



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3717

Introduced 2/10/2012, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

50 ILCS 753/15
50 ILCS 753/20
30 ILCS 105/5.811 new

Amends the Prepaid Wireless 9-1-1 Surcharge Act. Provides that the Department of Revenue shall pay to the State Treasurer all prepaid wireless E911 charges and penalties collected for deposit into the Wireless Service Emergency Fund, other than amounts to be paid to the Municipal Wireless Service Emergency Fund. Sets forth reporting and distribution requirements concerning the amounts collected. Provides that the Department may deduct a specified amount of remitted charges to be transferred into the Tax Compliance and Administration Fund (now, to be retained by the Department) to reimburse the Department for its direct costs of administering the collection and remittance of prepaid wireless 9-1-1 surcharges. Provides that if a home rule municipality having a population in excess of 500,000 as of the effective date of this amendatory Act imposes an E911 surcharge, then the Treasurer shall deposit any amounts collected into the Municipal Wireless Service Emergency Fund. Sets forth reporting and distribution requirements concerning the amounts collected. Further provides that overpayments received by the Department for liabilities reported on existing or combined returns shall be first applied to retailers' occupation tax, use tax, service occupation tax, or service use tax liabilities. Amends the State Finance Act. Creates the Municipal Wireless Service Emergency Fund.

LRB097 18201 KMW 63425 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Prepaid Wireless 9-1-1 Surcharge Act is
5 amended by changing Sections 15 and 20 as follows:

6 (50 ILCS 753/15)

7 Sec. 15. Prepaid wireless 9-1-1 surcharge.

8 (a) There is hereby imposed on consumers a prepaid wireless
9 9-1-1 surcharge of 1.5% per retail transaction. The surcharge
10 authorized by this subsection (a) does not apply in a home rule
11 municipality having a population in excess of 500,000. The
12 amount of the surcharge may be reduced or increased pursuant to
13 subsection (e).

14 (a-5) A home rule municipality having a population in
15 excess of 500,000 on the effective date of this Act may only
16 impose a prepaid wireless 9-1-1 surcharge not to exceed 7% per
17 retail transaction sourced to that jurisdiction and collected
18 and remitted in accordance with the provisions of subsection
19 (b-5).

20 (b) The prepaid wireless 9-1-1 surcharge shall be collected
21 by the seller from the consumer with respect to each retail
22 transaction occurring in this State and shall be remitted to
23 the Department by the seller as provided in this Act. The

1 amount of the prepaid wireless 9-1-1 surcharge shall be
2 separately stated as a distinct item apart from the charge for
3 the prepaid wireless telecommunications service on an invoice,
4 receipt, or other similar document that is provided to the
5 consumer by the seller or shall be otherwise disclosed to the
6 consumer. If the seller does not separately state the surcharge
7 as a distinct item to the consumer as provided in this Section,
8 then the seller shall maintain books and records as required by
9 this Act which clearly identify the amount of the 9-1-1
10 surcharge for retail transactions.

11 For purposes of this subsection (b), a retail transaction
12 occurs in this State if (i) the retail transaction is made in
13 person by a consumer at the seller's business location and the
14 business is located within the State; (ii) the seller is a
15 provider and sells prepaid wireless telecommunications service
16 to a consumer located in Illinois; (iii) the retail transaction
17 is treated as occurring in this State for purposes of the
18 Retailers' Occupation Tax Act; or (iv) a seller that is
19 included within the definition of a "retailer maintaining a
20 place of business in this State" under Section 2 of the Use Tax
21 Act makes a sale of prepaid wireless telecommunications service
22 to a consumer located in Illinois. In the case of a retail
23 transaction which does not occur in person at a seller's
24 business location, if a consumer uses a credit card to purchase
25 prepaid wireless telecommunications service on-line or over
26 the telephone, and no product is shipped to the consumer, the

1 transaction occurs in this State if the billing address for the
2 consumer's credit card is in this State.

