

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) "Clear and conspicuous" means:*

27 *(a) In larger type than the surrounding text, or in contrasting type, font, or*

- 1 color to the surrounding text of the same size, or set off from the
2 surrounding text of the same size by symbols or other marks, in a manner
3 that clearly calls attention to the language; or
- 4 (b) In the case of an audio disclosure, in a volume and cadence sufficient to be
5 readily audible and understandable;
- 6 (5) "Continuous service" means a plan or arrangement in which the terms of a
7 subscription, membership, or purchasing agreement continue until the consumer
8 cancels the service;
- 9 (6) "Continuous service offer terms" means the clear and conspicuous disclosure:
- 10 (a) That the terms of the purchasing agreement will continue until the
11 consumer cancels;
- 12 (b) Of a description of the cancellation policy that applies to the offer;
- 13 (c) Of recurring charges that will be charged to the consumer's credit or debit
14 card or payment account with a third party as part of the continuous service
15 plan or arrangement, and that the amount of the charge may change, if that
16 is the case, and the amount to which the charge will change, if known;
- 17 (d) That the length of the service plan is continuous; and
- 18 (e) Of a minimum purchase obligation, if any;
- 19 (7) "Gift membership" means a membership that is:
- 20 (a) Purchased by one (1) consumer on behalf of another; and
21 (b) Not subject to renewal or rebilling;
- 22 (8) "Gift subscription" means a subscription that is:
- 23 (a) Purchased by one (1) consumer on behalf of another; and
24 (b) Not subject to renewal or rebilling;
- 25 (9) "Material change" means a change in any of the terms of a purchasing
26 agreement;
- 27 (10) "Membership" means an agreement;

1 (a) Allowing a consumer to enter or utilize a location or facility, or otherwise
2 conduct business therein, at will, during a defined period of time;

3 (b) For which the consumer is billed either once for the entirety of the term of
4 the membership or at agreed upon intervals throughout the term of the
5 membership; and

6 (c) That expires at the conclusion of the definite period of time during which
7 the consumer has access to the location or facility, as outlined in a
8 purchasing agreement setting forth the terms of the membership;

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

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

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

18 (b) The consumer is billed for the subscription either once for the entirety of
19 the term of the subscription or at agreed upon intervals throughout the term
20 of the subscription; and

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

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

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

27 (a) Present the automatic renewal offer terms or continuous service offer terms

1 in a clear and conspicuous manner and in visual proximity, or in the case
2 of an offer conveyed by voice, in temporal proximity, to the request for
3 affirmative consent to the offer before the consumer's credit or debit card,
4 or the consumer's account with a third party, is charged. If the offer also
5 includes a free gift or trial, the offer shall include a clear and conspicuous
6 explanation of the price that will be charged after the trial ends or the
7 manner in which the subscription, membership, or purchasing agreement
8 pricing will change upon conclusion of the trial as well as the precise
9 duration of the trial;

10 (b) Obtain the consumer's affirmative consent to the purchasing agreement
11 with the automatic renewal offer terms or continuous service offer terms,
12 including the terms of an automatic renewal offer or continuous service
13 offer that is made at a promotional or discounted price for a limited period
14 of time, before charging the consumer's credit or debit card, or the
15 consumer's account with a third party;

16 (c) Provide an acknowledgment that includes the automatic renewal offer or
17 continuous service offer, cancellation policy, refund policy, and information
18 regarding how to cancel, as well as how to obtain a refund if a refund policy
19 exists, in a manner that is capable of being retained by the consumer. If the
20 automatic renewal offer or continuous service offer includes a free gift or
21 trial, the business shall also disclose in the acknowledgment how to cancel,
22 and allow the consumer to cancel, the automatic renewal or continuous
23 service before the consumer pays for the goods or service;

24 (d) Provide a toll-free telephone number, electronic mail address, a postal
25 address if the seller directly bills the consumer, or it shall provide another
26 cost-effective, timely, and easy-to-use mechanism for cancellation or
27 obtaining a refund that shall be described in the acknowledgment specified

1 in paragraph (c) of this subsection;

2 (e) Provide a consumer who accepts an automatic renewal or continuous
3 service in one (1) medium the option to cancel the automatic renewal or
4 continuous service and, if a refund policy is present, the option to request a
5 refund, in the same medium. For online acceptance, exclusive cancellation
6 and refund requests online shall be allowed, and may also include a
7 cancellation and refund electronic mail formatted and provided by the
8 business that a consumer can send to the business without additional
9 information;

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

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

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

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

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

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

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

6 (c) The requirement in subsection (1)(f) of this section shall be made available
 7 to the consumer both prior to and after the initial charge made in
 8 connection with the automatic renewal or continuous service, and the
 9 consumer shall have the option to utilize the procedure outlined in
 10 subsection (1)(f) at any time throughout the duration of the automatic
 11 renewal or continuous service.

