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BILL



ANALYSIS

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House Bill 5468 (Substitute H-2 as passed by the House)
Sponsor: Representative Aric Nesbitt
House Committee: Energy and Technology
Senate Committee: Energy and Technology

Date Completed: 6-5-12

CONTENT

The bill would amend the Emergency 9-1-1 Service Enabling Act to require the 9-1-1 charge to be collected from prepaid wireless customers by retail sellers, rather than service suppliers; set the charge at 1.92% per retail transaction; allow sellers to retain 2% of the charge; and require the charge to be remitted in the same manner as required for the sales tax. The bill also would delay the Act's sunset from December 31, 2014, until December 31, 2021.

The bill would take effect on October 1, 2012.

Prepaid Wireless 9-1-1 Charge

The Act prescribes mechanisms for the collection of State and county 9-1-1 charges from landline and wireless (commercial mobile radio service, or CMRS) customers. The Act prescribes a separate mechanism for the collection of 9-1-1 charges from prepaid CMRS customers, and requires each CMRS supplier or reseller to collect an emergency 9-1-1 charge from each of its prepaid customers.

("Commercial mobile radio service" means such service regulated under the Federal Communications Act and the rules of the Federal Communications Commission (FCC) or provider under the FCC's Wireless Emergency Service Order. The term includes all of the following:

- A wireless two-way communication device, including a radio telephone used in cellular telephone service or personal communication service.
- A functional equivalent of a radio telephone communications line used in cellular telephone service or personal communication service.
- A network radio access line.)

The Emergency 9-1-1 Service Committee must establish the amount of the charge on prepaid customers annually by combining the amounts described below.

The CMRS supplier or reseller has a one-time option of selecting one of the following methods of determining the portion of the charge that represents the State amount:

- By dividing the total earned prepaid revenue the supplier or reseller received within the monthly 9-1-1 reporting period by \$50 and multiplying that number by the amount of the State 9-1-1 charge established under the Act.

- By multiplying the amount of the State charge for each active prepaid account of the supplier or reseller.

The Committee must review and establish annually the portion of the emergency 9-1-1 charge that represents the county amount. The charge must be based on the weighted average of all county 9-1-1 charges imposed statewide.

The CMRS must deposit the amount collected from the total charge into the Emergency 9-1-1 Fund to be distributed as provided in the Act (described below, under **BACKGROUND**).

The bill would eliminate these provisions for collection of the charge from users of a prepaid wireless telecommunications service. Instead, the bill would require a seller to collect a prepaid wireless 9-1-1 surcharge from a consumer for each retail transaction occurring in Michigan.

("Seller" would mean a person who sells prepaid wireless telecommunications service to another person. "Consumer" would mean a person who purchased such services in a retail transaction. "Retail transaction" would mean the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. "Prepaid wireless telecommunications service" would mean a CMRS that allows a caller to dial 9-1-1 to gain access to the 9-1-1 system and is paid for in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.)

The amount of the surcharge would have to be 1.92% per retail transaction. The charge would have to be stated separately on an invoice, receipt, or similar document provided to a consumer by the seller, or otherwise disclosed to the consumer.

Each of the following transactions would be considered to have occurred in Michigan:

- A retail transaction effected in person by a consumer at a business location of a seller located in this State.
- A retail transaction treated as occurring in Michigan as provided in the Use Tax Act, as applicable to a prepaid wireless calling service.

The surcharge would be the liability of the consumer and not of the seller or any provider of prepaid wireless telecommunications services.

Except as otherwise provided, if a prepaid wireless telecommunications service were sold with one or more products or services for a single, nonitemized price, the seller would have to collect 1.92% on the entire price unless the seller elected to do the following:

- If the amount of the prepaid wireless service were disclosed to the consumer as a dollar amount, apply the percentage to that dollar amount.
- If the seller could identify the portion of the price that was attributable to the prepaid wireless service by reasonable and verifiable standards from its books and records kept in the regular course of business for other purposes, apply the percentage to that portion.

