

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 5 of this Act, unless the context indicates otherwise:*

7 *(1) "Affirmative consent" means an affirmation made by the consumer that he or*  
8 *she understands and agrees to the terms of the subscription, gift subscription,*  
9 *membership, gift membership, or purchasing agreement or any material change*  
10 *to the terms of the subscription, gift subscription, membership, gift membership,*  
11 *or purchasing agreement;*

12 *(2) "Automatic renewal" means a plan or arrangement in which a paid subscription,*  
13 *membership, or purchasing agreement is automatically renewed at the end of a*  
14 *definite term for a subsequent term;*

15 *(3) "Automatic renewal offer terms" means a clear and conspicuous disclosure:*

16 *(a) That the subscription, membership, or purchasing agreement will continue*  
17 *to be renewed until the consumer cancels;*

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

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

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

25 *(e) Of a minimum purchase obligation, if any;*

26 *(4) (a) "Business" means a sole proprietorship, partnership, corporation, limited*  
27 *liability company, association, or other entity, however organized and*

1 whether or not organized to operate at a profit.

2 (b) "Business" does not mean:

3 1. A bank as defined in 12 U.S.C. sec. 1813(a) or Subtitles 1, 2, and 3 of  
4 KRS Chapter 286;

5 1. A credit union as defined in 12 U.S.C. sec. 1752 or Subtitle 6 of KRS  
6 Chapter 286;

7 2. A savings association as defined in 12 U.S.C. sec. 1813(b);

8 3. A consumer loan company as licensed under Subtitle 4 of KRS  
9 Chapter 286; or

10 4. Any person or entity that is an insurer as defined in KRS 304.1-040  
11 and regulated under KRS Chapter 304;

12 (5) "Clear and conspicuous" means:

13 (a) In larger type than the surrounding text, or in contrasting type, font, or  
14 color to the surrounding text of the same size, or set off from the  
15 surrounding text of the same size by symbols or other marks, in a manner  
16 that clearly calls attention to the language; or

17 (b) In the case of an audio disclosure, in a volume and cadence sufficient to be  
18 readily audible and understandable;

19 (6) "Continuous service" means a plan or arrangement in which the terms of a  
20 subscription, membership, or purchasing agreement continue until the consumer  
21 cancels the service;

22 (7) "Continuous service offer terms" means the clear and conspicuous disclosure:

23 (a) That the terms of the purchasing agreement will continue until the  
24 consumer cancels;

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

26 (c) Of recurring charges that will be charged to the consumer's credit or debit  
27 card or payment account with a third party as part of the continuous service

- 1           plan or arrangement, and that the amount of the charge may change, if that  
2           is the case, and the amount to which the charge will change, if known;
- 3           (d) That the length of the service plan is continuous; and  
4           (e) Of a minimum purchase obligation, if any;
- 5           (8) "Gift membership" means a membership that is:  
6           (a) Purchased by one (1) consumer on behalf of another; and  
7           (b) Not subject to renewal or rebilling;
- 8           (9) "Gift subscription" means a subscription that is:  
9           (a) Purchased by one (1) consumer on behalf of another; and  
10           (b) Not subject to renewal or rebilling;
- 11           (10) "Material change" means a change in any of the terms of a purchasing  
12           agreement;
- 13           (11) "Membership" means an agreement:  
14           (a) Allowing a consumer to enter or utilize a location or facility, or otherwise  
15           conduct business therein, at will, during a defined period of time;  
16           (b) For which the consumer is billed either once for the entirety of the term of  
17           the membership or at agreed upon intervals throughout the term of the  
18           membership; and  
19           (c) That expires at the conclusion of the definite period of time during which  
20           the consumer has access to the location or facility, as outlined in a  
21           purchasing agreement setting forth the terms of the membership;
- 22           (12) "Purchasing agreement" means all of the terms, including but not limited to any  
23           free gift or trial, initial price and charges, type and quantity of goods or services,  
24           duration, billing intervals, any automatic renewal offer terms, and any  
25           continuous service offer terms that constitute an automatic renewal, continuous  
26           service, membership, gift membership, subscription, or gift subscription; and
- 27           (13) "Subscription" means any agreement for the purchase of goods or services in

1 which:

2 (a) Goods or services are supplied to the consumer at distinct intervals over a  
3 defined period of time;

4 (b) The consumer is billed for the subscription either once for the entirety of  
5 the term of the subscription or at agreed upon intervals throughout the term  
6 of the subscription; and

7 (c) The subscription expires at the conclusion of the definite period of time  
8 outlined in the agreement for which the goods or services are to be supplied.

