

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 specified period of more than one (1) month;*

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

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

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

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

12 6. Any person or entity providing service contracts as described in KRS
13 304.5-070; or

14 7. Providers of in-vehicle, roadside assistance, or travel subscription
15 services;

16 (5) "Clear and conspicuous" means:

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

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

23 (6) "Consumer" means an individual who acquires goods or services for personal,
24 family, or household purposes;

25 (7) "Continuous service" means a plan or arrangement in which the terms of a
26 subscription, membership, or purchasing agreement continue until the consumer
27 cancels the service;

- 1 (8) "Continuous service offer terms" means the clear and conspicuous disclosure:
2 (a) That the terms of the purchasing agreement will continue until the
3 consumer cancels;
4 (b) Of a description of the cancellation policy that applies to the offer;
5 (c) Of recurring charges that will be charged to the consumer's credit or debit
6 card or payment account with a third party as part of the continuous service
7 plan or arrangement, and that the amount of the charge may change, if that
8 is the case, and the amount to which the charge will change, if known;
9 (d) That the length of the service plan is continuous; and
10 (e) Of a minimum purchase obligation, if any;
11 (9) "Gift membership" means a membership that is:
12 (a) Purchased by one (1) consumer on behalf of another; and
13 (b) Not subject to renewal or rebilling;
14 (10) "Gift subscription" means a subscription that is:
15 (a) Purchased by one (1) consumer on behalf of another; and
16 (b) Not subject to renewal or rebilling;
17 (11) "Material change" means a change in any of the terms of a purchasing
18 agreement;
19 (12) "Membership" means an agreement:
20 (a) Allowing a consumer to enter or utilize a location or facility, or otherwise
21 conduct business therein, at will, during a defined period of time;
22 (b) For which the consumer is billed either once for the entirety of the term of
23 the membership or at agreed upon intervals throughout the term of the
24 membership; and
25 (c) That expires at the conclusion of the definite period of time during which
26 the consumer has access to the location or facility, as outlined in a
27 purchasing agreement setting forth the terms of the membership;

1 (13) "Purchasing agreement" means all of the terms, including but not limited to any
2 free gift or trial, initial price and charges, type and quantity of goods or services,
3 duration, billing intervals, any automatic renewal offer terms, and any
4 continuous service offer terms that constitute an automatic renewal, continuous
5 service, membership, gift membership, subscription, or gift subscription; and

6 (14) "Subscription" means any agreement for the purchase of goods or services in
7 which:

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

10 (b) The consumer is billed for the subscription either once for the entirety of
11 the term of the subscription or at agreed upon intervals throughout the term
12 of the subscription; and

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

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

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

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

1 duration of the trial;

2 (b) Obtain the consumer's affirmative consent to the purchasing agreement
3 with the automatic renewal offer terms or continuous service offer terms,
4 including the terms of an automatic renewal offer or continuous service
5 offer that is made at a promotional or discounted price for a limited period
6 of time, before charging the consumer's credit or debit card, or the
7 consumer's account with a third party;

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

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

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

1 information;

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

6 (g) Prior to implementation of a material change, provide the consumer notice
7 of any material change to the terms of the automatic renewal or continuous
8 service that has been accepted by a consumer via a clear and conspicuous
9 notice, as well as information regarding how to cancel in a manner that is
10 capable of being retained by the consumer.

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

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

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

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

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

25 (c) The requirement in subsection (1)(f) of this section shall be made available
26 to the consumer both prior to and after the initial charge made in
27 connection with the automatic renewal or continuous service, and the

1 consumer shall have the option to utilize the procedure outlined in
2 subsection (1)(f) at any time throughout the duration of the automatic
3 renewal or continuous service.

4 (3) It shall be considered an automatic renewal or continuous service under Sections
5 1 to 5 of this Act if any business repeats a consumer's prior order of goods or
6 services or continues to bill a customer for a singular purchase of goods or
7 services or a purchase of goods or services for a definite period of time unless the
8 consumer separately initiates or expressly approves of the subsequent order or
9 continuation.

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

12 (1) For any subscription for which the defined period of time exceeds one (1) month,
13 the business providing the subscription shall notify the consumer of the
14 expiration of the subscription no less than one (1) month, and no greater than
15 two (2) months, prior to the expiration date. The notification shall be made in
16 writing and conveyed by mail, electronic mail, or both.

17 (2) 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 subscription to a consumer,
19 continues to bill the consumer after the expiration of the subscription, unless the
20 bill or charge specifically relates to goods or services provided in accordance with
21 the terms of the subscription prior to its expiration or the consumer separately
22 initiates or expressly approves of a subsequent order.

23 (3) It shall be considered an automatic renewal or continuous service under Sections
24 1 to 5 of this Act if any business, having provided a gift subscription to a
25 receiving consumer at the request of a requesting consumer:

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

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

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

6 **(1) For any membership for which the defined period of time exceeds one (1) month,**
7 **the business providing the membership shall notify the consumer of the**
8 **expiration of the membership no less than one (1) month, and no greater than**
9 **two (2) months, 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 membership to a consumer,**
13 **continues to bill the consumer after the expiration of the membership, unless the**
14 **bill or charge specifically relates to access to or use of a facility provided in**
15 **accordance with the terms of the membership prior to its expiration or the**
16 **consumer separately initiates a request for or expressly approves of a charge for**
17 **subsequent access or use of the facility outside the terms of the membership.**

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

21 **(a) Continues to bill the requesting consumer or otherwise renews the gift**
22 **membership at the expiration of the gift membership; or**

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

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

1 *If the business fails to obtain the consumer's affirmative consent as required in Section*
2 *2 of this Act, any goods, wares, merchandise, or products sent to a consumer, or access*
3 *and use of any facility granted to a consumer, under an automatic renewal of a*
4 *purchasing agreement or through the operation of a continuous service agreement*
5 *shall for all purposes be deemed an unconditional gift to the consumer, who may use*
6 *or dispose of the same in any manner he or she sees fit without any obligation*
7 *whatsoever on the consumer's part to the business, including but not limited to bearing*
8 *the cost of or responsibility for shipping any goods, wares, merchandise, or products to*
9 *the business.*

10 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
11 READ AS FOLLOWS:

12 *Sections 1 to 5 of this Act shall not apply to any:*

13 *(1) Service provided by a business or its affiliate where either the business or its*
14 *affiliate is operating pursuant to a franchise issued by a political subdivision of*
15 *this state or a license, franchise, certificate, or other authorization issued by the*
16 *Kentucky Public Service Commission; or*

17 *(2) Service provided by a business or its affiliate where either the business or its*
18 *affiliate is regulated by the Kentucky Public Service Commission, the Federal*
19 *Communications Commission, or the Federal Energy Regulatory Commission.*

20 ➔Section 7. KRS 365.990 is amended to read as follows:

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

25 (2) Any person who violates any of the provisions of KRS 365.020 to 365.050 shall, for
26 each offense, be fined not less than one hundred dollars (\$100) nor more than one
27 thousand dollars (\$1,000), or imprisoned for not more than six (6) months, or both.

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

1 365.660, 365.665, 365.680 or 365.685 or who knowingly advertises, offers for sale,
2 or sells any goods, wares, or merchandise in violation of the provisions of KRS
3 365.650 to 365.695, is guilty of a misdemeanor and shall, upon conviction, be fined
4 not more than five hundred dollars (\$500) or shall be imprisoned in the county jail
5 for not more than six (6) months, or both.

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