

1 State of Arkansas *As Engrossed: S3/13/13 S3/20/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 500

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5 By: Senator J. Woods

6 By: Representative Neal

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For An Act To Be Entitled

9 AN ACT TO ASSIST THE ADMINISTRATION AND COLLECTION OF
10 911 EMERGENCY PHONE SYSTEM CHARGES UNDER THE ARKANSAS
11 PUBLIC SAFETY COMMUNICATIONS ACT OF 1985; TO REGULATE
12 CONTRIBUTIONS FROM PREPAID WIRELESS PHONE USERS; AND
13 FOR OTHER PURPOSES.

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Subtitle

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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. Arkansas Code § 12-10-303(17), concerning the definition of
26 "prepaid wireless telephone service" under the Arkansas Public Safety
27 Communications Act of 1985, is amended to read as follows:

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(17) "Prepaid wireless ~~telephone~~ telecommunications service"
means a "prepaid wireless telephone calling service" as defined in § 26-52-
314+

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~~(A) For which no monthly invoices are issued; and~~

~~(B) Which is activated in advance by payment for a finite~~

~~dollar amount of service or for a finite set of minutes that terminate;~~

~~(i) Upon use by the customer and delivery by a CMRS
provider or reseller of an agreed upon amount of service corresponding to the
total dollar amount paid in advance; or~~



1 ~~(ii) Within a certain period of time following the~~
2 ~~initial purchase or activation unless additional payments are made;~~

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4 SECTION 2. Arkansas Code § 12-10-303(26)(A), concerning the definition
5 of "tariff rate" under the Arkansas Public Safety Communications Act of 1985,
6 is amended to read as follows:

7 (26)(A) "Tariff rate" means the rate or rates billed by a
8 service supplier as stated in the service supplier's tariffs, ~~and approved by~~
9 ~~the Arkansas Public Service Commission, which represents~~ price lists,
10 customer contracts, or other methods of publishing service offerings that
11 represent the service supplier's recurring charges for exchange access
12 facilities, exclusive of all:

13 (i) Taxes;

14 (ii) Fees;

15 (iii) Licenses; or

16 (iv) Similar charges whatsoever.

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18 SECTION 3. Arkansas Code § 12-10-318(b)(1), concerning emergency
19 telephone service charges, is amended to read as follows:

20 (b)(1)(A)(i) There is levied a commercial mobile radio service
21 emergency telephone service charge in an amount of sixty-five cents (65¢) per
22 month per commercial mobile radio service connection that has a place of
23 primary use within the State of Arkansas.

24 (ii)(a) A commercial mobile radio service provider
25 may determine, bill, collect, and retain an additional amount to reimburse
26 the commercial mobile radio service provider for enabling and providing 911
27 and enhanced 911 services and capability in the network and for the
28 facilities and associated equipment.

29 (b) The commercial mobile radio service
30 provider may add any amounts implemented under this subdivision (b)(1)(A)(ii)
31 to the sixty-five cents (65¢) levied in subdivision (b)(1)(A)(i) of this
32 section so that the commercial mobile radio service emergency telephone
33 service charges appear as a single line item on a subscriber's bill.

34 ~~(B)(i) There is levied a service charge of sixty-five~~
35 ~~cents (65¢) per month on prepaid wireless telephone service subscribers whose~~
36 ~~mobile set telephone numbers are assigned to the State of Arkansas.~~

1 ~~(ii) Providers of prepaid wireless telephone service~~
2 ~~shall collect and remit the service charge under one (1) of the following~~
3 ~~methods:~~

4 ~~(a) The CMRS provider shall collect on a~~
5 ~~monthly basis the sixty five cents (65¢) service charge from each prepaid~~
6 ~~wireless telephone service customer whose account balance is equal to or~~
7 ~~greater than the amount of the service charge; or~~

8 ~~(b) The CMRS provider shall divide the total~~
9 ~~earned prepaid wireless telephone service revenue received by the CMRS~~
10 ~~provider with respect to each prepaid wireless telephone service customer in~~
11 ~~the state within the monthly 911 reporting period by fifty dollars (\$50.00)~~
12 ~~and multiply the quotient by the service charge amount.~~