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

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

13 (a) Present the automatic renewal offer terms or continuous service offer terms  
14 in a clear and conspicuous manner and in visual proximity, or in the case  
15 of an offer conveyed by voice, in temporal proximity, to the request for  
16 affirmative consent to the offer before the consumer's credit or debit card,  
17 or the consumer's account with a third party, is charged. If the offer also  
18 includes a free gift or trial, the offer shall include a clear and conspicuous  
19 explanation of the price that will be charged after the trial ends or the  
20 manner in which the subscription, membership, or purchasing agreement  
21 pricing will change upon conclusion of the trial as well as the precise  
22 duration of the trial;

23 (b) Obtain the consumer's affirmative consent to the purchasing agreement  
24 with the automatic renewal offer terms or continuous service offer terms,  
25 including the terms of an automatic renewal offer or continuous service  
26 offer that is made at a promotional or discounted price for a limited period  
27 of time, before charging the consumer's credit or debit card, or the

1 consumer's account with a third party;

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

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

15 (e) Provide a consumer who accepts an automatic renewal or continuous  
16 service in one (1) medium the option to cancel the automatic renewal or  
17 continuous service and, if a refund policy is present, the option to request a  
18 refund, in the same medium. For online acceptance, exclusive cancellation  
19 and refund requests online shall be allowed, and may also include a  
20 cancellation and refund electronic mail formatted and provided by the  
21 business that a consumer can send to the business without additional  
22 information;

23 (f) Provide a mechanism by which a consumer who accepts an automatic  
24 renewal or continuous service may elect to change the method by which he  
25 or she remits payment for the automatic renewal or continuous service offer  
26 and instructions on how to make that change; and

27 (g) Prior to implementation of a material change, provide the consumer notice

1 of any material change to the terms of the automatic renewal or continuous  
2 service that has been accepted by a consumer via a clear and conspicuous  
3 notice, as well as information regarding how to cancel in a manner that is  
4 capable of being retained by the consumer.

5 (2) The requirements of this section shall apply only prior to charging the  
6 consumer's credit or debit card, or the consumer's account with a third party, for  
7 the initial charge made in connection with the automatic renewal or continuous  
8 service, except that:

9 (a) The requirement in subsection (1)(c) of this section:

10 1. May be fulfilled after the initial charge made in connection with the  
11 automatic renewal or continuous service, if it does not include a free  
12 gift or trial, but shall be fulfilled prior to any subsequent charge or  
13 renewal; or

14 2. Shall be fulfilled prior to the conclusion of any free gift or trial and  
15 before the customer is billed if a free gift or trial is included with the  
16 automatic renewal or continuous service;

17 (b) The requirement in subsection (1)(g) of this section shall be fulfilled prior  
18 to implementation of the material change; and

19 (c) The requirement in subsection (1)(f) of this section shall be made available  
20 to the consumer both prior to and after the initial charge made in  
21 connection with the automatic renewal or continuous service, and the  
22 consumer shall have the option to utilize the procedure outlined in  
23 subsection (1)(f) at any time throughout the duration of the automatic  
24 renewal or continuous service.

25 (3) It shall be considered an automatic renewal or continuous service under Sections  
26 1 to 5 of this Act if any business repeats a consumer's prior order of goods or  
27 services or continues to bill a customer for a singular purchase of goods or

1 services or a purchase of goods or services for a definite period of time unless the  
2 consumer separately initiates or expressly approves of the subsequent order or  
3 continuation.

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

6 (1) For any subscription for which the defined period of time exceeds thirty (30)  
7 days, the business providing the subscription shall notify the consumer of the  
8 expiration of the subscription no less than thirty (30) days, and no greater than  
9 sixty (60) days, prior to the expiration date. The notification shall be made in  
10 writing and conveyed by mail, electronic mail, or both.

11 (2) It shall be considered an automatic renewal or continuous service under Sections  
12 1 to 5 of this Act if any business, having provided a subscription to a consumer,  
13 continues to bill the consumer after the expiration of the subscription, unless the  
14 bill or charge specifically relates to goods or services provided in accordance with  
15 the terms of the subscription prior to its expiration or the consumer separately  
16 initiates or expressly approves of a subsequent order.

17 (3) It shall be considered an automatic renewal or continuous service under Sections  
18 1 to 5 of this Act if any business, having provided a gift subscription to a  
19 receiving consumer at the request of a requesting consumer:

20 (a) Continues to bill the requesting consumer or otherwise renews the gift  
21 subscription at the expiration of the gift subscription; or

22 (b) Begins to bill or charge the receiving consumer at the expiration of the gift  
23 subscription without first obtaining his or her affirmative consent and  
24 completing a new purchasing agreement with him or her.

