

2015 Regular Session

HOUSE BILL NO. 726

BY REPRESENTATIVE STOKES

TAX/LOCAL: Authorize local governments to impose a tax on telecommunications

1 AN ACT

2 To enact Subpart G of Part I of Chapter 6 of Title 33, to be comprised of R.S. 33:2740.91
3 and 2740.92, relative to taxes on telecommunications; to authorize parishes to levy
4 a tax on wireless telecommunications; to provide relative to the levy and collection
5 of such taxes; to provide for definitions; to provide exemptions; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Subpart G of Part I of Chapter 6 of Title 33, comprised of R.S. 33:2740.91
9 and 2740.92 are hereby enacted to read as follows:

10 SUBPART G. WIRELESS TELECOMMUNICATIONS TAX

11 §2740.91. Wireless telecommunications service charge

12 A. Definitions. As used in this Section, the following words and terms shall
13 have the following meanings, unless the context clearly indicates otherwise:

14 (1) The term "CMRS" means commercial mobile radio service under Section
15 3(27) and 332(d) of the Telecommunications Act of 1996, 47 United States Code
16 Section 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L.
17 103-66. The term includes the term "wireless" and includes service provided by any
18 wireless real time two-way voice communication device, including a radio-telephone
19 communications line used in cellular telephone service, a personal communication
20 service, specialized mobile radio service, or a network radio access line. The term

1 does not include service whose customers do not have access to a communication
2 channel suitable only for data transmission, to a wireless roaming service or other
3 nonlocal radio access line service, to paging services, or to a private
4 telecommunications system.

5 (2) The term "service supplier" means a person or entity who provides
6 CMRS service.

7 (3) The term "CMRS connection" means each mobile handset telephone
8 number assigned to a CMRS customer.

9 (4) The term "service charge" means the CMRS telephone service charge
10 levied and collected pursuant to this Section.

11 B. Service charge. The governing authority of any parish may levy a service
12 charge subject to and in accordance with the provisions of this Subsection. Such
13 service charge:

14 (1) Shall not exceed one cent per month per wireless CMRS connection.

15 (2) Shall be levied by resolution or ordinance of the governing authority of
16 the parish.

17 (3) Shall be levied against each CMRS connection for which the billing
18 address is within the parish. In the absence of a billing address, the service charge
19 shall be levied against each CMRS connection for which the primary use is within
20 the parish. Notwithstanding the foregoing, the application of a service charge to any
21 mobile telecommunications service shall apply only if the customer's place of
22 primary use is located within the boundaries of the parish levying such service
23 charge.

24 (4) Shall be a liability of the service user until it has been paid to the service
25 supplier.

26 (5)(a) Shall be collected as part of the supplier's normal billing process in
27 accordance with the provisions of this Paragraph.

28 (b) The service charge shall be collected by each service supplier providing
29 service in the parish. The parish governing authority shall notify, by certified mail,

1 return receipt requested, each service supplier of the adoption of the resolution or
2 ordinance provided for in Paragraph (3) of this Subsection. The duty of the wireless
3 service supplier to collect any such service charge or any increase in service charge
4 authorized by this Section shall commence within sixty days after receipt of such
5 notice.

6 (c) The service supplier shall add the service charge to its invoice to the
7 service user, but may state it separately therein.

8 (d)(i) The service supplier shall have no obligation to take any legal action
9 to enforce the collection of any service charge. However, the service supplier shall
10 annually provide the parish governing authority with a list of the amount uncollected,
11 together with the names and addresses of those service users who carry a balance that
12 can be determined by the service supplier to be nonpayment of such service charge.
13 The service charge shall be collected in accordance with the regular billing practice
14 of the service supplier.

15 (ii) Good faith compliance by the service supplier with this provision shall
16 constitute a complete defense to any legal action or claim which may result from the
17 service supplier's determination of nonpayment or the identification of service users
18 in connection therewith or both.

19 (e)(i) The amounts collected by the service supplier attributable to any
20 service charge shall be due quarterly. The amount of service charge collected in one
21 calendar quarter by the service supplier shall be remitted to the parish no later than
22 sixty days after the close of a calendar quarter.

23 (ii) On or before the sixtieth day after the close of a calendar quarter, a
24 return, in such form as the parish governing authority and the service supplier agree
25 upon, shall be filed with the parish, together with a remittance of the amount of
26 service charge collected payable to the parish.

27 (iii) The service supplier shall maintain records of the amount of the service
28 charge collected for a period of at least two years from date of collection. The parish
29 governing authority may, at its expense, require an annual audit of the service

1 supplier's books and records with respect to the collection and remittance of the
2 service charge.

3 (6) Trunks or service lines used to supply service to service suppliers and
4 used by service suppliers to provide CMRS service shall not have a service charge
5 levied against them.

