

1 AN ACT relating to the termination of automatic renewal offers and continuous  
2 service offers.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
5 READ AS FOLLOWS:

6 *As used in Sections 1 to 4 of this Act, unless the context indicates otherwise:*

7 *(1) "Automatic renewal" means a plan or arrangement in which a paid subscription*  
8 *or purchasing agreement is automatically renewed at the end of a definite term*  
9 *for a subsequent term.*

10 *(2) "Automatic renewal offer terms" means a clear and conspicuous disclosure:*

11 *(a) That the subscription or purchasing agreement will continue until the*  
12 *consumer cancels;*

13 *(b) Describing the cancellation policy that applies to the offer;*

14 *(c) That the recurring charges that will be charged to the consumer's credit or*  
15 *debit card or payment account with a third party as part of the automatic*  
16 *renewal plan or arrangement, and if the amount of the charge changes, the*  
17 *amount to which the charge will change, if known;*

18 *(d) Of the length of the automatic renewal term, unless the length of the term is*  
19 *chosen by the consumer; and*

20 *(e) Of a minimum purchase obligation, if any.*

21 *(3) "Clear and conspicuous" means:*

22 *(a) In larger type than the surrounding text, or in contrasting type, font, or*  
23 *color to the surrounding text of the same size, or set off from the*  
24 *surrounding text of the same size by symbols or other marks, in a manner*  
25 *that clearly calls attention to the language.*

26 *(b) In the case of an audio disclosure, "clearly and conspicuously" means in a*  
27 *volume and cadence sufficient to be readily audible and understandable.*

1 (4) "Continuous service" means a plan or arrangement in which a subscription or  
2 purchasing agreement continues until the consumer cancels the service.

3 (5) "Continuous service offer terms" means the clear and conspicuous disclosure:

4 (a) That the subscription or purchasing agreement will continue until the  
5 consumer cancels;

6 (b) Of a description of the cancellation policy that applies to the offer;

7 (c) Of recurring charges that will be charged to the consumer's credit or debit  
8 card or payment account with a third party as part of the continuous service  
9 plan or arrangement, and that the amount of the charge may change, if that  
10 is the case, and the amount to which the charge will change, if known;

11 (d) Of the length of the service plan is continuous; and

12 (e) Of a minimum purchase obligation, if any.

13 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
14 READ AS FOLLOWS:

15 (1) A business making an automatic renewal or continuous service offer to a  
16 consumer in this state shall:

17 (a) Present the automatic renewal offer terms or continuous service offer terms  
18 in a clear and conspicuous manner before the subscription or purchasing  
19 agreement is fulfilled and in visual proximity, or in the case of an offer  
20 conveyed by voice, in temporal proximity, to the request for consent to the  
21 offer. If the offer also includes a free gift or trial, the offer shall include a  
22 clear and conspicuous explanation of the price that will be charged after the  
23 trial ends or the manner in which the subscription or purchasing agreement  
24 pricing will change upon conclusion of the trial;

25 (b) Obtain the consumer's affirmative consent to the agreement with the  
26 automatic renewal offer terms or continuous service offer terms, including  
27 the terms of an automatic renewal offer or continuous service offer that is

1 made at a promotional or discounted price for a limited period of time,  
2 before charging the consumer's credit or debit card, or the consumer's  
3 account with a third party;

4 (c) Provide an acknowledgment that includes the automatic renewal offer or  
5 continuous service offer, cancellation policy, and information regarding  
6 how to cancel in a manner that is capable of being retained by the  
7 consumer. If the automatic renewal offer or continuous service offer  
8 includes a free gift or trial, the business shall also disclose in the  
9 acknowledgment how to cancel, and allow the consumer to cancel, the  
10 automatic renewal or continuous service before the consumer pays for the  
11 goods or service;

12 (d) Provide a toll-free telephone number, electronic mail address, a postal  
13 address if the seller directly bills the consumer, or it shall provide another  
14 cost-effective, timely, and easy-to-use mechanism for cancellation that shall  
15 be described in the acknowledgment specified in paragraph (c) of this  
16 subsection;

17 (e) Provide a consumer who accepts an automatic renewal or continuous  
18 service offer in one medium the option to terminate the automatic renewal  
19 or continuous service in the same medium. For online acceptance, exclusive  
20 termination online must be allowed, and may also include a termination-  
21 mail formatted and provided by the business that a consumer can send to  
22 the business without additional information; and

23 (f) Prior to implementation of a material change, provide the consumer notice  
24 of any material change to the terms of the automatic renewal that has been  
25 accepted by a consumer via a clear and conspicuous notice, as well as  
26 information regarding how to cancel in a manner that is capable of being  
27 retained by the consumer.

