

2016 Regular Session

HOUSE BILL NO. 678

BY REPRESENTATIVE CARMODY

TELECOMMUNICATIONS: Provides for the assessment of a surcharge fee on prepaid 911 services

1 AN ACT

2 To amend and reenact R.S. 33:9109.1(A) through (D), (F), and (G), to enact R.S. 33:9109.2,
3 and to repeal R.S. 33:9109.1(B)(9), relative to charges imposed on prepaid 911
4 services; to provide for and modify definitions; to increase the amount of the prepaid
5 911 charge; to provide for administration of prepaid 911 charges; to restrict use of
6 certain funds; to provide for effectiveness; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 33:9109.1(A) through (D), (F), and (G) are hereby amended and
9 reenacted and R.S. 33:9109.2 is hereby enacted to read as follows:

10 §9109.1. Prepaid ~~wireless telecommunications~~ 911 ~~service~~ charge; intent;
11 definitions; collection and remittance; administration; distribution of funds;
12 liability; exclusivity

13 A. Intent. (1) The legislature finds that maintaining effective and efficient
14 911 systems across the state benefits all citizens.

15 (2) ~~Service charges~~ Charges imposed upon the consumers of
16 ~~telecommunication services~~ services that have the ability to ~~dial~~ access 911 are an
17 important funding mechanism to assist state and local governments with the
18 deployment of ~~enhanced~~ 911 services to the citizens of this state.

1 (3) Prepaid ~~wireless telecommunication~~ services that provide access to 911
2 are an important segment of the ~~telecommunications~~ industry and have proven
3 particularly attractive to low-volume consumers.

4 (4) Unlike traditional telecommunication services, prepaid ~~wireless~~
5 ~~telecommunications~~ services that provide access to 911 are not sold or used pursuant
6 to term contracts or subscriptions, and monthly bills are not sent to consumers by
7 prepaid ~~wireless telecommunication~~ service providers or retail vendors.

8 (5) Prepaid ~~wireless service~~ consumers have ~~the same~~ access to emergency
9 911 services from their ~~wireless~~ devices as ~~wireless consumers on term contracts~~,
10 and prepaid ~~wireless service~~ consumers benefit from the ability to access the 911
11 system ~~by dialing 911~~. Therefore, prepaid ~~wireless service~~ consumers should ~~begin~~
12 ~~contributing~~ contribute to funding of the 911 emergency communications system.

13 (6) Consumers purchase prepaid ~~wireless telecommunication~~ services that
14 provide access to 911 at a wide variety of general retail locations and other
15 distribution channels, not just through service providers. Such purchases are made
16 on a "cash-and-carry" or "pay-as-you-go" basis from retailers.

17 (7) To ensure equitable contributions to the funding of 911 systems from
18 consumers of prepaid ~~wireless telecommunication~~ services, the collection and
19 payment obligation of charges to support ~~E911~~ 911 should be imposed upon the
20 consumer's retail purchase of the prepaid ~~wireless telecommunication~~ service and
21 should be in the form of a single, statewide charge that is collected once at the time
22 of purchase directly from the consumer, remitted to the state, and distributed to
23 communications districts.

24 B. Definitions. As used in this Section, the following words and terms ~~shall~~
25 have the following meanings, unless the context clearly indicates otherwise:

26 (1) "Consumer" means a person who purchases a prepaid ~~wireless~~
27 ~~telecommunications~~ service that provides access to 911 in a retail transaction.

28 (2) "Department" means the Department of Revenue.

1 (3) ~~"E911"~~ "911" means an emergency telephone system that provides the
2 caller with emergency 911 system service, that directs 911 calls to appropriate public
3 safety answering points by selective routing based on the geographical location from
4 which the call originated, and that provides the capability for automatic number
5 identification and other features that the Federal Communications Commission may
6 require in the future.

7 (4) "Prepaid ~~wireless 911 service charge~~" means the charge that is required
8 to be collected by a seller from a consumer in the amount established under
9 Subsection C of this Section.

10 (5) "Prepaid ~~wireless telecommunications service~~" means a ~~wireless~~
11 ~~telecommunications service that allows a caller to dial 911 to access the 911 system,~~
12 commercial mobile radio service as defined by 47 C.F.R. 20.3 in addition to any
13 other service capable of accessing 911 through the use of voice, text, video, image,
14 data, or any other means, which service shall be paid for in advance and is sold in
15 predetermined units or dollars of which the number declines with use in a known
16 amount.

