

SECOND REGULAR SESSION

HOUSE BILL NO. 2767

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PERKINS.

5979H.02I

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 190.460, RSMo, and to enact in lieu thereof one new section relating to prepaid wireless emergency telephone service charges.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 190.460, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 190.460, to read as follows:

190.460. 1. As used in this section, the following terms mean:

(1) "Board", the Missouri 911 service board established under section 650.325;

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

(3) "Department", the department of revenue;

(4) "Prepaid wireless service provider", a provider that provides prepaid wireless service to an end user;

(5) "Prepaid wireless telecommunications service", a wireless telecommunications service that allows a caller to dial 911 to access the 911 system and which service shall be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount;

(6) "Retail transaction", the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. The purchase of more than one item that provides prepaid wireless telecommunication service, when such items are sold separately, constitutes more than one retail transaction;

(7) "Seller", a person who sells prepaid wireless telecommunications service to another person;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (8) "Wireless telecommunications service", commercial mobile radio service as
19 defined by 47 CFR 20.3, as amended.

20 2. (1) Beginning January 1, 2019, there is hereby imposed a prepaid wireless
21 emergency telephone service charge on each retail transaction. The amount of such charge
22 shall be equal to ~~[three]~~ **four** percent of the amount of each retail transaction. The first fifteen
23 dollars of each retail transaction shall not be subject to the service charge.

24 (2) When prepaid wireless telecommunications service is sold with one or more
25 products or services for a single, nonitemized price, the prepaid wireless emergency telephone
26 service charge set forth in subdivision (1) of this subsection shall apply to the entire
27 nonitemized price unless the seller elects to apply such service charge in the following way:

28 (a) If the amount of the prepaid wireless telecommunications service is disclosed to
29 the consumer as a dollar amount, ~~[three]~~ **four** percent of such dollar amount; or

30 (b) If the seller can identify the portion of the price that is attributable to the prepaid
31 wireless telecommunications service by reasonable and verifiable standards from the seller's
32 books and records that are kept in the regular course of business for other purposes including,
33 but not limited to, nontax purposes, ~~[three]~~ **four** percent of such portion[;]

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35 ~~The first fifteen dollars of each transaction under this subdivision shall not be subject to the~~
36 ~~service charge].~~

37 (3) The prepaid wireless emergency telephone service charge shall be collected by the
38 seller from the consumer with respect to each retail transaction occurring in this state. The
39 amount of the prepaid wireless emergency telephone service charge shall be either separately
40 stated on an invoice, receipt, or other similar document that is provided to the consumer by
41 the seller or otherwise disclosed to the consumer.

42 (4) For purposes of this subsection, a retail transaction that is effected in person by a
43 consumer at a business location of the seller shall be treated as occurring in this state if that
44 business location is in this state, and any other retail transaction shall be treated as occurring
45 in this state if the retail transaction is treated as occurring under chapter 144.

46 (5) The prepaid wireless emergency telephone service charge is the liability of the
47 consumer and not of the seller or of any provider; except that, the seller shall be liable to remit
48 all charges that the seller collects or is deemed to collect.

49 (6) The amount of the prepaid wireless emergency telephone service charge that is
50 collected by a seller from a consumer, if such amount is separately stated on an invoice,
51 receipt, or other similar document provided to the consumer by the seller, shall not be
52 included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by
53 this state, any political subdivision of this state, or any intergovernmental agency.

54 3. (1) Prepaid wireless emergency telephone service charges collected by sellers shall
55 be remitted to the department at the times and in the manner provided by state law with
56 respect to sales and use taxes. The department shall establish registration and payment
57 procedures that substantially coincide with the registration and payment procedures that apply
58 under state law. On or after the effective date of the service charge imposed under the
59 provisions of this section, the director of the department of revenue shall perform all
60 functions incident to the administration, collection, enforcement, and operation of the service
61 charge, and the director shall collect, in addition to the sales tax for the state of Missouri, all
62 additional service charges imposed in this section. All service charges imposed under this
63 section together with all taxes imposed under the sales tax law of the state of Missouri shall
64 be collected together and reported upon such forms and under such administrative rules and
65 regulations as may be prescribed by the director, **provided that the director shall require a**
66 **seller to report the number of retail transactions for which a prepaid wireless**
67 **emergency telephone service charge is collected under this section, as well as the total**
68 **dollar amount of each transaction and the total amount of prepaid wireless emergency**
69 **telephone service charges collected.** All applicable provisions contained in sections
70 144.010 to 144.525 governing the state sales tax and section 32.057 shall apply to the
71 collection of any service charges imposed under this section except as modified.

72 (2) Beginning on January 1, 2019, and ending on January 31, 2019, when a consumer
73 purchases prepaid wireless telecommunications service in a retail transaction from a seller
74 under this section, the seller shall be allowed to retain one hundred percent of the prepaid
75 wireless emergency telephone service charges that are collected by the seller from the
76 consumer. Beginning on February 1, 2019, a seller shall be permitted to deduct and retain
77 ~~[three]~~ **four** percent of prepaid wireless emergency telephone service charges that are
78 collected by the seller from consumers. **Notwithstanding any provision of law to the**
79 **contrary, if the director of revenue determines that a seller has not collected the amount**
80 **of prepaid wireless emergency telephone charges required by this section, such seller**
81 **shall not be permitted to deduct and retain any amount of such charges as allowed in**
82 **this subdivision, nor shall the seller be permitted to deduct and retain any amount of**
83 **sales tax allowable under section 144.140, for the reporting period for which the director**
84 **has determined a deficiency.**

85 (3) The department shall establish procedures by which a seller of prepaid wireless
86 telecommunications service may document that a sale is not a retail transaction, which
87 procedures shall substantially coincide with the procedures for documenting sale for resale
88 transactions for sales and use purposes under state law.

