

LEGISLATIVE BILL 157

Approved by the Governor April 04, 2018

Introduced by Friesen, 34.

A BILL FOR AN ACT relating to telecommunications; to amend sections 86-316, 86-318, 86-328, 86-902, 86-903, 86-904, and 86-905, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change a provision of the Nebraska Telecommunications Universal Service Fund Act; to change the prepaid wireless surcharge determination and duties of sellers and the Department of Revenue under the Prepaid Wireless Surcharge Act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 86-316, Reissue Revised Statutes of Nebraska, is amended to read:

86-316 Sections 86-316 to 86-329 and section 3 of this act shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

Sec. 2. Section 86-318, Reissue Revised Statutes of Nebraska, is amended to read:

86-318 For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 86-319 to 86-322 and section 3 of this act apply.

Sec. 3. Prepaid wireless telecommunications service provider means a wireless telecommunications company whose 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 or expiration of time.

Sec. 4. Section 86-328, Reissue Revised Statutes of Nebraska, is amended to read:

86-328 (1) Annually the commission shall hold a public hearing to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act. The commission shall publish notice of the hearing in at least one newspaper of general circulation in the state at least once each week for two consecutive weeks before the hearing. After the hearing, the commission shall determine the amount of the fund for the following year, including a reasonable reserve. In the initial year of the fund's operation, the commission shall determine the amount of the fund to be equivalent to the amount which, in the commission's judgment, after careful analysis, is necessary to keep approximately ninety-six percent of Nebraska households subscribed to local telecommunications service.

(2) In an emergency as determined by the commission, the commission may adjust the level of the fund, but only after a public hearing for such purpose.

(3) For purposes of service by a prepaid wireless telecommunications service provider, universal service fund contribution and surcharge obligations shall be governed by the Prepaid Wireless Surcharge Act, except that a prepaid wireless telecommunications service provider shall continue to be subject to the audit requirements in subdivision (2)(d) of section 86-324.

Sec. 5. Section 86-902, Reissue Revised Statutes of Nebraska, is amended to read:

86-902 For purposes of the Prepaid Wireless Surcharge Act:

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

(2) Prepaid wireless surcharge means the charge that is required to be collected by a seller from a consumer in the amount established under section 86-903;

(3) 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 or expiration of time;

(4) Provider means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission;

(5) Retail transaction means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale;

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

(7) Wireless telecommunications service means mobile service as defined by 47 C.F.R. 20.3, as such section existed on July 19, 2012.

Sec. 6. Section 86-903, Reissue Revised Statutes of Nebraska, is amended to read:

86-903 (1) The Department of Revenue shall determine the prepaid wireless surcharge annually, effective January 1, based on the charges described in subsection (2) of this section as in effect on the preceding July 1. The department shall provide not less than ninety days' advance notice of any change in the prepaid wireless surcharge on the department's web site.

(2) The rate of the prepaid wireless surcharge shall be the sum of the following three ~~two~~ percentages, rounded up to the nearest tenth of one

percent:

(a) The percentage obtained by dividing (i) the amount of the wireless E-911 surcharge authorized under subdivision (1)(b) of section 86-457 by (ii) fifty; ~~and~~

(b) The percentage obtained by dividing (i) the amount of the Nebraska Telecommunications Relay System Fund surcharge set by the Public Service Commission pursuant to the Telecommunications Relay System Act by (ii) fifty; ~~and~~

(c) The percentage obtained by multiplying (i) the Nebraska Telecommunications Universal Service Fund surcharge percentage rate set by the Public Service Commission by (ii) one minus the Federal Communications Commission safe harbor percentage for determining the interstate portion of a fixed monthly wireless charge.

(3) The Department of Revenue shall provide the Public Service Commission with prepaid wireless surcharge calculation and collection data upon request by the commission.

~~(4) (3)~~ Beginning January 1, 2013, each seller shall collect the prepaid wireless surcharge from the consumer with respect to each retail transaction occurring in this state. The seller shall disclose the amount of the prepaid wireless surcharge either separately on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise. 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 section 77-2703.

~~(5) (4)~~ The prepaid wireless surcharge 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 prepaid wireless surcharges that the seller collects from consumers as provided in section 86-904, including all such charges that the seller is deemed to collect when 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.

~~(6) (5)~~ The amount of the prepaid wireless surcharge that is collected by a seller from a consumer, whether or not 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.

~~(7) (6)~~ For purposes of subsection ~~(4) (3)~~ of this section, when prepaid wireless telecommunications service is sold with one or more other products or services for a single, non-itemized price, the seller shall elect to treat the price of the prepaid wireless telecommunications service (a) as such entire non-itemized price, (b) if the amount of prepaid wireless telecommunications service is disclosed to the consumer as a dollar amount, as such dollar amount, or (c) if the retailer can identify the portion of the price that is attributable to the prepaid wireless telecommunications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes, as such portion. If the amount of prepaid wireless telecommunications service is denominated as ten minutes or less or as five dollars or less, the seller may elect not to collect any prepaid wireless surcharge with respect to the retail transaction.

Sec. 7. Section 86-904, Reissue Revised Statutes of Nebraska, is amended to read:

86-904 (1) Sellers shall remit collected prepaid wireless surcharges to the Department of Revenue ~~at the times and~~ in the manner provided in the Nebraska Revenue Act of 1967 with respect to sales tax. Sellers shall remit the prepaid wireless surcharges to the department on a monthly basis, except that if a seller collected less than one thousand dollars of prepaid wireless surcharges in the prior year, the seller may remit on an annual basis. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to sales tax.

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

(3) The audit and appeal procedures applicable to sales tax under the Nebraska Revenue Act of 1967 shall apply to prepaid wireless surcharges.

(4) The Department of Revenue 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 tax purposes.

(5) After deducting an amount, not to exceed one-half of one ~~two~~ percent of charges, to be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless surcharges, the department shall remit all collected prepaid wireless surcharges to the State Treasurer for credit to the Enhanced Wireless 911 Fund, ~~and~~ the Nebraska Telecommunications Relay System Fund, and the Nebraska Telecommunications Universal Service Fund in the proportions that the respective corresponding components of the prepaid wireless surcharge under subsection (2) of section 86-903 bear to the total prepaid wireless surcharge.

Sec. 8. Section 86-905, Reissue Revised Statutes of Nebraska, is amended to read:

86-905 The prepaid wireless surcharge shall be the only funding obligation imposed with respect to prepaid wireless telecommunications service for E-911 service, and telecommunications relay service, and universal 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 purposes of funding E-911 service, or telecommunications relay service, or universal service, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

Sec. 9. Original sections 86-316, 86-318, 86-328, 86-902, 86-903, 86-904, and 86-905, Reissue Revised Statutes of Nebraska, are repealed.