12 (3) It shall be considered an automatic renewal or continuous service under Sections
 13 1 to 5 of this Act if any business repeats a consumer's prior order of goods or
 14 services or continues to bill a customer for a singular purchase of goods or
 15 services or a purchase of goods or services for a definite period of time unless the
 16 consumer separately initiates or expressly approves of the subsequent order or
 17 continuation.

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

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

25 (2) It shall be considered an automatic renewal or continuous service under Sections
 26 1 to 5 of this Act if any business, having provided a subscription to a consumer,
 27 continues to bill the consumer after the expiration of the subscription, unless the

1 bill or charge specifically relates to goods or services provided in accordance with
 2 the terms of the subscription prior to its expiration or the consumer separately
 3 initiates or expressly approves of a subsequent order.

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

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

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

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

14 (1) For any membership for which the defined period of time exceeds thirty (30)
 15 days, the business providing the membership shall notify the consumer of the
 16 expiration of the membership no less than thirty (30) days, and no greater than
 17 sixty (60) days, prior to the expiration date. The notification shall be made in
 18 writing and conveyed by mail, electronic mail, or both.

19 (2) It shall be considered an automatic renewal or continuous service under Sections
 20 1 to 5 of this Act if any business, having provided a membership to a consumer,
 21 continues to bill the consumer after the expiration of the membership, unless the
 22 bill or charge specifically relates to access to or use of a facility provided in
 23 accordance with the terms of the membership prior to its expiration or the
 24 consumer separately initiates a request for or expressly approves of a charge for
 25 subsequent access or use of the facility outside the terms of the membership.

26 (3) It shall be considered an automatic renewal or continuous service under Sections
 27 1 to 5 of this Act if any business, having provided a gift membership to a

1 receiving consumer at the request of a requesting consumer:

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

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

7 ➔SECTION 5. 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 Section
 10 2 of this Act, any goods, wares, merchandise, or products sent to a consumer, or access
 11 and use of any facility granted to a consumer, under an automatic renewal of a
 12 purchasing agreement or through the operation of a continuous service agreement
 13 shall for all purposes be deemed an unconditional gift to the consumer, who may use
 14 or dispose of the same in any manner he or she sees fit without any obligation
 15 whatsoever on the consumer's part to the business, including but not limited to bearing
 16 the cost of or responsibility for shipping any goods, wares, merchandise, or products to
 17 the business.

18 ➔Section 6. KRS 365.990 is amended to read as follows:

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

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

1 corporation for which he is director, officer, or agent, shall be responsible therefor
2 equally with such person or corporation, and, in a prosecution brought by the local
3 Commonwealth's attorney against him under this subsection, it shall be sufficient to
4 allege and prove the unlawful intent of the person or corporation for whom he acts.

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

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

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

14 (6) A conviction of a corporation of violating any of the provisions of KRS 365.210 or
15 365.220 shall operate to forfeit its charter or right to do business in this state.
16 Proceedings may be instituted by the Commonwealth's attorney in any district in
17 this state to forfeit the charter or right to do business in this state of any corporation
18 violating any of the provisions of KRS 365.210 or 365.220, and to subject the
19 corporation charged, if found guilty, to the penalty imposed in subsection (7) of this
20 section.

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

24 (8) Any person or entity that transacts a transient business as defined in KRS 365.650
25 without first having obtained a permit in accordance with the provisions of KRS
26 365.660, 365.665, 365.680 or 365.685 or who knowingly advertises, offers for sale,
27 or sells any goods, wares, or merchandise in violation of the provisions of KRS

1 365.650 to 365.695, is guilty of a misdemeanor and shall, upon conviction, be fined
2 not more than five hundred dollars (\$500) or shall be imprisoned in the county jail
3 for not more than six (6) months, or both.

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