



Sen. Don Harmon

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LRB097 06257 HLH 66160 a

1 AMENDMENT TO HOUSE BILL 3129

2 AMENDMENT NO. _____. Amend House Bill 3129 by replacing
3 everything after the enacting clause with the following:

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

1 retail transaction sourced to that jurisdiction and collected
2 and remitted in accordance with the provisions of subsection
3 (b-5).

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

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

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

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

23 For purposes of this subsection (b-5), a retail transaction
24 occurs in the municipality if (i) the retail transaction is
25 made in person by a consumer at the seller's business location
26 and the business is located within the municipality; (ii) the

1 seller is a provider and sells prepaid wireless
2 telecommunications service to a consumer located in the
3 municipality; (iii) the retail transaction is treated as
4 occurring in the municipality for purposes of the Retailers'
5 Occupation Tax Act; or (iv) a seller that is included within
6 the definition of a "retailer maintaining a place of business
7 in this State" under Section 2 of the Use Tax Act makes a sale
8 of prepaid wireless telecommunications service to a consumer
9 located in the municipality. In the case of a retail
10 transaction which does not occur in person at a seller's
11 business location, if a consumer uses a credit card to purchase
12 prepaid wireless telecommunications service on-line or over
13 the telephone, and no product is shipped to the consumer, the
14 transaction occurs in the municipality if the billing address
15 for the consumer's credit card is in the municipality.

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

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

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

13 (e) The prepaid wireless 9-1-1 charge imposed under
14 subsection (a) of this Section shall be proportionately
15 increased or reduced, as applicable, upon any change to the
16 surcharge imposed under Section 17 of the Wireless Emergency
17 Telephone Safety Act. The adjusted rate shall be determined by
18 dividing the amount of the surcharge imposed under Section 17
19 of the Wireless Emergency Telephone Safety Act by \$50. Such
20 increase or reduction shall be effective on the first day of
21 the first calendar month to occur at least 60 days after the
22 enactment of the change to the surcharge imposed under Section
23 17 of the Wireless Emergency Telephone Safety Act. The
24 Department shall provide not less than 30 days' notice of an
25 increase or reduction in the amount of the surcharge on the
26 Department's website.

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

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

1 denominated as 10 minutes or less or \$5 or less is considered
2 minimal.

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

4 (50 ILCS 753/20)

5 Sec. 20. Administration of prepaid wireless 9-1-1
6 surcharge.

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

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

1 be permitted to deduct and retain 3% of prepaid wireless 9-1-1
2 surcharges that are collected by the seller from consumers and
3 that are remitted and timely filed with the Department.

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

1 the provisions of the Wireless Emergency Telephone Safety Act.
2 ~~The Department shall pay all remitted prepaid wireless E911~~
3 ~~charges over to the State Treasurer for deposit into the~~
4 ~~Wireless Service Emergency Fund within 30 days after receipt.~~
5 ~~The Illinois Commerce Commission shall distribute such funds in~~
6 ~~the same proportion as they are distributed under the Wireless~~
7 ~~Emergency Telephone Safety Act and such funds may only be used~~
8 ~~in accordance with the provisions of the Wireless Emergency~~
9 ~~Telephone Safety Act.~~ The Department may deduct an amount, not
10 to exceed 3% during the first year following the effective date
11 of this Act and not to exceed 2% during every year thereafter
12 of remitted charges, to be transferred into ~~retained by~~ the Tax
13 Compliance and Administration Fund ~~Department~~ to reimburse the
14 Department for its direct costs of administering the collection
15 and remittance of prepaid wireless 9-1-1 surcharges.

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

1 (e) If a home rule municipality having a population in
2 excess of 500,000 as of the effective date of this amendatory
3 Act of the 97th General Assembly imposes an E911 surcharge
4 under subsection (a-5) of Section 15 of this Act, then the
5 Department shall pay to the State Treasurer all prepaid
6 wireless E911 charges, penalties, and interest collected for
7 deposit into the Municipal Wireless Service Emergency Fund. All
8 deposits into the Municipal Wireless Service Emergency Fund
9 shall be held by the State Treasurer as ex officio custodian
10 separate and apart from all public moneys or funds of this
11 State. Moneys in the Municipal Wireless Service Emergency Fund
12 are not subject to appropriation. On or before the 25th day of
13 each calendar month, the Department shall prepare and certify
14 to the Comptroller the amount available for disbursement to the
15 home rule municipality out of the Municipal Wireless Service
16 Emergency Fund. The amount to be paid to the Municipal Wireless
17 Service Emergency Fund shall be the amount (not including
18 credit memoranda) collected during the second preceding
19 calendar month by the Department plus an amount the Department
20 determines is necessary to offset any amounts which were
21 erroneously paid to a different taxing body. The amount paid to
22 the Municipal Wireless Service Emergency Fund shall not include
23 any amount equal to the amount of refunds made during the
24 second preceding calendar month by the Department to retailers
25 under this Act or any amount that the Department determines is
26 necessary to offset any amounts which were payable to a

1 different taxing body but were erroneously paid to the
2 Municipal Wireless Service Emergency Fund. Within 10 days after
3 receipt by the Comptroller of the certification provided for in
4 this subsection, the Comptroller shall cause the orders to be
5 drawn for the respective amounts in accordance with the
6 directions in the certification. The Department may deduct an
7 amount, not to exceed 3% during the first year following the
8 effective date of this amendatory Act of the 97th General
9 Assembly and not to exceed 2% during every year thereafter of
10 remitted charges, to be transferred into the Tax Compliance and
11 Administration Fund to reimburse the Department for its direct
12 costs of administering the collection and remittance of prepaid
13 wireless 9-1-1 surcharges.

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

15 Section 10. The State Finance Act is amended by adding
16 Section 5.811 as follows:

17 (30 ILCS 105/5.811 new)

18 Sec. 5.811. The Municipal Wireless Service Emergency
19 Fund."