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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 389

02/06/2013 Authored by Lesch; Loon; Johnson, S.; Cornish and Melin

The bill was read for the first time and referred to the Committee on Labor, Workplace and Regulated Industries

02/21/2013 Adoption of Report: Pass and re-referred to the Committee on Public Safety Finance and Policy

02/28/2013 Adoption of Report: Pass and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; 911 telephone service; providing for collection of 911
1.3 fees from prepaid wireless telecommunications services and prepaid wireless
1.4 E911 services; amending Minnesota Statutes 2012, sections 237.52, subdivision
1.5 3, by adding a subdivision; 270B.01, subdivision 8; 270B.12, subdivision
1.6 4; 403.02, subdivision 21, by adding subdivisions; 403.06, subdivision 1a;
1.7 403.11, subdivision 1, by adding a subdivision; proposing coding for new law in
1.8 Minnesota Statutes, chapter 403.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2012, section 237.52, subdivision 3, is amended to read:

1.11 Subd. 3. **Collection.** Every provider of services capable of originating a TRS call,
1.12 including cellular communications and other nonwire access services, in this state shall,
1.13 except as provided in subdivision 3a, collect the charges established by the commission
1.14 under subdivision 2 and transfer amounts collected to the commissioner of public
1.15 safety in the same manner as provided in section 403.11, subdivision 1, paragraph (d).
1.16 The commissioner of public safety must deposit the receipts in the fund established in
1.17 subdivision 1.

1.18 Sec. 2. Minnesota Statutes 2012, section 237.52, is amended by adding a subdivision
1.19 to read:

1.20 Subd. 3a. **Fee for prepaid wireless telecommunications service.** The fee
1.21 established in subdivision 2 does not apply to prepaid wireless telecommunications
1.22 services as defined in section 403.02, subdivision 17b, which are instead subject to the
1.23 prepaid wireless telecommunications access Minnesota fee established in section 403.161,
1.24 subdivision 1, paragraph (b). Collection, remittance, and deposit of prepaid wireless
1.25 telecommunications access Minnesota fees are governed by sections 403.161 and 403.162.

2.1 Sec. 3. Minnesota Statutes 2012, section 270B.01, subdivision 8, is amended to read:

2.2 Subd. 8. **Minnesota tax laws.** For purposes of this chapter only, unless expressly
2.3 stated otherwise, "Minnesota tax laws" means:

2.4 (1) the taxes, refunds, and fees administered by or paid to the commissioner under
2.5 chapters 115B, 289A (except taxes imposed under sections 298.01, 298.015, and 298.24),
2.6 290, 290A, 291, 295, 297A, 297B, ~~and 297H~~, and 403, or any similar Indian tribal tax
2.7 administered by the commissioner pursuant to any tax agreement between the state and
2.8 the Indian tribal government, and includes any laws for the assessment, collection, and
2.9 enforcement of those taxes, refunds, and fees; and

2.10 (2) section 273.1315.

2.11 Sec. 4. Minnesota Statutes 2012, section 270B.12, subdivision 4, is amended to read:

2.12 Subd. 4. **Department of Public Safety.** The commissioner may disclose return
2.13 information to the Department of Public Safety for the purpose of and to the extent
2.14 necessary to administer ~~section~~ sections 270C.725 and 403.16 to 403.162.

2.15 Sec. 5. Minnesota Statutes 2012, section 403.02, is amended by adding a subdivision
2.16 to read:

2.17 Subd. 17b. **Prepaid wireless telecommunications service.** "Prepaid wireless
2.18 telecommunications service" means a wireless telecommunications service that allows the
2.19 caller to dial 911 to access the 911 system, which service must be paid for in advance and is:

2.20 (1) sold in predetermined units or dollars of which the number declines with use in a
2.21 known amount; or

2.22 (2) provides unlimited use for a predetermined time period.

2.23 The inclusion of nontelecommunications services, including the download of digital
2.24 products delivered electronically, content, and ancillary services, with a prepaid wireless
2.25 telephone service does not preclude that service from being considered a prepaid wireless
2.26 telephone service under this chapter.

