

Kentucky statutes directly regulating telemarketers. Also see administrative regulations at 40 KAR 2.070. These statutes are not official copies and are provided for a convenience only. Statutory headings are not considered part of the statute.

367.461 CONDITIONS FOR USE OF AUTOMATED CALLING EQUIPMENT

(1) As used in KRS 367.461 to 367.469, "automated calling equipment" means any device or combination of devices which is used to select or dial telephone numbers and to deliver recorded messages to the numbers so selected or dialed.

(2) Unless the conditions set out in paragraphs (a) to (f) of this subsection are met, no person shall use automated calling equipment, or cause it to be used, for conducting polls, for soliciting information, or for advertising goods, services, or property:

(a) The person receiving the call consents to it, as specified in KRS 367.463;

(b) The recorded message clearly states the name and telephone number of the person or organization initiating the call within the first twenty-five (25) seconds of the message and at the conclusion of the message. That telephone number given in the recorded message shall, during normal office hours, be answered promptly and personally by an agent of the person or organization on whose behalf the automatic calls are made, who is able to provide information concerning the automatic calls;

(c) The automated calling equipment terminates its connection with any telephone call within ten (10) seconds after the person called either fails to consent to hear a recorded message or hangs up the telephone;

(d) The use does not involve either the random or sequential dialing of telephone numbers, does not call telephone numbers which are omitted from the telephone directory at the customer's request, and does not call hospitals, nursing homes, fire protection agencies, or law enforcement agencies;

(e) Calls using the automated calling equipment are made only between 8:00 a.m. and 9:00 p.m.; and

(f) The automated calling equipment operates only when it is attended and is designed or installed so that it does not operate without an attendant, even in the event of power failures.

(3) Nothing in this section prohibits the use of automated calling equipment to make calls with recorded messages when the calls:

(a) Are made in response to calls initiated by the person to whom the automatic call or recorded message is directed;

(b) Concern goods or services, or the availability of same which were previously ordered or purchased;

(c) Relate to collection of lawful debts;

(d) Are made by a public school as part of a program to regulate and control absenteeism of students; or

(e) Are reminders and notices of meetings and activities of organizations of which the person called is a member or a subscribed consumer of the services of the organization, or are made to a person with whom there is an existing business relationship.

**367.463 CONSENT TO CALLS MADE WITH AUTOMATED CALLING EQUIPMENT;
WRITTEN CONSENT; WITHDRAWAL OF WRITTEN CONSENT; PERIOD OF VALIDITY
OF WRITTEN CONSENT**

- (1) A person may consent to a call made with automated calling equipment when:
- (a) A live operator introduces the call and states an intent to play a recorded message; or
 - (b) By using the telephone keypad to provide a consent response.

Consent obtained pursuant to this subsection applies only to the particular call and does not constitute prior consent to receive further calls through automated calling equipment.

- (2) A person may consent to receive telephone calls through automated calling equipment by giving written consent to the person using automated calling equipment or causing it to be used.
- (a) Any form used to obtain written consent shall state clearly and conspicuously its purpose and effect and shall clearly and conspicuously give notice of how the consent can be withdrawn.
 - (b) A record of written consent shall be maintained by the person to whom consent is given and shall be made available to the Attorney General or his authorized representative during normal business hours and upon twenty-four (24) hours' notice.
 - (c) A written consent to receive telephone calls through automated calling equipment shall be void on and after the fifteenth day after receipt of a letter withdrawing the consent.
 - (d) Unless withdrawn, a written consent shall be valid for two (2) years from the date on which it is executed; the record of written consent shall be maintained by the person to whom consent is given for at least the same period of time.

**367.465 PROHIBITIONS RELATING TO USE OF AUTOMATED CALLING EQUIPMENT
TO SOLICIT CALLS FOR TELEPHONE FEE LINES**

- (1) As used in this section, "telephone fee line" means a telephone number with a charge attached to calling it, whereby the telephone company as billing agent charges the caller an amount for accessing the line in addition to applicable rates, if any, for the telephone call.
- (2) No person shall use automated calling equipment, or cause it to be used, to solicit persons to call a telephone fee line under his control.
- (3) No telephone company shall knowingly provide a telephone fee line to a person who solicits calls to that line through the use of automated calling equipment. A telephone company shall, on order of the Attorney General, withdraw control of a telephone fee line from any person if calls to that line are solicited by automated calling equipment.

