



Sen. Don Harmon

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09700HB3129sam002

LRB097 06257 HLH 66442 a

1 AMENDMENT TO HOUSE BILL 3129

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3129 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Prepaid Wireless 9-1-1 Surcharge Act is  
5 amended by changing Sections 15 and 20 as follows:

6 (50 ILCS 753/15)

7 Sec. 15. Prepaid wireless 9-1-1 surcharge.

8 (a) There is hereby imposed on consumers a prepaid wireless  
9 9-1-1 surcharge of 1.5% per retail transaction. The surcharge  
10 authorized by this subsection (a) does not apply in a home rule  
11 municipality having a population in excess of 500,000. The  
12 amount of the surcharge may be reduced or increased pursuant to  
13 subsection (e).

14 (a-5) A home rule municipality having a population in  
15 excess of 500,000 on the effective date of this Act may only  
16 impose a prepaid wireless 9-1-1 surcharge not to exceed 7% per

1 retail transaction sourced to that jurisdiction and collected  
2 and remitted in accordance with the provisions of subsection  
3 (b-5).

4 (b) The prepaid wireless 9-1-1 surcharge shall be collected  
5 by the seller from the consumer with respect to each retail  
6 transaction occurring in this State and shall be remitted to  
7 the Department by the seller as provided in this Act. The  
8 amount of the prepaid wireless 9-1-1 surcharge shall be  
9 separately stated as a distinct item apart from the charge for  
10 the prepaid wireless telecommunications service on an invoice,  
11 receipt, or other similar document that is provided to the  
12 consumer by the seller or shall be otherwise disclosed to the  
13 consumer. If the seller does not separately state the surcharge  
14 as a distinct item to the consumer as provided in this Section,  
15 then the seller shall maintain books and records as required by  
16 this Act which clearly identify the amount of the 9-1-1  
17 surcharge for retail transactions.

18 For purposes of this subsection (b), a retail transaction  
19 occurs in this State if (i) the retail transaction is made in  
20 person by a consumer at the seller's business location and the  
21 business is located within the State; (ii) the seller is a  
22 provider and sells prepaid wireless telecommunications service  
23 to a consumer located in Illinois; (iii) the retail transaction  
24 is treated as occurring in this State for purposes of the  
25 Retailers' Occupation Tax Act; or (iv) a seller that is  
26 included within the definition of a "retailer maintaining a

1 place of business in this State" under Section 2 of the Use Tax  
2 Act makes a sale of prepaid wireless telecommunications service  
3 to a consumer located in Illinois. In the case of a retail  
4 transaction which does not occur in person at a seller's  
5 business location, if a consumer uses a credit card to purchase  
6 prepaid wireless telecommunications service on-line or over  
7 the telephone, and no product is shipped to the consumer, the  
8 transaction occurs in this State if the billing address for the  
9 consumer's credit card is in this State.

10 (b-5) The prepaid wireless 9-1-1 surcharge imposed under  
11 subsection (a-5) of this Section shall be collected by the  
12 seller from the consumer with respect to each retail  
13 transaction occurring in the municipality imposing the  
14 surcharge. The amount of the prepaid wireless 9-1-1 surcharge  
15 shall be separately stated on an invoice, receipt, or other  
16 similar document that is provided to the consumer by the seller  
17 or shall be otherwise disclosed to the consumer. If the seller  
18 does not separately state the surcharge as a distinct item to  
19 the consumer as provided in this Section, then the seller shall  
20 maintain books and records as required by this Act which  
21 clearly identify the amount of the 9-1-1 surcharge for retail  
22 transactions.

23 For purposes of this subsection (b-5), a retail transaction  
24 occurs in the municipality if (i) the retail transaction is  
25 made in person by a consumer at the seller's business location  
26 and the business is located within the municipality; (ii) the

1 seller is a provider and sells prepaid wireless  
2 telecommunications service to a consumer located in the  
3 municipality; (iii) the retail transaction is treated as  
4 occurring in the municipality for purposes of the Retailers'  
5 Occupation Tax Act; or (iv) a seller that is included within  
6 the definition of a "retailer maintaining a place of business  
7 in this State" under Section 2 of the Use Tax Act makes a sale  
8 of prepaid wireless telecommunications service to a consumer  
9 located in the municipality. In the case of a retail  
10 transaction which does not occur in person at a seller's  
11 business location, if a consumer uses a credit card to purchase  
12 prepaid wireless telecommunications service on-line or over  
13 the telephone, and no product is shipped to the consumer, the  
14 transaction occurs in the municipality if the billing address  
15 for the consumer's credit card is in the municipality.

16 (c) The prepaid wireless 9-1-1 surcharge is imposed on the  
17 consumer and not on any provider. The seller shall be liable to  
18 remit all prepaid wireless 9-1-1 surcharges that the seller  
19 collects from consumers as provided in Section 20, including  
20 all such surcharges that the seller is deemed to collect where  
21 the amount of the surcharge has not been separately stated on  
22 an invoice, receipt, or other similar document provided to the  
23 consumer by the seller. The surcharge collected or deemed  
24 collected by a seller shall constitute a debt owed by the  
25 seller to this State, and any such surcharge actually collected  
26 shall be held in trust for the benefit of the Department.

