AN ACT concerning consumer protection; relating to vendors offering goods or services over the internet.

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

Section 1. As used in sections 1 and 2, and amendments thereto:
(a) "Cable service" has the same meaning as provided in 47 U.S.C. § 522(6).
(b) "Commercial mobile service provider" has the same meaning as provided in 47 U.S.C. § 332(d).
(c) "Electronic signature" means an electronic signature having legal effect pursuant to the Kansas uniform electronic transaction act, K.S.A. 16-1601 et seq., and amendments thereto, or an electronic signature having legal effect pursuant to the uniform commercial code, K.S.A. 84-1-101 et seq., and amendments thereto, as applicable.
(d) "Goods or services" means any goods or services provided by the vendor offering goods or services over the internet for which the vendor charges the customer, and is not limited to goods or services in the vendor's line or lines of business.
(e) "Internet" means the international network of interconnected government, educational and commercial computer networks.
(f) "Internet access service" has the same meaning as provided in 47 U.S.C. § 231.
(g) "Internet service provider" means an entity that provides end-user access to the internet.
(h) "Internet protocol enabled service" means any service, capability, functionality or application using an internet protocol that enables an end user to send or receive a voice, data or video communication in an internet protocol format.
(i) "Negative option billing" means billing for goods or services not affirmatively requested by the customer.
(j) "Provider of direct broadcast satellite service" shall have the same meaning as provided in 47 U.S.C. § 335.
(k) "Telecommunications service" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
"Vendors offering goods or services over the internet" means every person engaged in the business of selling tangible personal property or services who uses the internet as a means of communicating with, soliciting sales and completing a sales transaction with the customer. "Vendor offering goods or services over the internet" may include, but is not limited to, retailers of tangible goods, cable service providers, commercial mobile service providers, internet access service providers, direct broadcast satellite service providers, telecommunications service providers, video service providers, wireless service providers and persons engaged in the business of selling software or services to be used on the internet by the customer.

"Video service" means video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology.

"Wireless services" means "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities.

Sec. 2. (a) Notwithstanding any other provision of state law, it is the intent and directive of the legislature that negative option billing by vendors offering goods or services over the internet be prohibited, as provided in this section, to the furthest extent possible as may be accomplished by state law. It is the intent of the legislature, subject to federal law and regulation, that a vendor offering goods and services over the internet shall not engage in negative option billing or negative enrollment of goods or services and shall not bill a customer for any goods or services that the customer did not affirmatively order, as provided in subsection (c), unless that good or service is required to be provided by law. A customer's failure to refuse the vendor's proposal to provide goods or services shall not be construed as an affirmative request for those goods or services. A vendor offering goods or services over the internet shall not charge a customer for a service provided after the customer has canceled that service.

(b) Subject to federal law and regulation, the attorney general and the state corporation commission shall cooperatively develop rules and regulations, each with respect to the limits of their powers and jurisdiction under law, to accomplish the intent and directive of the legislature set forth in subsection (a), to accomplish the provisions of subsection (c) and as otherwise necessary or convenient to implement and administer the provisions of this section.

(c) Subject to federal law and regulation, a vendor offering goods or
services over the internet shall require an electronic signature by a
customer, clearly representing an affirmative "opt in" decision by the
customer, directly following a 30-word or less explanation of a charge, an
increase in a charge or continuation of a charge, before such charge,
increase in a charge or continuation of a charge may be imposed upon the
customer. If billing is to be made for multiple goods or services, each good
or service shall separately require the notice and electronic signature. The
notice shall be provided in large and legible text placed directly on the web
page and shall be placed directly preceding the place of the electronic
signature. If a charge or increase in a charge is to be recurring, the
recurring nature of the charge or increase in a charge, the amount of the
charge and any increase in the charge, when the charge will be billed, the
duration of the recurring charge, and the means of canceling the charge
shall be indicated. All charges to a customer shall require either an
affirmative manual payment or an electronic signature by the customer. If
a written or electronic billing statement is not sent to the customer prior to
each charge requiring an affirmative manual payment by the customer,
recurring charges shall require an email or text message containing an
explanation of the charge and how the charge may be canceled that shall
be delivered prior to each charge to the customer, based on contact
information provided by the customer, in such time as reasonably
sufficient to enable the customer to cancel the charge. The charge may not
be billed unless the email or text permits an electronic signature indicating
consent to the charge and the customer electronically signs the text or
e-mail giving consent to the charge.

(d) Any person who violates subsection (c) shall be liable for a civil
penalty of up to $5,000 for each offense. The attorney general or state
corporation commission shall also seek to recover for the customer
payments from the customer received by any person in violation of
subsection (c).

(e) A penalty imposed pursuant to subsection (d) shall be enforced by
a civil action in any court of competent jurisdiction. If the violation is of a
continuing nature, each day during which the violation continues may
constitute an additional, separate and distinct offense.

(f) In addition to any other remedy available to the state, the amount
of the penalty imposed pursuant to subsection (d) may be withheld by the
department of revenue from any tax refund or tax credit within the
jurisdiction of the department of revenue claimed by the offender. The
department of revenue may adopt rules and regulations to implement this
subsection.

(g) A violation of subsection (c) shall constitute an unconscionable
act or practice in connection with a consumer transaction prohibited by
K.S.A. 50-627, and amendments thereto.
(h) This section and section 1, and amendments thereto, shall be part of and supplemental to the Kansas consumer protection act.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.