3 (b-5) The prepaid wireless 9-1-1 surcharge imposed under
4 subsection (a-5) of this Section shall be collected by the
5 seller from the consumer with respect to each retail
6 transaction occurring in the municipality imposing the
7 surcharge. The amount of the prepaid wireless 9-1-1 surcharge
8 shall be separately stated on an invoice, receipt, or other
9 similar document that is provided to the consumer by the seller
10 or shall be otherwise disclosed to the consumer. If the seller
11 does not separately state the surcharge as a distinct item to
12 the consumer as provided in this Section, then the seller shall
13 maintain books and records as required by this Act which
14 clearly identify the amount of the 9-1-1 surcharge for retail
15 transactions.

16 For purposes of this subsection (b-5), a retail transaction
17 occurs in the municipality if (i) the retail transaction is
18 made in person by a consumer at the seller's business location
19 and the business is located within the municipality; (ii) the
20 seller is a provider and sells prepaid wireless
21 telecommunications service to a consumer located in the
22 municipality; (iii) the retail transaction is treated as
23 occurring in the municipality for purposes of the Retailers'
24 Occupation Tax Act; or (iv) a seller that is included within
25 the definition of a "retailer maintaining a place of business
26 in this State" under Section 2 of the Use Tax Act makes a sale

1 of prepaid wireless telecommunications service to a consumer
2 located in the municipality. In the case of a retail
3 transaction which does not occur in person at a seller's
4 business location, if a consumer uses a credit card to purchase
5 prepaid wireless telecommunications service on-line or over
6 the telephone, and no product is shipped to the consumer, the
7 transaction occurs in the municipality if the billing address
8 for the consumer's credit card is in the municipality.

9 (c) The prepaid wireless 9-1-1 surcharge is imposed on the
10 consumer and not on any provider. The seller shall be liable to
11 remit all prepaid wireless 9-1-1 surcharges that the seller
12 collects from consumers as provided in Section 20, including
13 all such surcharges that the seller is deemed to collect where
14 the amount of the surcharge has not been separately stated on
15 an invoice, receipt, or other similar document provided to the
16 consumer by the seller. The surcharge collected or deemed
17 collected by a seller shall constitute a debt owed by the
18 seller to this State, and any such surcharge actually collected
19 shall be held in trust for the benefit of the Department.

20 For purposes of this subsection (c), the surcharge shall
21 not be imposed or collected from entities that have an active
22 tax exemption identification number issued by the Department
23 ~~are tax exempt~~ under Section 1g of the Retailers' Occupation
24 Tax Act.

25 (d) The amount of the prepaid wireless 9-1-1 surcharge that
26 is collected by a seller from a consumer, if such amount is

1 separately stated on an invoice, receipt, or other similar
2 document provided to the consumer by the seller, shall not be
3 included in the base for measuring any tax, fee, surcharge, or
4 other charge that is imposed by this State, any political
5 subdivision of this State, or any intergovernmental agency.

6 (e) The prepaid wireless 9-1-1 charge imposed under
7 subsection (a) of this Section shall be proportionately
8 increased or reduced, as applicable, upon any change to the
9 surcharge imposed under Section 17 of the Wireless Emergency
10 Telephone Safety Act. The adjusted rate shall be determined by
11 dividing the amount of the surcharge imposed under Section 17
12 of the Wireless Emergency Telephone Safety Act by \$50. Such
13 increase or reduction shall be effective on the first day of
14 the first calendar month to occur at least 60 days after the
15 enactment of the change to the surcharge imposed under Section
16 17 of the Wireless Emergency Telephone Safety Act. The
17 Department shall provide not less than 30 days' notice of an
18 increase or reduction in the amount of the surcharge on the
19 Department's website.

20 (e-5) Any changes in the rate of the surcharge imposed by a
21 municipality under the authority granted in subsection (a-5) of
22 this Section shall be effective on the first day of the first
23 calendar month to occur at least 60 days after the enactment of
24 the change. The Department shall provide not less than 30 days'
25 notice of the increase or reduction in the rate of such
26 surcharge on the Department's website.

