

1 AN ACT relating to pharmaceutical advertisements.

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) "Advertisement" means a commercial message in any medium that aids,*
7 *promotes, or assists directly or indirectly in the purchase of pharmaceutical*
8 *products and does not include advice from a medical professional; and*

9 *(b) "Pharmaceutical company" means any business entity in the private or*
10 *public sector involved in the discovery, development, and manufacture of*
11 *drugs or medications.*

12 *(2) A pharmaceutical company, or its agent, seller, or distributor, shall not advertise*
13 *any drug, medicine, or pharmaceutical product through any advertisement that is*
14 *accessible to the general public.*

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

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

23 (2) In any action brought under KRS 367.190, if the court finds that a person is
24 willfully using or has willfully used a method, act, or practice declared unlawful by
25 KRS 367.170, the Attorney General, upon petition to the court, may recover, on
26 behalf of the Commonwealth, a civil penalty of not more than two thousand dollars
27 (\$2,000) per violation, or where the defendant's conduct is directed at a person aged

- 1 sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)
2 per violation, if the trier of fact determines that the defendant knew or should have
3 known that the person aged sixty (60) or older is substantially more vulnerable than
4 other members of the public.
- 5 (3) Any person with actual notice that an investigation has begun or is about to begin
6 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,
7 or falsifies documentary material is guilty of a Class A misdemeanor.
- 8 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240
9 or 367.250, intentionally falsifies or withholds documents, records, or pertinent
10 materials that are not privileged shall be subject to a fine as provided in subsection
11 (3) of this section.
- 12 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is
13 proposed, operated, or promoted may grant an injunction without bond, upon
14 complaint filed by the Attorney General to enjoin the further operation thereof, and
15 the Attorney General may ask for and the court may assess civil penalties against
16 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)
17 which shall be for the benefit of the Commonwealth of Kentucky.
- 18 (6) Any person, business, or corporation who knowingly violates the provisions of
19 KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense
20 each time a magazine is mailed into the state; but it shall be considered only one (1)
21 offense for any quantity of the same issue of a magazine mailed into Kentucky.
- 22 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be
23 guilty of a Class A misdemeanor.
- 24 (8) In addition to the penalties contained in this section, the Attorney General, upon
25 petition to the court, may recover, on behalf of the Commonwealth a civil penalty
26 of not more than the greater of five thousand dollars (\$5,000) or two hundred
27 dollars (\$200) per day for each and every violation of KRS 367.175.

- 1 (9) Any person who shall willfully and intentionally violate any provision of KRS
2 367.976 to 367.985 shall be guilty of a Class B misdemeanor.
- 3 (10) (a) Any person who violates the terms of a temporary or permanent injunction
4 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a
5 penalty of not more than five thousand dollars (\$5,000) per violation. For the
6 purposes of this section, the Circuit Court issuing an injunction shall retain
7 jurisdiction, and the cause shall be continued, and in such cases the Attorney
8 General acting in the name of the Commonwealth may petition for recovery
9 of civil penalties.
- 10 (b) 1. The Attorney General may, upon petition to a court having jurisdiction
11 under KRS 367.190, recover on behalf of the Commonwealth from any
12 person found to have willfully committed an act declared unlawful by
13 KRS 367.667 a penalty of not more than five thousand dollars (\$5,000)
14 per violation.
- 15 2. In addition to any other penalties provided for the commission of the
16 offense, any person found guilty of violating KRS 367.667(1)(c):
- 17 a. Shall be punished by a fine of no less than five hundred dollars
18 (\$500) for the first offense and no less than five thousand dollars
19 (\$5,000) for any subsequent offense; and
- 20 b. Pay restitution of any financial benefit secured through conduct
21 proscribed by KRS 367.667(1)(c).
- 22 3. The Office of the Attorney General or the appropriate Commonwealth's
23 attorney shall have concurrent enforcement powers as to fines, felonies,
24 and misdemeanors under this paragraph.
- 25 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,
26 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false
27 or incorrect information to the Attorney General in filing statements or reports

- 1 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- 2 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under
3 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per
4 violation to be collected in the name of the Commonwealth upon action of the
5 Attorney General.
- 6 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be
7 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in
8 the name of the Commonwealth upon action by the Attorney General.
- 9 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or
10 367.816 shall be guilty of a Class C felony.
- 11 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have
12 authority to prosecute violations of KRS 367.801 to 367.819.
- 13 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the
14 Attorney General or the appropriate Commonwealth's attorney shall have authority
15 to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- 16 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 17 (17) Any person, partnership, or corporation who violates the provisions of KRS
18 367.850 shall be guilty of a Class A misdemeanor.
- 19 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets
20 back, disconnects, fails to connect, or causes to be changed, set back, or
21 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale
22 of the motor vehicle shall be guilty of a Class D felony.
- 23 (19) Any person who negotiates a contract of membership on behalf of a club without
24 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty
25 of a Class D felony.
- 26 (20) Any person or corporation who operates or attempts to operate a health spa in
27 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.

- 1 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony;
2 and
- 3 (b) The appropriate Commonwealth's attorney shall have authority to prosecute
4 felony violations of KRS 367.832.
- 5 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be
6 guilty of a violation. Either the Attorney General or the appropriate county
7 health department may prosecute violators of KRS 367.855 or 367.857.
- 8 (b) The provisions of this subsection shall not apply to any retail establishment if
9 the wholesaler, distributor, or processor fails to comply with the provisions of
10 KRS 367.857.
- 11 (23) Notwithstanding any other provision of law, any telemarketing company,
12 telemarketer, caller, or merchant shall be guilty of a Class D felony when that
13 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)
14 calendar year knowingly and willfully violates KRS 367.46955(15) by making or
15 causing to be made an unsolicited telephone solicitation call to a telephone number
16 that appears in the current publication of the zero call list maintained by the Office
17 of the Attorney General, Division of Consumer Protection.
- 18 (24) Notwithstanding any other provision of law, any telemarketing company,
19 telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when
20 that telemarketing company, telemarketer, caller, or merchant uses a zero call list
21 identified in KRS 367.46955(15) for any purpose other than complying with the
22 provisions of KRS 367.46951 to 367.46999.
- 23 (25) (a) Notwithstanding any other provision of law, any telemarketing company,
24 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999
25 shall be assessed a civil penalty of not more than five thousand dollars
26 (\$5,000) for each offense.
- 27 (b) The Attorney General, or any person authorized to act in his or her behalf,

1 shall initiate enforcement of a civil penalty imposed under paragraph (a) of
2 this subsection.

3 (c) Any civil penalty imposed under paragraph (a) of this subsection may be
4 compromised by the Attorney General or his or her designated representative.
5 In determining the amount of the penalty or the amount agreed upon in
6 compromise, the Attorney General, or his or her designated representative,
7 shall consider the appropriateness of the penalty to the financial resources of
8 the telemarketing company, telemarketer, caller, or merchant charged, the
9 gravity of the violation, the number of times the telemarketing company,
10 telemarketer, caller, or merchant charged has been cited, and the good faith of
11 the telemarketing company, telemarketer, caller, or merchant charged in
12 attempting to achieve compliance, after notification of the violation.

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

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

23 **(27) Any person, business, or corporation who violates the provisions of Section 1 of**
24 **this Act shall be guilty of a violation and be subject to a fine not to exceed one**
25 **hundred thousand dollars (\$100,000). A fine shall be assessed for each purchase**
26 **of an advertisement, not by the frequency of the advertisement in its published**
27 **format.**