

HOUSE BILL No. 5952

September 27, 2012, Introduced by Rep. Nesbitt and referred to the Committee on Energy and Technology.

A bill to amend 1986 PA 32, entitled "Emergency 9-1-1 service enabling act," by amending section 401c (MCL 484.1401c), as amended by 2012 PA 260.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 401c. (1) A seller shall collect a prepaid wireless 9-1-1
2 surcharge from a consumer for each retail transaction occurring in
3 this state.

4 (2) The amount of the prepaid wireless 9-1-1 surcharge shall
5 be 1.92% per retail transaction. The charge allowed under this
6 section shall be either separately stated on an invoice, receipt,
7 or other similar document that is provided to a consumer by the
8 seller or otherwise disclosed to the consumer.

9 (3) Each of the following transactions ~~shall be~~ **IS** considered
10 to have occurred in this state:

1 (a) A retail transaction that is effected in person by a
2 consumer at a business location of a seller located in this state.

3 (b) A retail transaction that is treated as occurring in this
4 state as provided in section 3c of the use tax act, 1937 PA 94, MCL
5 205.93c, as that section applies to a prepaid wireless calling
6 service.

7 (4) A prepaid wireless 9-1-1 surcharge is the liability of the
8 consumer and not of the seller or of any provider.

9 (5) Except as otherwise provided in subsection (6), if a
10 prepaid wireless telecommunications service is sold with 1 or more
11 products or services for a single, nonitemized price, the seller
12 shall collect 1.92% on the entire nonitemized price unless the
13 seller elects to do the following:

14 (a) If the amount of the prepaid wireless telecommunications
15 service is disclosed to the consumer as a dollar amount, apply the
16 percentage to that dollar amount.

17 (b) If the seller can identify the portion of the price that
18 is attributable to the prepaid wireless telecommunications service
19 by reasonable and verifiable standards from its books and records
20 that are kept in the regular course of business for other purposes
21 including, but not limited to, nontax purposes, apply the
22 percentage to that portion.

23 (6) If a minimal amount of prepaid wireless telecommunications
24 service is sold with a prepaid wireless device for a single,
25 nonitemized price, a seller may elect not to apply the percentage
26 specified in subsection (5)(a) to that transaction. As used in this
27 subsection, "minimal amount" means an amount of service denominated

1 as 10 minutes or less or \$5.00 or less.

2 (7) The prepaid wireless 9-1-1 surcharge shall be remitted at
3 ~~the same time and in the same manner as the taxes provided by the~~
4 ~~general sales tax act, 1933 PA 167, MCL 205.51 to 205.78. The~~
5 ~~department shall establish record keeping, payment, and other~~
6 ~~procedures for providers or sellers that are substantially similar~~
7 ~~to those applicable procedures for taxpayers imposed under the~~
8 ~~general sales tax act, 1933 PA 167, MCL 205.51 to 205.78. The~~
9 ~~department shall deposit the prepaid wireless 9-1-1 surcharges~~
10 **MONTHLY BY THE SELLER TO THE STATE TREASURER AND DEPOSITED** in the
11 emergency 9-1-1 fund created in section 407.

12 ~~— (8) The prepaid wireless 9-1-1 surcharge imposed by this act~~
13 ~~shall be administered by the department under 1941 PA 122, MCL~~
14 ~~205.1 to 205.31, and this act. If the provisions of 1941 PA 122,~~
15 ~~MCL 205.1 to 205.31, and this act conflict, the provisions of this~~
16 ~~act apply.~~

17 ~~— (9) The department shall promulgate rules to implement this~~
18 ~~section pursuant to the administrative procedures act of 1969, 1969~~
19 ~~PA 306, MCL 24.201 to 24.328.~~

20 (8) ~~(10)~~—A seller may retain 2% of prepaid wireless 9-1-1
21 surcharges that are collected by the seller to reimburse the seller
22 for its direct costs in collecting and remitting the prepaid
23 wireless 9-1-1 surcharges.

24 (9) ~~(11)~~—A provider or seller of prepaid wireless
25 telecommunications service is not liable for damages to any person
26 resulting from or incurred in connection with the provision of, or
27 failure to provide, 9-1-1 service or for identifying or failing to

1 identify the telephone number, address, location, or name
2 associated with any person or device that is accessing or
3 attempting to access 9-1-1 service.

4 (10) ~~(12)~~—A provider or seller of prepaid wireless
5 telecommunications service is not liable for damages to any person
6 resulting from or incurred in connection with the provision of any
7 lawful assistance to any investigative or law enforcement officer
8 of the United States, this state, or any other state in connection
9 with any lawful investigation or other law enforcement activity by
10 that law enforcement officer.

11 (11) ~~(13)~~—As used in this section:

12 (a) "Consumer" means a person who purchases prepaid wireless
13 telecommunications services in a retail transaction.

14 (b) "Department" means the Michigan department of treasury.

15 (c) "Prepaid wireless 9-1-1 surcharge" means the fee that is
16 required to be collected by a seller from a consumer in the amount
17 established under subsection (2).

18 (d) "Provider" means a person that provides prepaid wireless
19 telecommunications services under a license issued by the federal
20 communications commission.

21 (e) "Retail transaction" means the purchase of prepaid
22 wireless telecommunications service from a seller for any purpose
23 other than resale.

24 (f) "Seller" means a person who sells prepaid wireless
25 telecommunications service to another person.