1 (f) When prepaid wireless telecommunications service is
2 sold with one or more other products or services for a single,
3 non-itemized price, then the percentage specified in
4 subsection (a) or (a-5) of this Section 15 shall be applied to
5 the entire non-itemized price unless the seller elects to apply
6 the percentage to (i) the dollar amount of the prepaid wireless
7 telecommunications service if that dollar amount is disclosed
8 to the consumer or (ii) the portion of the price that is
9 attributable to the prepaid wireless telecommunications
10 service if the retailer can identify that portion by reasonable
11 and verifiable standards from its books and records that are
12 kept in the regular course of business for other purposes,
13 including, but not limited to, books and records that are kept
14 for non-tax purposes. However, if a minimal amount of prepaid
15 wireless telecommunications service is sold with a prepaid
16 wireless device for a single, non-itemized price, then the
17 seller may elect not to apply the percentage specified in
18 subsection (a) or (a-5) of this Section 15 to such transaction.
19 For purposes of this subsection, an amount of service
20 denominated as 10 minutes or less or \$5 or less is considered
21 minimal.

22 (Source: P.A. 97-463, eff. 1-1-12.)

23 (50 ILCS 753/20)

24 Sec. 20. Administration of prepaid wireless 9-1-1
25 surcharge.

1 (a) In the administration and enforcement of this Act, the
2 provisions of Sections 2a, 2b, 2c, 3, 4, 5, 5a, 5b, 5c, 5d, 5e,
3 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 12 of the
4 Retailers' Occupation Tax Act that are not inconsistent with
5 this Act, and Section 3-7 of the Uniform Penalty and Interest
6 Act shall apply, as far as practicable, to the subject matter
7 of this Act to the same extent as if those provisions were
8 included in this Act. References to "taxes" in these
9 incorporated Sections shall be construed to apply to the
10 administration, payment, and remittance of all surcharges
11 under this Act. The Department shall establish registration and
12 payment procedures that substantially coincide with the
13 registration and payment procedures that apply to the
14 Retailers' Occupation Tax Act.

15 (b) For the first 12 months after the effective date of
16 this Act, a seller shall be permitted to deduct and retain 5%
17 of prepaid wireless 9-1-1 surcharges that are collected by the
18 seller from consumers and that are remitted and timely filed
19 with the Department. After the first 12 months, a seller shall
20 be permitted to deduct and retain 3% of prepaid wireless 9-1-1
21 surcharges that are collected by the seller from consumers and
22 that are remitted and timely filed with the Department.

23 (c) Other than the amounts for deposit into the Municipal
24 Wireless Service Emergency Fund, the Department shall pay to
25 the State Treasurer all prepaid wireless E911 charges and
26 penalties collected under this Act for deposit into the

1 Wireless Service Emergency Fund. On or before the 25th day of
2 each calendar month, the Department shall prepare and certify
3 to the Comptroller the amount available to the Illinois
4 Commerce Commission for distribution out of the Wireless
5 Service Emergency Fund. The amount certified shall be the
6 amount (not including credit memoranda) collected during the
7 second preceding calendar month by the Department plus an
8 amount the Department determines is necessary to offset any
9 amounts which were erroneously paid to a different taxing body.
10 The amount paid to the Wireless Service Emergency Fund shall
11 not include any amount equal to the amount of refunds made
12 during the second preceding calendar month by the Department to
13 retailers under this Act or any amount that the Department
14 determines is necessary to offset any amounts which were
15 payable to a different taxing body but were erroneously paid to
16 the Wireless Service Emergency Fund. The Illinois Commerce
17 Commission shall distribute the funds in the same proportion as
18 they are distributed under the Wireless Emergency Telephone
19 Safety Act and the funds may only be used in accordance with
20 the provisions of the Wireless Emergency Telephone Safety Act.
21 ~~The Department shall pay all remitted prepaid wireless E911~~
22 ~~charges over to the State Treasurer for deposit into the~~
23 ~~Wireless Service Emergency Fund within 30 days after receipt.~~
24 ~~The Illinois Commerce Commission shall distribute such funds in~~
25 ~~the same proportion as they are distributed under the Wireless~~
26 ~~Emergency Telephone Safety Act and such funds may only be used~~

