

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

A Bill

SENATE BILL 754

4
5 By: Senator Teague

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

14 AN ACT TO CREATE FAIRNESS IN THE
15 APPLICATION OF SERVICE CHARGES TO PREPAID
16 WIRELESS TELEPHONES.

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

20
21 SECTION 1. Arkansas Code § 12-10-303(17), defining prepaid wireless
22 telephone service, is amended to read as follows:

23 (17)(A) ~~“Prepaid wireless telephone service” means a wireless~~
24 ~~telephone service:~~

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

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

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

31 (ii) ~~Within a certain period of time following the~~
32 ~~initial purchase or activation unless additional payments are made; “Prepaid~~
33 wireless calling service” includes a telecommunication service that provides
34 the right to utilize a mobile wireless service as well as other non-
35 telecommunications services, including the download of a digital product
36 delivered electronically and content and ancillary services, that shall be



1 paid for in advance and that is sold in predetermined units or dollars of
2 which the number declines with use in a known amount;

3
4 SECTION 2. Arkansas Code § 12-10-318(b) and (c), concerning emergency
5 telephone service charges, are amended to read as follows:

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

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

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

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

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

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

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

35 ~~(iii) In the case of prepaid wireless telephone~~
36 ~~service:~~

1 Mobile Telecommunications Sourcing Act.

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

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

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

12 (A) The Auditor of State or his or her designated
13 representative;

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

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

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

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

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

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

35 (ii)(a) Not more than fifteen percent (15%) of the
36 total monthly revenues collected and remitted under subdivision (b)(1)(A) of

1 this section and § 12-10-325(b) shall be held in the interest-bearing
2 account. The board shall report to Legislative Council in the event the sum
3 held under this subdivision becomes less than three million five hundred
4 thousand dollars (\$3,500,000).

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

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

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

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

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

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

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

34 (2) All cities and counties receiving
35 funds under this section shall also submit to the board no later than April 1
36 of each year, a copy of all documents reflecting the 911 funds received for

1 the previous calendar year, including without limitation wireless, wireline,
2 general revenues, sales taxes, and other sources used by the city or county
3 for 911 services.

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

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

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

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

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

29 (ii) Due to the confidential and proprietary nature
30 of the information submitted by commercial mobile radio service providers,
31 the information shall be retained by the independent auditor in confidence,
32 shall be subject to review only by the Auditor of State, and shall not be
33 subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., nor
34 released to any third party.

35 (iii) The information collected by the independent
36 auditor shall be released only in aggregate amounts that do not identify or

1 allow identification of numbers of subscribers or revenues attributable to an
 2 individual commercial mobile radio service provider.

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

8

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

11 12-10-325. Prepaid commercial mobile radio service E911 service
 12 charge.

13 (a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (B) Otherwise disclosed to the consumer.

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

26 (e) The prepaid commercial mobile radio service E911 charge is the
27 liability of the consumer and not of the seller or of any provider, except
28 that the seller shall be liable to remit all prepaid commercial mobile radio
29 service E911 charges that the seller collects from consumers under subsection
30 (c) of this section, including all charges that the seller is deemed to
31 collect where the amount of the charge has not been separately stated on an
32 invoice, receipt, or other similar document provided to the consumer by the
33 seller.

34 (f) The amount of the prepaid commercial mobile radio service E911
35 charge that is collected by a seller from a consumer, if the amount is
36 separately stated on an invoice, receipt, or other similar document provided

1 to the consumer by the seller, shall not be included in the base for
2 measuring any tax, fee, surcharge, or other charge that is imposed by this
3 state, any political subdivision of this state, or any intergovernmental
4 agency.

5 (g)(1)(A) The Department of Finance and Administration shall
6 proportionately increase or reduce, as applicable, the prepaid commercial
7 mobile radio service E911 charge upon any change to the commercial mobile
8 radio service emergency telephone service charge imposed under § 12-10-
9 318(b)(1)(A)(i).

10 (B) The seller shall report the fee increased or reduced
11 under subdivision (g)(1)(A) of this section on the retailer's tax report
12 filed under the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101
13 et seq., or the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-
14 101 et seq.

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

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

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

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

30 (2) The department shall establish registration and payment
31 procedures that substantially coincide with the registration and payment
32 procedures that apply to the tax imposed under § 26-52-314(a) with respect to
33 the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

34 (i)(1)(A) A seller shall be permitted to deduct and retain two percent
35 (2%) of prepaid commercial mobile radio service E911 charges that are
36 collected by the seller from consumers.

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

4 (2) If the seller fails to remit the amount due under this
5 section on or before the twentieth day after the amount is due, the seller
6 forfeits his or her claim to the discount under subdivision (i)(1)(A) of this
7 section and the seller remit to the director the amount withheld under
8 subdivision (i)(1)(A) of this section.

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

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

15 (2) Procedures adopted under subdivision (k)(1) of this section
16 shall substantially coincide with the procedures for documenting sales for
17 resale transactions under the Arkansas Gross Receipts Act of 1941, § 26-52-
18 101 et seq.

19 (1)(1) The department shall pay all remitted prepaid commercial mobile
20 radio service E911 charges over to the Arkansas Emergency Telephone Services
21 Board within thirty (30) days after receipt for use by the board under § 12-
22 10- 318(c) after deducting an amount not to exceed three percent (3%) of
23 collected charges.

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

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

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

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

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

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

18
19 SECTION 4. DO NOT CODIFY. This act becomes effective on January 1,
20 2012.