



Sen. Don Harmon

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1 AMENDMENT TO SENATE BILL 120

2 AMENDMENT NO. _____. Amend Senate Bill 120 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Prepaid Wireless 9-1-1 Surcharge Act.

6 Section 5. Purpose. The General Assembly finds and declares
7 that maintaining effective and efficient 9-1-1 systems across
8 the State benefits all citizens. The fees imposed upon the
9 consumers of telecommunication services that have the ability
10 to dial 9-1-1 are an important funding mechanism to assist the
11 State and units of local government with the deployment of
12 enhanced 9-1-1 services to the citizens of this State.

13 Prepaid wireless telecommunication services are an
14 important segment of the telecommunications industry and have
15 proven particularly attractive to low-income and low-volume
16 consumers. Unlike traditional telecommunication services,

1 prepaid wireless telecommunications services are not sold or
2 used pursuant to term contracts or subscriptions and monthly
3 bills are not sent to consumers by prepaid wireless
4 telecommunication service providers or retail vendors.

5 Prepaid wireless consumers have the same access to
6 emergency 9-1-1 services from their wireless devices as
7 wireless consumers on term contracts. Prepaid wireless
8 consumers benefit from the ability to access the 9-1-1 system
9 by dialing 9-1-1.

10 Consumers purchase prepaid wireless telecommunication
11 services at a wide variety of general retail locations and
12 other distribution channels. Such purchases are made on a
13 cash-and-carry or pay-as-you-go basis from retailers.

14 It is the intent of the General Assembly to:

15 (1) ensure equitable contributions to the funding of
16 9-1-1 systems from consumers of prepaid wireless
17 telecommunication services;

18 (2) collect 9-1-1 surcharges from purchasers of
19 prepaid wireless telecommunications service at the point
20 of sale;

21 (3) impose the collection and remittance obligation
22 for 9-1-1 surcharges on sellers of prepaid wireless
23 telecommunications service;

24 (4) impose a single statewide 9-1-1 surcharge on point
25 of sale transactions in order to minimize administrative
26 costs on retailers.

1 Section 10. Definitions. In this Act:

2 "Consumer" means a person who purchases prepaid wireless
3 telecommunications service in a retail transaction.

4 "Department" means the Department of Revenue.

5 "Prepaid wireless E911 surcharge" means the charge that is
6 required to be collected by a seller from a consumer in the
7 amount established under Section 15 of this Act.

8 "Prepaid wireless telecommunications service" means a
9 wireless telecommunications service that allows a caller to
10 dial 9-1-1 to access the 9-1-1 system, which service must be
11 paid for in advance and is sold in predetermined units or
12 dollars of which the amount declines with use in a known
13 amount.

14 "Provider" means a person that provides prepaid wireless
15 telecommunications service pursuant to a license issued by the
16 Federal Communications Commission.

17 "Retail transaction" means the purchase of prepaid
18 wireless telecommunications service from a seller for any
19 purpose other than resale.

20 "Seller" means a person who sells prepaid wireless
21 telecommunications service to another person.

22 "Wireless telecommunications service" means commercial
23 mobile radio service as defined by 47 C.F.R. 20.3.

24 Section 15. Prepaid wireless 9-1-1 surcharge.

1 (a) There is hereby imposed a prepaid wireless 9-1-1
2 surcharge of \$0.37 per retail transaction. The amount of the
3 surcharge may be reduced or increased pursuant to subsection
4 (e).

5 (b) The prepaid wireless 9-1-1 surcharge shall be collected
6 by the seller from the consumer with respect to each retail
7 transaction occurring in this State. The amount of the prepaid
8 wireless 9-1-1 surcharge shall be either separately stated on
9 an invoice, receipt, or other similar document that is provided
10 to the consumer by the seller or otherwise disclosed to the
11 consumer.

