

CHAPTER 371

GOVERNMENT - LOCAL

SENATE BILL 10-120

BY SENATOR(S) White, Bacon, Steadman, Boyd, Foster, Gibbs, Heath, Hodge, Johnston, Keller, Tochtrop, Whitehead, Williams, Schwartz;
also REPRESENTATIVE(S) Rice, Bradford, McCann, Casso, Hullinghorst, Liston, Loooper, Soper, Todd.

AN ACT

CONCERNING THE INCLUSION OF PREPAID WIRELESS TELEPHONE SERVICE AMONG THE SERVICES SUBJECT TO THE SURCHARGE THAT FUNDS ENHANCED 911 EMERGENCY SERVICES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 29-11-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

29-11-101. Definitions. As used in this article, unless the context otherwise requires:

(5.5) "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS WIRELESS TELECOMMUNICATIONS ACCESS THAT ALLOWS A CALLER TO DIAL 911 TO ACCESS THE 911 SYSTEM, IS PAID FOR IN ADVANCE, AND IS SOLD IN PREDETERMINED UNITS OR DOLLARS, OF WHICH THE NUMBER OF UNITS OR DOLLARS AVAILABLE TO THE CALLER DECLINES WITH USE IN A KNOWN AMOUNT.

SECTION 2. 29-11-102 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

29-11-102. Imposition of charge - liability of user for charge - collection - uncollected amounts - rules. (2) (e) THIS SUBSECTION (2) SHALL NOT APPLY TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICES.

SECTION 3. Part 1 of article 11 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

29-11-102.5. Imposition of charge on prepaid wireless - rules - prepaid wireless trust cash fund - definitions - repeal. (1) AS USED IN THIS SECTION:

(a) "CONSUMER" MEANS A PERSON WHO PURCHASES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN A RETAIL TRANSACTION.

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(c) "PREPAID WIRELESS E911 CHARGE" MEANS THE CHARGE THAT IS REQUIRED TO BE COLLECTED BY A SELLER FROM A CONSUMER UNDER SUBSECTION (2) OF THIS SECTION.

(d) "PROVIDER" MEANS A PERSON THAT PROVIDES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

(e) "RETAIL TRANSACTION" MEANS THE PURCHASE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FROM A SELLER FOR ANY PURPOSE OTHER THAN RESALE.

(f) "SELLER" MEANS A PERSON WHO SELLS PREPAID WIRELESS TELECOMMUNICATIONS SERVICE TO ANOTHER PERSON.

(2) (a) A PREPAID WIRELESS E911 CHARGE OF ONE AND FOUR-TENTHS PERCENT OF THE PRICE OF THE RETAIL TRANSACTION IS HEREBY IMPOSED ON EACH RETAIL TRANSACTION.

(b) (I) THE SELLER SHALL COLLECT THE PREPAID WIRELESS E911 CHARGE FROM THE CONSUMER ON EACH RETAIL TRANSACTION OCCURRING IN THIS STATE. THE AMOUNT OF THE PREPAID WIRELESS E911 CHARGE SHALL BE EITHER DISCLOSED TO THE CONSUMER OR SEPARATELY STATED ON AN INVOICE, RECEIPT, OR OTHER SIMILAR DOCUMENT THE SELLER PROVIDES TO THE CONSUMER. A SELLER SHALL ELECT TO EITHER DISCLOSE OR SEPARATELY STATE THE CHARGE AND SHALL NOT CHANGE THE ELECTION WITHOUT THE WRITTEN CONSENT OF THE DEPARTMENT.

