Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The legislature finds that some mobile communications devices are being used by individuals to perpetrate criminal undertakings and to avoid leaving a verified identity and address. Individuals that sign contracts with wireless telephone providers sign contracts with the providers and provide verifiable names and addresses. However, individuals that purchase prepaid mobile devices do not provide any such information. This has made the use of prepaid mobile devices an increasingly common choice for some individuals to perpetrate criminal activity without leaving any identifying information. Because this lack of information enables criminal elements to continue undetected, the legislature determines that the prepaid telephone security act is necessary to identify individuals engaging in criminal activity while minimally intruding on lawful citizens and business activities.

(b) (1) The department shall issue a request for proposal and select a provider with demonstrated capabilities of working with law enforcement agencies and protecting electronic data by January 1, 2016. The provider shall establish a mobile communications devices identification system and provide all necessary equipment, software and training to the sellers to effectuate the provisions of this act. Collection of the fee established pursuant to subsection (f) shall commence for each seller after the provider has delivered and completed employee training at that seller's location. Such contract shall not be subject to the provisions of K.S.A. 75-3739, and amendments thereto.

(2) The mobile communications devices identification system shall be a central repository of information received by sellers from purchasers and maintained for the purpose of providing information to law enforcement. All information in the system shall be the property of the department and shall not be sold or used for any purpose unless authorized by this section or pursuant to rules and regulations adopted by the department. The department may promulgate rules and regulations that permit the contract provider to retain information collected in the mobile communications
devices identification system for up to two calendar years from the date
the information was added to the system. Any information associated with
a record that has been stored in the system for two calendar years and that
is not part of an on-going judicial process must be destroyed.

(3) The mobile communications devices identification system, all
information contained therein and any records maintained by the
department, or by any entity contracting with the department, submitted to,
maintained or stored as a part of the system, shall be confidential, may
only be used for investigatory or evidentiary purposes, including open
court disclosure and criminal discovery to defense counsel, related to
violations of state or federal law, shall not be a public record and shall not
be subject to the Kansas open records act, K.S.A. 45-215 et seq., and
amendments thereto, and only shall be released to law enforcement
officers and prosecutors pursuant to this section. The provisions of this
subsection shall expire on June 30, 2020, unless the legislature acts to
reenact such provision. The provisions of this subsection shall be reviewed
by the legislature prior to July 1, 2020.

(4) The department shall issue a request for proposal for an
independent data manager to maintain the mobile communications devices
identification system. The data manager shall have experience in collecting
electronic data from multiple states as well as experience in data security,
protection of personal information, responding to data requests from courts
and law enforcement officers and any other requirements the department
determines are necessary. The department shall promulgate rules and
regulations establishing procedures for the data manager to:

(A) Provide for the maintenance of all records in the system;
(B) destroy old records pursuant to subsection (b)(2); and
(C) determine the sufficiency of any emergency request pursuant to
subsection (d).

(c) (1) All sellers in this state, prior to the completion of any retail
transaction to a purchaser, shall: (A) Require a purchaser to provide a valid
government issued identification card; and
(B) on equipment or software provided to the seller by the contractor
at no cost to the seller, record the purchaser's full name, complete physical
home address and the mobile equipment identifier or the international
mobile station equipment identity of the prepaid mobile device, prepaid
wireless communications services or SIM card to be purchased, or, if
neither are available, the activation code of such device, services or SIM
card.

(2) The seller shall record all retail transactions through an electronic
filing process that will transfer the information to the system at the time of
such sale. The department shall have the authority to contract with any
software or hardware vendors necessary to facilitate this instantaneous
transfer of reports from the seller to the mobile communications devices identification system. Such reports shall be made and transferred in accordance with rules and regulations adopted pursuant to this section.

d) The information in the mobile communications devices identification system established pursuant to this section shall be available to all law enforcement officers in this state which have a need for information relating to prepaid mobile devices, prepaid wireless communications services or SIM cards, upon production of a subpoena or other court order. Information in the system may be provided without a subpoena or court order if a law enforcement officer determines that information in the system is necessary in order to respond to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.

e) Any seller that knowingly fails to electronically record any retail transaction required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general or a county or district attorney located in the jurisdiction of the seller in an amount not exceeding $100 for each failure to report. After five documented failures to report, the seller shall be liable for an additional civil penalty of up to $1,000 for each subsequent failure to record a retail transaction. Any civil penalty recovered under this subsection shall be transferred to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit 50% of the moneys to the attorney general's litigation fund and 50% of the moneys to the mobile communications devices identification system fee fund established pursuant to this section.