1 ~~in accordance with the provisions of the Wireless Emergency~~
2 ~~Telephone Safety Act.~~ The Department may deduct an amount, not
3 to exceed 3% during the first year following the effective date
4 of this Act and not to exceed 2% during every year thereafter
5 of remitted charges, to be transferred into ~~retained by~~ the Tax
6 Compliance and Administration Fund ~~Department~~ to reimburse the
7 Department for its direct costs of administering the collection
8 and remittance of prepaid wireless 9-1-1 surcharges.

9 (d) The Department shall administer the collection of all
10 9-1-1 surcharges and may adopt and enforce reasonable rules
11 relating to the administration and enforcement of the
12 provisions of this Act as may be deemed expedient. The
13 Department shall require all surcharges collected under this
14 Act to be reported on existing forms or combined forms,
15 including, but not limited to, Form ST-1. Any overpayments
16 received by the Department for liabilities reported on existing
17 or combined returns shall be applied as an overpayment of
18 retailers' occupation tax, use tax, service occupation tax, or
19 service use tax liability.

20 (e) If a home rule municipality having a population in
21 excess of 500,000 as of the effective date of this amendatory
22 Act of the 97th General Assembly imposes an E911 surcharge
23 under subsection (a-5) of Section 15 of this Act, then the
24 Department shall pay to the State Treasurer all prepaid
25 wireless E911 charges, penalties, and interest collected for
26 deposit into the Municipal Wireless Service Emergency Fund. All

1 deposits into the Municipal Wireless Service Emergency Fund
2 shall be held by the State Treasurer as ex officio custodian
3 separate and apart from all public moneys or funds of this
4 State. Moneys in the Municipal Wireless Service Emergency Fund
5 are not subject to appropriation. On or before the 25th day of
6 each calendar month, the Department shall prepare and certify
7 to the Comptroller the amount available for disbursement to the
8 home rule municipality out of the Municipal Wireless Service
9 Emergency Fund. The amount to be paid to the Municipal Wireless
10 Service Emergency Fund shall be the amount (not including
11 credit memoranda) collected during the second preceding
12 calendar month by the Department plus an amount the Department
13 determines is necessary to offset any amounts which were
14 erroneously paid to a different taxing body. The amount paid to
15 the Municipal Wireless Service Emergency Fund shall not include
16 any amount equal to the amount of refunds made during the
17 second preceding calendar month by the Department to retailers
18 under this Act or any amount that the Department determines is
19 necessary to offset any amounts which were payable to a
20 different taxing body but were erroneously paid to the
21 Municipal Wireless Service Emergency Fund. Within 10 days after
22 receipt by the Comptroller of the certification provided for in
23 this subsection, the Comptroller shall cause the orders to be
24 drawn for the respective amounts in accordance with the
25 directions in the certification. The Department may deduct an
26 amount, not to exceed 3% during the first year following the

1 effective date of this amendatory Act of the 97th General
2 Assembly and not to exceed 2% during every year thereafter of
3 remitted charges, to be transferred into the Tax Compliance and
4 Administration Fund to reimburse the Department for its direct
5 costs of administering the collection and remittance of prepaid
6 wireless 9-1-1 surcharges.

7 (Source: P.A. 97-463, eff. 1-1-12.)

8 Section 10. The State Finance Act is amended by adding
9 Section 5.811 as follows:

10 (30 ILCS 105/5.811 new)

11 Sec. 5.811. The Municipal Wireless Service Emergency Fund.