1 (2) The requirements of this section shall apply only prior to the completion of the  
 2 initial order for the automatic renewal or continuous service, except that:

3 (a) The requirement in paragraph (c) of subsection (1) of this section may be  
 4 fulfilled after completion of the initial order; and

5 (b) The requirement in paragraph (f) of subsection (1) of this section shall be  
 6 fulfilled prior to implementation of the material change.

7 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
 8 READ AS FOLLOWS:

9 If the business fails to obtain the consumer's affirmative consent as required in  
 10 Section 2 of this Act, any goods, wares, merchandise, or products sent to a consumer  
 11 under an automatic renewal of a purchase or continuous service agreement shall for  
 12 all purpose be deemed an unconditional gift to the consumer, who may use or dispose  
 13 of the same in any manner he or she sees fit without any obligation whatsoever on the  
 14 consumer's part to the business, including but not limited to bearing the cost of or  
 15 responsibility for, shipping any goods, wares, merchandise, or products to the business.

16 ➔Section 4. KRS 365.990 is amended to read as follows:

17 (1) Any person who violates any of the provisions of KRS 365.015 shall be fined not  
 18 less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or  
 19 imprisoned for not less than ten (10) days nor more than thirty (30) days, or both,  
 20 and each day that the violation continues shall constitute a separate offense.

21 (2) Any person who violates any of the provisions of KRS 365.020 to 365.050 shall, for  
 22 each offense, be fined not less than one hundred dollars (\$100) nor more than one  
 23 thousand dollars (\$1,000), or imprisoned for not more than six (6) months, or both.  
 24 Any person who, as agent of any person or as director, officer, or agent of any  
 25 corporation assists or aids in a violation of any of such provisions by the person or  
 26 corporation for which he is director, officer, or agent, shall be responsible therefor  
 27 equally with such person or corporation, and, in a prosecution brought by the local

- 1 Commonwealth's attorney against him under this subsection, it shall be sufficient to  
2 allege and prove the unlawful intent of the person or corporation for whom he acts.
- 3 (3) Any person who violates any of the provisions of KRS 365.100 shall be fined not  
4 less than two hundred dollars (\$200) for each offense.
- 5 (4) Any person who violates any of the provisions of KRS 365.110 shall be fined not  
6 less than ten dollars (\$10) nor more than fifty dollars (\$50) for each offense.
- 7 (5) Any agent or employee of a corporation or any other person who violates any of the  
8 provisions of subsection (2) of KRS 365.220 shall be fined not less than one  
9 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each  
10 offense, and each day's continuance of the violation shall constitute a separate  
11 offense.
- 12 (6) A conviction of a corporation of violating any of the provisions of KRS 365.210 or  
13 365.220 shall operate to forfeit its charter or right to do business in this state.  
14 Proceedings may be instituted by the Commonwealth's attorney in any district in  
15 this state to forfeit the charter or right to do business in this state of any corporation  
16 violating any of the provisions of KRS 365.210 or 365.220, and to subject the  
17 corporation charged, if found guilty, to the penalty imposed in subsection (7) of this  
18 section.
- 19 (7) Any company that violates any of the provisions of KRS 365.230 shall be fined not  
20 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000),  
21 and if it is a corporation it shall, upon conviction, forfeit its charter.
- 22 (8) Any person or entity that transacts a transient business as defined in KRS 365.650  
23 without first having obtained a permit in accordance with the provisions of KRS  
24 365.660, 365.665, 365.680 or 365.685 or who knowingly advertises, offers for sale,  
25 or sells any goods, wares, or merchandise in violation of the provisions of KRS  
26 365.650 to 365.695, is guilty of a misdemeanor and shall, upon conviction, be fined  
27 not more than five hundred dollars (\$500) or shall be imprisoned in the county jail

1 for not more than six (6) months, or both.

2 **(9) Any person who violates Section 2 or 3 of this Act shall be fined not more than**  
3 **five thousand dollars (\$5,000) for each offense. No civil penalty shall be enforced**  
4 **against businesses who make a good faith effort to comply with the requirements**  
5 **of Sections 2 and 3 of this Act.**