

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

SENATE BILL 754

4 By: Senator Teague

5
6 Filed with: Interim Senate Committee on Insurance and Commerce
7 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

8 AN ACT TO CREATE FAIRNESS IN THE APPLICATION OF
9 SERVICE CHARGES TO PREPAID COMMERCIAL MOBILE RADIO
10 SERVICE TELEPHONES; AND FOR OTHER PURPOSES.

Subtitle

11 AN ACT TO CREATE FAIRNESS IN THE
12 APPLICATION OF SERVICE CHARGES TO PREPAID
13 WIRELESS TELEPHONES.

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

22
23 SECTION 1. Arkansas Code § 12-10-303(17), defining prepaid wireless
24 telephone service, is amended to read as follows:

25 (17)(A) ~~“Prepaid wireless telephone service” means a wireless~~
26 ~~telephone service:~~

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

28 (B) ~~Which is activated in advance by payment for a finite~~
29 ~~dollar amount of service or for a finite set of minutes that terminate:~~

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

33 (ii) ~~Within a certain period of time following the~~
34 ~~initial purchase or activation unless additional payments are made; “Prepaid~~
35 ~~wireless calling service” includes a telecommunication service that provides~~
36 ~~the right to utilize a mobile wireless service as well as other non-~~

1 telecommunications services, including the download of a digital product
 2 delivered electronically and content and ancillary services, that shall be
 3 paid for in advance and that is sold in predetermined units or dollars of
 4 which the number declines with use in a known amount;

5
 6 SECTION 2. Arkansas Code § 12-10-318(b) and (c), concerning emergency
 7 telephone service charges, are amended to read as follows:

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

12 (ii)(a) A commercial mobile radio service provider
 13 may determine, bill, collect, and retain an additional amount to reimburse
 14 the commercial mobile radio service provider for enabling and providing 911
 15 and enhanced 911 services and capability in the network and for the
 16 facilities and associated equipment.

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

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

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

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

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

1 ~~(iii) In the case of prepaid wireless telephone~~
2 ~~service;~~

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

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

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

16 ~~(2) However, collection of the wireless~~
17 ~~911 surcharge under this subdivision (b)(1)(B)(iii)(c) does not reduce the~~
18 ~~sales price for any tax collected at the point of sale.~~

19 (B)(i) The service charge imposed by subdivision
20 (b)(1)(A)(i) of this section does not apply to prepaid wireless calling
21 service.

22 (ii) Prepaid wireless calling service is subject to
23 the service charge imposed under § 12-10-325.

24 (C) There is levied a voice over internet protocol
25 emergency telephone service charge in an amount of sixty-five cents (65¢) per
26 month per voice over internet protocol connection that has a place of primary
27 use within the State of Arkansas.

28 (D) There is levied a nontraditional telephone service
29 charge in an amount of sixty-five cents (65¢) per month per nontraditional
30 service connection that has a place of primary use within the State of
31 Arkansas.

32 (E) Except for ~~prepaid wireless telephone service~~ prepaid
33 wireless calling service, the service charge levied in subdivision (b)(1)(A)
34 of this section ~~and any additional amounts implemented under subdivision~~
35 ~~(b)(1)(B) of this section~~ and collected by commercial mobile radio service
36 providers that provide mobile telecommunications services as defined by the

1 Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on
2 ~~January 1, 2001~~ January 1, 2011, shall be collected ~~pursuant to~~ under the
3 Mobile Telecommunications Sourcing Act.

4 (2)(A) The service charges collected under subdivision (b)(1)(A)
5 of this section, less administrative fees under subdivision (c)(3) of this
6 section, shall be remitted to the Arkansas Emergency Telephone Services Board
7 within sixty (60) days after the end of the month in which the fees are
8 collected.

9 (B) The funds collected ~~pursuant to~~ under subdivision
10 (b)(1)(A) of this section and § 12-10-325(b) shall not be deemed revenues of
11 the state and shall not be subject to appropriation by the General Assembly.

