

### **367.46973 Contents of filing.**

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

- (1) The name or names of the telemarketing company, including the name under which the telemarketing company is doing or intends to do business, if different from the name of the telemarketing company, and the name of any parent or affiliated organization that will engage in business transactions with purchasers relating to sales solicited by the telemarketing company, or that accepts responsibility for statements made by, or acts of, the telemarketing company relating to sales solicited by the telemarketing company;
- (2) The telemarketing company's business form and place of organization and, if the telemarketing company 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 telemarketing company will be conducting business. If the principal business location of the telemarketing company is not in this state, then the telemarketing company 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 telemarketing company and the address where each telephone using each of these telephone numbers is located;
- (5) The name of and the office held by the telemarketing company's officers, directors, trustees, general and limited partners, sole proprietor, and owners and the names of persons having management responsibilities in the telemarketing company'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 telemarketing company leaves in charge at each location in which the telemarketing company 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 telemarketing company, 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 telemarketing company 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 telemarketing company 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 telemarketing company, and any names the salesperson uses while soliciting;
- (10) A description of the items the telemarketing company is offering for sale and a copy of all sales scripts the telemarketing company 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 telemarketing company to salespersons or of which the telemarketing company informs salespersons, and a copy of all written materials the telemarketing company sends to any prospective or actual purchaser;
- (12) (a) If the telemarketing company 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 telemarketing company 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 telemarketing company, the filing shall include the following:
1. The manner in which the telemarketing company 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 telemarketing company has not been in business that long, during the period the telemarketing company 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 telemarketing company 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.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 115, sec. 4, effective June 26, 2007. -- Created 1994 Ky. Acts ch. 302, sec. 8, effective July 15, 1994; and ch. 463, sec. 8, effective July 15, 1994.

**Legislative Research Commission Note (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.