367.467 APPLICABILITY OF REMEDIES OF CONSUMER PROTECTION ACT

- (1) Any violation of KRS 367.461, 367.463, or 367.465 shall be an unfair, false, misleading, and deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170.
- (2) All of the remedies, powers, and duties provided for the Attorney General in KRS 367.190 to 367.300, and all of the penalties provided in KRS 367.990, pertaining to acts declared unlawful by KRS 367.170, shall apply to acts and practices declared unlawful in KRS 367.461, 367.463,

and 367.465.

367.469 REQUIREMENT OF PERMIT FROM ATTORNEY GENERAL; SURETY BOND; AUTHORITY TO PROMULGATE ADMINISTRATIVE REGULATIONS

(1) Unless covered by one (1) of the exceptions in KRS 367.461(3), and prior to using automated calling equipment to call telephone numbers in this Commonwealth, a person or company shall first obtain a permit from the Attorney General. The application for permit shall include:

- (a) Name, address, and telephone number of the company or person utilizing the equipment;
- (b) If the address required by paragraph (a) of this subsection is not in Kentucky, the name and address of a designated agent for the automated calling equipment operator located in Kentucky;
- (c) A surety bond executed by the automated calling equipment operator from a surety company authorized to do business in this Commonwealth for the sum of ten thousand dollars (\$10,000), to be maintained continuously in full force and effect. The Attorney General may accept an alternate form of surety, such as a letter of credit, for an operator demonstrating financial responsibility.

(2) The Attorney General shall promulgate administrative regulations to govern the issuance, revocation, suspension, or reissuance of permits for automated calling equipment operators utilizing equipment to call telephone numbers located in Kentucky. The Attorney General may revoke permits for any violation of KRS 367.461, 367.463, or 367.465, following an administrative hearing conducted in accordance with KRS Chapter 13B.

367.46951 DEFINITIONS FOR KRS 367.46951 TO 367.46999

As used in KRS 367.46951 to 367.46999, unless the context otherwise requires:

(1) "Telephone solicitation" means:

(a) A telephone call or message sent by a facsimile machine to a residential, mobile, or telephone paging device telephone number, including a call made by an automatic dialing or recorded message device, for the purpose of:

1. Soliciting a sale of consumer goods or services, offering an investment, business, or employment opportunity, or offering a consumer loan to the person called;
2. Obtaining information that will or may be used for the solicitation of a sale of consumer goods or services, the offering of an investment, business, or employment opportunity, or the offering of a consumer loan to the person called;
3. Offering the person called a prize, gift, or anything else of value, if payment of money or other consideration is required in order to receive the prize or gift, including the purchase of other merchandise or services or the payment of any processing fees, delivery charges, shipping and handling fees, or other fees or charges; or
4. Offering the person called a prize, gift, or other incentive to attend a sales presentation for consumer goods or services, an investment or business opportunity, or a consumer loan;

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the merchant to persons who have not previously purchased goods or services from the merchant or telemarketer or who have not previously

requested credit from the merchant, to a prospective purchaser if the merchant or telemarketer represents or implies to the recipient of the notification that any of the following applies:

1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
2. That the recipient will receive a prize or gift if the recipient calls the merchant or telemarketer; or
3. That if the recipient buys one (1) or more items from the merchant or telemarketer, the recipient will also receive additional or other items of the same or a different type at no additional cost or for less than the regular price of the items;

(2) "Telephone solicitation" does not mean the following:

(a) A telephone call made in response to an express request of a person called, unless the request was made during a prior telephone solicitation;

(b) A telephone call made primarily in connection with the payment or performance of an existing debt or contract, the payment or performance of which has not been completed at the time of the call;

(c) A telephone call to any person with whom the telemarketer or merchant has a prior or existing business relationship, including but not limited to the solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;

(d) A telephone call made by any of the following:

1. A college or university accredited by a national or regional accrediting organization;
2. An organization exempt from taxation under Section 501(c)(3) [FN1] or Section 501(c)(6) of the Internal Revenue Code;
3. A school, or a person on behalf of a school, regulated by the Kentucky Department of Education;
4. A real estate broker or sales associate properly licensed under the provisions of KRS Chapter 324;
5. A broker-dealer, agent, or investment adviser properly registered under the provisions of KRS Chapter 292;
6. An insurance agent, solicitor, or consultant properly licensed under the provisions of Subtitle 9 of KRS Chapter 304;
7. An employment agency that has obtained a current permit from the Cabinet for Workforce Development under the provisions of KRS Chapter 340;
8. A person soliciting the sale of a subscription to a newspaper, magazine, or periodical of general circulation, or a cable television service;
9. A merchant or telemarketer or the merchant's or telemarketer's affiliate or authorized agent, when the merchant or telemarketer is regulated by the Public Service Commission;
10. A merchant or telemarketer soliciting the sale of food costing less than one hundred dollars (\$100) to each address;
11. A person who periodically issues and delivers catalogs to potential purchasers if the catalog includes a written description or illustration and the sales price of each item offered for sale, includes at least twenty-four (24) full pages of written material or illustrations, is distributed in more than one (1) state, and has an annual circulation of not less than two hundred fifty thousand (250,000) customers;
12. Any corporation, partnership, or individual whose business or activities are regulated

by the Commonwealth of Kentucky, Department for Financial Institutions;

13. A merchant or telemarketer or the merchant's or telemarketer's affiliate or authorized agent when the merchant or telemarketer is subject to the control or licensure regulations of the Federal Communications Commission;

14. A book, video, or record club or contractual plan or arrangement in which the merchant or telemarketer provides the consumer with a form which the consumer may use to instruct the merchant or telemarketer not to ship the offered merchandise, or which is regulated by federal regulation concerning the use of negative option plans by sellers in commerce, or which otherwise provides for the sale of books, records, or videos. Examples of the latter plan include continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;

15. A merchant or telemarketer who: solicits without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; does not make the major sales presentation during the solicitation but arranges for the major presentation to be made at a later, face-to-face meeting between the sales person and the purchaser; and does not go or cause another to collect payment for the purchase or deliver any item purchased to the prospective purchaser directly following the telephone solicitation;

16. Any telephone marketing service company which provides telemarketing sales services under contract to merchants and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) of whose services are performed for merchants exempted under KRS 367.46951 to 367.46999, if the company files an annual certification with the Office of the Attorney General on a form prescribed by the Attorney General. The certification shall include the company's basis for claiming the exemption and shall indicate the company's agreement to comply with the provisions of KRS 367.46951 to 367.46999, if applicable;

17. A telephone call made by a merchant or telemarketer located in Kentucky to a location outside the Commonwealth of Kentucky;

18. A merchant or his employee if the merchant has operated for at least two (2) years, under the same name as that used in connection with its telemarketing operations, a retail establishment in Kentucky where consumer goods are displayed and offered for sale on a continuing basis if a majority of the merchant's business involves the buyers obtaining services or products at the merchant's retail establishment; or

19. A merchant or telemarketer or the merchant's or telemarketer's affiliate or authorized agent, where the merchant or telemarketer is a publicly traded corporation;

Except for paragraph (d)16. of this subsection, the exemptions provided under this subsection shall apply only to a merchant or telemarketer or the merchant's or telemarketer's affiliate or authorized agent engaging in a telephone solicitation on the merchant's or telemarketer's behalf;

(3) "Consumer goods or services" means goods, services, or interests in real property used by natural persons primarily for personal, family, or household purposes;

(4) "Consumer loan" means any extension of credit, including credit cards and other forms of revolving credit, to a natural person primarily for the purposes of purchasing consumer goods or services or for paying existing personal, family, or household debts;