12 (c)(1) There is established the Arkansas Emergency Telephone Services
13 Board consisting of the following:

14 (A) The Auditor of State or his or her designated
15 representative;

16 (B) Two (2) representatives selected by a majority of the
17 commercial mobile radio service providers licensed to do business in the
18 state; and

19 (C) Two (2) 911 system employees selected by a majority of
20 the public safety answering point administrators in the state.

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

22 (A) To establish and maintain an interest-bearing account
23 into which will be deposited revenues from the service charges levied under
24 subdivision (b)(1)(A) of this section and § 12-10-325(b);

25 (B) To manage and disburse the funds from the account
26 levied under subdivision (b)(1)(A) of this section and § 12-10-325(b) in the
27 following manner:

28 (i) Not less than eighty-three and five-tenths
29 percent (83.5%) of the total monthly revenues collected and remitted under
30 subdivision (b)(1)(A) of this section and § 12-10-325(b) shall be distributed
31 on a population basis to each political subdivision operating a 911 public
32 safety communications center that has the capability of receiving commercial
33 mobile radio service 911 calls on dedicated 911 trunk lines for expenses
34 incurred for the answering, routing, and proper disposition of 911 calls,
35 including payroll costs, readiness costs, and training costs associated with
36 wireless, voice over internet protocol, and nontraditional 911 calls;

1 (ii)(a) Not more than fifteen percent (15%) of the
2 total monthly revenues collected and remitted under subdivision (b)(1)(A) of
3 this section and § 12-10-325(b) shall be held in the interest-bearing
4 account. The board shall report to Legislative Council in the event the sum
5 held under this subdivision becomes less than three million five hundred
6 thousand dollars (\$3,500,000).

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

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

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

20 (iii) Not more than five-tenths percent (0.5%) of
21 the fees collected under subdivision (b)(1)(A) of this section and § 12-10-
22 325(b) may be utilized by the board to compensate the independent auditor and
23 for administrative expenses;

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

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

33 (b)(1) The board may require any other
34 information necessary to ensure the funds have been properly utilized
35 according to this section.

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

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

10 (C)(i) To promulgate regulations necessary to perform its
11 duties prescribed by this subchapter.

12 (ii) In determining the population basis for
13 distribution of funds under subdivision (c)(2)(B)(i) of this section, the
14 board shall determine, based on the latest federal decennial census, the
15 population of all unincorporated areas of counties operating a 911 public
16 safety communications center that has the capacity of receiving commercial
17 mobile radio service, voice over internet protocol service, or nontraditional
18 911 calls on dedicated 911 trunk lines and the population of all incorporated
19 areas operating a 911 public safety communications center that has the
20 capability of receiving commercial mobile radio service, voice over internet
21 protocol service, or nontraditional 911 calls on dedicated 911 trunk lines
22 and compare the population of each of those political subdivisions to the
23 total population;

24 (D) To submit annual reports to the office of the Auditor
25 of State outlining fees collected and moneys disbursed to public safety
26 answering points under subdivision (b)(1)(A) of this section and § 12-10-
27 325(b); and

28 (E)(i) To retain an independent third-party auditor for
29 the purposes of receiving, maintaining, and verifying the accuracy of any
30 proprietary information submitted to the board by commercial mobile radio
31 service providers.

32 (ii) Due to the confidential and proprietary nature
33 of the information submitted by commercial mobile radio service providers,
34 the information shall be retained by the independent auditor in confidence,
35 shall be subject to review only by the Auditor of State, and shall not be

1 subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., nor
2 released to any third party.

3 (iii) The information collected by the independent
4 auditor shall be released only in aggregate amounts that do not identify or
5 allow identification of numbers of subscribers or revenues attributable to an
6 individual commercial mobile radio service provider.

7 (3) Commercial mobile radio service providers, voice over
8 internet protocol, or other nontraditional communications providers shall be
9 entitled to retain one percent (1%) of the fees collected under subdivision
10 (b)(1)(A) of this section as reimbursement for collection and handling of the
11 charges.

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

15 12-10-325. Prepaid commercial mobile radio service E911 service
16 charge.

17 (a) As used in this section:

18 (1)(A) “Commercial mobile radio service” or “CMRS” means
19 commercial mobile service under §§ 3(27) and 332(d), Federal
20 Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., Federal
21 Communications Commission rules, and the Omnibus Budget Reconciliation Act of
22 1993.