12 For purposes of this subsection (b), a retail transaction
13 occurs in this State if (i) the retail transaction is made in
14 person by a consumer at the seller's business location and the
15 business is located within the State or (ii) the retail
16 transaction is treated as occurring in this State for purposes
17 of the Retailers' Occupation Tax Act.

18 (c) The prepaid wireless 9-1-1 surcharge is the liability
19 of the consumer and not of the seller or of any provider,
20 except that the seller shall be liable to remit all prepaid
21 wireless 9-1-1 surcharges that the seller collects from
22 consumers as provided in Section 20, including all such
23 surcharges that the seller is deemed to collect where the
24 amount of the surcharge has not been separately stated on an
25 invoice, receipt, or other similar document provided to the
26 consumer by the seller.

1 (d) The amount of the prepaid wireless 9-1-1 surcharge that
2 is collected by a seller from a consumer, whether or not such
3 amount is separately stated on an invoice, receipt, or other
4 similar document provided to the consumer by the seller, shall
5 not be included in the base for measuring any tax, fee,
6 surcharge, or other charge that is imposed by this State, any
7 political subdivision of this State, or any intergovernmental
8 agency.

9 (e) The prepaid wireless 9-1-1 charge shall be
10 proportionately increased or reduced, as applicable, upon any
11 change to the surcharge imposed under Section 17 of the
12 Wireless Emergency Telephone Safety Act. Such increase or
13 reduction shall be effective on the effective date of the
14 change to the surcharge imposed under Section 17 of the
15 Wireless Emergency Telephone Safety Act or, if later, the first
16 day of the first calendar month to occur at least 60 days after
17 the enactment of the change to the surcharge imposed under
18 Section 17 of the Wireless Emergency Telephone Safety Act. The
19 Department shall provide not less than 30 days' notice of an
20 increase or reduction in the amount of the surcharge on the
21 Department's website.

22 Section 20. Administration of prepaid wireless 9-1-1
23 surcharge.

24 (a) Prepaid wireless E911 charges collected by sellers
25 shall be remitted to the Department at the times and in the

1 manner provided by the Retailers' Occupation Tax Act. The
2 Department shall establish registration and payment procedures
3 that substantially coincide with the registration and payment
4 procedures that apply to the Retailers' Occupation Tax Act.

5 (b) A seller shall be permitted to deduct and retain 3% of
6 prepaid wireless 9-1-1 surcharges that are collected by the
7 seller from consumers.

8 (c) The audit and appeal procedures applicable to the
9 Retailers' Occupation Tax Act shall apply to prepaid wireless
10 E911 charges.

11 (d) The Department shall establish procedures by which a
12 seller of prepaid wireless telecommunications service may
13 document that a sale is not a retail transaction. The
14 procedures must substantially coincide with the procedures for
15 documenting sale for resale transactions under the Retailers'
16 Occupation Tax Act.

17 (e) The Department shall pay all remitted prepaid wireless
18 E911 charges over to the State Treasurer for deposit into the
19 Wireless Service Emergency Fund within 30 days after receipt,
20 for use in accordance with the provisions of the Wireless
21 Emergency Telephone Safety Act. The Department may deduct an
22 amount, not to exceed 2% of remitted charges, to be retained by
23 the Department to reimburse its direct costs of administering
24 the collection and remittance of prepaid wireless 9-1-1
25 surcharges.

1 Section 25. Liability of sellers and providers.

2 (a) The provisions of Section 50 of the Wireless Emergency
3 Telephone Safety Act shall apply to sellers and providers of
4 prepaid wireless telecommunications service.

5 (b) No provider or seller of prepaid wireless
6 telecommunications service shall be liable for damages to any
7 person resulting from or incurred in connection with the
8 provision of any lawful assistance to any investigative or law
9 enforcement officer of the United States, this or any other
10 state, or any political subdivision of this or any other state,
11 in connection with any lawful investigation or other law
12 enforcement activity by such law enforcement officer.