1           For purposes of this subsection (c), the surcharge shall  
2 not be imposed or collected from entities that have an active  
3 tax exemption identification number issued by the Department  
4 ~~are tax exempt~~ under Section 1g of the Retailers' Occupation  
5 Tax Act.

6           (d) The amount of the prepaid wireless 9-1-1 surcharge that  
7 is collected by a seller from a consumer, if such amount is  
8 separately stated on an invoice, receipt, or other similar  
9 document provided to the consumer by the seller, shall not be  
10 included in the base for measuring any tax, fee, surcharge, or  
11 other charge that is imposed by this State, any political  
12 subdivision of this State, or any intergovernmental agency.

13           (e) The prepaid wireless 9-1-1 charge imposed under  
14 subsection (a) of this Section shall be proportionately  
15 increased or reduced, as applicable, upon any change to the  
16 surcharge imposed under Section 17 of the Wireless Emergency  
17 Telephone Safety Act. The adjusted rate shall be determined by  
18 dividing the amount of the surcharge imposed under Section 17  
19 of the Wireless Emergency Telephone Safety Act by \$50. Such  
20 increase or reduction shall be effective on the first day of  
21 the first calendar month to occur at least 60 days after the  
22 enactment of the change to the surcharge imposed under Section  
23 17 of the Wireless Emergency Telephone Safety Act. The  
24 Department shall provide not less than 30 days' notice of an  
25 increase or reduction in the amount of the surcharge on the  
26 Department's website.

1           (e-5) Any changes in the rate of the surcharge imposed by a  
2 municipality under the authority granted in subsection (a-5) of  
3 this Section shall be effective on the first day of the first  
4 calendar month to occur at least 60 days after the enactment of  
5 the change. The Department shall provide not less than 30 days'  
6 notice of the increase or reduction in the rate of such  
7 surcharge on the Department's website.

8           (f) When prepaid wireless telecommunications service is  
9 sold with one or more other products or services for a single,  
10 non-itemized price, then the percentage specified in  
11 subsection (a) or (a-5) of this Section 15 shall be applied to  
12 the entire non-itemized price unless the seller elects to apply  
13 the percentage to (i) the dollar amount of the prepaid wireless  
14 telecommunications service if that dollar amount is disclosed  
15 to the consumer or (ii) the portion of the price that is  
16 attributable to the prepaid wireless telecommunications  
17 service if the retailer can identify that portion by reasonable  
18 and verifiable standards from its books and records that are  
19 kept in the regular course of business for other purposes,  
20 including, but not limited to, books and records that are kept  
21 for non-tax purposes. However, if a minimal amount of prepaid  
22 wireless telecommunications service is sold with a prepaid  
23 wireless device for a single, non-itemized price, then the  
24 seller may elect not to apply the percentage specified in  
25 subsection (a) or (a-5) of this Section 15 to such transaction.  
26 For purposes of this subsection, an amount of service

1 denominated as 10 minutes or less or \$5 or less is considered  
2 minimal.

3 (Source: P.A. 97-463, eff. 1-1-12.)

4 (50 ILCS 753/20)

5 Sec. 20. Administration of prepaid wireless 9-1-1  
6 surcharge.

7 (a) In the administration and enforcement of this Act, the  
8 provisions of Sections 2a, 2b, 2c, 3, 4, 5, 5a, 5b, 5c, 5d, 5e,  
9 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 12 of the  
10 Retailers' Occupation Tax Act that are not inconsistent with  
11 this Act, and Section 3-7 of the Uniform Penalty and Interest  
12 Act shall apply, as far as practicable, to the subject matter  
13 of this Act to the same extent as if those provisions were  
14 included in this Act. References to "taxes" in these  
15 incorporated Sections shall be construed to apply to the  
16 administration, payment, and remittance of all surcharges  
17 under this Act. The Department shall establish registration and  
18 payment procedures that substantially coincide with the  
19 registration and payment procedures that apply to the  
20 Retailers' Occupation Tax Act.

21 (b) For the first 12 months after the effective date of  
22 this Act, a seller shall be permitted to deduct and retain 5%  
23 of prepaid wireless 9-1-1 surcharges that are collected by the  
24 seller from consumers and that are remitted and timely filed  
25 with the Department. After the first 12 months, a seller shall

1 be permitted to deduct and retain 3% of prepaid wireless 9-1-1  
2 surcharges that are collected by the seller from consumers and  
3 that are remitted and timely filed with the Department.