23 (B)(i) “Commercial mobile radio service” or “CMRS”
24 includes any wireless, two-way communication device, including radio-
25 telephone communications used in cellular telephone service, personal
26 communication service, or the functional and competitive or functional or
27 competitive equivalent of a radio-telephone communications line used in
28 cellular telephone service, a personal communication service, or a network
29 radio access line.

30 (ii) “Commercial mobile radio service” or “CMRS”
31 does not include services whose customers do not have access to 911 or a 911-
32 like service, a communication channel suitable only for data transmission, a
33 wireless roaming service or other nonlocal radio access line service, or a
34 private telecommunications system;

35 (2) “Consumer” means a person who purchases prepaid wireless
36 calling service in a retail transaction;

1 (3) "Prepaid commercial mobile radio service E911 charge" means
2 the charge that is required to be collected by a seller from a consumer in
3 the amount established under subsection (b) of this section.;

4 (4) "Provider" means a person that provides prepaid wireless
5 calling service under a license issued by the Federal Communications
6 Commission;

7 (5) "Retail transaction" means the purchase of prepaid wireless
8 calling service from a seller for any purpose other than resale; and

9 (6) " Seller" means a person who sells prepaid wireless calling
10 service to another person.

11 (b) A prepaid commercial mobile radio service E911 charge: is imposed
12 as follow:

13 (1) Thirty-five cents (35¢) per retail transaction ; or

14 (2) On and after the effective date of an adjusted amount per
15 retail transaction under subsection (g) of this section, the adjusted amount.

16 (c)(1) The seller shall collect the prepaid commercial mobile radio
17 service E911 charge from the consumer with respect to each retail transaction
18 occurring in this state.

19 (2) The amount of the prepaid commercial mobile radio service
20 E911 charge shall be:

21 (A) Separately stated on an invoice, receipt, or other
22 similar document that is provided to the consumer by the seller; or

23 (B) Otherwise disclosed to the consumer.

24 (d) For purposes of subsection (c) of this section, a retail
25 transaction that is effected in person by a consumer at a business location
26 of the seller shall be treated as occurring in this state if that business
27 location is in this state, and any other retail transaction shall be treated
28 as occurring in this state if the retail transaction is treated as occurring
29 in this state under § 26-52-521(b).

30 (e) The prepaid commercial mobile radio service E911 charge is the
31 liability of the consumer and not of the seller or of any provider, except
32 that the seller shall be liable to remit all prepaid commercial mobile radio
33 service E911 charges that the seller collects from consumers under subsection
34 (c) of this section, including all charges that the seller is deemed to
35 collect where the amount of the charge has not been separately stated on an

1 invoice, receipt, or other similar document provided to the consumer by the
2 seller.

3 (f) The amount of the prepaid commercial mobile radio service E911
4 charge that is collected by a seller from a consumer, if the amount is
5 separately stated on an invoice, receipt, or other similar document provided
6 to the consumer by the seller, shall not be included in the base for
7 measuring any tax, fee, surcharge, or other charge that is imposed by this
8 state, any political subdivision of this state, or any intergovernmental
9 agency.

10 (g)(1)(A) The Department of Finance and Administration shall
11 proportionately increase or reduce, as applicable, the prepaid commercial
12 mobile radio service E911 charge upon any change to the commercial mobile
13 radio service emergency telephone service charge imposed under § 12-10-
14 318(b)(1)(A)(i).

15 (B) The seller shall report the fee increased or reduced
16 under subdivision (g)(1)(A) of this section on the retailer's tax report
17 filed under the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101
18 et seq., or the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-
19 101 et seq.

20 (2)(A) An increase or reduction under subdivision (g)(1)(A) of
21 this section shall be effective on July 1 of the year in which the department
22 imposes the increase or reduction.

23 (B) The department shall provide not less than thirty (30)
24 days of advance notice of an increase or reduction under subdivision
25 (g)(1)(A) of this section on the department's website.