2.27 Sec. 6. Minnesota Statutes 2012, section 403.02, is amended by adding a subdivision
2.28 to read:

2.29 Subd. 20a. **Wireless telecommunications service.** Wireless telecommunications
2.30 service means a commercial mobile radio service, as that term is defined in United
2.31 States Code, title 47, section 332, subsection (d), including all broadband personal
2.32 communication services, wireless radio telephone services, and geographic area

3.1 specialized mobile radio licensees, that offer real-time, two-way voice service
 3.2 interconnected with the public switched telephone network.

3.3 Sec. 7. Minnesota Statutes 2012, section 403.02, subdivision 21, is amended to read:

3.4 Subd. 21. **Wireless telecommunications service provider.** "Wireless
 3.5 telecommunications service provider" means a provider of ~~commercial mobile radio~~
 3.6 ~~services, as that term is defined in United States Code, title 47, section 332, subsection~~
 3.7 ~~(d), including all broadband personal communications services, wireless radio telephone~~
 3.8 ~~services, geographic area specialized and enhanced specialized mobile radio services, and~~
 3.9 ~~incumbent wide area specialized mobile radio licensees, that offers real-time, two-way~~
 3.10 ~~voice service interconnected with the public switched telephone network and that is doing~~
 3.11 ~~business in the state of Minnesota~~ wireless telecommunications service.

3.12 Sec. 8. Minnesota Statutes 2012, section 403.06, subdivision 1a, is amended to read:

3.13 Subd. 1a. **Biennial budget; annual financial report.** The commissioner shall
 3.14 prepare a biennial budget for maintaining the 911 system. By December 15 of each year,
 3.15 the commissioner shall submit a report to the legislature detailing the expenditures for
 3.16 maintaining the 911 system, the 911 fees collected, the balance of the 911 fund, ~~and the~~
 3.17 ~~911-related administrative expenses of the commissioner, and the most recent forecast of~~
 3.18 revenues and expenditures for the 911 emergency telecommunications service account,
 3.19 including a separate projection of E911 fees from prepaid wireless customers and
 3.20 projections of year-end fund balances. The commissioner is authorized to expend money
 3.21 that has been appropriated to pay for the maintenance, enhancements, and expansion
 3.22 of the 911 system.

3.23 Sec. 9. Minnesota Statutes 2012, section 403.11, subdivision 1, is amended to read:

3.24 Subdivision 1. **Emergency telecommunications service fee; account.** (a) Each
 3.25 customer of a wireless or wire-line switched or packet-based telecommunications service
 3.26 provider connected to the public switched telephone network that furnishes service capable
 3.27 of originating a 911 emergency telephone call is assessed a fee based upon the number
 3.28 of wired or wireless telephone lines, or their equivalent, to cover the costs of ongoing
 3.29 maintenance and related improvements for trunking and central office switching equipment
 3.30 for 911 emergency telecommunications service, to offset administrative and staffing costs
 3.31 of the commissioner related to managing the 911 emergency telecommunications service
 3.32 program, to make distributions provided for in section 403.113, and to offset the costs,

4.1 including administrative and staffing costs, incurred by the State Patrol Division of the
4.2 Department of Public Safety in handling 911 emergency calls made from wireless phones.

4.3 (b) Money remaining in the 911 emergency telecommunications service account
4.4 after all other obligations are paid must not cancel and is carried forward to subsequent
4.5 years and may be appropriated from time to time to the commissioner to provide financial
4.6 assistance to counties for the improvement of local emergency telecommunications
4.7 services. The improvements may include providing access to 911 service for
4.8 telecommunications service subscribers currently without access and upgrading existing
4.9 911 service to include automatic number identification, local location identification,
4.10 automatic location identification, and other improvements specified in revised county
4.11 911 plans approved by the commissioner.

