

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) (a) Causing misleading caller identification information to be transmitted to
7 users of caller identification services, or to otherwise misrepresent the
8 origin of the telephone solicitation.

9 (b) 1. This subsection shall not apply to solicitations which block caller
10 identification, nor shall it apply to solicitations in which the name and
11 telephone number of the party on whose behalf the call is made is
12 substituted for the name and telephone number of the actual
13 caller~~[Utilizing any method to block or otherwise circumvent the use of~~
14 ~~a caller identification service when placing an unsolicited telephone~~
15 ~~solicitation call, including but not limited to through the use of~~
16 ~~telecommunications services or interconnected Voice over Internet~~
17 ~~Protocol or VoIP, to knowingly cause any caller identification service to~~
18 ~~transmit misleading or inaccurate caller identification information with~~
19 ~~the intent to defraud or cause harm to another person or to wrongfully~~
20 ~~obtain anything of value]; and~~

21 2. This subsection shall not apply to a telecommunications, broadband,
22 or Voice over Internet Protocol service provider that is:

23 a. Acting in the telecommunications, broadband, or Voice over
24 Internet Protocol service provider's capacity as an intermediary
25 for the transmission of telephone service between the caller and
26 the recipient;

27 b. Providing or configuring a service or service feature as

1 requested by the customer;

2 c. Acting in a manner that is authorized or required by applicable

3 law; or

4 d. Engaging in other conduct that is necessary to provide service;

- 5 (10) Directing or permitting employees to use a fictitious name or not to use their name
6 while making a telephone solicitation;
- 7 (11) Threatening, intimidating, or using profane or obscene language;
- 8 (12) Causing the telephone to ring more than thirty (30) seconds in an intended
9 telephone solicitation;
- 10 (13) Engaging any person repeatedly or continuously with behavior a reasonable person
11 would deem to be annoying, abusive, or harassing;
- 12 (14) Initiating a telephone solicitation call to a person, when that person has stated
13 previously that he or she does not wish to receive solicitation calls from that seller;
- 14 (15) Making or causing to be made an unsolicited telephone solicitation call if the
15 residential number for that telephone appears in the current publication of the
16 national Do Not Call Registry maintained by the United States Federal Trade
17 Commission;
- 18 (16) Making telephone solicitations to a person's residence at any time other than
19 between 10 a.m. - 9 p.m. local time, at the called person's location;
- 20 (17) Selling or making available for economic gain any information revealed during a
21 telephone solicitation without the express written consent of the consumer;
- 22 (18) Making a telephone solicitation to any residential telephone using an artificial or
23 prerecorded voice to deliver a message, unless the call is initiated for emergency
24 purposes by schools regulated by the Kentucky Department of Education or the call
25 is made with the prior express consent of the called party; or
- 26 (19) Engaging in any unfair, false, misleading, or deceptive practice or act as part of a
27 telephone solicitation.

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

- 2 (1) Any person, including, but not limited to, a merchant, a telemarketer, a salesperson,
 3 agent or representative of the merchant, or an independent contractor, who
 4 knowingly violates any provision of KRS 367.46951 to 367.46999 or engages in
 5 any act, practice, or course of business which operates or would operate as fraud or
 6 deceit upon any person in connection with a sale shall be guilty of a Class D felony,
 7 except that any person who violates KRS 367.46955(7) to (16) shall be guilty of:
- 8 **(a)** A Class B misdemeanor for the first offense **that shall be punishable by**
 9 **imprisonment of not more than ninety (90) days, or a fine of no more than**
 10 **five hundred dollars (\$500), or both;** and
- 11 **(b)** A Class A misdemeanor for any subsequent offense **that shall be punishable**
 12 **by imprisonment of not more than one (1) year, or a fine of not more than**
 13 **five thousand dollars (\$5000), or both.**
- 14 (2) Notwithstanding any other provision of law, in addition to the penalties provided in
 15 this section, any person found guilty of violating KRS 367.46955(9) shall ~~be~~:
- 16 ~~(a) Be fined no less than five hundred dollars (\$500) for the first offense and one~~
 17 ~~thousand dollars (\$1,000) for any subsequent offense; and~~
- 18 ~~(b) pay restitution of any financial benefit secured through conduct proscribed by~~
 19 KRS 367.46955(9).
- 20 (3) The Office of the Attorney General shall have concurrent enforcement powers as to
 21 such felonies and misdemeanors.
- 22 **(4) (a) Notwithstanding other criminal and administrative remedies, a person or**
 23 **class of persons alleging:**
- 24 **1. Receipt of a call in violation of subsection (9) of Section 1 of this Act;**
 25 **or**
- 26 **2. That a number assigned to the person was misleadingly transmitted as**
 27 **a caller identification number by a solicitor in violation of subsection**

