

CHAPTER 216

(HB 688)

AN ACT relating to contract formation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 372 IS CREATED TO READ AS FOLLOWS:

- (1) *Any term which is defined in the Uniform Commercial Code, KRS Chapter 355, shall have that same meaning in this section, unless the context otherwise requires.*
- (2) *Any person soliciting business in this Commonwealth who intends to make an offer for contract formation by sending through the mail, as part of the solicitation, what appears to be a check or other item payable to the recipient where the indorsement and subsequent negotiation of the item by the recipient is intended by any party to the item, or agent or assignee thereof, to form an acceptance of the contract shall make the following disclosure in upper case twelve (12) point bold face type immediately adjacent to the designated place of indorsement: "BY SIGNING AND DELIVERING THIS DOCUMENT YOU AGREE TO PAY FOR FUTURE SERVICES ARISING OUT OF THIS CONTRACT."*
- (3) *A purported offer described in subsection (2) of this section that does not contain the required disclosure, to the extent a subsequent indorsement and negotiation of the item would otherwise constitute an acceptance, shall not be a valid offer for contract formation in this Commonwealth.*
- (4) *If a purported offer which meets the requirements in subsection (2) relates to a free membership period, trial period, or some other similar acceptance incentive that is prescribed by a time limit and which purports to form a contract without a cancellation, rescission, revocation, or other form of termination by the recipient prior to the end of such a period, then the offeror shall send notice to the recipient at least two (2) weeks prior to the end of that time period of the recipient's purported obligation to cancel, rescind, revoke, or otherwise terminate the recipient's purported acceptance before a purported contract is formed. The notice shall be readily apparent on any communication from the offeror and it shall be in upper case twelve (12) point bold face type and in the following form: "YOU MUST ACT NOW TO AVOID FUTURE CHARGES." Any time period described under this subsection that is part of a purported offer described in subsection (2) of this section and that is less than two (2) weeks shall not be a valid offer for contract formation in this Commonwealth.*
- (5) *If a purported offer described in subsection (2) of this section does not contain the required disclosure, or is not followed by the required notice, then any goods or services delivered to the recipient pursuant to the purported offer shall not operate to form a contract by or between the offeror and the recipient. Any such offer or purported contract as a result thereof is void as against the public policy of the Commonwealth.*
- (6) *An attempt by an offeror, or an agent or assignee thereof, to enforce a purported contract or to bind a recipient to a purported acceptance arising out of a purported offer that does not comply with this section shall be a violation of the Consumer Protection Act, KRS 367.170 to 367.300. Remedies available for a violation of KRS 367.170 to 367.300 shall be in addition to any remedies available at common law or under this section.*

- (7) *The Attorney General, Commonwealth's attorneys, and county attorneys shall have concurrent jurisdiction to enforce the provisions of this section in a court of the county where the purported offer was received.*
- (8) *Any waiver by the recipient of jurisdiction for actions arising out of a purported offer under this section shall be void. Any depository bank or holder in due course of an item which does not meet the requirements of subsection (2) of this section or, as the case may be subsection (4) of this section, shall be held harmless by the offeror of the item, or an agent or assignee thereof.*
- (9) *Nothing contained in this section shall apply to licensed lenders that are regulated by the Commonwealth of Kentucky, or to a bank regulated by the federal government or any agency thereof.*

Approved April 5, 2002