17 (6) "Provider" means a person that provides a prepaid ~~wireless~~
18 ~~telecommunications service pursuant to a license issued by the Federal~~
19 ~~Communications Commission.~~

20 (7) "Retail transaction" means each individual purchase of a prepaid ~~wireless~~
21 ~~telecommunications service that provides access to 911~~ from a seller for any purpose
22 other than resale.

23 (8) "Seller" means a person who sells a prepaid ~~wireless telecommunications~~
24 ~~service that provides access to 911~~ to another person.

25 C. Collection and remittance of prepaid ~~wireless telecommunications 911~~
26 ~~service charge.~~ (1) There is hereby imposed a prepaid ~~wireless telecommunications~~
27 ~~911 service charge of two~~ four percent of the amount of the per retail transaction.

28 (2) The prepaid ~~wireless 911 service charge~~ shall be collected by the seller
29 from the consumer with respect to each retail transaction occurring in this state. The

1 amount of the prepaid ~~wireless~~ 911 ~~service~~ charge shall be either separately stated
2 on an invoice, receipt, or other similar document that is provided to the consumer by
3 the seller, or otherwise disclosed to the consumer.

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

9 (4) The prepaid ~~wireless~~ 911 ~~service~~ charge shall be the liability of the
10 consumer and not of the seller or of any provider, except that the seller shall be liable
11 to remit all prepaid ~~wireless~~ 911 ~~service~~ charges that the seller collects from
12 consumers as provided in Subsection D of this Section, including all such charges
13 that the seller is deemed to collect where the amount of the charge has not been
14 separately stated on an invoice, receipt, or other similar document provided to the
15 consumer by the seller.

16 (5) The amount of the prepaid ~~wireless~~ 911 ~~service~~ charge that is collected
17 by a seller from a consumer, whether or not such amount is separately stated on an
18 invoice, receipt, or other similar document provided to the consumer by the seller,
19 shall not be included in the base for measuring any tax, fee, surcharge, or other
20 charge that is imposed by this state, any political subdivision of this state, or any
21 intergovernmental agency.

22 D. Administration of prepaid ~~wireless~~ 911 ~~service~~ charge. (1) Prepaid
23 ~~wireless~~ 911 ~~service~~ charges collected by sellers shall be remitted to the department
24 quarterly by the seller and the return for the quarter shall be filed on or before the
25 twentieth day of the first month of the next succeeding quarter. The department shall
26 establish electronic registration procedures to enable sellers to file and pay the
27 prepaid ~~wireless~~ 911 ~~service~~ charges electronically in accordance with R.S.
28 47:1520(A), which authorizes the secretary of the department to mandate electronic
29 filing when the report is required for dedicated fund distribution. Sellers shall be

1 required to file their prepaid ~~wireless~~ 911 ~~service~~ charge reports and to remit the
2 prepaid ~~wireless~~ 911 ~~service~~ charge collection electronically using the electronic
3 format prescribed by the department.

4 (2) A seller shall be permitted to deduct and retain ~~the entirety~~ half of the
5 ~~2010~~ 2016 ~~first~~ fourth quarter's fees. Thereafter, a seller shall be permitted to deduct
6 and retain four percent of prepaid ~~wireless~~ 911 ~~service~~ charges that are collected by
7 the seller from consumers.

8 (3) The audit and appeal procedures applicable under Chapter 2 of Subtitle
9 I of Title 47 of the Louisiana Revised Statutes of 1950 with respect to the state sales
10 tax shall apply to prepaid ~~wireless~~ 911 ~~service~~ charges and prescription shall be
11 governed by Article VII, Section 16 of the Constitution of Louisiana.

12 (4) The department shall establish procedures by which a seller of prepaid
13 ~~wireless telecommunications~~ 911 service may document that a sale is not a retail
14 transaction, which procedures shall substantially coincide with the procedures for
15 documenting sale for resale transactions under Chapter 2 of Subtitle I of Title 47 of
16 the Louisiana Revised Statutes of 1950 with respect to the state sales tax.

17 (5) The department shall pay all remitted prepaid ~~wireless~~ 911 ~~service~~
18 charges over to eligible communications districts in accordance with Subsection E
19 of this Section. The department may retain up to two percent of remitted ~~service~~
20 charges to reimburse its direct costs of administering the collection and remittance
21 of prepaid ~~wireless~~ 911 ~~service~~ charges.

22 * * *

23 F. Liability. (1) No provider or seller of prepaid ~~wireless~~
24 ~~telecommunications~~ service shall be liable for damages to any person resulting from
25 or incurred in connection with the provision of, or failure to provide, 911 or E911
26 service, or for identifying, or failing to identify, the telephone number, address,
27 location, or name associated with any person or device that is accessing or
28 attempting to access 911 or E911 service.