1 *(9) of Section 1 of this Act;*
 2 *may bring a civil action in the county where the plaintiff resides or has his*
 3 *or her principal place of business, against any person who is responsible for*
 4 *or who knowingly participated in the violation.*

5 *(b) The civil action brought under paragraph (a) of this subsection may be for:*
 6 *1. Appropriate injunctive relief;*
 7 *2. Actual damages;*
 8 *3. Actual expenses incurred, including court costs and attorney's fees;*
 9 *and*
 10 *4. Punitive damages.*

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

12 *(1)* The following acts and practices in the conduct of charitable solicitation shall be
 13 considered unfair, false, misleading, or deceptive in violation of KRS 367.170:

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

20 *(b)*~~*(2)*~~ Utilizing a name, symbol, or statement so closely related or similar to
 21 that used by another charitable organization, public official, or public agency
 22 that its use would tend to confuse or mislead a solicited person; ~~*or*~~

23 *(c)*~~*(3)*~~ *1. Causing misleading caller identification information to be*
 24 *transmitted to users of caller identification services, or to otherwise*
 25 *misrepresent the origin of the charitable telephone solicitation.*

26 *2. This paragraph shall not apply to solicitations which block caller*
 27 *identification, nor shall it apply to solicitations in which the name and*

1 telephone number of the party on whose behalf the call is made is
 2 substituted for the name and telephone number of actual caller;

3 3. This paragraph shall not apply to a telecommunications, broadband,
 4 or Voice over Internet Protocol service provider that is:

5 a. Acting in the telecommunications, broadband, or Voice over
 6 Internet Protocol service provider's capacity as an intermediary
 7 for the transmission of telephone service between the caller and
 8 the recipient;

9 b. Providing or configuring a service or service feature as
 10 requested by the customer;

11 c. Acting in a manner that is authorized or required by applicable
 12 law; or

13 d. Engaging in other conduct that is necessary to provide service;
 14 or

15 (d) Representing when soliciting funds that a charity will be the recipient of the
 16 funds when the professional solicitor or his employer pursuant to a contract is
 17 allowed to or will receive more than fifty percent (50%) of the gross receipts
 18 of the funds solicited as his compensation. It shall be a defense in any action
 19 brought to enforce this subsection for the professional solicitor to show that he
 20 disclosed in a clear and conspicuous manner to the prospective donor the
 21 percentage of the funds which he was allowed by contract to receive.

22 (2) (a) Notwithstanding other criminal and administrative remedies, a person or
 23 class of persons alleging:

24 1. Receipt of a call in violation of paragraph (1)(c) of this section of this
 25 Act; or

26 2. That a number assigned to the person was misleadingly transmitted as
 27 a caller identification number by a solicitor;

1 may bring a civil action in the county where the plaintiff resides or has his
 2 or her principal place of business, against any person who is responsible for or who
 3 knowingly participated in the violation.

4 **(b) The civil action brought under paragraph (a) of this subsection may be for:**

5 **1. Appropriate injunctive relief;**

6 **2. Actual damages;**

7 **3. Actual expenses incurred, including court costs and attorney's fees;**

8 **and**

9 **4. Punitive damages.**

10 ➔Section 4. 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
 9 (\$5,000)~~two thousand dollars (\$2,000)]~~ per violation.

10 2. In addition to any other penalties provided for the commission of the
 11 offense, any person found guilty of violating subsection (1)(c) of
 12 Section 3 of this Act:

13 a. Shall be punished by a fine of no less than five hundred dollars
 14 (\$500) for the first offense and no less than five thousand dollars
 15 (\$5,000) for any subsequent offense; and

16 b. Pay restitution of any financial benefit secured through conduct
 17 proscribed by subsection (1)(c) of Section 3 of this Act.

18 3. The Office of the Attorney General or the appropriate
 19 Commonwealth's attorney shall have concurrent enforcement powers
 20 as to fines, felonies, and misdemeanors under this paragraph.~~;~~~~and]~~

- 21 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,
 22 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false
 23 or incorrect information to the Attorney General in filing statements or reports
 24 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.

- 25 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under
 26 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per
 27 violation to be collected in the name of the Commonwealth upon action of the

- 1 Attorney General.
- 2 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be
3 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in
4 the name of the Commonwealth upon action by the Attorney General.
- 5 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or
6 367.816 shall be guilty of a Class C felony.
- 7 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have
8 authority to prosecute violations of KRS 367.801 to 367.819.
- 9 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the
10 Attorney General or the appropriate Commonwealth's attorney shall have authority
11 to prosecute violators of KRS 367.474 to 367.478 and 367.482.
- 12 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 13 (17) Any person, partnership, or corporation who violates the provisions of KRS
14 367.850 shall be guilty of a Class A misdemeanor.
- 15 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets
16 back, disconnects, fails to connect, or causes to be changed, set back, or
17 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale
18 of the motor vehicle shall be guilty of a Class D felony.
- 19 (19) Any person who negotiates a contract of membership on behalf of a club without
20 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty
21 of a Class D felony.
- 22 (20) Any person or corporation who operates or attempts to operate a health spa in
23 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 24 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; 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 ➔Section 5. KRS 454.210 is amended to read as follows:

19 (1) As used in this section, "person" includes an individual, his executor, administrator,
20 or other personal representative, or a corporation, partnership, association, or any
21 other legal or commercial entity, who is a nonresident of this Commonwealth.