- (5) "Consumer" means a natural person who receives a telephone solicitation;
- (6) "Legal name of the merchant" means the real name of the merchant, as defined in KRS 365.015(1), or the assumed name of the merchant for which all proper certificates have been filed pursuant to KRS 365.015;
- (7) "Merchant" means the individual or business entity offering the consumer goods or services, an investment, business, or employment opportunity, or a consumer loan;
- (8) "Caller" or "sales person" means the individual making the call or operating the automatic dialing or recorded message device and causing the call to be made;
- (9) "Division" means the Consumer Protection Division of the Office of the Attorney General;
- (10) "Automated calling equipment" means any device or combination of devices used to select or dial telephone numbers and to deliver recorded messages to those numbers without the use of a live operator; and
- (11) "Telemarketer" means any person who under contract with a merchant or in connection with a telephone solicitation initiates or receives telephone calls to or from a consumer of goods and services. A telemarketer includes, but is not limited to, any such person that is an owner, operator, officer, director, or partner to the management activities of a business.
- (12) "Publicly-traded corporation" means an issuer or subsidiary of an issuer that has a class of securities which is:
- (a) Subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78l) and which is registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;
 - (b) Listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; or
 - (c) A reported security within the meaning of subparagraph (4) of Regulation Section 240.11Aa3-1.(a) under the Securities Exchange Act of 1934. A subsidiary of an issuer that qualifies for exemption under this paragraph shall not itself be exempt unless at least sixty percent (60%) of the voting power of its shares is owned by the qualifying issuer.
- (13) "Telemarketing company" means a company whose primary business is to engage in telephone solicitation.

367.46953 REQUIREMENTS FOR MAKING TELEPHONE SOLICITATION

A caller making a telephone solicitation shall:

- (1) Immediately upon making contact by telephone with the consumer, state his actual name, the merchant's legal name, a telephone number or address at which the merchant may be contacted, and the town or city and state where the caller is physically located;

(2) Within the first thirty (30) seconds of the call, identify the goods, services, interest in real estate, investment or business opportunity, or type of credit being offered and inquire whether the consumer is interested in listening to a sales presentation; and

(3) Immediately discontinue the solicitation if the consumer responds in the negative.

367.46955 PROHIBITED TELEPHONE SOLICITATION ACTS AND PRACTICES

It is a prohibited telephone solicitation act or practice and a violation of KRS 367.46951 to 367.46999 for any telemarketing company to engage in the following conduct:

(1) Advertising or representing that registration as a telemarketer equals an endorsement or approval by any government or governmental agency;

(2) Requesting a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

(3) Requesting or receiving a payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telephone solicitation transaction;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the telemarketing company has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or bond or other account without the consumer's express written authorization;

(6) Procuring the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected;

(7) Assisting, supporting, or providing substantial assistance to any telemarketer when the telemarketing company knew or should have known that the telemarketer was engaged in any act or practice prohibited under this section;

(8) Making a telephone solicitation to anyone under eighteen (18) years of age. When making a telephone solicitation the telemarketer shall inquire as to whether the person is eighteen (18) years of age or older and the answer shall be presumed to be correct;

(9) Utilizing any method to block or otherwise circumvent the use of a caller identification service when placing an unsolicited telephone solicitation call;

(10) Directing or permitting employees to use a fictitious name or not to use their name while making a telephone solicitation;

(11) Threatening, intimidating, or using profane or obscene language;

(12) Causing the telephone to ring more than thirty (30) seconds in an intended telephone solicitation;

(13) Engaging any person repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive, or harassing;

(14) Initiating a telephone solicitation call to a person, when that person has stated previously that he or she does not wish to receive solicitation calls from that seller;

(15) Making or causing to be made an unsolicited telephone solicitation call if the number for that telephone appears in the current publication of the "no telephone solicitation calls" list maintained by the Office of the Attorney General, Division of Consumer Protection. Any holder of a telephone number may notify the division and be placed on a "no telephone solicitation calls" list indicating the wish not to receive unsolicited telephone solicitation calls by notification to the division. The names of persons requesting to be on the "no telephone solicitation calls" list shall remain on the list until the person rescinds his or her name from the list. The list shall be published quarterly in hard copy and may be made available in other formats at the discretion of the division. After the publication of the list each month each telemarketing company shall be deemed to be on notice not to solicit any person whose name appears on the list. The division shall charge a fee calculated to defray costs of the no telephone solicitation calls program to telemarketing companies for the provision of the list. Funds collected shall be deposited into the division's trust and agency account. The list shall be made available to requesters either on a statewide or county by county basis; or

(16) Engaging in telemarketing to a person's residence at any time other than between 10 a.m. - 9 p.m. local time, at the called person's location.