6 (7) The service charge, or any part or percentage thereof, shall not be subject
7 to any sales, use, franchise, income, excise, or any other tax, fee, or assessment, and
8 shall not be considered revenue of the service supplier for any purpose.

9 (8) Any person or entity otherwise exempt from taxation shall be exempt
10 from the service charge authorized by this Section.

11 §2740.92. Prepaid wireless telecommunications service charge

12 A. Definitions. As used in this Section, the following words and terms shall
13 have the following meanings, unless the context clearly indicates otherwise:

14 (1) "CMRS" means commercial mobile radio service under Section 3(27)
15 and 332(d) of the Telecommunications Act of 1996, 47 United States Code Section
16 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66.

17 The term includes the term "wireless" and includes service provided by any wireless
18 real time two-way voice communication device, including a radio-telephone
19 communications line used in cellular telephone service, a personal communication
20 service, specialized mobile radio service, or a network radio access line. The term
21 does not include service whose customers do not have access to a communication
22 channel suitable only for data transmission, to a wireless roaming service or other
23 nonlocal radio access line service, to paging services, or to a private
24 telecommunications system.

25 (2) "Consumer" means a person who purchases prepaid wireless
26 telecommunications service in a retail transaction.

27 (3) "Prepaid wireless telecommunications service" means a wireless
28 telecommunications service paid for in advance and is sold in predetermined units
29 or dollars of which the number declines with use in a known amount.

1 (4) "Provider" means a person that provides prepaid wireless
2 telecommunications service pursuant to a license issued by the Federal
3 Communications Commission.

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

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

8 (7) "Service charge" means the CMRS telephone service charge levied and
9 collected pursuant to this Section.

10 (8) "Wireless telecommunications service" means commercial mobile radio
11 service as defined by 47 C.F.R. 20.3, as amended.

12 C. The governing authority of any parish may levy a CMRS telephone
13 service charge subject to and in accordance with the provisions of this Subsection.

14 (1) Such service charge shall not exceed three cents per retail transaction.

15 (2) The prepaid wireless service charge shall be collected by the seller from
16 the consumer with respect to each retail transaction occurring in this state. The
17 amount of the prepaid wireless service charge shall be either separately stated on an
18 invoice, receipt, or other similar document that is provided to the consumer by the
19 seller, or otherwise disclosed to the consumer.

20 (3) For purposes of Paragraph (2) of this Subsection, a retail transaction that
21 is effected in person by a consumer at a business location of the seller shall be
22 treated as occurring in this state if that business location is in this state, and any other
23 retail transaction shall be treated as occurring in this state if the retail transaction is
24 treated as occurring in this state for purposes of R. S. 47:301(16)(d).

25 (4) The prepaid wireless service charge shall be the liability of the consumer
26 and not of the seller or of any provider, except that the seller shall be liable to remit
27 all prepaid wireless service charges that the seller collects from consumers as
28 provided in Subsection D of this Section, including all such charges that the seller
29 is deemed to collect where the amount of the charge has not been separately stated

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

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

9 D. Administration of prepaid wireless service charge.

10 (1) The amounts collected by the service supplier attributable to any service
11 charge shall be due quarterly. The amount of service charge collected in one
12 calendar quarter by the service supplier shall be remitted to the parish no later than
13 sixty days after the close of a calendar quarter.

14 (2) On or before the sixtieth day after the close of a calendar quarter, a
15 return, in such form as the parish governing authority and the service supplier agree
16 upon, shall be filed with the parish, together with a remittance of the amount of
17 service charge collected payable to the parish.

18 (3) The service supplier shall maintain records of the amount of the service
19 charge collected for a period of at least two years from date of collection. The parish
20 governing authority may, at its expense, require an annual audit of the service
21 supplier's books and records with respect to the collection and remittance of the
22 service charge.

23 Section 2. This Act shall become effective upon signature by the governor or, if not
24 signed by the governor, upon expiration of the time for bills to become law without signature
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
27 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 726 Original

2015 Regular Session

Stokes

Abstract: Authorizes parishes to levy a service charge on wireless and prepaid wireless telecommunication service within the parish.

Proposed law authorizes a parish governing authority to levy the following taxes:

- (1) A one cent per month service charge on each contract cell phone connection within the parish.
- (2) A three cent per retail transaction service charge on all prepaid wireless services sold within the parish.

Requires such service charges to be levied by adoption of an ordinance. Establishes procedures for notifying service providers that the charge has been levied.

Requires service providers of contract wireless services to collect the charge on monthly bills. Requires prepaid wireless service providers to collect the charge at the time of sale.

Requires providers to remit collected amounts to the parish quarterly.

Prohibits the service charge, or any portion of such charge, from being subject to other taxes, fees, or assessments, and further prohibits such service charge from being considered "revenue" of the service provider.

Prohibits otherwise tax-exempt entities from being subject to proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 33:2740.91 and 2740.92)