13 Section 30. Exclusivity of prepaid wireless 9-1-1
14 surcharge. The prepaid wireless 9-1-1 surcharge imposed by this
15 Act shall be the only 9-1-1 funding obligation imposed with
16 respect to prepaid wireless telecommunications service in this
17 State. No tax, fee, surcharge, or other charge shall be imposed
18 by this State, any political subdivision of this State, or any
19 intergovernmental agency, for 9-1-1 funding purposes, upon any
20 provider, seller, or consumer with respect to the sale,
21 purchase, use, or provision of prepaid wireless
22 telecommunications service.

23 Section 35. The Wireless Emergency Telephone Safety Act is
24 amended by changing Sections 10 and 17 and by adding Section 80

1 as follows:

2 (50 ILCS 751/10)

3 (Section scheduled to be repealed on April 1, 2013)

4 Sec. 10. Definitions. In this Act:

5 ~~"Active prepaid wireless telephone" means a prepaid~~
6 ~~wireless telephone that has been used or activated by the~~
7 ~~customer during the month to complete a telephone call for~~
8 ~~which the customer's card or account was decremented.~~

9 "Emergency telephone system board" means a board appointed
10 by the corporate authorities of any county or municipality that
11 provides for the management and operation of a 9-1-1 system
12 within the scope of the duties and powers prescribed by the
13 Emergency Telephone System Act.

14 "Master street address guide" means the computerized
15 geographical database that consists of all street and address
16 data within a 9-1-1 system.

17 "Mobile telephone number" or "MTN" shall mean the telephone
18 number assigned to a wireless telephone at the time of initial
19 activation.

20 "Prepaid wireless telecommunication ~~telephone~~ service"
21 means a cellular or wireless telecommunications telephone
22 service that allows a caller to dial 9-1-1 to access the 9-1-1
23 system, which service must be paid for in advance and is sold
24 in predetermined units or dollars which the amount declines
25 with use in a known amount. ~~which is activated by payment in~~

1 ~~advance of a finite dollar amount or for a finite set of~~
2 ~~minutes and which, unless an additional finite dollar amount or~~
3 ~~finite set of minutes is paid in advance, terminates either (i)~~
4 ~~upon use by a customer and delivery by the wireless carrier of~~
5 ~~an agreed upon amount of service corresponding to the total~~
6 ~~dollar amount paid in advance, or within a certain period of~~
7 ~~time following initial purchase or activation.~~

8 "Public safety agency" means a functional division of a
9 public agency that provides fire fighting, police, medical, or
10 other emergency services. For the purpose of providing wireless
11 service to users of 9-1-1 emergency services, as expressly
12 provided for in this Act, the Department of State Police may be
13 considered a public safety agency.

14 "Qualified governmental entity" means a unit of local
15 government authorized to provide 9-1-1 services pursuant to the
16 Emergency Telephone System Act where no emergency telephone
17 system board exists.

18 "Remit period" means the billing period, one month in
19 duration, for which a wireless carrier, ~~other than a prepaid~~
20 ~~wireless carrier that provides zip code information based upon~~
21 ~~the addresses associated with its customers' points of~~
22 ~~purchase, customers' billing addresses, or locations~~
23 ~~associated with MTNs, as described in subsection (a) of Section~~
24 ~~17,~~ remits a surcharge and provides subscriber information by
25 zip code to the Illinois Commerce Commission, in accordance
26 with Section 17 of this Act.

1 "Statewide wireless emergency 9-1-1 system" means all
2 areas of the State where an emergency telephone system board
3 or, in the absence of an emergency telephone system board, a
4 qualified governmental entity has not declared its intention
5 for one or more of its public safety answering points to serve
6 as a primary wireless 9-1-1 public safety answering point for
7 its jurisdiction. The operator of the statewide wireless
8 emergency 9-1-1 system shall be the Department of State Police.

