



Ohio Legislative Service Commission

Bill Analysis

Kathleen A. Luikart

Sub. H.B. 360

129th General Assembly
(As Passed by the House)

Reps. Rosenberg, Butler, Murray, Grossman, J. Adams, Ruhl, Gonzales, Combs, Stautberg, Batchelder

BILL SUMMARY

- If the current wireless 9-1-1 charge, which is required to sunset at the end of this year, is not extended into July 2013 or thereafter, the bill would likely do only the following, effective July 1, 2013:
 - Exclude providers and sellers of prepaid wireless calling services from civil liability for activities or omissions with regard to a 9-1-1 system or for providing related assistance.
 - Grant rule-making authority to the Tax Commissioner.
- If the current wireless 9-1-1 charge is extended into July 2013 or thereafter, and existing law with regard to that charge is otherwise preserved, the bill would do the following, effective July 1, 2013:
 - Change the method of collection of the wireless 9-1-1 charge on prepaid subscribers by requiring sellers of prepaid services to collect the charge at the point of sale, rather than collection by prepaid providers or resellers alone.
 - Change the amount of the prepaid charge from 28¢ per month to 0.56% of the sale price for the sale of the prepaid services.
 - Require sellers to remit the prepaid charges to the Department of Taxation, and would specify that the sellers are subject to sales-tax requirements then in effect regarding audits, assessments, appeals, enforcement, liability, and penalties.

- Permit sellers to retain a 3% collection fee before remitting the prepaid charges.
- Require the Department of Taxation to transfer the remitted prepaid charges to a Prepaid Wireless 9-1-1 Administrative Fund, used to defray the Department's costs, and the remainder to the Wireless 9-1-1 Government Assistance Fund.
- Require the Tax Commissioner to provide all known sellers with notice of any increase or decrease in the amount of the prepaid charge.
- Exclude providers and sellers of prepaid wireless calling services from civil liability for activities or omissions with regard to a 9-1-1 system or for providing related assistance.
- Grant rule-making authority to the Tax Commissioner.

CONTENT AND OPERATION

Overview

The current wireless 9-1-1 charge, which is altered by this bill, is required to sunset on December 31 of this year.¹ But the bill's effective date is July 1, 2013.² And the bill does not extend the current charge. Therefore, unless the charge is extended, the bill would have only a minimal effect on existing law, likely establishing certain immunity for providers and sellers of prepaid wireless calling services (see "**Liability limitations**").³ However, if the General Assembly extends the current wireless 9-1-1 charge into July 2013 or thereafter, or resurrects the charge, the bill would change the amount and method of collection of the current wireless 9-1-1 charge on prepaid subscribers, by establishing a specific prepaid charge, distinct from the charge imposed on nonprepaid subscribers.

There is no distinction in current law between a prepaid charge and a nonprepaid charge. The current wireless 9-1-1 charge is imposed on *all* wireless subscribers with Ohio billing addresses.⁴ The charge goes to fund countywide wireless

¹ R.C. 4931.61(A).

² Section 3.

³ R.C. 4931.49(D).

⁴ R.C. 4931.61 and 4931.63.

enhanced 9-1-1 systems and for other related purposes.⁵ Wireless enhanced 9-1-1 services are federally required.⁶

The bill would change the method of collection of the charge on prepaid subscribers by requiring sellers of prepaid services to collect the bill's prepaid charge at the point of sale, rather than collection by prepaid providers or resellers.⁷ The bill would change the amount of the prepaid charge from 28¢ per month to 0.56% of the sale price of the prepaid services. The bill would require the prepaid charge to terminate on whatever day the current charge is required to terminate.⁸

This analysis discusses how the bill would change the law if the current charge were extended. In doing so, the analysis compares the bill to current law. But the law at the time that the bill takes effect may not be the same as current law.