89 (4) The department shall deposit all remitted prepaid wireless emergency telephone
90 service charges into the general revenue fund for the department's use until eight hundred

91 thousand one hundred fifty dollars is collected to reimburse its direct costs of administering
92 the collection and remittance of prepaid wireless emergency telephone service charges. From
93 then onward, the department shall deposit all remitted prepaid wireless emergency telephone
94 service charges into the Missouri 911 service trust fund created under section 190.420 within
95 thirty days of receipt for use by the board. After the initial eight hundred thousand one
96 hundred fifty dollars is collected, the department may deduct an amount not to exceed one
97 percent of collected charges to be retained by the department to reimburse its direct costs of
98 administering the collection and remittance of prepaid wireless emergency telephone service
99 charges.

100 (5) The board shall set a rate between twenty-five and one hundred percent of the
101 prepaid wireless emergency telephone service charges deposited in the Missouri 911 service
102 trust fund collected in counties without a charter form of government, less the deductions
103 authorized in subdivision (4) of this subsection, that shall be remitted to such counties in
104 direct proportion to the amount of charges collected in each county. The board shall set a rate
105 between sixty-five and one hundred percent of the prepaid wireless emergency telephone
106 service charges deposited in the Missouri 911 service trust fund collected in counties with a
107 charter form of government and any city not within a county, less the deductions authorized in
108 subdivision (4) of this subsection, that shall be remitted to each such county or city not within
109 a county in direct proportion to the amount of charges collected in each such county or city
110 not within a county. If a county has an elected emergency services board, the Missouri 911
111 service board shall remit the funds to the elected emergency services board, except for an
112 emergency services board originally organized under section 190.325 operating within a
113 county with a charter form of government and with more than two hundred thousand but
114 fewer than three hundred fifty thousand inhabitants, in which case the funds shall be remitted
115 to the county's general fund for the purpose of public safety infrastructure. The initial
116 percentage rate set by the board for counties with and without a charter form of government
117 and any city not within a county shall be set by June thirtieth of each applicable year and may
118 be adjusted annually for the first three years, and thereafter the rate may be adjusted every
119 three years; however, at no point shall the board set rates that fall below twenty-five percent
120 for counties without a charter form of government and sixty-five percent for counties with a
121 charter form of government and any city not within a county.

122 (6) Any amounts received by a county or city under subdivision (5) of this subsection
123 shall be used only for purposes authorized in sections 190.305, 190.325, and 190.335. Any
124 amounts received by any county with a charter form of government and with more than six
125 hundred thousand but fewer than seven hundred thousand inhabitants under this section may
126 be used for emergency service notification systems.

127 4. (1) A seller that is not a provider shall be entitled to the immunity and liability
128 protections under section 190.455, notwithstanding any requirement in state law regarding
129 compliance with Federal Communications Commission Order 05-116.

130 (2) A provider shall be entitled to the immunity and liability protections under section
131 190.455.

132 (3) In addition to the protection from liability provided in subdivisions (1) and (2) of
133 this subsection, each provider and seller and its officers, employees, assigns, agents, vendors,
134 or anyone acting on behalf of such persons shall be entitled to the further protection from
135 liability, if any, that is provided to providers and sellers of wireless telecommunications
136 service that is not prepaid wireless telecommunications service under section 190.455.

137 5. The prepaid wireless emergency telephone service charge imposed by this section
138 shall be in addition to any other tax, fee, surcharge, or other charge imposed by this state, any
139 political subdivision of this state, or any intergovernmental agency for 911 funding purposes.

140 6. The provisions of this section shall become effective unless the governing body of
141 a county or city adopts an ordinance, order, rule, resolution, or regulation by at least a two-
142 thirds vote prohibiting the charge established under this section from becoming effective in
143 the county or city at least forty-five days prior to the effective date of this section. If the
144 governing body does adopt such ordinance, order, rule, resolution, or regulation by at least a
145 two-thirds vote, the charge shall not be collected and the county or city shall not be allowed to
146 obtain funds from the Missouri 911 service trust fund that are remitted to the fund under the
147 charge established under this section. The Missouri 911 service board shall, by September 1,
148 2018, notify all counties and cities of the implementation of the charge established under this
149 section, and the procedures set forth under this subsection for prohibiting the charge from
150 becoming effective.

151 7. Any county or city which prohibited the prepaid wireless emergency telephone
152 service charge pursuant to the provisions of subsection 6 of this section may take a vote of the
153 governing body, and notify the department of revenue of the result of such vote to impose
154 such charge. A vote of at least two-thirds of the governing body is required in order to impose
155 such charge. The department shall notify the board of notices received ~~by~~ within sixty days
156 of receiving such notice.

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