f) (1) The department is authorized, in consultation with the mobile communications devices identification system data manager, Kansas law enforcement officer agency heads and the department of revenue, to promulgate rules and regulations to establish a mobile communications devices identification fee to be collected at the point of purchase that is necessary to operate the system. Such fee shall be no greater than 1% of the cost of a retail transaction. The fee shall be collected by the seller from the purchaser with respect to each retail transaction occurring in this state. Collection of this fee shall commence for each seller after the provider has delivered and completed employee training at that seller's location. Such contract shall not be subject to the provisions of K.S.A. 75-3739, and amendments thereto.

(2) The amount of the mobile communications devices identification fee shall be either separately stated on an invoice, receipt or other similar document that is provided to the purchaser by the seller, or otherwise disclosed to the purchaser. The amount of the fee that is collected by a
seller from a purchaser, if such amount is separately stated on an invoice,
receipt or other similar document provided to the purchaser, shall not be
included in the base for measuring any tax, fee, surcharge or other charge
that is imposed by this state, any political subdivision of this state or any
intergovernmental agency.

(g) A seller may charge and keep up to a $2 administrative fee, separate from the mobile communications devices identification fee, per retail transaction to compensate the seller for expenses associated with reporting the required sales information.

(h) For the purposes of this section, a retail transaction that is effected in person by a purchaser in a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for the purposes of K.S.A. 79-3673(c)(3), and amendments thereto.

(i) The mobile communications devices identification fee is the liability of the purchaser and not the seller, except that the seller shall be liable to remit all mobile communications devices identification fees that the seller collects from purchasers pursuant to this section, including all such fees that the seller is deemed to collect where the amount of the charge has not been separately stated in an invoice, receipt or other similar document provided by the seller.

(j) All mobile communications devices identification fees collected by sellers shall be remitted to the department of revenue by electronic filing that is consistent with the provisions of article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The department of revenue shall establish registration and payment procedures for the collection of the mobile communications devices identification fee. The department of revenue shall establish procedures by which a seller may document that a sale is not a retail sale, which procedures shall substantially coincide with procedures for documenting sale for resale transactions pursuant to article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

(k) The department of revenue shall transfer all remitted mobile communications devices identification fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the mobile communications devices identification system fee fund, which is hereby established in the state treasury, to be used for the creation and maintenance of the mobile communications devices identification system established in this section. During fiscal year 2015, the department of revenue may retain up to $70,000 of remitted funds only for use in paying
for programming and other one-time costs for establishing a system for
collecting the mobile communications devices identification fee. During
any fiscal year hereafter, the department of revenue shall not retain any
remitted funds.

(l) To minimize additional costs to the department of revenue, the
department of revenue may conduct audits of sellers in conjunction with
sales and use tax audits. The department of revenue is authorized to
provide the department and the attorney general with information obtained
in such audits if such information indicates that a seller may not be
complying with the provisions of this section. The department may request
the department of revenue to initiate collection or audit procedures on
individual sellers if collection efforts have been unsuccessful.

(m) The secretary of administration shall adopt rules and regulations
necessary to effectuate the provisions of this section.

(n) As used in this section:
(1) "Department" means the department of administration;
(2) "international mobile station equipment identity" means an
equipment identification number, similar to a serial number, used to
identify a mobile station;
(3) "mobile equipment identifier" means a globally unique number
for a physical piece of mobile station equipment;
(4) "mobile station" means all user equipment and software needed
for communication with a mobile network;
(5) "prepaid mobile device" means any cellular phone or similar
wireless communication device for which the mobile device user
purchases a set allotment of wireless communication services provided by
a wireless carrier;
(6) "prepaid wireless communications services" means prepaid
wireless service as defined in K.S.A. 2014 Supp. 12-5363, and
amendments thereto;
(7) "purchaser" means any person that purchases a prepaid mobile
device or SIM card from a seller;
(8) "retail transaction" means the purchase of a prepaid mobile
device, prepaid wireless communications services or SIM card from a
seller for any purpose other than resale, not including the use, storage or
consumption of such services;
(9) "seller" means any business subject to the provisions of article 36
of chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
that sells prepaid mobile devices or SIM cards;
(10) "SIM card" means a subscriber identity module or functionally
equivalent data storage device; and
(11) "wireless carrier" has the meaning provided in 47 U.S.C. §
615b(4), as in effect on the effective date of this act.
Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.