22 (2) (a) A court may exercise personal jurisdiction over a person who acts directly or
23 by an agent, as to a claim arising from the person's:

- 24 1. Transacting any business in this Commonwealth;
- 25 2. Contracting to supply services or goods in this Commonwealth;
- 26 3. Causing tortious injury by an act or omission in this Commonwealth;
- 27 4. Causing tortious injury in this Commonwealth by an act or omission

- 1 outside this Commonwealth if he regularly does or solicits business, or
2 engages in any other persistent course of conduct, or derives substantial
3 revenue from goods used or consumed or services rendered in this
4 Commonwealth, provided that the tortious injury occurring in this
5 Commonwealth arises out of the doing or soliciting of business or a
6 persistent course of conduct or derivation of substantial revenue within
7 the Commonwealth;
- 8 5. Causing injury in this Commonwealth to any person by breach of
9 warranty expressly or impliedly made in the sale of goods outside this
10 Commonwealth when the seller knew such person would use, consume,
11 or be affected by, the goods in this Commonwealth, if he also regularly
12 does or solicits business, or engages in any other persistent course of
13 conduct, or derives substantial revenue from goods used or consumed or
14 services rendered in this Commonwealth;
- 15 6. Having an interest in, using, or possessing real property in this
16 Commonwealth, providing the claim arises from the interest in, use of,
17 or possession of the real property, provided, however, that such in
18 personam jurisdiction shall not be imposed on a nonresident who did not
19 himself voluntarily institute the relationship, and did not knowingly
20 perform, or fail to perform, the act or acts upon which jurisdiction is
21 predicated;
- 22 7. Contracting to insure any person, property, or risk located within this
23 Commonwealth at the time of contracting;
- 24 8. Committing sexual intercourse in this state which intercourse causes the
25 birth of a child when:
- 26 a. The father or mother or both are domiciled in this state;
- 27 b. There is a repeated pattern of intercourse between the father and

1 mother in this state; or

2 c. Said intercourse is a tort or a crime in this state; or

3 9. Making a telephone solicitation, as defined in KRS 367.46951, or a
4 charitable solicitation as defined in KRS 367.650 via
5 telecommunication, into the Commonwealth.

6 (b) When jurisdiction over a person is based solely upon this section, only a claim
7 arising from acts enumerated in this section may be asserted against him.

8 (3) (a) When personal jurisdiction is authorized by this section, service of process
9 may be made on such person, or any agent of such person, in any county in
10 this Commonwealth, where he may be found, or on the Secretary of State
11 who, for this purpose, shall be deemed to be the statutory agent of such
12 person.

13 (b) The clerk of the court in which the action is brought shall issue a summons
14 against the defendant named in the complaint. The clerk shall execute the
15 summons either by:

16 1. Sending by certified mail two (2) true copies to the Secretary of State
17 and shall also mail with the summons two (2) attested copies of
18 plaintiff's complaint; or

19 2. Transmitting an electronically attested copy of the complaint and
20 summons to the Secretary of State via the Kentucky Court of Justice
21 electronic filing system.

22 (c) The Secretary of State shall, within seven (7) days of receipt thereof in his
23 office, mail a copy of the summons and complaint to the defendant at the
24 address given in the complaint. The letter shall be posted by certified mail,
25 return receipt requested, and shall bear the return address of the Secretary of
26 State. The clerk shall make the usual return to the court, and in addition the
27 Secretary of State shall make a return to the court showing that the acts

1 contemplated by this statute have been performed, and shall attach to his
2 return the registry receipt, if any. Summons shall be deemed to be served on
3 the return of the Secretary of State and the action shall proceed as provided in
4 the Rules of Civil Procedure.

5 (d) The clerk mailing the summons to the Secretary of State shall mail to him, at
6 the same time, a fee of ten dollars (\$10), which shall be taxed as costs in the
7 action. The fee for a summons transmitted electronically pursuant to this
8 subsection shall be transmitted to the Secretary of State on a periodic basis.

9 (4) When the exercise of personal jurisdiction is authorized by this section, any action
10 or suit may be brought in the county wherein the plaintiff resides or where the cause
11 of action or any part thereof arose.

12 (5) A court of this Commonwealth may exercise jurisdiction on any other basis
13 authorized in the Kentucky Revised Statutes or by the Rules of Civil Procedure,
14 notwithstanding this section.