4.12 (c) The fee may not be less than eight cents nor more than 65 cents a month until
4.13 June 30, 2008, not less than eight cents nor more than 75 cents a month until June 30,
4.14 2009, not less than eight cents nor more than 85 cents a month until June 30, 2010, and
4.15 not less than eight cents nor more than 95 cents a month on or after July 1, 2010, for
4.16 each customer access line or other basic access service, including trunk equivalents as
4.17 designated by the Public Utilities Commission for access charge purposes and including
4.18 wireless telecommunications services. With the approval of the commissioner of
4.19 management and budget, the commissioner of public safety shall establish the amount of
4.20 the fee within the limits specified and inform the companies and carriers of the amount to
4.21 be collected. When the revenue bonds authorized under section 403.27, subdivision 1,
4.22 have been fully paid or defeased, the commissioner shall reduce the fee to reflect that debt
4.23 service on the bonds is no longer needed. The commissioner shall provide companies and
4.24 carriers a minimum of 45 days' notice of each fee change. The fee must be the same for all
4.25 customers, except that the fee imposed under this subdivision does not apply to prepaid
4.26 wireless telecommunications service, which is instead subject to the fee imposed under
4.27 section 403.161, subdivision 1, paragraph (a).

4.28 (d) The fee must be collected by each wireless or wire-line telecommunications
4.29 service provider subject to the fee. Fees are payable to and must be submitted to the
4.30 commissioner monthly before the 25th of each month following the month of collection,
4.31 except that fees may be submitted quarterly if less than \$250 a month is due, or annually if
4.32 less than \$25 a month is due. Receipts must be deposited in the state treasury and credited
4.33 to a 911 emergency telecommunications service account in the special revenue fund. The
4.34 money in the account may only be used for 911 telecommunications services.

4.35 (e) This subdivision does not apply to customers of interexchange carriers.

5.1 (f) The installation and recurring charges for integrating wireless 911 calls into
5.2 enhanced 911 systems are eligible for payment by the commissioner if the 911 service
5.3 provider is included in the statewide design plan and the charges are made pursuant to
5.4 contract.

5.5 (g) Competitive local exchanges carriers holding certificates of authority from the
5.6 Public Utilities Commission are eligible to receive payment for recurring 911 services.

5.7 Sec. 10. Minnesota Statutes 2012, section 403.11, is amended by adding a subdivision
5.8 to read:

5.9 Subd. 6. **Report.** (a) Beginning September 1, 2013, and continuing semiannually
5.10 thereafter, each wireless telecommunications service provider shall report to the
5.11 commissioner, based on the mobile telephone number, both the total number of prepaid
5.12 wireless telecommunications subscribers sourced to Minnesota and the total number of
5.13 wireless telecommunications subscribers sourced to Minnesota. The report must be filed
5.14 on the same schedule as Federal Communications Commission Form 477.

5.15 (b) The commissioner shall make a standard form available to all wireless
5.16 telecommunications service providers for submitting information required to compile
5.17 the report required under this subdivision.

5.18 (c) The information provided to the commissioner under this subdivision is
5.19 considered trade secret data under section 13.37 and may only be used for purposes of
5.20 administering this chapter.

5.21 Sec. 11. [403.16] DEFINITIONS.

5.22 Subdivision 1. **Scope.** For the purposes of sections 403.16 to 403.164, the terms
5.23 defined in this section have the meanings given them.

5.24 Subd. 2. **Consumer.** "Consumer" means a person who purchases prepaid wireless
5.25 telecommunications service in a retail transaction.

5.26 Subd. 3. **Department.** "Department" means the Department of Revenue.

5.27 Subd. 4. **Prepaid wireless E911 fee.** "Prepaid wireless E911 fee" means the fee that
5.28 is required to be collected by a seller from a consumer as established in section 403.161,
5.29 subdivision 1, paragraph (a).

5.30 Subd. 5. **Prepaid wireless telecommunications access Minnesota fee.** "Prepaid
5.31 wireless telecommunications access Minnesota fee" means the fee that is required to be
5.32 collected by a seller from a consumer as established in section 403.161, subdivision 1,
5.33 paragraph (b).

6.1 Subd. 6. **Provider.** "Provider" means a person that provides prepaid wireless
 6.2 telecommunications service under a license issued by the Federal Communications
 6.3 Commission.

6.4 Subd. 7. **Retail transaction.** "Retail transaction" means the purchase of prepaid
 6.5 wireless telecommunications service from a seller for any purpose other than resale.

6.6 Subd. 8. **Seller.** "Seller" means a person who sells prepaid wireless
 6.7 telecommunications service to another person.

