

HOUSE BILL No. 2355

By Committee on Commerce, Labor and Economic Development

2-10

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

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 and 2, and amendments thereto:

6 (a) "Cable service" has the same meaning as provided in 47 U.S.C. §
7 522(6).

8 (b) "Commercial mobile service provider" has the same meaning as
9 provided in 47 U.S.C. § 332(d).

10 (c) "Electronic signature" means an electronic signature having legal
11 effect pursuant to the Kansas uniform electronic transaction act, K.S.A.
12 16-1601 et seq., and amendments thereto, or an electronic signature having
13 legal effect pursuant to the uniform commercial code, K.S.A. 84-1-101 et
14 seq., and amendments thereto, as applicable.

15 (d) "Goods or services" means any goods or services provided by the
16 vendor offering goods or services over the internet for which the vendor
17 charges the customer, and is not limited to goods or services in the
18 vendor's line or lines of business.

19 (e) "Internet" means the international network of interconnected
20 government, educational and commercial computer networks.

21 (f) "Internet access service" has the same meaning as provided in 47
22 U.S.C. § 231.

23 (g) "Internet service provider" means an entity that provides end-user
24 access to the internet.

25 (h) "Internet protocol enabled service" means any service, capability,
26 functionality or application using an internet protocol that enables an end
27 user to send or receive a voice, data or video communication in an internet
28 protocol format.

29 (i) "Negative option billing" means billing for goods or services not
30 affirmatively requested by the customer.

31 (j) "Provider of direct broadcast satellite service" shall have the same
32 meaning as provided in 47 U.S.C. § 335.

33 (k) "Telecommunications service" means providing the means of
34 transmission, between or among points specified by the user, of
35 information of the user's choosing, without change in the form or content
36 of the information as sent and received.

1 (l) "Vendors offering goods or services over the internet" means every
2 person engaged in the business of selling tangible personal property or
3 services who uses the internet as a means of communicating with,
4 soliciting sales and completing a sales transaction with the customer.
5 "Vendor offering goods or services over the internet" may include, but is
6 not limited to, retailers of tangible goods, cable service providers,
7 commercial mobile service providers, internet access service providers,
8 direct broadcast satellite service providers, telecommunications service
9 providers, video service providers, wireless service providers and persons
10 engaged in the business of selling software or services to be used on the
11 internet by the customer.

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

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

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

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

43 (c) Subject to federal law and regulation, a vendor offering goods or

1 services over the internet shall require an electronic signature by a
2 customer, clearly representing an affirmative "opt in" decision by the
3 customer, directly following a 30-word or less explanation of a charge, an
4 increase in a charge or continuation of a charge, before such charge,
5 increase in a charge or continuation of a charge may be imposed upon the
6 customer. If billing is to be made for multiple goods or services, each good
7 or service shall separately require the notice and electronic signature. The
8 notice shall be provided in large and legible text placed directly on the web
9 page and shall be placed directly preceding the place of the electronic
10 signature. If a charge or increase in a charge is to be recurring, the
11 recurring nature of the charge or increase in a charge, the amount of the
12 charge and any increase in the charge, when the charge will be billed, the
13 duration of the recurring charge, and the means of canceling the charge
14 shall be indicated. All charges to a customer shall require either an
15 affirmative manual payment or an electronic signature by the customer. If
16 a written or electronic billing statement is not sent to the customer prior to
17 each charge requiring an affirmative manual payment by the customer,
18 recurring charges shall require an email or text message containing an
19 explanation of the charge and how the charge may be canceled that shall
20 be delivered prior to each charge to the customer, based on contact
21 information provided by the customer, in such time as reasonably
22 sufficient to enable the customer to cancel the charge. The charge may not
23 be billed unless the email or text permits an electronic signature indicating
24 consent to the charge and the customer electronically signs the text or
25 email giving consent to the charge.

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

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

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

41 (g) A violation of subsection (c) shall constitute an unconscionable
42 act or practice in connection with a consumer transaction prohibited by
43 K.S.A. 50-627, and amendments thereto.

1 (h) This section and section 1, and amendments thereto, shall be part
2 of and supplemental to the Kansas consumer protection act.

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