1 (2) No provider or seller of prepaid ~~wireless telecommunications~~ service
 2 shall be liable for damages to any person resulting from or incurred in connection
 3 with the provision of any lawful assistance to any investigation or activity by a law
 4 enforcement officer of the United States, this or any other state, or any political
 5 subdivision of this or any other state, in connection with any lawful investigation or
 6 other law enforcement activity by such law enforcement officer.

7 G. Exclusivity of charge. The prepaid ~~wireless E911~~ 911 charge shall be the
 8 only ~~E911~~ 911 funding obligation imposed with respect to prepaid ~~wireless~~
 9 ~~telecommunications~~ service in this state, and no tax, fee, surcharge, or other charge
 10 shall be imposed by this state, any political subdivision of this state, or any
 11 intergovernmental agency, for ~~E911~~ 911 funding purposes, upon any provider, seller,
 12 or consumer with respect to the sale, purchase, use, or provision of prepaid ~~wireless~~
 13 ~~telecommunications~~ 911 service.

14 §9109.2. Restrictions imposed on use of certain funds

15 Notwithstanding any provision of law to the contrary, all revenues collected
 16 from the assessment of 911 surcharge fees in a parishwide communications district,
 17 as provided in this Chapter, shall be used for the express purpose of providing 911
 18 emergency response communications services and operations. The funds shall not
 19 be diverted for use by any other entity or for any purpose other than those outlined
 20 within the Chapter.

21 Section 2. R.S. 33:9109.1(B)(9) is hereby repealed in its entirety.

22 Section 3. This Act shall become effective upon signature by the governor or, if not
 23 signed by the governor, upon expiration of the time for bills to become law without signature
 24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 26 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 678 Engrossed

2016 Regular Session

Carmody

Abstract: Provides for definitions and increases the amount of the charge being imposed on prepaid 911 services.

Present law details the intent of present law.

Present law includes definitions and multiple references that include the terms "wireless", "telecommunications", "wireless telecommunications service", and "service charges" relative to describing certain charges and services. Proposed law removes these references and modifies the definitions included in present law.

Proposed law removes the definitions of "wireless communications service" and "product".

Proposed law enumerates definitions to include the terms "prepaid 911 charge" and "prepaid service". Proposed law effectually broadens the scope of present law to make certain services that provide access to 911 subject to the prepaid 911 charge.

Present law provides procedures for the collection and remittance of prepaid wireless telecommunications 911 service charges. Present law imposes a prepaid wireless telecommunications 911 service charge in the amount of 2% of the amount of the per retail transaction. Proposed law imposes a prepaid 911 charge. Further, proposed law increases the amount of the charge from 2% to 4% of the amount of the per retail transaction. Otherwise, proposed law makes only technical changes to the procedures established by present law relative to the collection and remittance of the prepaid 911 charges for the purpose of incorporating the terms defined in proposed law.

Present law provides for the administration of prepaid wireless 911 service charges. Proposed law amends a reference to a provision of present law regarding the rights of a seller of prepaid 911 services and proposed law allows any seller to deduct and retain half of the 2016 fourth quarter's fees. Otherwise, proposed law makes only technical changes to the procedures established by present law relative to the administration of prepaid 911 charges for the purpose of incorporating the terms defined in proposed law.

Present law provides for limited liability relative to providers and sellers of prepaid wireless telecommunications service. Proposed law makes only technical changes to the provisions of present law relative to liability for the purpose of incorporating the terms defined in proposed law.

Present law provides that the prepaid wireless E911 charge shall be the exclusive funding obligation imposed with respect to prepaid wireless telecommunications service in this state. Proposed law makes only technical changes to the provisions of present law relative to the exclusivity of the charge for the purpose of incorporating the terms defined in proposed law.

Proposed law requires all revenues collected from the assessment of 911 surcharge fees to be used for the sole purpose of providing 911 emergency response communications services and operations. Prohibits diversion of the revenues for use by any other entity or for any other purpose other than those outlined in the present law and proposed law.

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

(Amends R.S. 33:9109.1(A) through (D), (F), and (G); Adds R.S. 33:9109.2; Repeals R.S. 33:9109.1(B)(9))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Remove all references to wireless telecommunications products.
2. Remove the definitions of "wireless communications service" and "product".
3. Add proposed law to require all revenues collected from the assessment of 911 surcharge fees to be used for the sole purpose of providing 911 emergency response communications services and operations. Prohibits diversion of the revenues for use by any other entity or for any other purpose other than those outlined in the present law.