367.46957 CONTRACT OR AGREEMENT VOIDABLE BY CONSUMER IF RESULTING FROM NONCONFORMING TELEPHONE SOLICITATION

A contract or agreement made as a result of a telephone solicitation violating KRS 367.46951 to 367.46999 is voidable by the consumer for any reason at any time and shall not be enforced against the consumer.

367.46961 CANCELLATION OF CONTRACT NOT REDUCED TO WRITING; EXCEPTION

(1) Unless the contract is reduced to writing in compliance with subsection (4) of this section, a consumer may cancel a contract made as a result of a telephone solicitation and obtain a full refund of all money paid, by returning the goods, if any, undamaged and unused, or canceling services within the later of:

- (a) Fourteen (14) calendar days following receipt of the goods; or
- (b) Fourteen (14) calendar days following receipt of two (2) copies of a written notice of cancellation rights containing the following language in no less than ten (10) point, bold-faced type:

NOTICE OF CANCELLATION RIGHTS

BECAUSE YOU AGREED TO BUY THESE GOODS (or services or other appropriate description) AS A RESULT OF AN UNSOLICITED TELEPHONE CALL, KENTUCKY LAW GIVES YOU FOURTEEN (14) DAYS TO CANCEL YOUR AGREEMENT WITH US. IF YOU WANT TO CANCEL, YOU MUST SIGN YOUR NAME BELOW AND RETURN A COPY OF THIS NOTICE, TOGETHER WITH ANY GOODS YOU HAVE RECEIVED, SO THEY ARE POSTMARKED NO LATER THAN MIDNIGHT OF THE FOURTEENTH DAY FOLLOWING THE DATE YOU RECEIVED THE GOODS OR AGREED TO THE SERVICES, OR THE FOURTEENTH DAY FOLLOWING THE DATE YOU RECEIVED THIS NOTICE, WHICHEVER IS LATER. THE NOTICE AND GOODS MUST BE ADDRESSED AS FOLLOWS:

(Name and address of Merchant)

I want to cancel my agreement to purchase.

(Signature)

(Name of Consumer--Printed)

(Address of Consumer--Printed)

(Address--City, State, Zip)

(Date)

- (2) The consumer shall be deemed to have complied with subsection (1) of this section if the cancellation notice and goods, if any, are returned to the merchant and are postmarked by midnight of the fourteenth day.
- (3) The merchant shall process the refund due any consumer within thirty (30) days of receiving the merchandise returned by the consumer or the written cancellation provided in subsection (1) of this section.
- (4) The cancellation period provided in subsection (1) of this section shall not apply to a written contract signed by the consumer that:
 - (a) Complies with all applicable federal and state laws and regulations;
 - (b) Contains a description of the goods, services, investment or business opportunity, extension

of credit, or interest in realty matching the description used in the telephone solicitation;

(c) Contains the name, address, and telephone number of the merchant, the total price of the contract, including any finance or interest charges, and a detailed description of the goods, services, credit, or interest in realty being offered;

(d) Contains all oral or written representations made to the consumer in connection with the transaction; and

(e) Sets out in at least ten (10) point, bold-face type, immediately preceding the signature, the following statement:

**YOU ARE NOT OBLIGATED TO PAY ANY
MONEY UNLESS YOU SIGN THIS CONTRACT
AND RETURN IT TO THE MERCHANT.**

367.46963 REQUIREMENTS TO BE MET BEFORE ACCEPTING PAYMENT FROM OR CHARGING CONSUMER

No caller or merchant making or causing to be made a telephone solicitation shall request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account until either:

- (1) The merchant receives from the consumer a signed copy of a written contract complying with KRS 367.46961(4); or
- (2) The cancellation period provided in KRS 367.46961(1) has expired, and the consumer has not exercised his right to cancel.