4 (c) Other than the amounts for deposit into the Municipal  
5 Wireless Service Emergency Fund, the Department shall pay to  
6 the State Treasurer all prepaid wireless E911 charges and  
7 penalties collected under this Act for deposit into the  
8 Wireless Service Emergency Fund. On or before the 25th day of  
9 each calendar month, the Department shall prepare and certify  
10 to the Comptroller the amount available to the Illinois  
11 Commerce Commission for distribution out of the Wireless  
12 Service Emergency Fund. The amount certified shall be the  
13 amount (not including credit memoranda) collected during the  
14 second preceding calendar month by the Department plus an  
15 amount the Department determines is necessary to offset any  
16 amounts which were erroneously paid to a different taxing body.  
17 The amount paid to the Wireless Service Emergency Fund shall  
18 not include any amount equal to the amount of refunds made  
19 during the second preceding calendar month by the Department to  
20 retailers under this Act or any amount that the Department  
21 determines is necessary to offset any amounts which were  
22 payable to a different taxing body but were erroneously paid to  
23 the Wireless Service Emergency Fund. The Illinois Commerce  
24 Commission shall distribute the funds in the same proportion as  
25 they are distributed under the Wireless Emergency Telephone  
26 Safety Act and the funds may only be used in accordance with



1 the provisions of the Wireless Emergency Telephone Safety Act.  
2 ~~The Department shall pay all remitted prepaid wireless E911~~  
3 ~~charges over to the State Treasurer for deposit into the~~  
4 ~~Wireless Service Emergency Fund within 30 days after receipt.~~  
5 ~~The Illinois Commerce Commission shall distribute such funds in~~  
6 ~~the same proportion as they are distributed under the Wireless~~  
7 ~~Emergency Telephone Safety Act and such funds may only be used~~  
8 ~~in accordance with the provisions of the Wireless Emergency~~  
9 ~~Telephone Safety Act.~~ The Department may deduct an amount, not  
10 to exceed 3% during the first year following the effective date  
11 of this Act and not to exceed 2% during every year thereafter  
12 of remitted charges, to be transferred into ~~retained by~~ the Tax  
13 Compliance and Administration Fund ~~Department~~ to reimburse the  
14 Department for its direct costs of administering the collection  
15 and remittance of prepaid wireless 9-1-1 surcharges.

16 (d) The Department shall administer the collection of all  
17 9-1-1 surcharges and may adopt and enforce reasonable rules  
18 relating to the administration and enforcement of the  
19 provisions of this Act as may be deemed expedient. The  
20 Department shall require all surcharges collected under this  
21 Act to be reported on existing forms or combined forms,  
22 including, but not limited to, Form ST-1. Any overpayments  
23 received by the Department for liabilities reported on existing  
24 or combined returns shall be applied as an overpayment of  
25 retailers' occupation tax, use tax, service occupation tax, or  
26 service use tax liability.

1       (e) If a home rule municipality having a population in  
2 excess of 500,000 as of the effective date of this amendatory  
3 Act of the 97th General Assembly imposes an E911 surcharge  
4 under subsection (a-5) of Section 15 of this Act, then the  
5 Department shall pay to the State Treasurer all prepaid  
6 wireless E911 charges, penalties, and interest collected for  
7 deposit into the Municipal Wireless Service Emergency Fund. All  
8 deposits into the Municipal Wireless Service Emergency Fund  
9 shall be held by the State Treasurer as ex officio custodian  
10 separate and apart from all public moneys or funds of this  
11 State. Moneys in the Municipal Wireless Service Emergency Fund  
12 are not subject to appropriation. On or before the 25th day of  
13 each calendar month, the Department shall prepare and certify  
14 to the Comptroller the amount available for disbursement to the  
15 home rule municipality out of the Municipal Wireless Service  
16 Emergency Fund. The amount to be paid to the Municipal Wireless  
17 Service Emergency Fund shall be the amount (not including  
18 credit memoranda) collected during the second preceding  
19 calendar month by the Department plus an amount the Department  
20 determines is necessary to offset any amounts which were  
21 erroneously paid to a different taxing body. The amount paid to  
22 the Municipal Wireless Service Emergency Fund shall not include  
23 any amount equal to the amount of refunds made during the  
24 second preceding calendar month by the Department to retailers  
25 under this Act or any amount that the Department determines is  
26 necessary to offset any amounts which were payable to a

1 different taxing body but were erroneously paid to the  
2 Municipal Wireless Service Emergency Fund. Within 10 days after  
3 receipt by the Comptroller of the certification provided for in  
4 this subsection, the Comptroller shall cause the orders to be  
5 drawn for the respective amounts in accordance with the  
6 directions in the certification. The Department may deduct an  
7 amount, not to exceed 3% during the first year following the  
8 effective date of this amendatory Act of the 97th General  
9 Assembly and not to exceed 2% during every year thereafter of  
10 remitted charges, to be transferred into the Tax Compliance and  
11 Administration Fund to reimburse the Department for its direct  
12 costs of administering the collection and remittance of prepaid  
13 wireless 9-1-1 surcharges.

14 (Source: P.A. 97-463, eff. 1-1-12.)

15 Section 10. The State Finance Act is amended by adding  
16 Section 5.811 as follows:

17 (30 ILCS 105/5.811 new)

18 Sec. 5.811. The Municipal Wireless Service Emergency Fund.

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law."