13 ~~(iii) In the case of prepaid wireless telephone~~
14 ~~service:~~

15 ~~(a) The monthly wireless 911 surcharge imposed~~
16 ~~by this subdivision (b)(1)(B) shall be remitted based upon each prepaid~~
17 ~~wireless telephone associated with this state for each wireless service~~
18 ~~customer that has a sufficient positive balance as of the last day of each~~
19 ~~month;~~

20 ~~(b) The surcharge shall be remitted in any~~
21 ~~manner consistent with the wireless provider's existing operating or~~
22 ~~technological abilities, such as customer address, location associated with~~
23 ~~the mobile telephone number, or reasonable allocation method based upon other~~
24 ~~comparable relevant data; and~~

25 ~~(c)(1) If direct billing is not feasible, the~~
26 ~~prepaid subscriber's account may be reduced by the surcharge amount or an~~
27 ~~equivalent number of minutes.~~

28 ~~(2) However, collection of the wireless~~
29 ~~911 surcharge under this subdivision (b)(1)(B)(iii)(c) does not reduce the~~
30 ~~sales price for any tax collected at the point of sale.~~

31 ~~(G)(B)~~ There is levied a voice over internet protocol
32 emergency telephone service charge in an amount of sixty-five cents (65¢) per
33 month per voice over internet protocol connection that has a place of primary
34 use within the State of Arkansas.

35 ~~(D)(C)~~ There is levied a nontraditional telephone service
36 charge in an amount of sixty-five cents (65¢) per month per nontraditional

1 service connection that has a place of primary use within the State of
2 Arkansas.

3 ~~(E)(D) Except for prepaid wireless telephone service, the~~
4 The service charge levied in subdivision (b)(1)(A) of this section ~~and any~~
5 ~~additional amounts implemented under subdivision (b)(1)(B) of this section~~
6 and collected by commercial mobile radio service providers that provide
7 mobile telecommunications services as defined by the Mobile
8 Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on January
9 1, 2001, shall be collected pursuant to the Mobile Telecommunications
10 Sourcing Act.

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12 SECTION 4. Arkansas Code § 12-10-318(c)(2)(A) and (B), concerning the
13 responsibilities of the Arkansas Emergency Telephone Services Board, is
14 amended to read as follows:

15 (2) The responsibilities of the board shall be as follows:

16 (A) To establish and maintain an interest-bearing account
17 into which ~~will~~ shall be deposited revenues from the service charges levied
18 under subdivision (b)(1)(A) of this section and prepaid wireless E911 charges
19 under § 12-10-326;

20 (B) To manage and disburse the funds from the interest-
21 bearing account levied under subdivision (b)(1)(A) established under
22 subdivision (c)(2)(A) of this section in the following manner:

23 (i)(a) Not less than eighty-three and five-tenths
24 percent (83.5%) of the total monthly revenues collected and remitted under
25 subdivision (b)(1)(A) of this section and prepaid wireless E911 charges under
26 § 12-10-326 shall be distributed on a population basis to each political
27 subdivision operating a 911 public safety communications center that has the
28 capability of receiving commercial mobile radio service 911 calls on
29 dedicated 911 trunk lines for expenses incurred for the answering, routing,
30 and proper disposition of 911 calls, including payroll costs, readiness
31 costs, and training costs associated with wireless, voice over internet
32 protocol, and nontraditional 911 calls.

33 (b) Each state fiscal year, one hundred twenty
34 thousand dollars (\$120,000) of the total monthly revenues collected and
35 remitted under subdivision (c)(2)(B)(i)(a) of this section shall be
36 transferred and deposited to the credit of the books of the Treasurer of

1 State and the Auditor of State for the Miscellaneous Agencies Fund Account
2 for the Arkansas Commission on Law Enforcement Standards and Training, to be
3 used exclusively for training and all related costs under § 12-10-325;

4 (ii)(a) Not more than fifteen percent (15%) of the
5 total monthly revenues collected and remitted under subdivision (b)(1)(A) of
6 this section and prepaid wireless E911 charges under § 12-10-326 shall be
7 held in the interest-bearing account. The board shall report to Legislative
8 Council in the event the sum held under this subdivision (c)(2)(B)(ii)(a)
9 becomes less than three million five hundred thousand dollars (\$3,500,000).

