

LEGISLATIVE BILL 1091

Approved by the Governor April 11, 2012

Introduced by Fischer, 43; Hadley, 37.

FOR AN ACT relating to telecommunications; to amend sections 86-450.03 and 86-457, Reissue Revised Statutes of Nebraska, and section 86-313, Revised Statutes Cumulative Supplement, 2010; to adopt the Prepaid Wireless Surcharge Act; to eliminate a definition and certain charges relating to prepaid wireless service; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; and to outright repeal section 86-450.02, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 5 of this act shall be known and may be cited as the Prepaid Wireless Surcharge Act.

Sec. 2. For purposes of the Prepaid Wireless Surcharge Act:

(1) Consumer means a person who purchases prepaid wireless telecommunications service in a retail transaction;

(2) Prepaid wireless surcharge means the charge that is required to be collected by a seller from a consumer in the amount established under section 3 of this act;

(3) Prepaid wireless telecommunications service means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount;

(4) Provider means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission;

(5) Retail transaction means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale;

(6) Seller means a person who sells prepaid wireless telecommunications service to another person; and

(7) Wireless telecommunications service means mobile service as defined by 47 C.F.R. 20.3, as such section existed on the operative date of this section.

Sec. 3. (1) The Department of Revenue shall determine the prepaid wireless surcharge annually, effective January 1, based on the charges described in subsection (2) of this section as in effect on the preceding July 1. The department shall provide not less than ninety days' advance notice of any change in the prepaid wireless surcharge on the department's web site.

(2) The prepaid wireless surcharge shall be the sum of the following two percentages, rounded up to the nearest tenth of one percent:

(a) The percentage obtained by dividing (i) the amount of the wireless E-911 surcharge authorized under subdivision (1)(b) of section 86-457 by (ii) fifty; and

(b) The percentage obtained by dividing (i) the amount of the Nebraska Telecommunications Relay System Fund surcharge set by the Public Service Commission pursuant to the Telecommunications Relay System Act by (ii) fifty.

(3) Beginning January 1, 2013, each seller shall collect the prepaid wireless surcharge from the consumer with respect to each retail transaction occurring in this state. The seller shall disclose the amount of the prepaid wireless surcharge either separately on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise. A retail transaction that is effected in person by a consumer at 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 purposes of section 77-2703.

(4) The prepaid wireless surcharge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless surcharges that the seller collects from consumers as provided in section 4 of this act, including all such charges that the seller is deemed to collect when the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(5) The amount of the prepaid wireless surcharge that is collected by a seller from a consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer

by the seller, 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.

(6) For purposes of subsection (3) of this section, when prepaid wireless telecommunications service is sold with one or more other products or services for a single, non-itemized price, the seller shall elect to treat the price of the prepaid wireless telecommunications service (a) as such entire non-itemized price, (b) if the amount of prepaid wireless telecommunications service is disclosed to the consumer as a dollar amount, as such dollar amount, or (c) if the retailer can identify the portion of the price that is attributable to the prepaid wireless telecommunications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes, as such portion. If the amount of prepaid wireless telecommunications service is denominated as ten minutes or less or as five dollars or less, the seller may elect not to collect any prepaid wireless surcharge with respect to the retail transaction.

Sec. 4. (1) Sellers shall remit collected prepaid wireless surcharges to the Department of Revenue at the times and in the manner provided in the Nebraska Revenue Act of 1967 with respect to sales tax. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to sales tax.

(2) A seller shall be permitted to deduct and retain three percent of prepaid wireless surcharges that are collected by the seller from consumers.

(3) The audit and appeal procedures applicable to sales tax under the Nebraska Revenue Act of 1967 shall apply to prepaid wireless surcharges.

(4) The Department of Revenue shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for sales tax purposes.

(5) After deducting an amount, not to exceed two percent of charges, to be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless surcharges, the department shall remit all collected prepaid wireless surcharges to the State Treasurer for credit to the Enhanced Wireless 911 Fund and the Nebraska Telecommunications Relay System Fund in the proportions that the respective corresponding components of the prepaid wireless surcharge under subsection (2) of section 3 of this act bear to the total prepaid wireless surcharge.