367.46967 VIOLATION AS UNFAIR OR DECEPTIVE TRADE PRACTICE; POWERS OF ATTORNEY GENERAL

- (1) A violation by a caller or merchant of KRS 367.46951 to 367.46999 shall constitute an unfair, false, misleading, or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170.
- (2) All of the remedies, powers, and duties provided for the Attorney General by KRS 367.190 to 367.300 and the penalties provided in KRS 367.990, relating to acts and practices violating KRS 367.170 shall apply with equal force and effect to acts and practices declared unlawful by KRS 367.46951 to 367.46999.
- (3) Nothing in KRS 367.46951 to 367.46999 shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General authorized under any other provision of law.

367.46971 REGISTRATION FOR MERCHANTS DOING BUSINESS IN THIS STATE; FILING FEE; RENEWAL; ADDENDUM; WRITTEN CONFIRMATION OF RECEIPT OF FILING;

POSTING OF REGISTRATION STATEMENT

(1) At least ten (10) days prior to doing business in this state, a merchant shall file with the division the information described below and pay a filing fee of three hundred dollars (\$300). A merchant shall be deemed to do business in this state if the merchant solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state. The information required by this section shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the merchant, under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to KRS 367.46951 to 367.46999 shall be clearly identified and appended to the filing.

(2) Registration of a merchant shall be valid for one (1) year from the effective date thereof and may be renewed annually by making the filing required by this section and paying a filing fee of fifty dollars (\$50).

(3) If, prior to expiration of a merchant's annual registration, there is a material change in the information required by KRS 367.46951 to 367.46999, the merchant shall, within ten (10) days, file an addendum updating the information with the division. However, changes in salespersons soliciting on behalf of a merchant shall be updated by filing addenda, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall include the required information for all salespersons currently soliciting or having solicited on behalf of the merchant at any time during the period between the filing of the registration, or the last addendum, and the current addendum, and shall include information on salespersons no longer soliciting for the merchant as of the date of the filing of the current addendum.

(4) Upon receiving the filing and the filing fee pursuant to this section, the division shall send the merchant a written confirmation of receipt of the filing. If the merchant has more than one (1) business location, the written confirmation shall be sent to the merchant's principal business location as identified in the merchant's filing in sufficient numbers so that the merchant can meet the requirements of this subsection. Within ten (10) days of receipt of the confirmation, the merchant shall post in a conspicuous place at each of the merchant's business locations within this state a copy of the entire registration statement which has been filed with the division. Until confirmation of receipt of filing is received and posted, the merchant shall post in a conspicuous place at each of the merchant's business locations within this state a copy of the first page of the registration form sent to the department. The merchant shall also post in close proximity to either the confirmation of receipt of filing or the first page of the submitted registration form the name of the individual in charge of each location from which the merchant does business in this state.

367.46973 CONTENTS OF FILING

Each filing pursuant to KRS 367.46971 shall contain the following information:

(1) The name or names of the merchant, including the name under which the merchant is doing or intends to do business, if different from the name of the merchant, and the name of any parent or affiliated organization that will engage in business transactions with purchasers relating to sales

solicited by the merchant, or that accepts responsibility for statements made by, or acts of, the merchant relating to sales solicited by the merchant;

(2) The merchant's business form and place of organization and, if the merchant is a corporation, a copy of its articles of incorporation and bylaws and amendments to those, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered, along with a copy of the registration documents. The same information shall be included for any parent or affiliated organization disclosed pursuant to subsection (1) of this section;

(3) The complete street address of all locations designating the principal location from which the merchant will be conducting business. If the principal business location of the merchant is not in this state, then the merchant shall also designate which of its locations within this state is its main location;

(4) A listing of all telephone numbers to be used by the merchant and the address where each telephone using each of these telephone numbers is located;

(5) The name of and the office held by the merchant's officers, directors, trustees, general and limited partners, sole proprietor, and owners and the names of persons having management responsibilities in the merchant's business activities;