9 ~~"Sufficient positive balance" means a dollar amount~~
10 ~~greater than or equal to the monthly wireless 9-1-1 surcharge~~
11 ~~amount.~~

12 "Wireless carrier" means a provider of two-way cellular,
13 broadband PCS, geographic area 800 MHZ and 900 MHZ Commercial
14 Mobile Radio Service (CMRS), Wireless Communications Service
15 (WCS), or other Commercial Mobile Radio Service (CMRS), as
16 defined by the Federal Communications Commission, offering
17 radio communications that may provide fixed, mobile, radio
18 location, or satellite communication services to individuals
19 or businesses within its assigned spectrum block and
20 geographical area or that offers real-time, two-way voice
21 service that is interconnected with the public switched
22 network, including a reseller of such service.

23 "Wireless enhanced 9-1-1" means the ability to relay the
24 telephone number of the originator of a 9-1-1 call and location
25 information from any mobile handset or text telephone device
26 accessing the wireless system to the designated wireless public

1 safety answering point as set forth in the order of the Federal
2 Communications Commission, FCC Docket No. 94-102, adopted June
3 12, 1996, with an effective date of October 1, 1996, and any
4 subsequent amendment thereto.

5 "Wireless public safety answering point" means the
6 functional division of an emergency telephone system board,
7 qualified governmental entity, or the Department of State
8 Police accepting wireless 9-1-1 calls.

9 "Wireless subscriber" means an individual or entity to whom
10 a wireless service account or number has been assigned by a
11 wireless carrier.

12 "Wireless telephone service" ~~includes prepaid wireless~~
13 ~~telephone service and~~ means all "commercial mobile service", as
14 that term is defined in 47 CFR 20.3, including all personal
15 communications services, wireless radio telephone services,
16 geographic area specialized and enhanced specialized mobile
17 radio services, and incumbent wide area specialized mobile
18 radio licensees that offer real time, two-way service that is
19 interconnected with the public switched telephone network.

20 (Source: P.A. 95-63, eff. 8-13-07.)

21 (50 ILCS 751/17)

22 (Section scheduled to be repealed on April 1, 2013)

23 Sec. 17. Wireless carrier surcharge.

24 (a) Except as provided in Sections ~~Section~~ 45 and 80, each
25 wireless carrier shall impose a monthly wireless carrier

1 surcharge per CMRS connection that either has a telephone
2 number within an area code assigned to Illinois by the North
3 American Numbering Plan Administrator or has a billing address
4 in this State. ~~In the case of prepaid wireless telephone
5 service, this surcharge shall be remitted based upon the
6 address associated with the point of purchase, the customer
7 billing address, or the location associated with the MTN for
8 each active prepaid wireless telephone that has a sufficient
9 positive balance as of the last day of each month, if that
10 information is available.~~ No wireless carrier shall impose the
11 surcharge authorized by this Section upon any subscriber who is
12 subject to the surcharge imposed by a unit of local government
13 pursuant to Section 45. Prior to January 1, 2008 (the effective
14 date of Public Act 95-698), the surcharge amount shall be the
15 amount set by the Wireless Enhanced 9-1-1 Board. Beginning on
16 January 1, 2008 (the effective date of Public Act 95-698), the
17 monthly surcharge imposed under this Section shall be \$0.73 per
18 CMRS connection. The wireless carrier that provides wireless
19 service to the subscriber shall collect the surcharge from the
20 subscriber. For mobile telecommunications services provided on
21 and after August 1, 2002, any surcharge imposed under this Act
22 shall be imposed based upon the municipality or county that
23 encompasses the customer's place of primary use as defined in
24 the Mobile Telecommunications Sourcing Conformity Act. The
25 surcharge shall be stated as a separate item on the
26 subscriber's monthly bill. The wireless carrier shall begin

1 collecting the surcharge on bills issued within 90 days after
2 the Wireless Enhanced 9-1-1 Board sets the monthly wireless
3 surcharge. State and local taxes shall not apply to the
4 wireless carrier surcharge.

