

# Legislative Analysis



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

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House Bill 5468 (Substitute H-2)  
Sponsor: Rep. Aric Nesbitt  
Committee: Energy and Technology

Complete to 5-1-12

## 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% 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 or less from collection of the surcharge.**
- **Allow a retailer to retain 2% of the surcharges to cover its costs.**
- **Provide limited civil liability to a provider or seller of prepaid wireless services.**
- **Define terms.**
- **Extend the sunset for repealing the Emergency 9-1-1 Service Enabling Act to the end of 2021.**

Specifically, House Bill 5468, which would take effect October 1, 2012, 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 and employee training, among other things.)

The bill would delete the current 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 % 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 non-itemized 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, non-itemized price. "Minimal amount" would mean 10 prepaid minutes or less or \$5 or less of service.
- Require a seller to remit all prepaid wireless surcharges collected in the same manner as for sales tax. The Department of Treasury would have to establish record keeping, payment, and other procedures for providers or sellers that are substantially similar to those applicable procedures for taxpayers imposed under the General Sales Tax Act.
- Require the department to administer the bill's provisions under PA 122 of 1941 and the Emergency 9-1-1 Service Enabling Act. In case of conflicts, the latter act would supersede the former.
- Require the department to promulgate rules implementing the act under provisions of the Administrative Procedures Act.

- Allow a seller to retain 2% of the surcharges collected for reimbursement of its direct costs in collecting and remitting the surcharges.
- 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 original 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.

#### ***Miscellaneous***

Currently, various emergency 9-1-1 surcharges charged to service users of traditional wireless service and landlines must be stated separately on a customer's bill. The bill would revise these provisions to instead require the charges to be stated separately "or otherwise disclosed to the consumer."

#### ***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 delay the sunset to December 31, 2021.

### **FISCAL IMPACT:**

A fiscal analysis is in process.

### **POSITIONS:**

The Detroit Regional Chamber indicated support for the bill. (5-1-12)

Sprint and Nextel indicated support for the bill. (5-1-12)

T-Mobile indicated support for the bill. (5-1-12)

The Telecommunications Association of Michigan indicated support for the bill. (5-1-12)

AT&T indicated support for the bill. (5-1-12)

Verizon indicated support for the bill. (5-1-12)

The Michigan Association of Counties indicated support for the bill. (5-1-12)

CTIA, the international association for the wireless telecom industry, indicated support for the bill. (3-20-12)

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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.