Requirement that would be imposed on sellers

The bill would require the seller of a "prepaid wireless calling service" to collect the prepaid wireless 9-1-1 charge from the consumer at the time of each retail sale.⁹ A "prepaid wireless calling service" is defined as a telecommunications service that provides the right to utilize mobile telecommunications service as well as other non-telecommunications services, including the download of digital products delivered electronically, and content and ancillary services, that must be paid for in advance and that is sold in predetermined units of dollars of which the number declines with use in a known amount.¹⁰ The seller would be required to collect the charge at the time of the retail sale and itemize the charge on the receipt, invoice, or similar form of written documentation.¹¹

The bill contains specific provisions for when a prepaid wireless calling service is sold with one or more other products or services for a single, nonitemized price, such as when a prepaid mobile phone is sold with free minutes upon activation. In this case,

⁵ R.C. 4931.65.

⁶ 47 C.F.R. 20.18 (not in the bill).

⁷ R.C. 4931.61.

⁸ R.C. 4931.61(B)(1).

⁹ R.C. 4931.61.

¹⁰ R.C. 4931.40(X); R.C. 5739.01(AA)(5) (not in the bill).

¹¹ R.C. 4931.61(B)(3).

the bill would require the prepaid charge to be imposed on the *entire* sale price, with the following exceptions:

- The seller could impose the charge on only the dollar amount of the prepaid wireless calling service if that amount were disclosed to the consumer.
- The seller could impose the charge only on the portion of the price attributed to the prepaid wireless calling service if the seller were able to identify that portion by reasonable and verifiable standards.
- The seller would be permitted *not to collect* the charge at all if the amount of the prepaid wireless calling service were ten minutes or less or \$5 or less.¹²

The bill specifies that a retail sale would occur in Ohio if it were effected by the consumer appearing at a seller's business location in Ohio. The bill also allows that sales could be sourced in the same manner as for sales tax purposes, except that the seller could elect to source the sale to the location associated with the mobile phone number.¹³

Current law requires wireless service providers or resellers to collect the wireless 9-1-1 charge from prepaid subscribers in one of the following manners:

- at the point of sale, such as when a subscriber purchases additional minutes;
- by reducing a subscriber's positive account balance at the beginning of a month; or
- by taking the amount due out of the provider or reseller's earned prepaid revenue.¹⁴

Remittance of charges

Seller remittance

The bill would require sellers to, by the 23rd of each month, make and file a return showing the amount of prepaid charges collected in the previous month, and

¹² R.C. 4931.61(B)(4).

¹³ R.C. 4931.61(B)(2).

¹⁴ R.C. 4931.61(A).

remit the full amount due to the Department of Taxation. Sellers would be permitted to retain a collection fee of 3% of the total charges collected and would be required to account for the retained amount to the Department. The bill would permit the Tax Commissioner to authorize a seller to make and file returns less frequently if collected charges do not merit monthly returns, based on administrative costs to the state.

The return would be required to be filed electronically using the Ohio Business Gateway, the Ohio Telefile System, or any other electronic means prescribed by the Tax Commissioner, unless the Commissioner excuses a seller, for good cause shown, from the electronic-filing requirement. Payment would be required to be made electronically (unless the seller is excused for good cause shown) in a manner approved by the Tax Commissioner. The bill would permit the Commissioner to extend the time for making and filing returns and paying amounts due. The bill would also permit the Commissioner to require that the return for the last month of any annual or semiannual period be a reconciliation return detailing the prepaid charges collected during the preceding annual or semiannual period. The bill would require the reconciliation return to be filed by the last day of the month following the last month of this period.¹⁵

Under current law, the wireless 9-1-1 charges are required to be remitted directly to the Ohio 9-1-1 Coordinator on a monthly basis.¹⁶

The bill also specifies that sellers would be subject to the sales-tax requirements, as those requirements apply to audits, assessments, appeals, enforcement, liability, and penalties. The bill requires the Tax Commissioner to establish procedures by which a person may document that a sale is not a retail sale subject to the bill's requirements. These procedures are required to substantially coincide with similar sales-tax procedures.¹⁷ The bill could be interpreted to require the Commissioner to establish these procedures even if the current wireless 9-1-1 charge is not extended.