5 (b) Except as provided in Sections ~~Section~~ 45 and 80, a
6 wireless carrier shall, within 45 days of collection, remit,
7 either by check or by electronic funds transfer, to the State
8 Treasurer the amount of the wireless carrier surcharge
9 collected from each subscriber. Of the amounts remitted under
10 this subsection prior to January 1, 2008 (the effective date of
11 Public Act 95-698), and for surcharges imposed before January
12 1, 2008 (the effective date of Public Act 95-698) but remitted
13 after January 1, 2008, the State Treasurer shall deposit
14 one-third into the Wireless Carrier Reimbursement Fund and
15 two-thirds into the Wireless Service Emergency Fund. For
16 surcharges collected and remitted on or after January 1, 2008
17 (the effective date of Public Act 95-698), \$0.1475 per
18 surcharge collected shall be deposited into the Wireless
19 Carrier Reimbursement Fund, and \$0.5825 per surcharge
20 collected shall be deposited into the Wireless Service
21 Emergency Fund. Of the amounts deposited into the Wireless
22 Carrier Reimbursement Fund under this subsection, \$0.01 per
23 surcharge collected may be distributed to the carriers to cover
24 their administrative costs. Of the amounts deposited into the
25 Wireless Service Emergency Fund under this subsection, \$0.01
26 per surcharge collected may be disbursed to the Illinois

1 Commerce Commission to cover its administrative costs.

2 (c) The first such remittance by wireless carriers shall
3 include the number of customers by zip code, and the 9-digit
4 zip code if currently being used or later implemented by the
5 carrier, that shall be the means by which the Illinois Commerce
6 Commission shall determine distributions from the Wireless
7 Service Emergency Fund. This information shall be updated no
8 less often than every year. Wireless carriers are not required
9 to remit surcharge moneys that are billed to subscribers but
10 not yet collected. Any carrier that fails to provide the zip
11 code information required under this subsection (c) ~~or any~~
12 ~~prepaid wireless carrier that fails to provide zip code~~
13 ~~information based upon the addresses associated with its~~
14 ~~customers' points of purchase, customers' billing addresses,~~
15 ~~or locations associated with MTNs, as described in subsection~~
16 ~~(a) of this Section,~~ shall be subject to the penalty set forth
17 in subsection (f) of this Section.

18 (d) (Blank.) ~~Within 90 days after August 13, 2007 (the~~
19 ~~effective date of Public Act 95-63), each wireless carrier must~~
20 ~~implement a mechanism for the collection of the surcharge~~
21 ~~imposed under subsection (a) of this Section from its~~
22 ~~subscribers. If a wireless carrier does not implement a~~
23 ~~mechanism for the collection of the surcharge from its~~
24 ~~subscribers in accordance with this subsection (d), then the~~
25 ~~carrier is required to remit the surcharge for all subscribers~~
26 ~~until the carrier is deemed to be in compliance with this~~

1 ~~subsection (d) by the Illinois Commerce Commission.~~

2 (e) If before midnight on the last day of the third
3 calendar month after the closing date of the remit period a
4 wireless carrier does not remit the surcharge or any portion
5 thereof required under this Section, then the surcharge or
6 portion thereof shall be deemed delinquent until paid in full,
7 and the Illinois Commerce Commission may impose a penalty
8 against the carrier in an amount equal to the greater of:

9 (1) \$25 for each month or portion of a month from the
10 time an amount becomes delinquent until the amount is paid
11 in full; or

12 (2) an amount equal to the product of 1% and the sum of
13 all delinquent amounts for each month or portion of a month
14 that the delinquent amounts remain unpaid.