26 (h)(1)(A) Prepaid commercial mobile radio service E911 charges
27 collected by sellers shall be remitted to the department at the time and in
28 the manner provided under § 26-52-314(a) with respect to the Arkansas Gross
29 Receipts Act of 1941, § 26-52-101 et seq.

30 (B) A seller shall remit moneys collected under
31 subdivision (h)(1)(A) of this section on the due date for the retailer's
32 sales or use tax report under the Arkansas Gross Receipts Act of 1941, as
33 amended, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949,
34 as amended, § 26-53-101 et seq.,

35 (2) The department shall establish registration and payment
36 procedures that substantially coincide with the registration and payment

1 procedures that apply to the tax imposed under § 26-52-314(a) with respect to
2 the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

3 (i)(1)(A) A seller shall be permitted to deduct and retain two percent
4 (2%) of prepaid commercial mobile radio service E911 charges that are
5 collected by the seller from consumers.

6 (B) However a seller shall not claim an early remittance
7 discount for the fees under § 26-52-503(a) with regard to deductions under
8 subdivision (i)(1) of this section.

9 (2) If the seller fails to remit the amount due under this
10 section on or before the twentieth day after the amount is due, the seller
11 forfeits his or her claim to the discount under subdivision (i)(1)(A) of this
12 section and the seller remit to the director the amount withheld under
13 subdivision (i)(1)(A) of this section.

14 (j) The audit and appeal procedures applicable to the Arkansas Tax
15 Procedure Act, § 26-18-101 et seq., apply to the prepaid commercial mobile
16 radio service E911 charge imposed under this section.

17 (k)(1) The department shall establish procedures by which a seller of
18 prepaid wireless calling service may document that a sale is not a retail
19 transaction.

20 (2) Procedures adopted under subdivision (k)(1) of this section
21 shall substantially coincide with the procedures for documenting sales for
22 resale transactions under the Arkansas Gross Receipts Act of 1941, § 26-52-
23 101 et seq.

24 (1)(1) The department shall pay all remitted prepaid commercial mobile
25 radio service E911 charges over to the Arkansas Emergency Telephone Services
26 Board within thirty (30) days after receipt for use by the board under § 12-
27 10- 318(c) after deducting an amount not to exceed three percent (3%) of
28 collected charges.

29 (2)(A) The department shall retain three percent (3%) of the
30 amount received under this section to reimburse the department's direct costs
31 of administering the collection and remittance of prepaid commercial mobile
32 radio service E911 charges.

33 (B) The department shall deposit moneys received under
34 this section into the Constitutional Officers Fund and the State Central
35 Services Fund § 19-5-205, in the same manner as all other tax collections.

1 (m)(1) A provider or seller of prepaid wireless calling service is not
2 liable for damages to a person that result from or are incurred in connection
3 with the provision of or failure to provide 911 or E911 service, or for
4 identifying, or failing to identify the telephone number, address, location,
5 or name associated with a person or device that is accessing or attempting to
6 access 911 or E911 service.

7 (2) A provider or seller of prepaid wireless calling service is
8 not liable for damages to a person that result from or are incurred in
9 connection with the provision of lawful assistance to an investigative or law
10 enforcement officer of the United States, this state or any other state, or a
11 political subdivision of this or any other state in connection with any
12 lawful investigation or other law enforcement activity by a law enforcement
13 officer.

14 (3) In addition to the exemptions under subdivisions (m)(1) and
15 (m)(2) of this section, the liability exemptions under § 12-10-318(d) apply
16 to sellers and providers of prepaid wireless calling service.

17 (n) The prepaid commercial mobile radio service E911 charge imposed
18 under this section is the only E911 funding obligation imposed with respect
19 to prepaid wireless calling service in this state, and a tax, fee, surcharge,
20 or other charge shall not be imposed by this state, any political subdivision
21 of this state, or any intergovernmental agency for E911 funding purposes upon
22 any provider, seller, or consumer with respect to the sale, purchase, use, or
23 provision of prepaid wireless calling service.

24
25 SECTION 4. DO NOT CODIFY. This act becomes effective on January 1,
26 2012.

27
28 Referred by the Arkansas Senate

29 Prepared by: MGF/VJF

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