Transfers to funds by the Department of Taxation

The Department of Taxation would be required to transfer the remitted prepaid charges directly to the appropriate funds. Specifically, the Department would be required, within 45 days after the end of each month, to transfer 1% of the remitted charges to the Prepaid Wireless 9-1-1 Administrative Fund, created by the bill in the state treasury. The fund would be required to be used by the Department in carrying out the bill's provisions governing the prepaid-charge collection and remittance. The

¹⁵ R.C. 4931.62(B).

¹⁶ R.C. 4931.62(A).

¹⁷ R.C. 4931.622.

Department would be required, within the same 45-day time period, to transfer the remaining amount to the Wireless 9-1-1 Government Assistance Fund, created in current law.¹⁸ The Ohio 9-1-1 Coordinator is required under continuing law to make monthly disbursements from this fund to counties that have adopted final plans for wireless enhanced 9-1-1 systems. The bill would also require the Department, immediately upon completion of the transfer, to certify to the Ohio 9-1-1 Coordinator the amounts transferred to the Wireless 9-1-1 Government Assistance Fund.¹⁹

Under current law, up to 2% of the remitted current wireless 9-1-1 charges are required to go to the Wireless 9-1-1 Administrative Fund, which funds the PUCO's costs, and the remainder is required to be deposited into the Wireless 9-1-1 Government Assistance Fund.²⁰

Notice requirement for change in the prepaid-charge amount

The bill would require the Tax Commissioner to give all known sellers of prepaid wireless calling services notice of any increase or decrease in the prepaid charge, at least 30 days before the increase or decrease would take effect.²¹

Liability limitations

The bill specifies that except for willful or wanton misconduct, a provider of and a seller of a prepaid wireless calling service and their respective officers, directors, employees, agents, and suppliers are not liable in civil damages resulting from participation in or acts or omissions in connection with participating in or developing, maintaining, or operating a 9-1-1 system, or from the provision of assistance to a public utility, municipal utility, or state or local government during a public emergency or service outage.²² The bill does not specifically tie this immunity provision to the bill's prepaid charge. Therefore, this provision would likely take effect regardless of whether the current wireless 9-1-1 charge is extended.

The bill specifies that no provider of a prepaid wireless calling service would be liable to the state for any prepaid charges not collected or remitted.²³

¹⁸ R.C. 4931.621.

¹⁹ R.C. 4931.64 and 4931.621(B).

²⁰ R.C. 4931.63.

²¹ R.C. 4931.611.

²² R.C. 4931.49(D).

²³ R.C. 4931.62(C)(2).

Rule-making authority

The bill requires the Tax Commissioner to adopt rules to carry out the bill's provisions regarding prepaid-charge collection and remittance. In a literal sense, this requirement could be interpreted to take effect regardless of whether the current wireless 9-1-1 charge is extended. The bill also limits the PUCO's current rule-making authority to prohibit the PUCO from adopting rules regarding the application of the sales-tax laws to sellers of prepaid wireless 9-1-1 calling services.²⁴

Wireless 9-1-1 Advisory Board recommendations

The bill requires the Wireless 9-1-1 Advisory Board to consult with and make recommendations to the Tax Commissioner, in addition to the PUCO and the 9-1-1 Coordinator as required under current law, regarding rules to be adopted.²⁵ As mentioned above, this requirement could be interpreted to take effect regardless of whether the current wireless 9-1-1 charge is extended.

Repeal of report requirement

The bill repeals an expired requirement that the Ohio 9-1-1 Coordinator submit a report to the General Assembly regarding wireless 9-1-1 in Ohio.²⁶

HISTORY

ACTION	DATE
Introduced	11-01-11
Reported, H. Public Utilities	03-28-12
Passed House (96-0)	05-15-12

H0360-PH-129.docx/jc

²⁴ R.C. 4931.67.

²⁵ R.C. 4931.69(D).

²⁶ R.C. 4931.70 (repealed); conforming changes in R.C. 167.03, 4927.03, 4927.15, 4931.40, 4931.41, 4931.44, 4931.49, 4931.50, 4931.60, 4931.63, 4931.64, 4931.65, 4931.66, 4931.67, and 4931.69.