

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4
5 By: Senator J. Woods
6 By: Representative Neal
7

A Bill

SENATE BILL 500

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.
14
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Subtitle

16 TO ASSIST THE ADMINISTRATION AND
17 COLLECTION OF 911 EMERGENCY PHONE SYSTEM
18 CHARGES; AND TO REGULATE CONTRIBUTIONS
19 FROM PREPAID WIRELESS PHONE USERS.
20
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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:

28 (17) "Prepaid wireless ~~telephone~~ telecommunications service"
29 means a "prepaid wireless telephone calling service" as defined in § 26-52-
30 314+

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

32 ~~(B) Which is activated in advance by payment for a finite~~
33 ~~dollar amount of service or for a finite set of minutes that terminate;~~

34 ~~(i) Upon use by the customer and delivery by a CMRS~~
35 ~~provider or reseller of an agreed upon amount of service corresponding to the~~
36 ~~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;~~

3
 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.

17
 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 (C) 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) 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) ~~Except for prepaid wireless telephone service, the~~ The
 4 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.

11 (F) Except for purposes of calculating an increase or
 12 decrease to a prepaid wireless E911 charge under § 12-10-326, the service
 13 charges provided by subdivision (b)(1) of this section do not apply to
 14 prepaid wireless telecommunications service.

15
 16 SECTION 4. Arkansas Code § 12-10-318(b)(2)(A), concerning emergency
 17 telephone service charges, is amended to read as follows:

18 (2)(A) ~~The~~ Prepaid wireless E911 charges under § 12-10-326 and
 19 service charges collected under subdivision (b)(1)(A) of this section, less
 20 administrative fees under subdivision (c)(3) of this section, shall be
 21 remitted to the Arkansas Emergency Telephone Services Board within sixty (60)
 22 days after the end of the month in which the ~~fees~~ charges are collected.

23
 24 SECTION 5. Arkansas Code § 12-10-318(c)(2)(A) and (B), concerning the
 25 responsibilities of the Arkansas Emergency Telephone Services Board, is
 26 amended to read as follows:

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

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

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

35 (i)(a) Not less than eighty-three and five-tenths
 36 percent (83.5%) of the total monthly revenues collected and remitted under

1 subdivision (b)(1)(A) of this section and prepaid wireless E911 charges under
2 § 12-10-326 shall be distributed on a population basis to each political
3 subdivision operating a 911 public safety communications center that has the
4 capability of receiving commercial mobile radio service 911 calls on
5 dedicated 911 trunk lines for expenses incurred for the answering, routing,
6 and proper disposition of 911 calls, including payroll costs, readiness
7 costs, and training costs associated with wireless, voice over internet
8 protocol, and nontraditional 911 calls.

9 (b) Each state fiscal year, one hundred twenty
10 thousand dollars (\$120,000) of the total monthly revenues collected and
11 remitted under subdivision (c)(2)(B)(i)(a) of this section shall be
12 transferred and deposited to the credit of the books of the Treasurer of
13 State and the Auditor of State for the Miscellaneous Agencies Fund Account
14 for the Arkansas Commission on Law Enforcement Standards and Training, to be
15 used exclusively for training and all related costs under § 12-10-325;

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

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

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

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

35 (iii) Not more than five-tenths percent (0.5%) of
36 the fees collected under subdivision (b)(1)(A) of this section and prepaid

1 wireless E911 charges under § 12-10-326 may be utilized by the board to
2 compensate the independent auditor and for administrative expenses;

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

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

12 (b)(1) The board may require any other
13 information necessary to ensure that the funds have been properly utilized
14 according to this section.

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

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

24
25 SECTION 6. Arkansas Code § 12-10-318(c)(2)(D), concerning the
26 responsibilities of the Arkansas Emergency Telephone Services Board, is
27 amended to read as follows:

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

32
33 SECTION 7. Arkansas Code Title 12, Chapter 10, Subchapter 3, is
34 amended to add an additional section to read as follows:

35 12-10-326. Prepaid wireless E911 service charges.

