

Legislative Analysis



PREPAID WIRELESS 9-1-1 SURCHARGES: MOVE TO POS MODEL

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House Bill 5468

Sponsor: Rep. Aric Nesbitt

Committee: Energy and Technology

Complete to 3-19-12

A SUMMARY OF HOUSE BILL 5468 AS INTRODUCED 3-13-12

The bill would create a new mechanism by which users of prepaid wireless phone minutes would pay a 9-1-1 surcharge as follows:

- **Require a retailer to collect a prepaid wireless 9-1-1 surcharge at the point-of-sale.**
- **Base the amount of the surcharge as 1.92 percent of the retail transaction.**
- **Apply the bill to transactions that would incur a state sales tax or use tax.**
- **Exempt prepaid wireless service sales of less than 10 minutes or \$5 from collection of the surcharge.**
- **Allow a retailer to retain 2 percent of the surcharges to cover its costs.**
- **Provide limited civil liability to a provider or seller of prepaid wireless services.**
- **Allow the continuation of certain county-based 9-1-1 surcharges;**
- **Define terms.**
- **Eliminate a provision repealing the Emergency 9-1-1 Service Enabling Act at the end of 2014.**

Specifically, House Bill 5468 would amend the Emergency 9-1-1 Service Enabling Act to revise the manner in which a 9-1-1 surcharge is levied and collected for "prepaid wireless telecommunications service." The term would be defined to mean a commercial mobile radio service that allowed a caller to dial 9-1-1 to access the 9-1-1 system and was paid for in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.

Collection of emergency 9-1-1 surcharge from prepaid wireless service providers

Currently, each commercial mobile radio service (CMRS) supplier or reseller, which includes cell phones and Internet-based telephone service (voice over Internet protocol, or VOIP), must collect an emergency 9-1-1 charge from each of its prepaid customers based on one of two collection options listed in the act. Revenue collected under the surcharge is deposited in the Emergency 9-1-1 Fund. (Revenue in the fund is used to support 9-1-1 services at the county level, employee training, among other things.)

The bill would delete the above provisions, including definitions for "active prepaid accounts," "CMRS reseller," "earned prepaid revenue," and "prepaid customer." Instead, the bill would add the following:

- Require a seller, defined to mean a "person who sells prepaid wireless telecommunications service to another person," to collect a prepaid wireless 9-1-1 surcharge from a consumer for each retail transaction occurring in the state. "Retail transaction" would mean the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. "Prepaid wireless 9-1-1 surcharge" would mean the charge required to be collected by a seller from a consumer in the amount established under the bill. "Consumer" would mean a person who purchased prepaid wireless telecommunications services in a retail transaction.
- Require the amount of the prepaid wireless 9-1-1 surcharge to be 1.92 percent per retail transaction.
- Require the allowed charge to be either separately stated on an invoice or receipt provided to the consumer by the seller or otherwise disclosed to the consumer.
- Apply the surcharge to a retail transaction made in person by a consumer at a business location of a seller located in Michigan or a retail transaction treated as occurring in Michigan as provided under the Use Tax Act, as it applies to a prepaid wireless calling service.
- Specify that the surcharge is the liability of the consumer and not of the seller or any other provider.
- If the prepaid minutes are bundled with other products or services, the surcharge would be imposed on the entire nonitemized price except as provided in the bill.
- Exempt from the surcharge, at the seller's discretion, a minimal amount of prepaid minutes sold with a prepaid wireless device for a single, nonitemized price. "Minimal amount" would mean 10 prepaid minutes or less or \$5 of service.
- Require a seller to remit monthly to the Department of Treasury by EFT all prepaid wireless surcharges collected in the previous month.
- Allow a seller to retain 2 percent of the surcharges collected for reimbursement of its direct costs in collecting and remitting the surcharges.
- Allow the department to retain up to 2 percent of remitted prepaid 9-1-1 surcharges for its direct administration costs. Remaining funds would be deposited into the Emergency 9-1-1 Fund.

- Specify that a provider or seller of prepaid wireless telecommunications service would not be civilly liable for damages to a person resulting from or incurred in connection with the provision of, or failure to provide, 9-1-1 service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 9-1-1 service.
- Similarly, provide civil immunity from damages to a provider or seller for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the U.S., state of Michigan, or other state in connection with a lawful investigation or other law enforcement activity by that law enforcement officer.

County 9-1-1 charge

Since June 30, 2008, a county board of commissioners has been authorized to assess a county 9-1-1 charge to service users as provided in the act. However, this authorization was set to expire as of the act's December 31, 2014, repeal date (except for charges levied as a pledge as security for the payment of qualified obligations). This provision would be deleted and thus would allow these county 9-1-1 surcharges to remain in place.

Repealer

Under provisions of Public Act 379 of 2008, the sunset date for the act was pushed back to December 31, 2014. The bill would repeal the sunset, meaning that the act as amended by the bill would continue to remain in effect.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.