(6) The principal residence, the date of birth, and the driver's license number and state of issuance of each person named pursuant to subsection (5) of this section;

(7) The name and principal residence of each person the merchant leaves in charge at each location in which the merchant does business in this state, and the business location at which each of these persons is in charge;

(8) A statement, meeting the requirements of this subsection, as to both the merchant, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity and as to any person identified pursuant to subsection (5) or (7) of this section who:

(a) Has been convicted of a felony or a misdemeanor involving a violation of this article, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere shall be considered a conviction;

(b) Has had entered against him a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of KRS 367.46951 to 367.46999, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices;

(c) Is subject to an injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit of that agency, including, but not limited to, an action affecting any vocational license; or

(d) Has during the previous seven (7) tax years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited

partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity that has so filed or was so adjudicated or reorganized, during or within one (1) year after the period that the person held that position.

The statement required by paragraphs (a), (b), and (c) of this subsection shall identify the merchant or person, the court or administrative agency rendering the conviction, judgment, or order, the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. For purposes of paragraph (d) of this section, the statement required shall include the name and location of the merchant or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter;

(9) A list of the names, driver's license numbers and states of issuance, principal residence addresses, and telephone numbers of salespersons who solicit on behalf of the merchant, and any names the salesperson uses while soliciting;

(10) A description of the items the merchant is offering for sale and a copy of all sales scripts the merchant requires salespersons to use when soliciting prospective purchasers. If no sales script is required to be used, a statement to that effect shall be included;

(11) A copy of all sales information and literature including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information provided by the merchant to salespersons or of which the merchant informs salespersons, and a copy of all written materials the merchant sends to any prospective or actual purchaser;

(12) (a) If the merchant represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items, including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate, or one (1) or more items among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:

1. A list of the items offered;
2. The actual value or worth of each item described to prospective purchasers and the basis for the valuation; and
3. The price paid by the merchant to its supplier for each of these items and the name, address, and telephone number of each item's supplier;

(b) If the purchaser is to receive fewer than all of the items described by the merchant, the filing shall include the following:

1. The manner in which the merchant decides which item each prospective purchaser is to receive;
2. The odds a single prospective purchaser has of receiving each described item;
3. The name and address of each recipient who has, during the preceding twelve (12) months, or if the merchant has not been in business that long, during the period the merchant has been in business, received the item having the greatest value and the item with the smallest odds of being received; and
4. All rules, regulations, terms, and conditions a prospective purchaser must meet in order to

receive the item; and

(13) If the merchant is offering an investment, business, or employment opportunity, the filing shall include the following:

- (a) The number of consumers or investors who have participated to date;
- (b) The actual experience of the consumers or investors as measured by standards used in the sales presentations; and
- (c) If the opportunity is so recent that no actual performance experience exists, that fact shall be disclosed in all sales presentations, and no other representation of performance shall be made in sales presentations.

367.46977 DISCLOSURE REQUIREMENTS FOR SALE PRESENTATIONS

(1) If the merchant or telemarketer represents or implies that the consumer will receive a prize, award, or similar item of value from a number of such prizes or awards, all sales presentations shall include the actual number of individuals who have received the item having the greatest value, a description of the item, the market value of the item, the number of prizes to be awarded, the conditions to receive the item, the odds of winning, the statement that no purchase is necessary to win the prize or to participate in the promotion, and the actual number of individuals who have received the item with the least value within the preceding twelve (12) months or since the merchant or telemarketer has been in business if less than twelve (12) months.

(2) If the merchant or telemarketer is offering real estate, an investment, business, or employment opportunity, the sales presentation shall include the following:

- (a) The number of consumers or investors who have participated to date;
- (b) The actual experience of the consumers or investors as measured by the standards used in the sales presentations; and
- (c) The price of the real estate or investment;
- (d) The location of the real estate or investment;
- (e) Regarding an investment or business opportunity, the reasonable likelihood of success and a notice of the risk; and
- (f) If the opportunity is so recent that no actual performance experience exists, that fact shall be disclosed in all sales presentations, and no other representation of performance shall be made in sales presentations.