Sec. 5. The prepaid wireless surcharge shall be the only funding obligation imposed with respect to prepaid wireless telecommunications service for E-911 and telecommunications relay service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for purposes of funding E-911 or telecommunications relay service, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

Sec. 6. Section 86-313, Revised Statutes Cumulative Supplement, 2010, is amended to read:

86-313 (1)(a) Each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed twenty cents per month on each telephone number or functional equivalent in Nebraska, including wireless service as defined in section 86-456.01. Except for wireless service, the surcharge shall only be collected on the first one hundred telephone numbers or functional equivalents per subscriber. The companies shall add the surcharge to each subscriber's bill. The surcharge shall not be collected with respect to prepaid wireless telecommunications service as defined in the Prepaid Wireless Surcharge Act.

(b) The telephone companies are not liable for any surcharge not paid by a subscriber.

(2) Before April 1 of each year, the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide telecommunications relay system and the specialized telecommunications equipment program for the following year plus a reasonable reserve. The surcharge shall become effective on July 1 following the change.

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing for such purpose.

(4) Each telephone company shall remit the proceeds from the surcharge to the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any company collecting the surcharge pursuant to the act.

(6) This section shall not apply to subscribers who have no access to relay service.

Sec. 7. Section 86-450.03, Reissue Revised Statutes of Nebraska, is amended to read:

86-450.03 Primary place of use means+ ~~(1) For users of wireless service other than prepaid wireless service,~~ the street address representative of where the use of wireless service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the user of the wireless service and shall be within the service area of the home service provider, ~~and (2) for users of prepaid wireless service,~~ the location associated with the telephone number assigned to the user.

Sec. 8. Section 86-457, Reissue Revised Statutes of Nebraska, is amended to read:

86-457 (1) Each wireless carrier shall collect:

(a) A surcharge of up to seventy cents, except as provided in subdivision (1)(b) of this subsection, ~~and as otherwise provided in this section with respect to prepaid wireless service,~~ on all active telephone numbers or functional equivalents every month from users of wireless service and shall remit the surcharge in accordance with section 86-459; or

(b) A surcharge of up to fifty cents, ~~except as otherwise provided in this section with respect to prepaid wireless service,~~ on all active telephone numbers or functional equivalents every month from users of wireless service whose primary place of use is in a county containing a city of the metropolitan class and shall remit the surcharge in accordance with section 86-459.

The wireless carrier is not liable for any surcharge not paid by a customer.

(2) Except as otherwise provided in this section, the wireless carrier shall add the surcharge to each user's billing statement. The surcharge shall appear as a separate line-item charge on the user's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge" or a reasonable abbreviation of such phrase.

(3) If a wireless carrier, except as otherwise provided in this section, resells its service through other entities, each reseller shall collect the surcharge from its customers and shall remit the surcharge in accordance with section 86-459.

~~(4) It is the intent of the Legislature that, effective July 1, 2007, all users of prepaid wireless services pay an amount comparable to the amount paid by users of wireless services that are not prepaid in support of statewide wireless enhanced 911 service. It is also the intent of the Legislature that whenever possible such amounts be collected from the users of such prepaid wireless services.~~

~~(5) The commission shall establish surcharges comparable to the surcharge assessed on other users of wireless services and shall develop methods for collection and remittance of such surcharges from wireless carriers offering prepaid wireless services.~~

~~(6) The duty to remit any surcharges established pursuant to subsection (5) of this section is the responsibility of the wireless carrier.~~

(4) The surcharges authorized by this section shall not apply to prepaid wireless telecommunications service as defined in section 2 of this act.

~~(7) (5) This section shall not apply to users who have no 911 service.~~

Sec. 9. Sections 1, 2, 3, 4, 5, 9, and 10 of this act become operative on their effective date. The other sections of this act become operative on January 1, 2013.

Sec. 10. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 11. Original sections 86-450.03 and 86-457, Reissue Revised Statutes of Nebraska, and section 86-313, Revised Statutes Cumulative Supplement, 2010, are repealed.

Sec. 12. The following section is outright repealed: Section 86-450.02, Reissue Revised Statutes of Nebraska.