

CHAPTER 332  
FORMERLY  
HOUSE BILL NO. 289  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ENHANCED 911 EMERGENCY REPORTING SYSTEM FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 101, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

**CHAPTER 101. ENHANCED 911 EMERGENCY REPORTING SYSTEM FUND**

Subchapter I. Creation of Fund; Administration; Disbursements.

§ 10101. Purpose.

The State shall create a special fund designated as the Enhanced 911 Emergency Reporting System Fund, which shall be used to reimburse the State, counties, local governments and providers of telecommunications services in this State for costs associated with the E-911 Emergency Reporting System.

§ 10105. Regulations.

The Secretary and, to the extent the collection of surcharges under this chapter is delegated to or performed by the Director of Revenue, each is authorized to adopt such regulations as are necessary to carry out the purpose of this ~~chapter~~ subchapter and subchapter II.

§§10106 – 10109. Reserved.

Subchapter II. Prepaid Wireless Retail Transactions.

§ 10110. Definitions.

In addition to the definitions set forth in Subchapter I, the following definitions shall be applicable to this subchapter:

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

(2) “Prepaid wireless E911 surcharge” means the surcharge that is required to be collected by a seller from a consumer in the amount established under §10112 of this chapter.

(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 in a known amount.

(4) “Prepaid wireless 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.

§ 10111. Imposition of charge.

(a) There shall be a prepaid wireless E911 surcharge on each retail transaction. The initial rate of the surcharge shall be sixty cents per retail transaction. Any rate changes shall be implemented under the provisions of subsection (f) of this section.

(b) The prepaid wireless E911 surcharge shall be collected by the seller from the consumer for each retail transaction occurring in this state. The amount of the prepaid wireless E911 surcharge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

(c) For purposes of determining whether a retail transaction is subject to the prepaid wireless E911 surcharge, the following transactions are deemed to occur in Delaware and are subject to the surcharge imposed under this section:

(1) The retail transaction is effected in person by the consumer at a business location of the seller if that business location is in Delaware; or

(2) The prepaid wireless telecommunications service is physically delivered to a consumer at a Delaware address provided to the seller; or

(3) The seller's records that are maintained in the regular course of business indicate that the consumer's address is in Delaware and the records are not kept or made in bad faith; or

(4) The consumer gives a Delaware address during the consummation of the retail transaction, including the customer's payment instrument if no other address is available, and the address is not given in bad faith; or

(5) The consumer's mobile telephone number is associated with a Delaware location.

(d) The prepaid wireless E911 surcharge is the liability of the consumer and not of the seller or of any prepaid wireless provider, except that the seller shall remit all prepaid wireless E911 surcharges that the seller collects from consumers as provided in this section, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(e) The amount of the prepaid wireless E911 surcharge that is collected by a seller from a consumer, if 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.

(f) The prepaid wireless E911 charge shall be proportionately increased or reduced, as applicable, upon any change to rate of the surcharge as determined under the provisions of § 10103(a) of this chapter. Provided, however, that any rate changes shall only be effective on the first day of the calendar quarter not less than 60 days after the Board provides final notice of such rate change. The Division of Revenue shall provide not less than 30 days of advance notice of such increase or reduction on the Division's website.

(g) If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized price, then the seller may elect not to apply the surcharge imposed by this section to such transaction. For purposes of this paragraph, an amount of service denominated as ten (10) minutes or less, or five dollars (\$5) or less, is minimal.

(h) The surcharge shall not be applied to prepaid wireless telecommunications service provided to a person through the Lifeline program.

§ 10112. Administrative provisions.

(a) Prepaid wireless E911 surcharges collected by sellers shall be remitted to the Division of Revenue quarterly on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue.

(b) The Director of Revenue shall deposit remitted prepaid wireless E911 surcharges to the credit of the Fund established under § 10103 of this chapter.

(c) The Division of Revenue shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is a sale for resale transaction and not a retail transaction.

(d) To the extent practicable, the audit, appeal, and other administrative provisions of Chapters 3 and 5 of title 30 shall apply to the administration of the prepaid wireless E911 surcharge.

(e) A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless E911 surcharges that are collected by the seller from consumers.

§ 10113. Liability; records; confidentiality.

(a) The provisions of § 10008, §10009, and §10010 of this chapter shall apply to providers and sellers of prepaid wireless telecommunications service.

(b) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or

law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

§ 10114. Only permissible E911 surcharge on prepaid wireless service.

The prepaid wireless E911 surcharge imposed by this Act shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications 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 E911 funding purposes, upon any prepaid wireless provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

Section 2. The provisions of this Act shall take effect January 1, 2015.

Approved July 21, 2014