36 (a) As used in this section:

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

3 (2) "Occurring in this state" means a retail transaction that
4 is:

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

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

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

12 (4) "Provider" means a person that provides prepaid wireless
13 telecommunications service under a license issued by the Federal
14 Communications Commission;

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

18 (B) "Retail transaction" includes a separate purchase of
19 prepaid wireless telecommunications service that is paid contemporaneously
20 with another purchase of prepaid wireless telecommunications service if
21 separately stated on an invoice, receipt, or similar document provided by the
22 seller to the consumer at the time of sale;

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

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

27 (b)(1) For each retail transaction occurring in this state, the seller
28 shall collect from the consumer a prepaid wireless E911 charge of sixty-five
29 cents (65¢) plus or minus an increase or decrease provided by subsection (c)
30 of this section.

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

35 (B) If the amount of the prepaid wireless E911 charge is
36 separately stated on an invoice, receipt, or similar document provided to the

1 consumer at the time of sale by the seller, the amount of the prepaid
2 wireless E911 charge shall not be included in the base for measuring any tax,
3 fee, surcharge, or other charge that is imposed by the state, a political
4 subdivision of the state, or an intergovernmental agency.

5 (c)(1) The prepaid wireless E911 charge shall be increased or
6 decreased by the amount of an increase or decrease to the commercial mobile
7 radio service emergency telephone service charge imposed under § 12-10-
8 318(b)(1)(A)(i).

9 (2) The increase or decrease is effective on the later of:

10 (A) The effective date of the change to the charge imposed
11 under § 12-10-318(b)(1)(A)(i); or

12 (B) The first day of a calendar month sixty (60) days
13 after the change to the charge.

14 (3) The Department of Finance and Administration shall provide
15 notice of an increase or decrease under this subsection:

16 (A) At least thirty (30) days before the increase or
17 reduction on the department's website; and

18 (B) As provided by law or rule of the department.

19 (d)(1) Except as provided in subdivision (d)(2) of this section, a
20 seller shall remit prepaid wireless E911 charges according to registration
21 and payment procedures established by the department that substantially
22 coincide with the registration and payment procedures for the gross receipts
23 tax under § 26-52-314(a).

24 (2) A seller may deduct and retain three percent (3%) of prepaid
25 wireless E911 charges.

26 (e) The audit and appeal procedures for the gross receipts tax imposed
27 by the Arkansas Gross Receipts Act of 1941, §26-52-101 et seq., apply to the
28 prepaid wireless E911 charge imposed under this section.

29 (f)(1) The department shall establish procedures to permit a seller of
30 prepaid wireless telecommunications service to document that a sale is not a
31 retail transaction.

32 (2) The procedures shall be substantially similar to the
33 procedures for documenting sale for resale transactions under the gross
34 receipts tax imposed by the Arkansas Gross Receipt Act of 1941, § 26-52-101
35 et seq.

36 (g)(1) Except as provided in subdivision (g)(2) of this section, the

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

4 (2) The department may deduct and retain no more than two
 5 percent (2%) of collected charges to reimburse the department’s direct costs
 6 of administering the collection and remittance of prepaid wireless E911
 7 charges.

8 (h) A provider or seller is not liable for damages to a person
 9 resulting from or incurred in connection with:

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

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

14 (3) Providing lawful assistance to a federal, state, or local
 15 investigator or law enforcement officer conducting a lawful investigation or
 16 other law enforcement activity.

17 (i) A provider or seller is not liable for civil damages or criminal
 18 liability in connection with:

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

21 (2) The release of subscriber information to a governmental
 22 entity as required by the Arkansas Public Safety Communications Act of 1985,
 23 § 12-10-301 et seq.

24 (j)(1) The prepaid wireless E911 charge imposed by this section shall
 25 be the only E911 funding obligation imposed for prepaid wireless
 26 telecommunications service in this state.

27 (2) A tax, fee, surcharge, or other charge shall not be imposed
 28 by the state, a political subdivision of the state, or an intergovernmental
 29 agency for E911 funding purposes upon a provider, seller, or consumer for the
 30 sale, purchase, use, or provision of prepaid wireless telecommunications
 31 service.

32
 33 SECTION 8. EFFECTIVE DATE. This act is effective on and after January
 34 1, 2014.