



Ohio Legislative Service Commission

Bill Analysis

Maura McClelland

H.B. 360

129th General Assembly
(As Introduced)

Reps. Rosenberg, Butler, Murray, Grossman, J. Adams, Ruhl, Gonzales

BILL SUMMARY

- Changes the method of collection of the prepaid wireless 9-1-1 charge by requiring sellers of prepaid services to collect the charge at the point of sale, rather than collection by prepaid providers or resellers alone.
- Changes the amount of the charge from 28¢ per month to 16¢ per line transaction.
- Requires sellers to remit the charges to the Department of Taxation, and specifies that the sellers are subject to current sales-tax requirements regarding filing returns, remittance, audits, assessments, appeals, enforcement, liability, and penalties.
- Permits sellers to retain a 3% collection fee before remitting charges to the Department of Taxation.
- Requires the Department of Taxation to transfer remitted charges to the Ohio 9-1-1 Coordinator, minus a 2% administrative fee the Department is permitted to retain.
- Requires the Department of Taxation to provide sellers with notice of any increase or decrease in the amount of the prepaid wireless 9-1-1 charge.
- Excludes providers and sellers of prepaid wireless calling services from civil liability for activities or omissions with regard to a 9-1-1 system or for providing related assistance.

CONTENT AND OPERATION

Overview

The bill changes the amount and method of collection of the prepaid wireless 9-1-1 charge. This charge is imposed under current law on *all* wireless subscribers with Ohio billing addresses, until December 31, 2012,¹ and goes to fund countywide wireless enhanced 9-1-1 systems and for other related purposes.² Wireless enhanced 9-1-1 services are federally required.³ The bill changes the method of collection by requiring sellers of prepaid services to collect the charge at the point of sale, rather than collection by prepaid providers or resellers.⁴ The bill changes the amount from 28¢ per month to 16¢ per line transaction.⁵ The bill does not alter the end date for imposition of the charges.⁶

Requirement imposed on sellers

The bill requires the seller of a "prepaid wireless calling service" to collect the prepaid wireless 9-1-1 charge from the consumer at the time of each retail sale.⁷ A "prepaid wireless calling service" is defined as a telecommunications service that provides the right to utilize mobile telecommunications service as well as other non-telecommunications services, including the download of digital products delivered electronically, and content and ancillary services, that must be paid for in advance and that is sold in predetermined units of dollars of which the number declines with use in a known amount.⁸ To collect the charge, the seller may either itemize the charge on a receipt or invoice, or charge the consumer only the price of the calling service, but provide written documentation that the price paid includes the prepaid 9-1-1 charge.⁹

¹ R.C. 4931.61 and 4931.63.

² R.C. 4931.65.

³ 47 C.F.R. 20.18 (not in the bill).

⁴ R.C. 4931.62.

⁵ R.C. 4931.61.

⁶ R.C. 4931.61(A) and (B)(1).

⁷ R.C. 4931.61.

⁸ R.C. 4931.40(X); R.C. 5739.01(AA)(5) (not in the bill).

⁹ R.C. 4931.61(B)(3)(a) and (b).

The bill specifies that a retail sale occurs in Ohio if it is effected by the consumer appearing at a seller's business location in Ohio. The bill also allows that sales may be sourced in the same manner as for sales tax purposes, except that the seller may elect to source the sale to the location associated with the mobile phone number.¹⁰

Current law requires wireless service providers or resellers to collect the prepaid wireless 9-1-1 charge in one of the following manners:

- at the point of sale, such as when a subscriber purchases additional minutes;
- by reducing a subscriber's account balance at the beginning of a month;
- by taking the amount due out of the provider or reseller's earned prepaid revenue.¹¹

Remittance of charges

The bill requires that sellers remit the prepaid wireless 9-1-1 charges to the Department of Taxation, regardless of whether sellers itemize charges or charge consumers only the price of the prepaid calling services. Charges are deemed to have been collected if they have been itemized as required by the bill. A seller may retain a collection fee of 3% before remitting the amount of charges due or collected. The seller must, however, account to the Department of Taxation for the amount retained.¹²

The Department of Taxation is to transfer the total amount of remitted charges to the Ohio 9-1-1 Coordinator, minus a 2% administrative fee, not later than 30 days after receipt of the charges.¹³ Under current law, the prepaid wireless 9-1-1 charges are required to be remitted directly to the Ohio 9-1-1 Coordinator on a monthly basis.¹⁴

The bill also specifies that sellers are subject to current law sales-tax requirements, as those requirements apply to filing returns, remittance, audits, assessments, appeals, enforcement, liability, and penalties. The bill requires the Department of Taxation to establish procedures by which a seller may document that a

¹⁰ R.C. 4931.61(B)(2).

¹¹ R.C. 4931.61(A).

¹² R.C. 4931.62(B).

¹³ R.C. 4931.621.

¹⁴ R.C. 4931.62(A).

sale is not a retail sale subject to the bill's requirements. These procedures are required to substantially coincide with similar sales-tax procedures under current law.¹⁵

The bill requires the Department of Taxation to give all sellers of prepaid wireless calling services notice of any increase or decrease in the prepaid wireless 9-1-1 charge, at least 30 days before the increase or decrease takes effect.¹⁶

Liability exclusions

The bill specifies that except for willful or wanton misconduct, a provider of and a seller of a prepaid wireless calling service and their respective officers, directors, employees, agents, and suppliers are not liable in civil damages resulting from participation in or acts or omissions in connection with participating in or developing, maintaining, or operating a 9-1-1 system, or from the provision of assistance to a public utility, municipal utility, or state or local government during a public emergency or service outage.¹⁷

The bill specifies that no provider of a prepaid wireless calling service is liable to the state for any prepaid wireless 9-1-1 charges not collected or remitted.¹⁸

Repeal of report requirement

The bill repeals the requirement that the Ohio 9-1-1 Coordinator submit a report to the General Assembly by November 30, 2011, regarding wireless 9-1-1 in Ohio.¹⁹

HISTORY

ACTION	DATE
Introduced	11-01-11

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¹⁵ R.C. 4931.622.

¹⁶ R.C. 4931.611.

¹⁷ R.C. 4931.49(D).

¹⁸ R.C. 4931.62(C)(1) and (2).

¹⁹ R.C. 4931.70 (repealed); conforming changes in R.C. 4927.03, 4927.15, 4931.40, 4931.41, 4931.44, 4931.49, 4931.50, 4931.60, 4931.63, 4931.64, 4931.65, 4931.66, 4931.67, and 4931.69.