6.8 Sec. 12. **[403.161] PREPAID WIRELESS FEES IMPOSED; COLLECTION;**
 6.9 **REMITTANCE.**

6.10 Subdivision 1. **Fees imposed.** (a) A prepaid wireless E911 fee of 80 cents per retail
 6.11 transaction is imposed on prepaid wireless telecommunications service until the fee is
 6.12 adjusted as an amount per retail transaction under subdivision 6.

6.13 (b) A prepaid wireless telecommunications access Minnesota fee, in the amount of
 6.14 the monthly charge provided for in section 237.52, subdivision 2, is imposed on each
 6.15 retail transaction for prepaid wireless telecommunications service until the fee is adjusted
 6.16 as an amount per retail transaction under subdivision 6.

6.17 Subd. 2. **Exemption.** The fees established under subdivision 1 are not imposed on a
 6.18 minimal amount of prepaid wireless telecommunications service that is sold with a prepaid
 6.19 wireless device and is charged a single nonitemized price, and a seller may not apply the
 6.20 fees to such a transaction. For purposes of this subdivision, a minimal amount of service
 6.21 means an amount of service denominated as either ten minutes or less or \$5 or less.

6.22 Subd. 3. **Fee collected.** The prepaid wireless E911 and telecommunications
 6.23 access Minnesota fees must be collected by the seller from the consumer for each retail
 6.24 transaction occurring in this state. The amount of each fee must be combined into one
 6.25 amount, which must be separately stated on an invoice, receipt, or other similar document
 6.26 that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

6.27 Subd. 4. **Sales and use tax treatment.** For purposes of this section, a retail
 6.28 transaction conducted in person by a consumer at a business location of the seller must
 6.29 be treated as occurring in this state if that business location is in this state, and any other
 6.30 retail transaction must be treated as occurring in this state if the retail transaction is treated
 6.31 as occurring in this state for purposes of the sales and use tax as specified in section
 6.32 297A.669, subdivision 3, paragraph (c).

6.33 Subd. 5. **Remittance.** The prepaid wireless E911 and telecommunications access
 6.34 Minnesota fees are the liability of the consumer and not of the seller or of any provider,
 6.35 except that the seller is liable to remit all fees that the seller collects from consumers as

7.1 provided in section 403.162, including all fees that the seller is deemed to collect in which
 7.2 the amount of the fee has not been separately stated on an invoice, receipt, or other similar
 7.3 document provided to the consumer by the seller.

7.4 Subd. 6. **Exclusion for calculating other charges.** The combined amount of the
 7.5 prepaid wireless E911 and telecommunications access Minnesota fees collected by a seller
 7.6 from a consumer must not be included in the base for measuring any tax, fee, surcharge,
 7.7 or other charge that is imposed by this state, any political subdivision of this state, or
 7.8 any intergovernmental agency.

7.9 Subd. 7. **Fee changes.** (a) The prepaid wireless E911 and telecommunications
 7.10 access Minnesota fee must be proportionately increased or reduced upon any change to
 7.11 the fee imposed under section 403.11, subdivision 1, paragraph (c), after July 1, 2013, or
 7.12 the fee imposed under section 237.52, subdivision 2, as applicable.

7.13 (b) The department shall post notice of any fee changes on its Web site at least 30
 7.14 days in advance of the effective date of the fee changes. It is the responsibility of sellers to
 7.15 monitor the department's Web site for notice of fee changes.

7.16 (c) Fee changes are effective 60 days after the first day of the first calendar month
 7.17 after the commissioner of public safety or the Public Utilities Commission, as applicable,
 7.18 changes the fee.

7.19 **Sec. 13. [403.162] ADMINISTRATION OF PREPAID WIRELESS E911 FEES.**

7.20 Subdivision 1. **Remittance.** Prepaid wireless E911 and telecommunications access
 7.21 Minnesota fees collected by sellers must be remitted to the commissioner of revenue
 7.22 at the times and in the manner provided by chapter 297A with respect to the general
 7.23 sales and use tax. The commissioner of revenue shall establish registration and payment
 7.24 procedures that substantially coincide with the registration and payment procedures that
 7.25 apply in chapter 297A.

7.26 Subd. 2. **Seller's fee retention.** A seller may deduct and retain three percent of
 7.27 prepaid wireless E911 and telecommunications access Minnesota fees collected by the
 7.28 seller from consumers.