10 (b) These funds may be utilized by the public
11 safety answering points for the following purposes in connection with
12 compliance with the Federal Communications Commission requirements:
13 upgrading, purchasing, programming, installing, and maintaining necessary
14 data, basic 911 GIS mapping, hardware, and software, including any network
15 elements required to supply enhanced 911 phase II cellular, voice over
16 internet protocol, and other nontraditional telephone service.

17 (c) Invoices must be presented to the board in
18 connection with any request for reimbursement and be approved by a majority
19 vote of the board to receive reimbursement.

20 (d) Any invoices presented to the board for
21 reimbursements of costs not described by this section may be approved only by
22 a unanimous vote of the board;

23 (iii) Not more than five-tenths percent (0.5%) of
24 the fees collected under subdivision (b)(1)(A) of this section and prepaid
25 wireless E911 charges under § 12-10-326 may be utilized by the board to
26 compensate the independent auditor and for administrative expenses;

27 (iv) All interest received on funds in the interest-
28 bearing account shall be disbursed as prescribed in subdivision (c)(2)(B)(i)
29 of this section; and

30 (v)(a) All cities and counties receiving funds under
31 this section shall submit to the board no later than April 1 of each year an
32 explanation and accounting of the funds received and expenditures of those
33 funds for the previous calendar year, along with a copy of the budget for the
34 previous year and a copy of the year-end appropriation and expenditure
35 analysis of any participating or supporting counties, cities, or agencies.

36 (b)(1) The board may require any other

1 information necessary to ensure that the funds have been properly utilized
2 according to this section.

3 (2) All cities and counties receiving
4 funds under this section also shall submit to the board no later than April 1
5 of each year a copy of all documents reflecting the 911 funds received for
6 the previous calendar year, including without limitation wireless, wireline,
7 general revenues, sales taxes, and other sources used by the city or county
8 for 911 services.

9 (c) Failure to submit the proper accounting
10 information and failure to utilize the funds in a proper manner may result in
11 the suspension or reduction of funding until corrected;

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13 SECTION 5. Arkansas Code § 12-10-318(c)(2)(D), concerning the
14 responsibilities of the Arkansas Emergency Telephone Services Board, is
15 amended to read as follows:

16 (D) To submit annual reports to the office of the Auditor
17 of State outlining fees collected and moneys disbursed to public safety
18 answering points from service charges under subdivision (b)(1)(A) of this
19 section and prepaid wireless E911 charges under § 12-10-326; and

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21 SECTION 6. Arkansas Code Title 12, Chapter 10, Subchapter 3, is
22 amended to add an additional section to read as follows:

23 12-10-326. Prepaid wireless E911 service charges.

24 (a) As used in this section:

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

27 (2) "Occurring in this state" means a retail transaction that
28 is:

29 (A) Conducted in person by a consumer at a business
30 location of a seller in this state; or

31 (B) Treated as occurring in this state for purposes of the
32 gross receipts tax provided under § 26-52-521(b);

33 (3) "Prepaid wireless E911 charge" means the charge for prepaid
34 wireless telecommunications service that is required to be collected by a
35 seller from a consumer under subsection (b) of this section;

36 (4) "Provider" means a person that provides prepaid wireless

1 telecommunications service under a license issued by the Federal
2 Communications Commission;

3 (5)(A) "Retail transaction" means each purchase of prepaid
4 wireless telecommunications service from a seller for any purpose other than
5 resale.

6 (B)(i) "Retail transaction" includes a separate purchase
7 of prepaid wireless telecommunications service that is paid contemporaneously
8 with another purchase of prepaid wireless telecommunications service if
9 separately stated on an invoice, receipt, or similar document provided by the
10 seller to the consumer at the time of sale.