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

27 (1) For any membership for which the defined period of time exceeds thirty (30)

1 days, the business providing the membership shall notify the consumer of the  
 2 expiration of the membership no less than thirty (30) days, and no greater than  
 3 sixty (60) days, prior to the expiration date. The notification shall be made in  
 4 writing and conveyed by mail, electronic mail, or both.

5 (2) It shall be considered an automatic renewal or continuous service under Sections  
 6 1 to 5 of this Act if any business, having provided a membership to a consumer,  
 7 continues to bill the consumer after the expiration of the membership, unless the  
 8 bill or charge specifically relates to access to or use of a facility provided in  
 9 accordance with the terms of the membership prior to its expiration or the  
 10 consumer separately initiates a request for or expressly approves of a charge for  
 11 subsequent access or use of the facility outside the terms of the membership.

12 (3) It shall be considered an automatic renewal or continuous service under Sections  
 13 1 to 5 of this Act if any business, having provided a gift membership to a  
 14 receiving consumer at the request of a requesting consumer:

15 (a) Continues to bill the requesting consumer or otherwise renews the gift  
 16 membership at the expiration of the gift membership; or

17 (b) Begins to bill or charge the receiving consumer at the expiration of the gift  
 18 membership without first obtaining his or her affirmative consent and  
 19 completing a new purchasing agreement with him or her.

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

22 If the business fails to obtain the consumer's affirmative consent as required in Section  
 23 2 of this Act, any goods, wares, merchandise, or products sent to a consumer, or access  
 24 and use of any facility granted to a consumer, under an automatic renewal of a  
 25 purchasing agreement or through the operation of a continuous service agreement  
 26 shall for all purposes be deemed an unconditional gift to the consumer, who may use  
 27 or dispose of the same in any manner he or she sees fit without any obligation

1 *whatsoever on the consumer's part to the business, including but not limited to bearing*  
2 *the cost of or responsibility for shipping any goods, wares, merchandise, or products to*  
3 *the business.*

4 →Section 6. KRS 365.990 is amended to read as follows:

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

9 (2) Any person who violates any of the provisions of KRS 365.020 to 365.050 shall, for  
10 each offense, be fined not less than one hundred dollars (\$100) nor more than one  
11 thousand dollars (\$1,000), or imprisoned for not more than six (6) months, or both.  
12 Any person who, as agent of any person or as director, officer, or agent of any  
13 corporation assists or aids in a violation of any of such provisions by the person or  
14 corporation for which he is director, officer, or agent, shall be responsible therefor  
15 equally with such person or corporation, and, in a prosecution brought by the local  
16 Commonwealth's attorney against him under this subsection, it shall be sufficient to  
17 allege and prove the unlawful intent of the person or corporation for whom he acts.

18 (3) Any person who violates any of the provisions of KRS 365.100 shall be fined not  
19 less than two hundred dollars (\$200) for each offense.

20 (4) Any person who violates any of the provisions of KRS 365.110 shall be fined not  
21 less than ten dollars (\$10) nor more than fifty dollars (\$50) for each offense.

22 (5) Any agent or employee of a corporation or any other person who violates any of the  
23 provisions of subsection (2) of KRS 365.220 shall be fined not less than one  
24 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each  
25 offense, and each day's continuance of the violation shall constitute a separate  
26 offense.

27 (6) A conviction of a corporation of violating any of the provisions of KRS 365.210 or

1       365.220 shall operate to forfeit its charter or right to do business in this state.  
2       Proceedings may be instituted by the Commonwealth's attorney in any district in  
3       this state to forfeit the charter or right to do business in this state of any corporation  
4       violating any of the provisions of KRS 365.210 or 365.220, and to subject the  
5       corporation charged, if found guilty, to the penalty imposed in subsection (7) of this  
6       section.

7       (7) Any company that violates any of the provisions of KRS 365.230 shall be fined not  
8       less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000),  
9       and if it is a corporation it shall, upon conviction, forfeit its charter.

10      (8) Any person or entity that transacts a transient business as defined in KRS 365.650  
11      without first having obtained a permit in accordance with the provisions of KRS  
12      365.660, 365.665, 365.680 or 365.685 or who knowingly advertises, offers for sale,  
13      or sells any goods, wares, or merchandise in violation of the provisions of KRS  
14      365.650 to 365.695, is guilty of a misdemeanor and shall, upon conviction, be fined  
15      not more than five hundred dollars (\$500) or shall be imprisoned in the county jail  
16      for not more than six (6) months, or both.

17      (9) *Any person or entity that violates Sections 1 to 5 of this Act shall be fined not*  
18      *more than five thousand dollars (\$5,000) for each offense. A civil penalty shall*  
19      *not be enforced against businesses that make a good-faith effort to comply with*  
20      *the requirements of Sections 1 to 5 of this Act.*