7.29 Subd. 3. **Audit; appeal.** The audit and appeal procedures applicable under chapter
 7.30 297A apply to any fee imposed under section 403.161.

7.31 Subd. 4. **Procedures for resale transactions.** The commissioner of revenue shall
 7.32 establish procedures by which a seller of prepaid wireless telecommunications service
 7.33 may document that a sale is not a retail transaction. These procedures must substantially
 7.34 coincide with the procedures for documenting sale for resale transactions as provided in
 7.35 chapter 297A.

8.1 Subd. 5. Fees deposited. (a) The commissioner of revenue shall, based on
 8.2 the relative proportion of the prepaid wireless E911 fee and the prepaid wireless
 8.3 telecommunications access Minnesota fee imposed per retail transaction, divide the fees
 8.4 collected in corresponding proportions. Within 30 days of receipt of the collected fees,
 8.5 the commissioner shall:

8.6 (1) deposit the proportion of the collected fees attributable to the prepaid wireless
 8.7 E911 fee in the 911 emergency telecommunications service account in the special revenue
 8.8 fund; and

8.9 (2) deposit the proportion of collected fees attributable to the prepaid wireless
 8.10 telecommunications access Minnesota fee in the telecommunications access fund
 8.11 established in section 237.52, subdivision 1.

8.12 (b) The department may deduct and retain an amount, not to exceed two percent of
 8.13 collected fees, to reimburse its direct costs of administering the collection and remittance
 8.14 of prepaid wireless E911 fees and prepaid wireless telecommunications access Minnesota
 8.15 fees.

8.16 **Sec. 14. [403.163] LIABILITY PROTECTION FOR SELLERS AND**
 8.17 **PROVIDERS.**

8.18 (a) A provider or seller of prepaid wireless telecommunications service is not liable
 8.19 for damages to any person resulting from or incurred in connection with providing, or
 8.20 failing to provide, 911 or E911 service, or for identifying, or failing to identify, the
 8.21 telephone number, address, location, or name associated with any person or device that
 8.22 is accessing or attempting to access 911 or E911 service.

8.23 (b) A provider or seller of prepaid wireless telecommunications service is not liable
 8.24 for damages to any person resulting from or incurred in connection with providing any
 8.25 lawful assistance to any investigative or law enforcement officer of the United States, this or
 8.26 any other state, or any political subdivision of this or any other state, in connection with any
 8.27 lawful investigation or other lawful enforcement activity by the law enforcement officer.

8.28 (c) In addition to the protection from liability provided by paragraphs (a) and (b),
 8.29 section 403.08, subdivision 11, applies to sellers and providers.

8.30 **Sec. 15. [403.164] EXCLUSIVITY OF PREPAID WIRELESS E911 FEE.**

8.31 The prepaid wireless E911 fee imposed by section 403.161 is the only E911 funding
 8.32 obligation imposed with respect to prepaid wireless telecommunications service in this
 8.33 state, and no tax, fee, surcharge, or other charge may be imposed by this state, any political
 8.34 subdivision of this state, or any intergovernmental agency, for E911 funding purposes,

9.1 upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision
9.2 of prepaid wireless telecommunications service.

9.3 Sec. 16. **REPORT; RECOMMENDATIONS.**

9.4 (a) By March 1, 2014, the commissioner of public safety shall submit a report to
9.5 the chairs and ranking minority members of the legislative committees with primary
9.6 jurisdiction over public safety and telecommunications that assesses the amount of
9.7 revenue collected from the fees imposed under Minnesota Statutes, section 403.161,
9.8 and recommends any adjustment of those fees that the commissioner of public safety
9.9 determines is necessary in order to:

9.10 (1) fund legislative appropriations from the 911 emergency telecommunications
9.11 service account and to maintain a reasonable fund reserve; and

9.12 (2) maintain fairness with respect to the amount of fees paid by customers of
9.13 prepaid wireless telecommunications service as compared with customers of other
9.14 telecommunications services.

9.15 (b) A wireless telecommunications service provider shall provide any information
9.16 requested by the commissioner of public safety for the purposes of the report.

9.17 Sec. 17. **EFFECTIVE DATE.**

9.18 Sections 10 and 16 are effective the day following final enactment. Sections 1 to 9
9.19 and 11 to 15 are effective January 1, 2014.