

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 646

Introduced by McDonnell, 5.

Read first time January 18, 2023

Committee:

1 A BILL FOR AN ACT relating to telecommunications; to amend section
2 86-457, Reissue Revised Statutes of Nebraska, and sections 86-458
3 and 86-903, Revised Statutes Cumulative Supplement, 2022; to change
4 provisions under the Enhanced Wireless 911 Services Act relating to
5 surcharges and public hearings; to harmonize provisions; and to
6 repeal the original sections.

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

1 Section 1. Section 86-457, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 86-457 (1) Each wireless carrier shall collect a ~~:(a)~~ A surcharge
4 of up to one dollar seventy cents, ~~except as provided in subdivision (1)~~
5 ~~(b) of this subsection~~, on all active telephone numbers or functional
6 equivalents every month from users of wireless service and shall remit
7 the surcharge in accordance with section 86-459; ~~or (b) A surcharge of up~~
8 ~~to fifty cents on all active telephone numbers or functional equivalents~~
9 ~~every month from users of wireless service whose primary place of use is~~
10 ~~in a county containing a city of the metropolitan class and shall remit~~
11 ~~the surcharge in accordance with section 86-459. The wireless carrier is~~
12 not liable for any surcharge not paid by a customer.

13 (2) Except as otherwise provided in this section, the wireless
14 carrier shall add the surcharge to each user's billing statement. The
15 surcharge shall appear as a separate line-item charge on the user's
16 billing statement and shall be labeled as "Enhanced Wireless 911
17 Surcharge" or a reasonable abbreviation of such phrase.

18 (3) If a wireless carrier, except as otherwise provided in this
19 section, resells its service through other entities, each reseller shall
20 collect the surcharge from its customers and shall remit the surcharge in
21 accordance with section 86-459.

22 (4) The surcharges authorized by this section shall not apply to
23 prepaid wireless telecommunications service as defined in section 86-902.

24 (5) This section shall not apply to users who have no 911 service.

25 Sec. 2. Section 86-458, Revised Statutes Cumulative Supplement,
26 2022, is amended to read:

27 86-458 The commission shall hold a public hearing annually to
28 determine the amount of revenue necessary to carry out the Enhanced
29 Wireless 911 Services Act and the 911 Service System Act. After the
30 hearing, the commission shall determine the amount of money to be
31 deposited in the 911 Service System Fund for the following year to

1 maximize operational support for all public safety answering points in
2 the state and shall set the surcharge subject to the limitation in
3 section 86-457.

4 Sec. 3. Section 86-903, Revised Statutes Cumulative Supplement,
5 2022, is amended to read:

6 86-903 (1) The Department of Revenue shall determine the prepaid
7 wireless surcharge annually, effective January 1, based on the charges
8 described in subsection (2) of this section as in effect on the preceding
9 July 1. The department shall provide not less than ninety days' advance
10 notice of any change in the prepaid wireless surcharge on the
11 department's website.

12 (2) The rate of the prepaid wireless surcharge shall be the sum of
13 the following three percentages, rounded up to the nearest tenth of one
14 percent:

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

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

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

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

30 (4) Beginning January 1, 2013, each seller shall collect the prepaid
31 wireless surcharge from the consumer with respect to each retail

1 transaction occurring in this state. The seller shall disclose the amount
2 of the prepaid wireless surcharge either separately on an invoice,
3 receipt, or other similar document that is provided to the consumer by
4 the seller or otherwise. A retail transaction that is effected in person
5 by a consumer at a business location of the seller shall be treated as
6 occurring in this state if that business location is in this state, and
7 any other retail transaction shall be treated as occurring in this state
8 if the retail transaction is treated as occurring in this state for
9 purposes of section 77-2703.

10 (5) The prepaid wireless surcharge is the liability of the consumer
11 and not of the seller or of any provider, except that the seller shall be
12 liable to remit all prepaid wireless surcharges that the seller collects
13 from consumers as provided in section 86-904, including all such charges
14 that the seller is deemed to collect when the amount of the charge has
15 not been separately stated on an invoice, receipt, or other similar
16 document provided to the consumer by the seller.

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

23 (7) For purposes of subsection (4) of this section, when prepaid
24 wireless telecommunications service is sold with one or more other
25 products or services for a single, non-itemized price, the seller shall
26 elect to treat the price of the prepaid wireless telecommunications
27 service (a) as such entire non-itemized price, (b) if the amount of
28 prepaid wireless telecommunications service is disclosed to the consumer
29 as a dollar amount, as such dollar amount, or (c) if the retailer can
30 identify the portion of the price that is attributable to the prepaid
31 wireless telecommunications service by reasonable and verifiable

1 standards from its books and records that are kept in the regular course
2 of business for other purposes, including, but not limited to, nontax
3 purposes, as such portion. If the amount of prepaid wireless
4 telecommunications service is denominated as ten minutes or less or as
5 five dollars or less, the seller may elect not to collect any prepaid
6 wireless surcharge with respect to the retail transaction.

7 Sec. 4. Original section 86-457, Reissue Revised Statutes of
8 Nebraska, and sections 86-458 and 86-903, Revised Statutes Cumulative
9 Supplement, 2022, are repealed.