(II) FOR PURPOSES OF THIS PARAGRAPH (b), A RETAIL TRANSACTION OCCURS IN COLORADO IF:

(A) THE CONSUMER EFFECTS THE RETAIL TRANSACTION IN PERSON AT A BUSINESS LOCATION IN COLORADO;

(B) IF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) DOES NOT APPLY, THE PRODUCT IS DELIVERED TO THE CONSUMER AT A COLORADO ADDRESS PROVIDED TO THE SELLER;

(C) IF SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (II) DO NOT APPLY, THE SELLER'S RECORDS, MAINTAINED IN THE ORDINARY COURSE OF BUSINESS, INDICATE THAT THE CONSUMER'S ADDRESS IS IN COLORADO AND THE RECORDS ARE NOT MADE OR KEPT IN BAD FAITH;

(D) IF SUB-SUBPARAGRAPHS (A) TO (C) OF THIS SUBPARAGRAPH (II) DO NOT APPLY, THE CONSUMER GIVES A COLORADO ADDRESS DURING THE CONSUMMATION

OF THE SALE, INCLUDING THE CONSUMER'S PAYMENT INSTRUMENT IF NO OTHER ADDRESS IS AVAILABLE, AND THE ADDRESS IS NOT GIVEN IN BAD FAITH; OR

(E) IF SUB-SUBPARAGRAPHS (A) TO (D) OF THIS SUBPARAGRAPH (II) DO NOT APPLY, THE MOBILE TELEPHONE NUMBER IS ASSOCIATED WITH A COLORADO LOCATION.

(c) THE PREPAID WIRELESS E911 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 PREPAID WIRELESS E911 CHARGES THAT THE SELLER COLLECTS FROM CONSUMERS AS PROVIDED IN SUBSECTION (3) OF THIS SECTION. THE SELLER SHALL BE DEEMED TO HAVE COLLECTED THE CHARGE NOTWITHSTANDING THAT THE AMOUNT OF THE CHARGE HAS NEITHER BEEN SEPARATELY DISCLOSED NOR STATED ON AN INVOICE, RECEIPT, OR OTHER SIMILAR DOCUMENT THE SELLER PROVIDES TO THE CONSUMER.

(d) THE AMOUNT OF THE PREPAID WIRELESS E911 CHARGE THAT IS COLLECTED BY A SELLER FROM A CONSUMER 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.

(3) (a) THE SELLER SHALL REMIT ANY COLLECTED PREPAID WIRELESS E911 CHARGES TO THE DEPARTMENT AT THE TIMES AND IN THE MANNER PROVIDED IN PART 1 OF ARTICLE 26 OF TITLE 39, C.R.S. THE DEPARTMENT SHALL ESTABLISH, BY RULE, REGISTRATION AND PAYMENT PROCEDURES THAT SUBSTANTIALLY COINCIDE WITH THE REGISTRATION AND PAYMENT PROCEDURES THAT APPLY UNDER PART 1 OF ARTICLE 26 OF TITLE 39, C.R.S. A SELLER IS SUBJECT TO THE PENALTIES UNDER PART 1 OF ARTICLE 26 OF TITLE 39, C.R.S., FOR FAILURE TO COLLECT OR REMIT A PREPAID WIRELESS E911 CHARGE IN ACCORDANCE WITH THIS SECTION.

(b) (I) EFFECTIVE JULY 1, 2011, A SELLER MAY DEDUCT AND RETAIN THREE AND THREE-TENTHS PERCENT OF THE PREPAID WIRELESS E911 CHARGES THAT ARE COLLECTED BY THE SELLER FROM CONSUMERS.

(II) (A) A SELLER MAY DEDUCT AND RETAIN TWO PERCENT OF THE PREPAID WIRELESS E911 CHARGES THAT ARE COLLECTED BY THE SELLER FROM CONSUMERS.

(B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1, 2011.

(c) THE AUDIT AND APPEAL PROCEDURES APPLICABLE TO THE STATE SALES TAX UNDER PART 1 OF ARTICLE 26 OF TITLE 39, C.R.S., SHALL APPLY TO PREPAID WIRELESS E911 CHARGES.

