

PUBLIC CHAPTER NO. 774

SENATE BILL NO. 2497

By Southerland, Burks

Substituted for: House Bill No. 3533

By Maddox, McCord, Sargent, Todd, Tindell, Dean

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 86, Part 1, relative to wireless telecommunications services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-86-103, is amended by adding the following as new, appropriately designated definitions:

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

() "Wireless telecommunications service" means commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended;

SECTION 2. Tennessee Code Annotated, Section 7-86-108(a)(1)(B), is amended by deleting subdivision (iv) and substituting instead the following:

(iv) The service charge shall not be imposed upon customers who pay for service prospectively, known as prepaid wireless telecommunications service customers. Prepaid wireless telecommunications service customers shall be subject to the fee imposed under § 7-86-128.

SECTION 3. Tennessee Code Annotated, Title 7, Chapter 86, Part 1, is amended by adding the following as a new, appropriately designated section:

§ 7-86-128.

(a) As used in this section, unless the context otherwise requires:

(1) "Board" means the emergency communications board established under § 7-86-302;

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

(3) "Department" means the Department of Revenue;

(4) "Prepaid wireless emergency telephone service charge" means the charge that is required to be collected by a seller from a consumer in the amount established under this section;

(5) "Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must 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) "Provider" means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission;

(7) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale, and the purchase of more than one (1) item that provides prepaid wireless telecommunications service, when such items are sold separately, constitutes more than one (1) retail transaction;

(8) "Seller" means a person who sells prepaid wireless telecommunications service to another person; and

(9) "Wireless telecommunications service" means commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended.

(b)(1)(A) A statewide prepaid wireless emergency telephone charge of fifty-three cents (53¢), or an adjusted amount as provided in subdivision (b)(6), shall be imposed on each retail transaction in lieu of the charge imposed pursuant to § 7-86-108.

(B) Notwithstanding (b)(1)(A), if a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device and a single, non-itemized price is charged for the service, then the seller may elect not to apply the service charge imposed by this subdivision (b)(1). For purposes of this subdivision (B), a minimal amount of service means an amount of service denominated as either ten (10) minutes or less or five dollars (\$5.00) or less.

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

(3) For purposes of this subsection (b), a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of § 67-6-230.

(4) The prepaid wireless emergency telephone service charge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

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

(6)(A) If the emergency telephone service charge imposed under § 7-86-108(a)(1)(B)(i)(a) is increased or reduced pursuant to the provisions of such subdivision, then the prepaid wireless emergency telephone charge imposed by subdivision (b)(1) shall be increased or reduced in proportion to such change.

(B) The proportional increase or reduction shall be effective on the first day of the first calendar month to occur at least sixty (60) days after notification is received by the department from the board as provided in § 7-86-108(a)(1)(B)(i)(b).

(C) The department shall provide notice on its Web site of an increase or reduction that occurs pursuant to this subdivision (6) at least thirty (30) days before such change takes effect.

(c)(1) Prepaid wireless emergency telephone service charges collected by sellers shall be remitted to the department at the times and in the manner provided by Title 67, Chapter 6, with respect to the sales and use taxes. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply under Title 67, Chapter 6.

(2) A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless E911 charges that are collected by the seller from consumers.

(3) The audit and appeal procedures applicable under Title 67, Chapter 1 shall apply to the prepaid wireless emergency telephone service charge.

(4) The department shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for sales and use purposes under Title 67, Chapter 6.

(5) The department shall pay all remitted prepaid wireless emergency telephone service charges over to the board within thirty (30) days of receipt, for use by the board in accordance with Part 3 of this chapter. The department may deduct an amount, not to exceed two percent (2%) of collected charges, to be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless emergency telephone service charges.

(d)(1) A seller that is not a provider shall be entitled to the immunity and liability protections under §§ 7-86-319 and 7-86-320, notwithstanding the requirement in subsection 7-86-320(a) regarding compliance with Federal Communications Commission Order # 05-116.

(2) A provider shall be entitled to the immunity and liability protections under Sections 7-86-319 and 7-86-320.

(3) In addition to the protection from liability provided by subdivisions (d)(1) and (2), each provider and seller shall be entitled to the further protection from liability, if any, that is provided to providers and sellers of wireless telecommunications service that is not prepaid wireless telecommunications service pursuant to §§ 7-86-319 and 7-86-320.

(e) The prepaid wireless emergency telephone service charge imposed by this section shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for E911 funding purposes, upon any provider, seller, or consumer with respect to the sale, purchase, use or provision of prepaid wireless telecommunications service.

SECTION 4. Tennessee Code Annotated, Section 7-86-108(a)(1)(B)(i)(b), is amended by deleting the language "shall notify each CMRS provider" in the first sentence of the subdivision and by substituting instead the language "shall notify the Department of Revenue and each CMRS provider".

SECTION 5. This act shall take effect July 1, 2011, the public welfare requiring it.

PASSED: March 31, 2010



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 16th day of April 2010



PHIL BREDESEN, GOVERNOR