11 (ii) A "retail transaction" includes a recharge as
12 defined in § 26-52-314 of prepaid wireless telecommunications service;

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

15 (7) "Wireless telecommunications service" means a commercial
16 mobile radio service as defined under § 12-10-303.

17 (b)(1) For each retail transaction occurring in this state, the seller
18 shall collect from the consumer a prepaid wireless E911 charge of sixty-five
19 cents (65¢).

20 (2)(A) The amount of the prepaid wireless E911 charge shall be
21 either separately stated on an invoice, receipt, or similar document that is
22 provided to the consumer at the time of sale by the seller or otherwise
23 disclosed to the consumer.

24 (B) If the amount of the prepaid wireless E911 charge is
25 separately stated on an invoice, receipt, or similar document provided to the
26 consumer at the time of sale by the seller, the amount of the prepaid
27 wireless E911 charge shall not be included in the base for measuring any tax,
28 fee, surcharge, or other charge that is imposed by the state, a political
29 subdivision of the state, or an intergovernmental agency.

30 (c) If prepaid wireless telecommunications service of ten (10) minutes
31 or less or five dollars (\$5.00) or less is sold with a prepaid wireless
32 device for a single, nonitemized price, then the seller is not required to
33 collect the fee specified in subdivision (b)(1) of this section.

34 (d)(1) Except as provided in subdivision (d)(2) of this section, a
35 seller shall report and pay one hundred percent (100%) of the prepaid
36 wireless E911 charge plus any penalties and interest due to the Director of

1 the Department of Finance and Administration in the same manner and at the
2 same time as the gross receipts tax under the Arkansas Gross Receipts Act of
3 1941, § 26-52-101 et seq.

4 (2) A seller that meets the prompt payment requirements of § 26-
5 52-503 may deduct and retain three percent (3%) of the prepaid wireless E911
6 charge.

7 (e) The Arkansas Tax Procedure Act, § 26-18-101 et seq., applies to a
8 prepaid wireless E911 charge.

9 (f) The department shall pay all remitted prepaid wireless E911
10 charges within thirty (30) days of receipt to the Arkansas Emergency
11 Telephone Services Board for use by the board under subdivision § 12-10-
12 318(c).

13 (g) A provider or seller is not liable for damages to a person
14 resulting from or incurred in connection with:

15 (1) Providing or failing to provide 911 or E911 service;

16 (2) Identifying or failing to identify the telephone number,
17 address, location, or name associated with a person or device that is
18 accessing or attempting to access 911 or E911 service; or

19 (3) Providing lawful assistance to a federal, state, or local
20 investigator or law enforcement officer conducting a lawful investigation or
21 other law enforcement activity.

22 (h) A provider or seller is not liable for civil damages or criminal
23 liability in connection with:

24 (1) The development, design, installation, operation,
25 maintenance, performance, or provision of 911 service; or

26 (2) The release of subscriber information to a governmental
27 entity as required by the Arkansas Public Safety Communications Act of 1985,
28 § 12-10-301 et seq.

29 (i)(1) The prepaid wireless E911 charge imposed by this section shall
30 be the only E911 funding obligation imposed for prepaid wireless
31 telecommunications service in this state.

32 (2) Except for the prepaid wireless E911 charge imposed under
33 this section, no other tax, fee, surcharge, or other charge shall be imposed
34 upon prepaid wireless telecommunication services by the state, a political
35 subdivision of the state, or an intergovernmental agency for the purpose of
36 implementing and supporting emergency telephone services.

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SECTION 7. Arkansas Code § 26-18-104(13), concerning definitions under the Arkansas Tax Procedure Act, § 26-18-101 et seq., is amended to read as follows:

(13) "State tax" means any tax, ~~or~~ any fee for a license, permit, or registration, or any other fee or charge which is payable to, collected by, or administered by the Revenue Division of the Department of Finance and Administration, ~~State of Arkansas;~~

SECTION 8. EFFECTIVE DATE. This act is effective on and after January 1, 2014.

/s/J. Woods

APPROVED: 04/04/2013