

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 157

FINAL READING

Introduced by Friesen, 34.

Read first time January 09, 2017

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications; to amend sections
2 86-316, 86-318, 86-328, 86-902, 86-903, 86-904, and 86-905, Reissue
3 Revised Statutes of Nebraska; to define and redefine terms; to
4 change a provision of the Nebraska Telecommunications Universal
5 Service Fund Act; to change the prepaid wireless surcharge
6 determination and duties of sellers and the Department of Revenue
7 under the Prepaid Wireless Surcharge Act; to harmonize provisions;
8 and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-316, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 86-316 Sections 86-316 to 86-329 and section 3 of this act shall be
4 known and may be cited as the Nebraska Telecommunications Universal
5 Service Fund Act.

6 Sec. 2. Section 86-318, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 86-318 For purposes of the Nebraska Telecommunications Universal
9 Service Fund Act, the definitions found in sections 86-319 to 86-322 and
10 section 3 of this act apply.

11 Sec. 3. Prepaid wireless telecommunications service provider means
12 a wireless telecommunications company whose service must be paid for in
13 advance and is sold in predetermined units or dollars of which the number
14 declines with use in a known amount or expiration of time.

15 Sec. 4. Section 86-328, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 86-328 (1) Annually the commission shall hold a public hearing to
18 determine the level of the fund necessary to carry out the Nebraska
19 Telecommunications Universal Service Fund Act. The commission shall
20 publish notice of the hearing in at least one newspaper of general
21 circulation in the state at least once each week for two consecutive
22 weeks before the hearing. After the hearing, the commission shall
23 determine the amount of the fund for the following year, including a
24 reasonable reserve. In the initial year of the fund's operation, the
25 commission shall determine the amount of the fund to be equivalent to the
26 amount which, in the commission's judgment, after careful analysis, is
27 necessary to keep approximately ninety-six percent of Nebraska households
28 subscribed to local telecommunications service.

29 (2) In an emergency as determined by the commission, the commission
30 may adjust the level of the fund, but only after a public hearing for
31 such purpose.

1 (3) For purposes of service by a prepaid wireless telecommunications
2 service provider, universal service fund contribution and surcharge
3 obligations shall be governed by the Prepaid Wireless Surcharge Act,
4 except that a prepaid wireless telecommunications service provider shall
5 continue to be subject to the audit requirements in subdivision (2)(d) of
6 section 86-324.

7 Sec. 5. Section 86-902, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 86-902 For purposes of the Prepaid Wireless Surcharge Act:

10 (1) Consumer means a person who purchases prepaid wireless
11 telecommunications service in a retail transaction;

12 (2) Prepaid wireless surcharge means the charge that is required to
13 be collected by a seller from a consumer in the amount established under
14 section 86-903;

15 (3) Prepaid wireless telecommunications service means a wireless
16 telecommunications service that allows a caller to dial 911 to access the
17 911 system, which service must be paid for in advance and is sold in
18 predetermined units or dollars of which the number declines with use in a
19 known amount or expiration of time;

20 (4) Provider means a person that provides prepaid wireless
21 telecommunications service pursuant to a license issued by the Federal
22 Communications Commission;

23 (5) Retail transaction means the purchase of prepaid wireless
24 telecommunications service from a seller for any purpose other than
25 resale;

26 (6) Seller means a person who sells prepaid wireless
27 telecommunications service to another person; and

28 (7) Wireless telecommunications service means mobile service as
29 defined by 47 C.F.R. 20.3, as such section existed on July 19, 2012.

30 Sec. 6. Section 86-903, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 86-903 (1) The Department of Revenue shall determine the prepaid
2 wireless surcharge annually, effective January 1, based on the charges
3 described in subsection (2) of this section as in effect on the preceding
4 July 1. The department shall provide not less than ninety days' advance
5 notice of any change in the prepaid wireless surcharge on the
6 department's web site.

7 (2) The rate of the prepaid wireless surcharge shall be the sum of
8 the following three ~~two~~ percentages, rounded up to the nearest tenth of
9 one percent:

10 (a) The percentage obtained by dividing (i) the amount of the
11 wireless E-911 surcharge authorized under subdivision (1)(b) of section
12 86-457 by (ii) fifty; ~~and~~

13 (b) The percentage obtained by dividing (i) the amount of the
14 Nebraska Telecommunications Relay System Fund surcharge set by the Public
15 Service Commission pursuant to the Telecommunications Relay System Act by
16 (ii) fifty; and -

17 (c) The percentage obtained by multiplying (i) the Nebraska
18 Telecommunications Universal Service Fund surcharge percentage rate set
19 by the Public Service Commission by (ii) one minus the Federal
20 Communications Commission safe harbor percentage for determining the
21 interstate portion of a fixed monthly wireless charge.

22 (3) The Department of Revenue shall provide the Public Service
23 Commission with prepaid wireless surcharge calculation and collection
24 data upon request by the commission.

