

17 *(d) "First-party operator" means an operator of a Web site on the internet, an*
18 *online service, an online application, or a mobile application with which a*
19 *user intends to connect; and*

20 *(e) "Third-party operator" means any operator of a program that appears on a*
21 *Web site, service, or application with respect to which the operator is not a*
22 *first-party operator.*

23 *(2) A first-party operator shall not collect, use, or store data, including cookies, from*
24 *a user of a connected device, other than such data necessary for the operation of*
25 *the Web site, service or application, for the purposes of distributing digital*
26 *advertisements unless the user gives express consent to the sharing of data before*
27 *the data is obtained.*

1 (3) A third-party operator shall not collect, use, or store any data, including cookies,
2 from a user of a connected device of a user of a Web site, service, or application
3 for the purposes of distributing digital advertisements unless the user gives
4 express consent to the sharing of the data before the personal data is obtained.

5 (4) Neither a first-party operator nor a third-party operator shall sell, share, or
6 facilitate the exchange of data collected from a user of its Web site, service, or
7 application with another party for the purposes of distributing digital
8 advertisements to that person unless the user gives express consent to the selling,
9 sharing, or exchange of his or her data upon entering the Web site.

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

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

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

27 (3) Any person with actual notice that an investigation has begun or is about to begin

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

1 purposes of this section, the Circuit Court issuing an injunction shall retain
2 jurisdiction, and the cause shall be continued, and in such cases the Attorney
3 General acting in the name of the Commonwealth may petition for recovery of
4 civil penalties.

- 5 (b) 1. The Attorney General may, upon petition to a court having jurisdiction
6 under KRS 367.190, recover on behalf of the Commonwealth from any
7 person found to have willfully committed an act declared unlawful by
8 KRS 367.667 a penalty of not more than five thousand dollars (\$5,000)
9 per violation.
- 10 2. In addition to any other penalties provided for the commission of the
11 offense, any person found guilty of violating KRS 367.667(1)(c):
- 12 a. Shall be punished by a fine of no less than five hundred dollars
13 (\$500) for the first offense and no less than five thousand dollars
14 (\$5,000) for any subsequent offense; and
- 15 b. Pay restitution of any financial benefit secured through conduct
16 proscribed by KRS 367.667(1)(c).
- 17 3. The Office of the Attorney General or the appropriate Commonwealth's
18 attorney shall have concurrent enforcement powers as to fines, felonies,
19 and misdemeanors under this paragraph.
- 20 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,
21 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false
22 or incorrect information to the Attorney General in filing statements or reports
23 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- 24 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under
25 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per
26 violation to be collected in the name of the Commonwealth upon action of the
27 Attorney General.

- 1 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be
2 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in
3 the name of the Commonwealth upon action by the Attorney General.
- 4 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or
5 367.816 shall be guilty of a Class C felony.
- 6 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have
7 authority to prosecute violations of KRS 367.801 to 367.819.
- 8 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the
9 Attorney General or the appropriate Commonwealth's attorney shall have authority
10 to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- 11 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 12 (17) Any person, partnership, or corporation who violates the provisions of KRS
13 367.850 shall be guilty of a Class A misdemeanor.
- 14 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets
15 back, disconnects, fails to connect, or causes to be changed, set back, or
16 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale
17 of the motor vehicle shall be guilty of a Class D felony.
- 18 (19) Any person who negotiates a contract of membership on behalf of a club without
19 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty
20 of a Class D felony.
- 21 (20) Any person or corporation who operates or attempts to operate a health spa in
22 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 23 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
24 (b) The appropriate Commonwealth's attorney shall have authority to prosecute
25 felony violations of KRS 367.832.
- 26 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be
27 guilty of a violation. Either the Attorney General or the appropriate county

1 health department may prosecute violators of KRS 367.855 or 367.857.

2 (b) The provisions of this subsection shall not apply to any retail establishment if
3 the wholesaler, distributor, or processor fails to comply with the provisions of
4 KRS 367.857.

5 (23) Notwithstanding any other provision of law, any telemarketing company,
6 telemarketer, caller, or merchant shall be guilty of a Class D felony when that
7 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)
8 calendar year knowingly and willfully violates KRS 367.46955(15) by making or
9 causing to be made an unsolicited telephone solicitation call to a telephone number
10 that appears in the current publication of the zero call list maintained by the Office
11 of the Attorney General, Division of Consumer Protection.

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

17 (25) (a) Notwithstanding any other provision of law, any telemarketing company,
18 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999
19 shall be assessed a civil penalty of not more than five thousand dollars
20 (\$5,000) for each offense.

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

24 (c) Any civil penalty imposed under paragraph (a) of this subsection may be
25 compromised by the Attorney General or his or her designated representative.
26 In determining the amount of the penalty or the amount agreed upon in
27 compromise, the Attorney General, or his or her designated representative,

1 shall consider the appropriateness of the penalty to the financial resources of
2 the telemarketing company, telemarketer, caller, or merchant charged, the
3 gravity of the violation, the number of times the telemarketing company,
4 telemarketer, caller, or merchant charged has been cited, and the good faith of
5 the telemarketing company, telemarketer, caller, or merchant charged in
6 attempting to achieve compliance, after notification of the violation.

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

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

17 (27) Any person who violates Section 1 of this Act shall be liable for a penalty of five
18 hundred dollars (\$500) per violation. Either the Attorney General or the
19 appropriate Commonwealth's attorney may prosecute violations of Section 1 of
20 this Act.