

**367.46951 Definitions for KRS 367.46951 to 367.46999 and 367.990.**

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

- (1) "Telephone solicitation" means:
  - (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. 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; or
  - (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. 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 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;
- (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 the following:
  - 1. A merchant or telemarketer located in Kentucky to a location outside of the Commonwealth of Kentucky;
  - 2. A telephone call made by one (1) 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 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;
- (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; 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.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 115, sec. 1, effective June 26, 2007. -- Amended 2002 Ky. Acts ch. 21, sec. 1, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 426, sec. 573, effective July 15, 1998; and ch. 581, sec. 1, effective July 15, 1998. -- Created 1994 Ky. Acts ch. 302, sec. 1, effective July 15, 1994; and ch. 463, sec. 1, effective July 15, 1994.

**Legislative Research Commission (7/15/94).** This statute was created by 1994 Ky. Acts chs. 302 and 463, which are substantively identical and have been codified together. Minor variations have been resolved by giving precedence to Acts ch. 463 which was enacted last.