15 A penalty imposed in accordance with this subsection (e)
16 for a portion of a month during which the carrier provides the
17 number of subscribers by zip code as required under subsection
18 (c) of this Section shall be prorated for each day of that
19 month during which the carrier had not provided the number of
20 subscribers by zip code as required under subsection (c) of
21 this Section. Any penalty imposed under this subsection (e) is
22 in addition to the amount of the delinquency and is in addition
23 to any other penalty imposed under this Section.

24 (f) If, before midnight on the last day of the third
25 calendar month after the closing date of the remit period, a
26 wireless carrier does not provide the number of subscribers by

1 zip code as required under subsection (c) of this Section, then
2 the report is deemed delinquent and the Illinois Commerce
3 Commission may impose a penalty against the carrier in an
4 amount equal to the greater of:

5 (1) \$25 for each month or portion of a month that the
6 report is delinquent; or

7 (2) an amount equal to the product of 1/2¢ and the
8 number of subscribers served by the wireless carrier.

9 A penalty imposed in accordance with this subsection (f)
10 for a portion of a month during which the carrier pays the
11 delinquent amount in full shall be prorated for each day of
12 that month that the delinquent amount was paid in full. Any
13 penalty imposed under this subsection (f) is in addition to any
14 other penalty imposed under this Section.

15 (g) The Illinois Commerce Commission may enforce the
16 collection of any delinquent amount and any penalty due and
17 unpaid under this Section by legal action or in any other
18 manner by which the collection of debts due the State of
19 Illinois may be enforced under the laws of this State. The
20 Executive Director of the Illinois Commerce Commission, or his
21 or her designee, may excuse the payment of any penalty imposed
22 under this Section if the Executive Director, or his or her
23 designee, determines that the enforcement of this penalty is
24 unjust.

25 (h) Notwithstanding any provision of law to the contrary,
26 nothing shall impair the right of wireless carriers to recover

1 compliance costs for all emergency communications services
2 that are not reimbursed out of the Wireless Carrier
3 Reimbursement Fund directly from their customers via line-item
4 charges on the customer's bill. Those compliance costs include
5 all costs incurred by wireless carriers in complying with
6 local, State, and federal regulatory or legislative mandates
7 that require the transmission and receipt of emergency
8 communications to and from the general public, including, but
9 not limited to, E-911.

10 (i) The Auditor General shall conduct, on an annual basis,
11 an audit of the Wireless Service Emergency Fund and the
12 Wireless Carrier Reimbursement Fund for compliance with the
13 requirements of this Act. The audit shall include, but not be
14 limited to, the following determinations:

15 (1) Whether the Commission is maintaining detailed
16 records of all receipts and disbursements from the Wireless
17 Carrier Emergency Fund and the Wireless Carrier
18 Reimbursement Fund.

19 (2) Whether the Commission's administrative costs
20 charged to the funds are adequately documented and are
21 reasonable.

22 (3) Whether the Commission's procedures for making
23 grants and providing reimbursements in accordance with the
24 Act are adequate.

25 (4) The status of the implementation of wireless 9-1-1
26 and E9-1-1 services in Illinois.

1 The Commission, the Department of State Police, and any
2 other entity or person that may have information relevant to
3 the audit shall cooperate fully and promptly with the Office of
4 the Auditor General in conducting the audit. The Auditor
5 General shall commence the audit as soon as possible and
6 distribute the report upon completion in accordance with
7 Section 3-14 of the Illinois State Auditing Act.

8 (Source: P.A. 95-63, eff. 8-13-07; 95-698, eff. 1-1-08; 95-876,
9 eff. 8-21-08.)

10 (50 ILCS 751/80 new)

11 Sec. 80. Prepaid wireless telecommunications service;
12 surcharge. The wireless carrier surcharge and any other
13 requirements imposed by Section 17 or authorized by Section 45
14 shall not apply to prepaid wireless telecommunications
15 service. The provisions of the Prepaid Wireless 9-1-1 Surcharge
16 Act shall apply to prepaid wireless telecommunications
17 service.

18 Section 99. Effective date. This Act takes effect January
19 1, 2010."