25 (4) ~~(3)~~ Beginning January 1, 2013, each seller shall collect the
26 prepaid wireless surcharge from the consumer with respect to each retail
27 transaction occurring in this state. The seller shall disclose the amount
28 of the prepaid wireless surcharge either separately on an invoice,
29 receipt, or other similar document that is provided to the consumer by
30 the seller or otherwise. A retail transaction that is effected in person
31 by a consumer at a business location of the seller shall be treated as

1 occurring in this state if that business location is in this state, and
2 any other retail transaction shall be treated as occurring in this state
3 if the retail transaction is treated as occurring in this state for
4 purposes of section 77-2703.

5 (5) ~~(4)~~ The prepaid wireless surcharge is the liability of the
6 consumer and not of the seller or of any provider, except that the seller
7 shall be liable to remit all prepaid wireless surcharges that the seller
8 collects from consumers as provided in section 86-904, including all such
9 charges that the seller is deemed to collect when the amount of the
10 charge has not been separately stated on an invoice, receipt, or other
11 similar document provided to the consumer by the seller.

12 (6) ~~(5)~~ The amount of the prepaid wireless surcharge that is
13 collected by a seller from a consumer, whether or not such amount is
14 separately stated on an invoice, receipt, or other similar document
15 provided to the consumer by the seller, shall not be included in the base
16 for measuring any tax, fee, surcharge, or other charge that is imposed by
17 this state, any political subdivision of this state, or any
18 intergovernmental agency.

19 (7) ~~(6)~~ For purposes of subsection (4) ~~(3)~~ of this section, when
20 prepaid wireless telecommunications service is sold with one or more
21 other products or services for a single, non-itemized price, the seller
22 shall elect to treat the price of the prepaid wireless telecommunications
23 service (a) as such entire non-itemized price, (b) if the amount of
24 prepaid wireless telecommunications service is disclosed to the consumer
25 as a dollar amount, as such dollar amount, or (c) if the retailer can
26 identify the portion of the price that is attributable to the prepaid
27 wireless telecommunications service by reasonable and verifiable
28 standards from its books and records that are kept in the regular course
29 of business for other purposes, including, but not limited to, nontax
30 purposes, as such portion. If the amount of prepaid wireless
31 telecommunications service is denominated as ten minutes or less or as

1 five dollars or less, the seller may elect not to collect any prepaid
2 wireless surcharge with respect to the retail transaction.

3 Sec. 7. Section 86-904, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 86-904 (1) Sellers shall remit collected prepaid wireless surcharges
6 to the Department of Revenue ~~at the times and~~ in the manner provided in
7 the Nebraska Revenue Act of 1967 with respect to sales tax. Sellers shall
8 remit the prepaid wireless surcharges to the department on a monthly
9 basis, except that if a seller collected less than one thousand dollars
10 of prepaid wireless surcharges in the prior year, the seller may remit on
11 an annual basis. The department shall establish registration and payment
12 procedures that substantially coincide with the registration and payment
13 procedures that apply to sales tax.

14 (2) A seller shall be permitted to deduct and retain three percent
15 of prepaid wireless surcharges that are collected by the seller from
16 consumers.

17 (3) The audit and appeal procedures applicable to sales tax under
18 the Nebraska Revenue Act of 1967 shall apply to prepaid wireless
19 surcharges.

20 (4) The Department of Revenue shall establish procedures by which a
21 seller of prepaid wireless telecommunications service may document that a
22 sale is not a retail transaction, which procedures shall substantially
23 coincide with the procedures for documenting sale for resale transactions
24 for sales tax purposes.

25 (5) After deducting an amount, not to exceed one-half of one two
26 percent of charges, to be retained by the department to reimburse its
27 direct costs of administering the collection and remittance of prepaid
28 wireless surcharges, the department shall remit all collected prepaid
29 wireless surcharges to the State Treasurer for credit to the Enhanced
30 Wireless 911 Fund, and the Nebraska Telecommunications Relay System Fund,
31 and the Nebraska Telecommunications Universal Service Fund in the

1 proportions that the respective corresponding components of the prepaid
2 wireless surcharge under subsection (2) of section 86-903 bear to the
3 total prepaid wireless surcharge.

4 Sec. 8. Section 86-905, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 86-905 The prepaid wireless surcharge shall be the only funding
7 obligation imposed with respect to prepaid wireless telecommunications
8 service for E-911 service, ~~and~~ telecommunications relay service, and
9 universal service in this state, and no tax, fee, surcharge, or other
10 charge shall be imposed by this state, any political subdivision of this
11 state, or any intergovernmental agency, for purposes of funding E-911
12 service, ~~or~~ telecommunications relay service, or universal service, upon
13 any provider, seller, or consumer with respect to the sale, purchase,
14 use, or provision of prepaid wireless telecommunications service.

15 Sec. 9. Original sections 86-316, 86-318, 86-328, 86-902, 86-903,
16 86-904, and 86-905, Reissue Revised Statutes of Nebraska, are repealed.