1   AN ACT relating to merchant processing agreements.

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

3   ➔SECTION 1.   A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO

4   READ AS FOLLOWS:

5   *(1)   As used in this section:*

6   *(a)   "Credit card processor" or "processor":*

7   *1.   Means a person that processes credit card or electronic commerce*

8   *transactions on behalf of a business for a fee; and*

9   *2.   Includes:*

10   *a.   A merchant services provider;*

11   *b.   A financial institution;*

12   *c.   An independent sales organization; and*

13   *d.   Any subsidiary or affiliate of a person listed in this*

14   *subparagraph; and*

15   *(b)   "Merchant processing agreement" or "agreement":*

16   *1.   Means a contract between a credit card processor and a business*

17   *under which the business agrees to pay the credit card processor for*

18   *processing credit card or electronic commerce transactions on behalf*

19   *of the business; and*

20   *2.   Includes any gift or sale of equipment or personal property that is*

21   *made to a business from a credit card processor in connection with an*

22   *agreement by the credit card processor to process credit card or*

23   *electronic commerce transactions on behalf of the business.*

24   *(2)   Except as provided in subsection (5) of this section, a credit card processor shall*

25   *not assess or charge a business a fee, fine, or penalty, including liquidated*

26   *damages, under a merchant processing agreement:*

27   *(a)   That exceeds the greater of the following for terminating the agreement*

1 *before the expiration of the term agreed upon by the processor and*

2 *business:*

3 *1. Five hundred dollars ($500); or*

4 *2. The unreimbursed cost of any equipment or other personal property*

5 *gifted or sold under the agreement; or*

6 *(b) For failing or declining to:*

7 *1. Renew the agreement; or*

8 *2. Enter into a subsequent merchant processing agreement.*

9 *(3) Except as provided in subsection (5) of this section, a credit card processor shall:*

10 *(a) Disclose clearly and conspicuously in bold twelve (12) point font the*

11 *following information on the signature page of a merchant processing*

12 *agreement:*

13 *1. The amount of any fee, fine, or penalty, including liquidated damages,*

14 *that may be assessed or charged by the credit card processor to the*

15 *business for termination of the agreement before the expiration of the*

16 *term agreed upon by the processor and business;*

17 *2. The expiration date of the agreement;*

18 *3. If applicable, the renewal date of the agreement; and*

19 *4. The customer service contact information of the credit card processor,*

20 *including telephone number, mailing address, and email address;*

21 *(b) Ensure that a merchant processing agreement contains, in addition to the*

22 *business signatory's signature, the initials of the business signatory next to*

23 *the information required under paragraph (a) of this subsection; and*

24 *(c) Provide a copy of a merchant processing agreement that contains the*

25 *information required under, and is initialed and signed in accordance with,*

26 *this subsection to a business:*

27 *1. In electronic or paper format; and*

1   ***2.***   ***At the time the business enters into the agreement.***

2   ***(4)***   ***(a)***   ***Any provision of a merchant processing agreement that violates subsection***

3   ***(2) of this section shall be void and unenforceable.***

4   ***(b)***   ***If a credit card processor violates subsection (3) of this section, any***

5   ***provision in the merchant processing agreement that assesses or charges an***

6   ***early termination fee, fine, or penalty, including liquidated damages, to the***

7   ***business shall be void and unenforceable.***

8   ***(5)***   ***This section shall not apply to a merchant processing agreement that:***

9   ***(a)***   ***May be terminated without the credit card processor assessing or charging a***

10   ***fee, fine, or penalty, including liquidated damages; or***

11   ***(b)***   ***Is entered into by a business that:***

12   ***1.***   ***Generates more than two million five hundred thousand dollars***

13   ***($2,500,000) in credit card or electronic commerce transactions each***

14   ***year; and***

15   ***2.***   ***Employs more than thirty (30) employees.***

16   ***(6)***   ***(a)***   ***The remedies and penalties set forth in this section shall be cumulative.***

17   ***(b)***   ***Nothing in this section shall be construed to limit or restrict the powers,***

18   ***duties, remedies, or penalties available to any person under any other***

19   ***statutory or common law.***

20   ➔Section 2.   This Act applies to contracts entered on or after the effective date of

21   this Act.