If a minimal amount of prepaid wireless service were sold with a prepaid wireless device for a single, nonitemized price, a seller could elect not to apply the prescribed percentage to that transaction. ("Minimal amount" would mean an amount of service denominated as 10 or fewer minutes or \$5 or less.)

A seller could retain 2% of the prepaid wireless 9-1-1 surcharges it collected to reimburse the seller for its direct costs in collecting and remitting the surcharges.

The surcharge would have to be remitted at the same time and in the same manner as the taxes provided by the General Sales Tax Act. The Department of Treasury would have to establish record-keeping, payment, and other procedures for providers and sellers that were substantially similar to the applicable procedures for taxpayers under that Act.

The surcharge would have to be administered by the Department under Public Act 122 of 1941 (which governs the Revenue Division of the Department) and the Emergency 9-1-1 Service Enabling Act. If the provisions of Public Act 122 and the Emergency 9-1-1 Service Enabling Act conflicted, the provisions of the latter would apply.

A provider or seller of prepaid wireless telecommunications service would not be liable for damage to any person resulting from or incurred in connection with the provision of, or failure to provide, 9-1-1 service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that was gaining access or attempting to gain access to 9-1-1 service.

A provider or seller also would not 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, Michigan, or any other state in connection with any lawful investigation or other law enforcement activity by that officer.

The Department of Treasury would have to promulgate rules to implement the Emergency 9-1-1 Service Enabling Act.

Disclosure of 9-1-1 Charge

The Act requires the State and county 9-1-1 charges, as well as the emergency telephone technical charge (described below) to be listed separately on the customer's bill or payment receipt. Under the bill, the charges could be listed separately on the bill or receipt or otherwise disclosed to the consumer.

Emergency Telephone Technical Charge

The Act requires each local exchange provider within a 9-1-1 service district to provide a billing and collection service for an emergency telephone technical charge from all service users within the geographical boundaries of the 9-1-1 service district. Under the bill, this provision would not apply to users of a prepaid wireless telecommunications service.

("Emergency telephone technical charge" means a charge allowed for costs directly related to 9-1-1 service, including plant-related costs associated with the use of the public switched telephone network from the end user to the selective router, the network start-up costs, customer notification costs, common network costs, administrative costs, database management costs, and network nonrecurring and recurring installation, maintenance, service, and equipment charges of a service supplier providing 9-1-1 service under the Act.)

Sunset & Collection of County Charge

Currently, the Act is scheduled to be repealed on December 31, 2014. The bill would delay the sunset until December 31, 2021.

The Act provides that the county charge may not be levied after the repeal date. If all or part of the charge, however, has been pledged as security for the payment of qualified obligations, the charge may be levied and collected only to the extent required to pay the obligations or satisfy the pledge. The bill would eliminate these provisions.

MCL 484.1102 et al.

BACKGROUND

Money deposited into the Emergency 9-1-1 Fund must be distributed as follows:

- 7.75% must be available to reimburse local exchange providers for the costs related to wireless emergency service.
- 6.0% must be available to primary public safety answering points (PSAPs) for training personnel assigned to 9-1-1 centers.
- 1.88% must be credited to the Michigan Department of State Police (MSP) to operate a regional dispatch center that receives and dispatches 9-1-1 calls, and 1.87% must be credited to the MSP for costs to administer the Act and to maintain the office of the State 9-1-1 coordinator.
- 82.5% must be disbursed to each county that has a final 9-1-1 plan in place.

Of the money disbursed to counties, 40% must be distributed on an equal basis to each county, and 60% must be distributed based on a population per capita basis.

("Primary public safety answering point" means a communications facility operated or answered on a 24-hour basis assigned responsibility by a public agency or county to receive 9-1-1 calls and to dispatch public safety response services, as appropriate.)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have a negligible fiscal impact on the level of future surcharge collections under the Emergency 9-1-1 Service Enabling Act. Amending the manner in which surcharges for 9-1-1 service are administered for prepaid cell phones should result in a very similar level of revenue compared to current collection methods, with the possibility that the added efficiency of the new method could result in a somewhat higher capture of funds.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.