(d) THE DEPARTMENT SHALL ESTABLISH PROCEDURES BY WHICH A SELLER MAY DOCUMENT THAT A TRANSACTION IS NOT A RETAIL TRANSACTION, WHICH PROCEDURES SHALL SUBSTANTIALLY COINCIDE WITH THE PROCEDURES FOR DOCUMENTING THAT A SALE WAS WHOLESALE FOR PURPOSES OF THE SALES TAX UNDER PART 1 OF ARTICLE 26 OF TITLE 39, C.R.S.

(e) (I) REMITTANCES OF PREPAID WIRELESS E911 CHARGES RECEIVED BY THE DEPARTMENT ARE COLLECTIONS FOR THE LOCAL GOVERNING BODY, NOT GENERAL

REVENUES OF THE STATE, AND SHALL BE HELD IN TRUST IN THE PREPAID WIRELESS TRUST CASH FUND, WHICH IS HEREBY CREATED. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (e), THE DEPARTMENT SHALL TRANSMIT THE MONEYS IN THE FUND TO EACH GOVERNING BODY WITHIN SIXTY DAYS AFTER THE DEPARTMENT RECEIVES THE MONEY IN ACCORDANCE WITH SECTION 29-2-106 FOR USE BY SUCH GOVERNING BODY FOR THE PURPOSES PERMITTED UNDER SECTION 29-11-104.

(II) THE DEPARTMENT MAY EXPEND AN AMOUNT, NOT TO EXCEED THREE PERCENT OF THE COLLECTED CHARGES IN THE PREPAID WIRELESS TRUST CASH FUND, NECESSARY TO REIMBURSE THE DEPARTMENT FOR ITS DIRECT COSTS OF ADMINISTERING THE COLLECTION AND REMITTANCE OF PREPAID WIRELESS E911 CHARGES; EXCEPT THAT THE DEPARTMENT MAY EXPEND UP TO AN ADDITIONAL FOUR HUNDRED FIFTY THOUSAND DOLLARS FROM JANUARY 1, 2011, THROUGH JANUARY 1, 2012, TO COVER THE INITIAL COST OF ESTABLISHING THE COLLECTION AND REMITTANCE PROCESS.

(III) THE PUBLIC UTILITIES COMMISSION SHALL ESTABLISH A FORMULA FOR DISTRIBUTION OF REVENUES FROM THE PREPAID WIRELESS E911 CHARGE BASED UPON THE GOVERNING AUTHORITY'S PORTION OF THE TOTAL 911 WIRELESS CALL VOLUME. THE PUBLIC UTILITIES COMMISSION, OR ITS DESIGNEE, SHALL COLLECT AND TRANSMIT THE PERCENTAGE OF WIRELESS CALLS PROCESSED BY EACH PUBLIC SAFETY ANSWERING POINT TO THE DEPARTMENT BY NOVEMBER 15 OF EACH YEAR. THE PUBLIC UTILITIES COMMISSION MAY PROMULGATE RULES TO IMPLEMENT THIS SUBPARAGRAPH (III).

(4) THE PREPAID WIRELESS E911 CHARGE IMPOSED BY THIS SECTION SHALL BE THE ONLY DIRECT E911 FUNDING OBLIGATION IMPOSED WITH RESPECT TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN THIS STATE. NO TAX, FEE, SURCHARGE, OR OTHER CHARGE TO FUND E911 SHALL BE IMPOSED BY THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE, OR ANY INTERGOVERNMENTAL AGENCY UPON A PROVIDER, SELLER, OR CONSUMER WITH RESPECT TO THE SALE, PURCHASE, USE, OR PROVISION OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the prepaid wireless trust cash fund created in section 29-11-102.5 (3) (e) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for administrative costs associated with collecting prepaid wireless telephone 911 surcharges, for the fiscal year beginning July 1, 2010, the sum of four hundred seventy-six thousand one hundred ninety-five dollars (\$476,195) cash funds and 1.4 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 5. Specified effective date - applicability. This act shall take effect January 1, 2011, and shall apply to sales made on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 7, 2010