

1 AN ACT relating to purchases from licensed gun dealers.

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) "Licensed gun dealer" has the same meaning as in KRS 237.060;*

7 *(b) "Merchant category code" means a code used to categorize businesses by*
8 *the type of goods or services provided;*

9 *(c) "Plan purchases" means purchases made using a revolving credit plan;*
10 *and*

11 *(d) "Revolving credit plan" means an arrangement between any person and a*
12 *consumer pursuant to which:*

13 *1. The person may extend credit to the consumer by permitting the*
14 *consumer to make purchases of goods, services, or anything else of*
15 *value or obtain loans, from time to time, directly from the person or*
16 *indirectly by use of a credit or debit card; and*

17 *2. The unpaid balances of purchases made, the principal of loans*
18 *obtained, and finance and other appropriate charges are debited to the*
19 *consumer's account.*

20 *(2) It shall be unlawful for any credit card company, financial institution, or other*
21 *person engaged in the business of offering, administering, facilitating, or*
22 *servicing revolving credit plans to use a merchant category code, or any other*
23 *type of classification or tracking system, that categorizes plan purchases from*
24 *licensed gun dealers separately from other retailers.*

25 *(3) (a) All of the remedies, powers, and duties provided to the Attorney General*
26 *under KRS 367.110 to 367.300 pertaining to acts declared unlawful by KRS*
27 *367.170 shall apply with equal force and effect to violations of this section.*

1 **(b) Nothing in this section or Section 2 of this Act shall be construed to limit or**
2 **restrict the Attorney General's powers or duties under any other provision**
3 **of law.**

4 **(4) (a) Any person damaged by a violation of this section may bring a cause of**
5 **action against the credit card company, financial institution, or other**
6 **person engaged in the business of offering, administering, facilitating, or**
7 **servicing revolving credit plans.**

8 **(b) A cause of action based on a violation of this section shall not be deemed to**
9 **have accrued until the discovery of the violation.**

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

11 (1) **(a)** Any person who violates the terms of a temporary or permanent injunction
12 issued under KRS 367.190 shall forfeit and pay to the Commonwealth a civil
13 penalty of not more than twenty-five thousand dollars (\$25,000) per violation.

14 **(b)** For the purposes of this section, the Circuit Court issuing an injunction shall
15 retain jurisdiction, and the cause shall be continued, and in such cases the
16 Attorney General acting in the name of the Commonwealth may petition for
17 recovery of civil 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
14 KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense
15 each 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
18 guilty 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
21 of not more than the greater of five thousand dollars (\$5,000) or two hundred
22 dollars (\$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
4 of 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;
24 and
- 25 (b) The appropriate Commonwealth's attorney shall have authority to prosecute
26 felony violations of KRS 367.832.
- 27 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be

1 guilty of a violation. Either the Attorney General or the appropriate county
2 health department may prosecute violators of KRS 367.855 or 367.857.

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

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

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

18 (25) (a) Notwithstanding any other provision of law, any telemarketing company,
19 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999
20 shall be assessed a civil penalty of not more than five thousand dollars
21 (\$5,000) for each offense.

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

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

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

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

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

18 **(27) Any person who violates Section 1 of this Act shall be liable for a civil penalty of:**

19 **(a) For a first offense, five thousand dollars (\$5,000); or**

20 **(b) For a second or subsequent offense, ten thousand dollars (\$10,000).**

21 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO
 22 READ AS FOLLOWS:

23 **(1) As used in this section:**

24 **(a) "Entity" means a credit card company, financial institution, or other**
 25 **person engaged in the business of offering, administering, facilitating, or**
 26 **servicing revolving credit plans; and**

27 **(b) "Revolving credit plan" has the same meaning as in Section 1 of this Act.**

- 1 (2) A governmental body shall not enter into a contract under this chapter for
- 2 financial services or products relating to payment card processing with an entity
- 3 unless:
- 4 (a) The contract includes a representation by the entity that it is not currently
- 5 engaged in, and will not for the duration of the contract engage in, any act
- 6 or practice in violation of Section 1 of this Act; and
- 7 (b) Within the past five (5) years:
- 8 1. A court of competent jurisdiction has not entered an order or opinion
- 9 finding that the entity has violated Section 1 of this Act; and
- 10 2. The entity has not admitted to violating Section 1 of this Act in the
- 11 records of a court or other official proceeding.

12 ➔Section 4. Section 3 of this Act applies to contracts entered into on or after the
 13 effective date of this Act, including any proposals, bids, or other submissions under KRS
 14 Chapter 45A outstanding prior to the effective date of this Act.