(3) If the sales presentation includes representations of prices below those usually charged for items, the sales presentation shall include the name of the manufacturer, importer, or supplier of such items and the locations within the merchant' or telemarketer's calling state or this state at which the items are offered at usual prices. If the item has never been sold in the merchant's or telemarketer's calling state or this state no representation of usual selling price shall be made.

(4) If presenting information on merchandise or service, the total cost of the goods or services that are the subject of the call shall be given.

(5) If any restrictions, limitations, or conditions for the purchase or investment exist, these shall be disclosed during the telephone sales presentation.

(6) Terms for refunds, cancellation, exchange, or repurchase of the subject of the sales presentation shall be disclosed during the telephone sales presentation.

367.46981 BOND REQUIRED FOR MERCHANTS; NOTIFICATION TO ATTORNEY GENERAL OF PROMOTION OFFERING PREMIUM

(1) Every merchant shall maintain a bond issued by a surety company admitted to do business in this state. The bond shall be in the amount of fifty thousand dollars (\$50,000) in favor of the Attorney General for the benefit of any person suffering injury or loss by reason of any violation of KRS 367.46951 to 367.46999 to be paid under the terms of any order of a court of competent jurisdiction obtained by the Attorney General, as a result of any violation of KRS 367.46951 to 367.46999. A copy of the bond shall be filed with the division.

(2) At least ten (10) days prior to the inception of any promotion offering a premium with an actual market value or advertised value of five hundred dollars (\$500) or more, the merchant shall notify the Attorney General in writing of the details of the promotion, describing the premium and its current market value, the value at which it is advertised or held out to the customer, the date the premium shall be awarded, and the conditions under which the award shall be made. The merchant shall maintain an additional bond for the greater of the current total market value or the advertised value of the premiums held out or advertised to be available to a purchaser or recipient. A copy of the bond shall be filed with the division. The bond, or a portion of it necessary to cover the cost of the award, shall be forfeited if the premium is not awarded to a bona fide customer within thirty (30) days of the date disclosed as the time of award or the time otherwise required by law. The proceeds of the bond shall be paid to any person suffering injury or loss by reason of any violation of KRS 367.46951 to 367.46999 or shall be paid pursuant to the terms of any order of a court of competent jurisdiction obtained by the Attorney General, Commonwealth's attorney, or county attorney as a result of any violation of KRS 367.46951 to 367.46999. The bond shall be maintained until the merchant files with the Attorney General proof that the premium was awarded.

367.46983 AUTHORITY FOR ADMINISTRATIVE REGULATIONS

The Attorney General may promulgate administrative regulations necessary for the proper administration and enforcement of KRS 367.46951 to 367.46999.

367.46987 PERSON USING ELECTRONIC EQUIPMENT FOR SOLICITATION DEEMED TO HAVE ACCEPTED KENTUCKY LAW

Any merchant, caller, or other person who uses electronic equipment within this Commonwealth for purposes of telephone solicitation shall, as a condition of that use, be deemed to have accepted the provisions of KRS 367.46951 to 367.46999 and of KRS Chapter 526.

367.46991 BURDEN OF PROVING EXEMPTION OR DEFENSE ON CLAIMANT

In a civil proceeding alleging a violation of KRS 367.46951 to 367.46999, the burden of proving an exemption shall be on the person claiming the exemption, and in a criminal proceeding alleging

a violation of KRS 367.46951 to 367.46999, the burden of producing evidence to support a defense based on an exemption shall be on the person claiming the exemption.

367.46999 PENALTY FOR VIOLATION; CONCURRENT ENFORCEMENT POWERS OF ATTORNEY GENERAL

Any person, including, but not limited to, a merchant, a telemarketer, a salesperson, agent or representative of the merchant, or an independent contractor, who knowingly violates any provision of KRS 367.46951 to 367.46999 or engages in any act, practice, or course of business which operates or would operate as fraud or deceit upon any person in connection with a sale shall be guilty of a Class D felony, except that any person who violates KRS 367.46955(7) to (16) shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for any subsequent offense. The Office of the Attorney General shall have concurrent enforcement powers as to such felonies and misdemeanors.