

## Kentucky and the Telephone Consumer Protection Act (TCPA), 47 USCS § 227

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Kentucky has not specifically adopted its own Telephone Consumer Protection Act (TCPA), 47 USCS § 227, but has enacted similar statutes that have stringent requirements for telephone solicitations (both automated and non-automated). In addition, Kentucky has enacted legislation that places strict limitations and penalties on telephone solicitors who call individuals registered with Kentucky's "No Call List."

### Kentucky Consumer Protection Act, KRS 367.170, *et seq.* and Kentucky Telemarketing No Call Statute, 367.46951, *et seq.*

- Kentucky's Consumer Protection Act, KRS 367.170, *et seq.*, sets forth a number of restrictions, compliance requirements, and remedies for telephone solicitation violations.
  - Similar to the TCPA, KRS 367.461 is entitled "Conditions for use of automated calling equipment" and provides, *inter alia*, that "no person shall use automated calling equipment . . ." unless the following conditions are met:
    - The person receiving the call consents to it, as specified in KRS 367.463;
    - 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;
    - 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;
    - 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;
- Calls using the automated calling equipment are made only between 8:00 a.m. and 9:00 p.m.; and
- 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.
- KRS 367.463 provides the manner in which consent to automatic calls may be obtained by a solicitor, *e.g.*, written consent or providing keyed consent response.
- KRS 367.467 is entitled “Applicability of Remedies of Consumer Protection Act” and provides that “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.”
- Kentucky’s Telemarketing No Call statute is set forth in KRS 367.46951 to 367.46999 and applies to all telephone solicitations that are placed to residential or wireless telephone numbers of the Kentucky “No Call” list regardless of origin.
  - KRS 367.46953 sets forth specific “[r]equirements for making telephone solicitation[s]” and provides that a “caller making a telephone solicitation shall (1) [i]mmediately 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) [w]ithin 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) [i]mmediately discontinue the solicitation if the consumer responds in the negative.”
  - KRS 367.46953. KRS 367.46955 sets forth “[p]rohibited telephone solicitation acts and practices” and prohibits, *inter alia*, making telephone solicitations to anyone under eighteen (18) years of age and making telephone solicitations to a person’s residence at any time other than 10 a.m. to 9 p.m. local time.

## Practices for Compliance with KCPA and Kentucky’s “No Call” List Statute

- A person or entity that intends to conduct telephone solicitations (automated or non-automated) should familiarize themselves with the statutes and applicable regulations as identified herein.
- “Automated Calling Equipment” is defined in KRS 367.461, and 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.
- KRS 367.469 provides that prior to using “Automated Calling Equipment” to call telephone numbers in the Commonwealth of Kentucky, a person or company is required to file an Application for Automated Calling Equipment Permit and a \$10,000 surety bond with the Office of Attorney General, unless covered by one (1) of the exceptions in KRS 367.461(3).
- No person is permitted to use “Automated Calling Equipment” for conducting polls, for soliciting information, or for advertising goods, services, or property unless the conditions set forth in KRS 367.461(2), (a)-(f) (set forth above) are met.
- 40 KAR 2:070 provides procedures for registration of telemarketing companies. A telemarketer must register for telephone solicitation pursuant to KRS 367.46971 by completing the “Commonwealth of

## Kentucky

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Kentucky Telemarketing Company Registration Statement” which can be located at the following link ([https://www.ag.ky.gov/AG%20Business%20Forms/TS-1\\_Telemarketing-Registration-Statement.pdf](https://www.ag.ky.gov/AG%20Business%20Forms/TS-1_Telemarketing-Registration-Statement.pdf)) and paying a fee as required by KRS 367.46971.