

KENTUCKY

Ky. Rev. Stat. Ann.

§367.46951. Definitions Pertaining to Telemarketing

As used in §§367.46951 to 367.46999 and 367.990, unless the context otherwise requires:

(1) "Telephone solicitation" means:

(1)(a) A live or recorded communication sent by a telephone 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)(a)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;

(1)(a)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;

(1)(a)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

(1)(a)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; or

(1)(b) A live or recorded communication sent by telephone, facsimile machine, mobile telephone, or telephone paging device 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)(b)1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;

(1)(b)2. That the recipient will receive a prize or gift if the recipient calls the merchant or telemarketer; or

(1)(b)3. That if the recipient buys one 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:

(2)(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;

(2)(b) A telephone call made to the debtor or a party to the contract 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;

(2)(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;

(2)(d) A telephone call made by the following:

(2)(d)1. A merchant or telemarketer located in Kentucky to a location outside of the Commonwealth of Kentucky;

(2)(d)2. A telephone call made by one merchant to another;

(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 §365.015(1), or the assumed name of the merchant for which all proper certificates have been filed pursuant to §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;

(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:

(12)(a) Subject to §12 of the Securities Exchange Act of 1934 (15 U.S.C. §781) 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;

(12)(b) Listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; or

(12)(c) A reported security within the meaning of Regulation §240.11Aa3-1.(a)(4) 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 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; and

(14) "Zero call list" means the national Do Not Call Registry maintained by the United States Federal Trade Commission containing the residential or wireless telephone numbers of the individuals that indicate their preference not to receive telephone solicitations.

Created by Chapter 302, §1, and Chapter 463, §1, Acts of 1994, effective July 15, 1994.

Amended by Chapter 426, §573, and Chapter 581, §1, Acts of 1998, effective July 15, 1998;

Chapter 21, §1, Acts of 2002, effective July 15, 2002; and Chapter 115, §1, Acts of 2007, effective June 26, 2007.

§367.46955. Prohibited Acts Relating to Telemarketing

It is a prohibited telephone solicitation act or practice and a violation of §§367.46951 to 367.46999 for any person making a telephone solicitation 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, or charging a credit card account or making electronic transfer of funds except in conformity with §367.46963;
- (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 18 years of age. When making a telephone solicitation the telemarketer shall inquire as to whether the person is 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 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 residential number for that telephone appears in the current publication of the national Do Not Call Registry maintained by the United States Federal Trade Commission;
- (16) Making telephone solicitations 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;
- (17) Selling or making available for economic gain any information revealed during a telephone solicitation without the express written consent of the consumer;
- (18) Making a telephone solicitation to any residential telephone using an artificial or prerecorded voice to deliver a message, unless the call is initiated for emergency purposes by schools regulated by the Kentucky Department of Education or the call is made with the prior express consent of the called party; or
- (19) Engaging in any unfair, false, misleading, or deceptive practice or act as part of a telephone solicitation.

Created by Chapter 581, §3, Acts of 1998, effective July 15, 1998. Amended by Chapter 21, §1, Acts of 2002, effective July 15, 2002; and Chapter 115, §2, Acts of 2007, effective June 26, 2007.

§367.46967. Enforcement of Laws Governing Telemarketing

- (1) A violation by a telemarketing company, telemarketer, caller, or merchant of §§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 §367.170.
- (2) All of the remedies, powers, and duties provided for the Attorney General by §§367.190 to 367.300 and the penalties provided in §367.990, relating to acts and practices violating §367.170 shall apply with equal force and effect to acts and practices declared unlawful by §§367.46951 to 367.46999.
- (3) Nothing in §§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.

*Created by Chapter 302, §6, and Chapter 463, §6, Acts of 1994, effective July 15, 1994.
Amended by Chapter 21, §7, Acts of 2002, effective July 15, 2002.*

§367.46999. Penalty for Violating Laws Governing Telemarketing

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 §§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 §367.46955(7) to §367.46955(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.
*Created by Chapter 302, §14, and Chapter 463, §14, Acts of 1994, effective July 15, 1994.
Amended by Chapter 581, §4, effective July 15, 1998.*