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

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

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

As used in Sections 1 to 5 of this Act, unless the context indicates otherwise:

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

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

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

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

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

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

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

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

(4) "Clear and conspicuous" means:

(a) In larger type than the surrounding text, or in contrasting type, font, or
color to the surrounding text of the same size, or set off from the
surrounding text of the same size by symbols or other marks, in a manner
that clearly calls attention to the language; or
(b) In the case of an audio disclosure, in a volume and cadence sufficient to be
readily audible and understandable;

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

(6) "Continuous service offer terms" means the clear and conspicuous disclosure:
(a) That the terms of the purchasing agreement will continue until the
    consumer cancels;
(b) Of a description of the cancellation policy that applies to the offer;
(c) Of recurring charges that will be charged to the consumer's credit or debit
    card or payment account with a third party as part of the continuous service
    plan or arrangement, and that the amount of the charge may change, if that
    is the case, and the amount to which the charge will change, if known;
(d) That the length of the service plan is continuous; and
(e) Of a minimum purchase obligation, if any;

(7) "Gift membership" means a membership that is:
(a) Purchased by one (1) consumer on behalf of another; and
(b) Not subject to renewal or rebilling;

(8) "Gift subscription" means a subscription that is:
(a) Purchased by one (1) consumer on behalf of another; and
(b) Not subject to renewal or rebilling;

(9) "Material change" means a change in any of the terms of a purchasing
agreement;

(10) "Membership" means an agreement:
(a) Allowing a consumer to enter or utilize a location or facility, or otherwise

carry on business therein, at will, during a defined period of time;

(b) For which the consumer is billed either once for the entirety of the term of

the membership or at agreed upon intervals throughout the term of the

membership; and

(c) That expires at the conclusion of the definite period of time during which

the consumer has access to the location or facility, as outlined in a

purchasing agreement setting forth the terms of the membership;

(11) "Purchasing agreement" means all of the terms, including but not limited to any

free gift or trial, initial price and charges, type and quantity of goods or services,
duration, billing intervals, any automatic renewal offer terms, and any
continuous service offer terms that constitute an automatic renewal, continuous
service, membership, gift membership, subscription, or gift subscription; and

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

which:

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

(b) The consumer is billed for the subscription either once for the entirety of

the term of the subscription or at agreed upon intervals throughout the term

of the subscription; and

(c) The subscription expires at the conclusion of the definite period of time

outlined in the agreement for which the goods or services are to be supplied.

SECTION 2. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO

READ AS FOLLOWS:

(1) A business making an automatic renewal or continuous service offer to a

consumer in this state shall:

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

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

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

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

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

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

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

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

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

1. May be fulfilled after the initial charge made in connection with the
automatic renewal or continuous service, if it does not include a free
gift or trial, but shall be fulfilled prior to any subsequent charge or
renewal; or
2. Shall be fulfilled prior to the conclusion of any free gift or trial and before the customer is billed if a free gift or trial is included with the automatic renewal or continuous service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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